WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #3

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2005 JUL 29 P 2:34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: W.V. 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.

Stephanie R. Timmermeyer
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 29, 2005

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 15, 2005

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

Published notice on June 17th and 21st in the Charleston Newspapers; The Charleston Daily Mail and The Charleston Gazette. Sent Public Hearing Notice via e-mail to an extensive Division of Air Quality mailing list and 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 18, 2005

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 29, 2005

f. **Name, title, address and phone/fax/e-mail numbers** 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. **IF DIFFERENT 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 For Source Categories Pursuant to 40 CFR Part 63"

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. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. 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 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial, Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air

Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

As provided in 40 CFR §63.4(a)(3), 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 Part 63 through the approved permit program under Title V of the CAA, as amended. Promulgation of this rule will enable the Department of Environmental Protection, Division of Air Quality (DAQ) to continue to be the primary enforcement authority for NESHAP promulgated under 40 CFR Part 63 by U.S. EPA as of June 1, 2005. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA, as amended. Revisions to the rule include general annual updates and incorporation by reference rule language clarification.

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

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

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 8, 2005 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - June 8, 2005
601 57th Street, SE, Charleston, WV
Dolly Sods Conference Room – 1st Floor

ATTENDEES:

Advisory Council Members:
Larry Harris
Jackie Hallinan
Rick Roberts
Lisa Dooley
Bill Raney
Karen Price

DEP:
Stephanie R. Timmermeyer, Cabinet Secretary
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
Mike Zeto, WVDEP
Charlie Sturey, WVDEP
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, WVDEP - Office of Oil & Gas
Brett Loflin, WV Oil and Gas Conservation Commission
Dave Bassage- WVDEP
Greg Adolpson – WVDEP
Jim Mason – WVDEP
Fred Durham – WVDEP
Jim Mason – WVDEP
Mike Johnson – WVDEP

VISITORS:

Linda Tennant, Spilman, Thomas, Battle
Don Garvin – WVEC
Bob Asplund - Dominion

Karen Watson, WVDEP – Assistant General Counsel, called the meeting to order at 10:00 a.m.

Proposed rules for the 2006 legislative session are as follows:

- **45CSR1 "Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors"**

  This rule partially fulfills the State's obligations in response to U.S. EPA's final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group region for Purposes of Reducing Regional Transport of Ozone* 27 Oct 1998, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrains them to set budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy/sell NO_x emission allowances from /to other program participants. For example, a source which has emitted NO_x in excess of its NO_x allowance allocation may purchase NO_x allowances under the federal NO_x Budget Trading Program to obtain the needed NO_x emission allowances to cover its actual NO_x emissions during an ozone season. Conversely, a source which emits fewer tons of NO_x than its NO_x allowance allocation may either bank or sell (trade) the excess NO_x allowances to another sources which needs them to cover its excess NO_x emissions.

  45CSR1 applies to large fossil fuel-fired stationary sources (large industrial boilers) with heat inputs greater than 250 mmBtu/hr. The Department of Environmental Protection, Division of Air Quality (DAQ) addresses Electric Generation Units (EGUs) in a separate rulemaking, 45CSR26. 45CSR1 also applies to large cement kilns and internal combustion engines which emitted more than one ton per day of NO_x from May 1 through September 30, 1995, although these sources are not subject to the NO_x Budget Trading Program.

  Comments:

  How will this relate to the new rule 40?

  Rule 40 will repeal Rule 1 in 2009.

  Are these kinds of trading effective in lowering NO_x emission?

  Yes, West Virginia has dropped from one of the highest to one of the lowest states.

  If one is testing, how do you see which sources account for improvement?

  Have CEMS on stacks so we can analyze data.

- **45CSR15 – "Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 61"**

  This rule establishes and adopts national emission standards for hazardous air pollutant (NESHAPO) and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to 40CFR part 61 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 to the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporated by reference the NESHAP standards of 40 CFR Parts 61 and 65 (consolidated Federal Air Rule), to the extent referenced in 40CFR part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CSR parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40CFR part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

No Comments

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

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule incorporates by reference New Sources Performance Standards (NSPS) promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of July 1, 2005: Standards of performance for Industrial-Commercial-Institutional Steam Generating units; Stationary Gas Turbines: Steel Plants; and new and Existing Stationary Sources: Electric Utility Steam Generating Units (CAMR).

No Comments

- **45CSR25 – "To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities."**

  This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods, which are appended to these standards. Any person, who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste management Program, the codified federal emission standards, and this rule.

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

  This revised rule incorporates by reference the following provisions of 40 CFR Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

  Comments:

  What does the term "constituents" mean and how does one decide whether a source has prevented emissions that would cause harm under section 1.1.b of the rule?

  > *Look at the definition of "hazardous waste" and prevention language is meant to set forth overall purpose of the rule.*

  Does the agency consult with DHHR or other public health officials?

  > *No, the agency uses a risk-based approach and has a toxicologist employed. It also looks to EPA.*

- **45CSR33 – "Acid Rain Provisions and Permits"**

  This rule establishes and adopts the general provisions and operating permit program requirements for affected sources under the Acid Rain Program promulgated by the4 United States Environmental Protection Agency (USEPA) undertitle IV of the Clean Air Act, as amended (CAA). The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these provisions. Under the Acid Rain Program and 45CSR33, no person may construct, modify, or operate or

cause to be constructed, modified, or operated, an Acid Rain Source in violation of 40CFR Parts 72 through 77.
Title IV of the CAA requires each state to implement an operating permit system conforming to Title IV and Title V of the CAA, as amended. 45CSR33 incorporates by reference the federal counterpart regulation 40 CFR Parts 72 through 77. USEPA approved West Virginia's Acid Rain Program with its approval of the state's Title V Operating Permit Program on December 15, 1995.

This revised rule incorporates by reference the following revisions to 40CFR Parts 72 through 77 promulgated as of June 1, 2005: Permits Regulation, Sulfur Dioxide Allowance System, Sulfur Dioxide Opt-Ins, continuous Emission Monitoring, Excess Emissions (CAIR & CAMR).

No Comments

- **45CSR34 – "Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63**

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. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. 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 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial,

Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

No Comments

- **45CSR37 – "Mercury Budget Trading Program to Reduce Mercury Emissions"**

This rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH.

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (15 March 2005, at FR XXXXX). The federal rule establishes standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (utility units). This rule establishes a mechanism by which Hg emissions from new and existing coal-fired utility units are capped at specific nation-wide levels. U.S. EPA has specified that annual Hg emission reductions be implemented in two phases. The first phase of Hg reductions starts in 2010 and the second phase begins in 2018, and continues thereafter. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell Hg emission allowances from or to other program participants.

45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW_e generating capacity.

Comments:

How will this affect Industrial boilers?

The rule does not cover these sources.

What kind of monitoring is required?

Have to install CEMS.

What happens when there is litigation?

If court remands, we would withdraw the rule.

Does the rule apply to natural gas-fired units?

No, only coal-fired.

Does the rule establish new fees?

No.

John Benedict informed the Council of the following reductions:

Nationally

2010 – 22%
2018 – 69%

WV:

2010 – 43%
2018 – 77%

- **45CSR39 – "Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides"**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_X Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_X).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_X reduce annual emissions through the constraint of set

budgets. U.S. EPA is specifying that annual NO_X emission reductions be implemented in two phases. The first phase of NO_X reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_X emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_X emission allowances from or to other program participants. Reducing upwind NO_X emissions will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_X Ozone Season Trading Program requirements are set forth in 45CSR40.

Comments:

How will this affect industrial boilers?

It will not. It only affects electric utilities.

Is there a set-aside provision?

Yes.

Agency should consider using the money to clean up streams impacted by acid rain.

- **45CSR40 – "Control of Ozone Season Nitogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nit5rogen Oxides"**

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_X Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_X).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_X reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_X emission reductions be implemented in two phases. The first phase of ozone season NO_X reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_X emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-

based "cap and trade" provisions which allow sources to buy or sell NO_X emission allowances from or to other program participants. Reducing upwind ozone season NO_X emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_X SIP Call trading program, existing NO_X SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_X reduction provisions must be "sunsetted" by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which effectively "sunsets" these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_X SIP Call ozone season NO_X emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_X Annual Trading Program requirements are set forth in 45CSR39.

No Comments.

- **33CSR41 – "Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide"**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO_2 Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO_2).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO_2 reduce annual emissions based upon the implementation of retirement ratios for SO_2 allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO_2 emission reductions be implemented in two phases. The first phase of SO_2 reductions starts in 2010 and requires retiring SO_2 allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO_2 allowances at a 2.86:1 ratio, and continues thereafter. The SO_2 emissions reductions requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell SO_2 emission allowances from or to other program participants. Reducing upwind SO_2 emissions will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment

areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity.

How was the fiscal note derived?

It is based on how many persons will be necessary to implement the rule.

When will these rules be filed with EPA?

September of 2006 for the CAIR rules and November 2006 for the mercury rule.

- **33CSR1 – "Solid Waste Management Rule"**

This legislative rule establishes requirements for the siting (including location standards), financial assurance, installation, establishment, construction, design, groundwater monitoring, modification, operation, permitting, closure and post-closure care of any solid waste facility that processes, recycles, composts, transfers or disposes of solid waste pursuant to W. Va. Code §22-15-1 et seq. The rule revision will clarify that the State Division of Highways is subject to an exemption from permitting for its construction/demolition wastes associated with highway construction. The rule will also clarify that the beneficial reuse of clean bituminous concrete (asphalt) is not subject to permitting requirements, just as the beneficial reuse of Portland cement is not subject to permitting.

Comments:

Has the agency worked with the Division of Highways on the rule?

Yes.

- **33-CSR20 – "Hazardous Waste Management"**

The purpose of this rule is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment. The rule changes pick up two new federal regulations.

No Comments.

- **35CSR3 – "Coalbed Methane Wells Rule"**

This rule applies to coalbed methane wells. The rule changes are necessary to conform to recent statutory revisions related to spacing. The changes also address new technology allowing for the horizontal drilling of wells.

Comments:

Are operators required to sample both water quality and quantity?

Just quality.

A question was raised about the 100' and 1000' distance requirements from water wells and the agency explained how these provisions work.

A comment was made that landowners are confused by the rule's requirements and some further explanations would be helpful.

- **39CSR1 – "Rules of the Commission"**

The rule is designed to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virignia and is applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict. The rule changes are to clarify the agency can enter consent agreements and establish escrow accounts.

No comments.

- **60CSR8 "Environmental Excellence Program Rule"**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program, consisting of incentives to reward facilities that go beyond regulatory requirements.

Comments:

Will the reports that are filed be shared with the public?

Yes, they will be posted on the internet.

Will people pay the $1000 fee?

From pre-comments, most are willing to pay some amount. The administrative fund will cover the agency's operating costs.

A comment was made that there should be more programs like this, where companies are rewarded for good performance.

Lisa McClung, Director of DWWM, presented several rules under the water program that will be filed in the future. One was the concentrated animal feeding operation (CAFO) rule that was withdrawn by the agency in the 2005 session. As soon as EPA repromulgates its rule, the State will need to do so, perhaps by an emergency rule.

Then the new law transferring the authority to adopt water quality standards to the DEP was discussed. A question was raised concerning the public's involvement in the process. Ms. McClung responded that the process would be somewhat different from the agency's normal rulemaking.

Karen Watson then presented a list of bills passed by the Legislature during the 2005 regular session and signed by the Governor as follows:

1. **SB 428. Creating the Revitalization Environmental Action Plan.**

This legislation transfers the litter control and recycling programs from DNR to DEP and transfers the waste tire remediation program from DOH to DEP. The legislation was amended by the House to require the excess funds to be transferred to the state road fund rather than the solid waste reclamation and environmental response fund. SB 428 bill also incorporates the provisions of Senate Bill 42 at 22-15A-12(f) and (k). These provisions provide liability protection on waste tire remediation to bona fide purchasers of property containing waste tires.

2. **SB 603. Higher Education Bill – Brownfield Assistance Centers.**

This legislation creates a provision in W.Va. Code § 18B11-7 that authorizes Marshall University and West Virginia University to each create Brownfield Assistance Centers for the purpose of acquiring and developing property; seeking federal brownfield assistance funds; and providing assistance to municipalities and local governments for brownfields development.

Comments:

The Council discussed the funding mechanisms under the new law.

3. **HB 3354. Oil and Gas Permit Fee Increase.**

This legislation increases the permit fees for shallow wells from $250 to $400; the permit fees for deep wells from $250 to $650; and the reclamation fees for all well activity from $100 to $150. This legislation also includes some technical amendments to the statutes governing oil and gas and coal bed methane drilling and production. As introduced, the legislation increased the permit fees for coal bed methane wells from $250 to $650 but the legislation was amended by the Senate to eliminate this permit fee increase. In total, this legislation will generate approximately $350,000 for the Office of Oil and Gas.

4. **SB 406. Uniform Environmental Covenant Act.**

This legislation clarifies that environmental covenants containing affirmative obligations issued pursuant to the Voluntary Remediation and Redevelopment Act or other federal or state response actions are enforceable and perpetual; provides notice requirements for those placing environmental covenants on real property; and authorizes the department and local governments to enforce environmental covenants.

Comments:

A question was raised as to local governments.

The agency responded that they are included and have authority under the new law.

5. **HB 2723. Environmental Rules Bundle.**

This legislation consolidates the rules proposed by DEP and EQB. The DEP rules include revisions to the air, waste, water and mining programs. The EQB's rule relates to water quality standards. The EQB's rule was amended to eliminate Fill Hollow Creek in Preston County that the Board recommended to be included on the Tier 2.5 list. Tier 2.5 waters are waters of special concern and include naturally reproducing trout streams.

6. **HB 3236. Thin Seam Coal Tax Applicability.**

This legislation clarifies that the special tax on coal production and the special reclamation tax apply to coal produced from thin seams.

7. **HB 2333. Environmental Good Samaritan Act.**

This legislation protect landowners, groups and individuals who volunteer to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mine lands from civil and environmental liability provided such activities are approved by the department and implemented in accordance with the plans approved by the department.

8. **HB 3033. Continuation of Special Reclamation Tax.**

This legislation extends the temporary special reclamation tax of seven cents for an additional eighteen months thereby maintaining the total special reclamation tax at fourteen cents per ton of coal produced. The legislation also requires the Secretary to evaluate and consider additional bonding mechanisms, such as full cost bonding and the creation of a water quality trust fund.

9. **SB 154. Beneficial Reuse of Water Treatment Plant Sludge.**

This legislation authorizes the beneficial reuse of water treatment plant sludge and requires the department to develop rules establishing criteria for the beneficial reuse of water treatment plant sludge.

10. **SB 287. Transfer of Rulemaking Authority for Water Quality Standards.**

This legislation transfers the authority to promulgate water quality standards and the authority to grant remining variances from the Environmental Quality Board to the department.

11. **SB 748. Credit for Mitigation.**

This legislation authorizes the secretary to grant credit for mitigation required by the Corps of Engineers pursuant to permit issued under Section 404 of the Clean Water Act when such mitigation satisfies mitigation required by the West Virginia Water Pollution Control Act.

12. SB 700. Creation of the Community Infrastructure Investment Program.

This legislation authorizes department to grant approval for the construction of privately financed water and sewage treatment facilities without the requirement of a certificate of need and convenience from the Public Service Commission provided that the project results in economic development and improvement of water quality. This legislation also authorizes municipal utilities and public service districts to enter into community service agreements with private developers for the purpose of constructing or expanding public utilities. This legislation also requires the secretary to promulgate emergency rules to implement the program.

Comments:

Two members expressed interest in the future rulemaking efforts and any stakeholders group.

13. HB 3356. Increasing authority of the Solid Waste Management.

This legislation requires the SWMB to conduct biannual performance reviews of county and regional solid waste authorities and grants the SWMB with the authority to supersede or exercise the powers granted to county or regional solid waste authorities that operate a solid waste facility

14. SB 455. Financing of Environmental Control Activities.

This Legislation authorizes the public service commission to review and approve the use of environmental control bonds for environmental control activities by certain qualified electric utilities.

The next meeting date was scheduled for September 15, 2005 – 1:00 p.m. – 3:00 p.m. – Trish will contact everyone with room location and agenda.

Karen Watson adjourned meeting.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR34 - "Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63"

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	2006 Increase/Decrease (use "-")	2007 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 For Source Categories Pursuant to 40 CFR Part 63"

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 Part 63 as of June 1, 2005 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 15, 2005

Signature of Agency Head or Authorized Representative

John A. Benedict, Director

FILED

2005 JUL 29 P 2:35

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE 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 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 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 substances listed as hazardous air pollutants in section 112(b) of the CAA. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

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

1.3. Filing Date. -- ~~May 20, 2005~~.

1.4. Effective Date. -- ~~June 1, 2005~~.

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 63 and 65, to the extent referenced in 40 CFR Part 63, effective ~~July 1, 2004~~ June 1, 2005.

1.6. 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 ~~April 30, 2004~~ May 20, 2005, and which became effective ~~June 1, 2004~~ June 1, 2005.

§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 section 112(b) of the CAA.

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

2.5. Other words and phrases used in this rule, unless otherwise indicated, ~~shall~~ will have the meaning ascribed to them in 40 CFR Part 63. Words and phrases not defined therein ~~shall~~ will 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 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 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 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 Secretary ~~shall~~ will determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to section 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with sections 112(d) and 112(e) of the CAA.

3.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the owner or operator ~~shall~~ must obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 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 63 and 65, to the extent referenced in 40 CFR Part 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65, effective ~~July 1, 2004~~ June 1, 2005, 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 §63.15 is amended to provide that information ~~shall~~ will 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 ~~shall~~ will be excluded.

§45-34-5. Secretary.

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

5.1.a. where the federal regulations specifically provide that the Administrator ~~shall~~ will retain authority and not transfer ~~such~~ authority to the ~~State~~ 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 ~~shall~~ must be construed or inferred to mean that permit requirements in accordance with applicable rules ~~shall~~ will 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, ~~such~~ the inconsistency ~~shall~~ will be resolved by the deter-

mination of the Secretary and ~~such~~ the determination ~~shall~~ will be based upon the application of the more stringent provision, term, condition, method or rule.

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph(c)(322)to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(322) New and amended plan for the following agency was submitted on December 9, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(*1*) East Kern County Ozone Attainment Demonstration, Maintenance Plan and Redesignation Request, adopted on May 1, 2003: Chapter 5—"Regional Forecast," including emissions inventory summary (Table 5–1) and motor vehicle emissions budgets (Table 5–2); Chapter 6—"Emission Control Measures," including contingency measures (Table 6–1); and Appendix B—"Emission Inventories."

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 § 81.305, the California Ozone (1-Hour Standard) table is amended by revising the entry for the East Kern County area to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
East Kern County:				
That portion of Kern County that lies east and south of a line described below: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East, then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County Boundary.	6/21/04	Attainment ...	.....	
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 04–9036 Filed 4–21–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 262

[OA–2004–0001; FRL–7650–6]

RIN 2090–AA13

National Environmental Performance Track Program

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: EPA is issuing regulations applicable only to members of EPA's National Environmental Performance Track Program (Performance Track, or the Program). Today's action includes a revision to the Resource Conservation and Recovery Act (RCRA) regulations to allow hazardous waste generators who are members of Performance Track up to 180 days, and in certain cases 270 days, to accumulate their hazardous waste without a RCRA permit or interim status; and simplified reporting requirements for facilities that are members of Performance Track and governed by Maximum Available Control Technology (MACT) provisions of the Clean Air Act (CAA). Today's final rule reflects EPA's response to comments filed by the public, interested stakeholders and associations, the Performance Track Participants Association, and Performance Track members. These provisions are intended to serve as incentives for facility membership in the National Environmental Performance Track Program while ensuring the current level of environmental protection provided by the relevant RCRA and MACT provisions.

DATES: This final rule is effective on April 22, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OA–2004–0001. 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 Office of Environmental Information 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 Office of Environmental Information Docket is (202) 566–1752. In addition to being available in the docket, an electronic copy of this final rule will also be available on the Worldwide Web through the National Environmental Performance Track (Performance Track) Web site at *http://www.epa.gov/performancetrack.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Sachs, Performance Incentives Division, Office of Business and Community Innovation, Office of Policy, Economics and Innovation, Office of Administrator, Mail Code 1808T, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number 202–566–2884; fax number 202–566–0966; e-mail address: *sachs.robert@epa.gov,* or Mr. Chad Carbone, Performance Incentives Division, Office of Business and Community Innovation, Office of Policy, Economics and Innovation, Office of Administrator, Mail Code 1808T, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number 202–566–2178; fax number 202–566–0292; e-mail address: *carbone.chad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include all entities regulated by EPA, pursuant to its authority under the various environmental statutes, who voluntarily decide to join the Performance Track Program. Thus, potential respondents may fall under any North American Industry Classification System (NAICS) Code. The following table lists the Primary NAICS Codes for all current Performance Track members.

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 EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is eligible to be regulated by this action, you should carefully examine the qualifying criteria for the Performance Track Program at *www.epa.gov/performancetrack.* 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.

PRIMARY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF CURRENT PERFORMANCE TRACK MEMBERS

Industry group	SIC	NAICS
Surgical Appliance and Supplies Manufacturing		339113
Laboratory Apparatus and Furniture Manufacturing		339111
Pharmaceutical Preparation Manufacturing		325412
All Other Miscellaneous Chemical Product and Preparation Manufacturing		325998
Fossil Fuel Electric Power Generation		221112
Dry Cleaning and Laundry Services (except Coin-Operated)		812320
Heating Oil Dealers		454311
Paper (except Newsprint) Mills		322121
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing		334220
Surgical and Appliance and Supplies Manufacturing		339113
Research and Development in the Physical, Engineering, and Life Sciences		541710
Plastics Material and Resin Manufacturing		325211
Wood Preservation		321114
All Other Basic Organic Chemical Manufacturing		325199
Ball and Roller Bearing Manufacturing		332991
Tire Manufacturing (except Retreading)		326211
Semiconductor and Related Device Manufacturing		334413
All Other Motor Vehicle Parts Manufacturing		336399
Fruit and Vegetable Canning		311421
Paperboard Mills		322130
Commercial Screen Printing		323113
Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing		326113
Electronic Computer Manufacturing		334111
Other Motor Vehicle Electrical and Electronic Equipment Manufacturing		336322
Surgical and Medical Instrument Manufacturing		339112
Ophthalmic Goods Manufacturing		339115
All Other Miscellaneous Manufacturing		339999
Hydroelectric Power Generation		221111
Electric Bulk Power Transmission and Control		221121
Electric Power Distribution		221122
Medicinal and Botanical Manufacturing		325411
All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		327999
Printed Circuit Assembly (Electronic Assembly) Manufacturing		334418
Motor Vehicle Body Manufacturing		336211
Dry, Condensed, and Evaporated Dairy Product Manufacturing		311514

PRIMARY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF CURRENT PERFORMANCE TRACK MEMBERS—Continued

Industry group	SIC	NAICS
Carpet and Rug Mills		314110
Cut Stock, Re-sawing Lumber, and Planing		321912
All Other Basic Inorganic Chemical Manufacturing		325188
Soap and Other Detergent Manufacturing		325611
Custom Compounding of Purchased Resins		325991
All Other Plastics Product Manufacturing		326199
Concrete Block and Brick Manufacturing		327331
Iron and Steel Mills		331111
Aluminum Die-Casting Foundries		331521
Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers		332812
Farm Machinery and Equipment Manufacturing		333111
Office Machinery Manufacturing		333313
Pump and Pumping Equipment Manufacturing		333911
Electron Tube Manufacturing		334411
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing		334511
Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals		334515
Prerecorded Compact Disc (except Software), Tape, and Record Reproducing		334612
Magnetic and Optical Recording Media Manufacturing		334613
Motor and Generator Manufacturing		335312
Motor Vehicle Transmission and Power Train Parts Manufacturing		336350
Aircraft Manufacturing		336411
Guided Missile and Space Vehicle Manufacturing		336414
Sporting and Athletic Goods Manufacturing		339920
Solid Waste Combustors and Incinerators		562213
National Security		928110
Potash, Soda, and Borate Mineral Mining		212391
Malt Manufacturing		311213
Cigarette Manufacturing		312221
Canvas and Related Product Mills		314912
Reconstituted Wood Product Manufacturing		321219
Wood Window and Door Manufacturing		321911
Pulp Mills		322110
Nonfolding Sanitary Food Container Manufacturing		322215
Synthetic Organic Dye and Pigment Manufacturing		325132
Synthetic Rubber Manufacturing		325212
Noncellulosic Organic Fiber Manufacturing		325222
In-Vitro Diagnostic Substance Manufacturing		325413
Adhesive Manufacturing		325520
Polish and Other Sanitation Good Manufacturing		325612
Surface Active Agent Manufacturing		325613
Printing Ink Manufacturing		325910
Rubber Product Manufacturing for Mechanical Use		326291
All Other Rubber Product Manufacturing		326299
Plate Work Manufacturing		332313
Metal Can Manufacturing		332431
Other Ordnance and Accessories Manufacturing		332995
Printing Machinery and Equipment Manufacturing		333293
Food Product Machinery Manufacturing		333294
Optical Instrument and Lens Manufacturing		333314
Photographic and Photocopying Equipment Manufacturing		333315
Turbine and Turbine Generator Set Units Manufacturing		333611
Bare Printed Circuit Board Manufacturing		334412
Electronic Capacitor Manufacturing		334414
Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use		334512
Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables		334513
Other Communication and Energy Wire Manufacturing		335929
Current-Carrying Wiring Device Manufacturing		335931
Automobile Manufacturing		336111
Truck Trailer Manufacturing		336212
Gasoline Engine and Engine Parts Manufacturing		336312
Motor Vehicle Air Conditioning Manufacturing		336391
Dental Equipment and Supplies Manufacturing		339114
Musical Instrument Manufacturing		339992
Other Nonhazardous Waste Treatment and Disposal		562219
Industrial Launderers		812332
Regulation and Administration of Transportation Programs		926120
Space Research and Technology		927110

Entities potentially affected by this final action also include state, local, and Tribal governments that have been authorized to implement these regulations.

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

I. General Information
A. Does this action apply to me?
II. Overview
A. What is the history of this action?
B. How have stakeholders been involved?
C. What incentives for members are envisioned?
D. What is EPA's rationale for this rule?
1. What environmental benefits will the Performance Track Program bring to society?
2. How will these incentives maximize the benefits of the Performance Track Program?
3. Will these incentives undercut existing environmental protections?
4. How does the Performance Track Program design limit membership to a uniquely appropriate set of facilities?
III. Final Rulemaking Changes
A. Maximum Achievable Control Technology (MACT)
1. Definition of Pollution Prevention
2. Reduced frequency of required MACT reporting for all eligible Performance Track facilities
3. Reporting reductions for Performance Track facilities that achieve MACT or better emission levels through pollution prevention methods such as process changes
B. 180-Day accumulation time for Performance Track hazardous waste generators
1. Background
2. What are the current requirements for large quantity generator accumulation?
3. What is in today's final rule?
4. How will today's final rule affect applicability of RCRA rules in authorized States?
IV. Summary of Environmental, Energy and Economic Impacts
A. What are the cost and economic impacts?
B. What are the health, environmental, and energy impacts?
V. Effective Date for Today's Requirements
VI. Administrative Requirements
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 Advancement Act
J. Congressional Review Act
VII. Statutory Authority
VIII. Judicial Review

II. Overview

A. What Is the History of This Action?

EPA announced the National Environmental Performance Track Program on June 26, 2000. The Program is designed to recognize and encourage top environmental performers—those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that provide greater benefit to people, communities, and the environment. The Program is based upon the experiences of EPA, states, businesses, and community and environmental groups with new approaches that achieve high levels of environmental protection with greater efficiency. This experience includes: EPA's Common Sense Initiative, designed to improve environmental results by tailoring strategies for six industry sectors; the national Environmental Leadership Program and EPA Region I's Star Track Program, designed as new ways to encourage businesses to do better than required; and many performance track-type programs in states such as Texas, Oregon, Wisconsin, New Jersey, and Virginia.

EPA currently is implementing the Performance Track Program, formerly known as the Achievement Track Program. The Program is designed to recognize facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and to report on their progress in doing so. A complete description of the Performance Track Program, its requirements, and other program materials are available on EPA's Web site (*www.epa.gov/performancetrack*) or by calling the Performance Track Information Center toll free at 1–888–339–PTRK (7875).

Performance Track is a voluntary program. Decisions to accept and remove facilities are wholly discretionary to EPA, and applicants or potential applicants have no legal right to challenge EPA's decision. EPA has held seven Performance Track application periods—between August 2000 and October 2000; between February 2001 and April 2001; between August 2001 and October 2001; between February 2002 and April 2002; between August 2002 and October 2002; between February 2003 and April 2003; and between August 2003 and October 2003. In the future, EPA plans to continue holding two application periods each year. There have been 508 facility applicants to Performance Track since its inception. A total of 409 facilities have been accepted into the Program as members. There are currently 344 members in the Program. Generally, facilities that are no longer members (65) have either closed, experienced a change in ownership, or have been dropped from membership in Performance Track for failing to continue to meet program standards.

Today's final rule establishes several regulatory incentives that are enforceable legal requirements for facilities that are members of the Performance Track Program and have taken all other steps required for the applicability or implementation of the individual regulatory incentives. Full eligibility and other Program requirements can be found at the Performance Track Web site (*www.epa.gov/performancetrack*). The Agency believes that, because of the stringency of the Program criteria, facilities in Performance Track should receive the non-regulatory and regulatory benefits outlined in the Program Description (and summarized below). Specifically, for acceptance in Performance Track, facilities must:

- Have adopted and implemented an environmental management system (EMS) that includes specific elements;
- Be able to demonstrate environmental achievements and commit to continued improvement in particular environmental categories;
- Engage the public and report on their environmental performance; and
- Have a record of sustained compliance with environmental requirements.

In addition, Performance Track is designed so that EPA and other stakeholders can monitor and track the implementation of the benefits currently being offered to Program members, as well as those being considered. Member facilities commit to providing annual reports on the status of their efforts to achieve their commitments to improvements in specific environmental categories.

This reporting commitment and other activities to engage the public result in a high level of scrutiny that will aid in monitoring the activities of the Performance Track Program. EPA analyzes these data and publishes a program report annually. This report can be found at *www.epa.gov/performancetrack*. Last, facilities are accepted into Performance Track for a

period of three years. To continue receiving the benefits associated with the Program, facilities must renew their membership, which requires developing additional, continuing commitments to environmental performance improvements.

In its efforts to promote improved environmental performance through the National Environmental Performance Track, EPA is evaluating additional regulatory incentives that could be applied to qualifying facilities. Today's rule is one step among several in developing incentives that will promote participation in the Program and the associated environmental benefits. These incentives will include both those that will be implemented through rulemaking (such as the regulatory changes issued today) and those that may be accomplished through policy, guidance, or administrative action by EPA or the states.

EPA proposed today's rule on August 13, 2002 (67 FR 52674), and the public comment period remained open until November 12, 2002. EPA received comments from 26 different groups. These included 10 Government entities and States; one public sector association; three nongovernmental organizations; seven industry trade associations; and five industry representatives. The majority of comments were supportive and made positive suggestions to improve the Program. Responses to comments are included throughout this preamble where EPA describes the content of the rule (*see* Section III. A. and B.).

B. How Have Stakeholders Been Involved?

During the development of the Performance Track Program and subsequent to its announcement in June 2000, EPA held many meetings with a wide array of stakeholders. Stakeholders included companies, non-governmental organizations, states, associations, and others. Over the course of these meetings, EPA has discussed a broad range of issues, including any incentives that would reward Performance Track members, as well as incentives that would motivate non-Performance Track facilities to implement environmental improvements that would qualify them for membership in the Program.

This rule grew out of the stakeholders' collective interest in promoting incentives for participating facilities. Since the inception of the Program, EPA has held four meetings with state regulators: May 2000 in Denver, February 2001 in Chicago, November 2001 in Charleston, and January 2003 in Denver. At each of these meetings, break-out sessions were held to solicit feedback from state personnel on potential incentives to be offered to Performance Track members.

On December 12, 2000, EPA held a "Charter Event" for the first round of Performance Track members. At this meeting EPA held a series of breakout discussions. During these sessions, ideas about incentives that could become part of the regulatory framework were discussed.

Similarly, on October 30, 2001 EPA met with a variety of stakeholders including associations, non-governmental organizations, and states to discuss EPA's "Innovations Strategy." During this meeting EPA held a specific breakout session on incentives that could be made available for Performance Track members.

In addition, EPA has had discussions regularly with individual Performance Track participants and the Performance Track Participants Association (PTPA), which comprises 165 members. The PTPA is a nonprofit organization that provides a forum for corporations, trade associations, and public entities dedicated to improving their environmental performance through the vehicle of the Performance Track Program. The PTPA meets regularly for member events, and convenes a member conference annually. The PTPA also has an Incentives Workgroup that focuses on identifying and advocating incentives for Performance Track members.

EPA is also working with 23 trade organizations through the Performance Track network to further enhance participation in the Program. Performance Track Network Partners join in a partnership to educate top environmental performers about the value of participating in Performance Track. This partnership increases information available to top environmental performers and provides greater opportunities to them. Network Partners include the following organizations: Academy of Certified Hazardous Waste Managers, American Chemistry Council, American Furniture Manufacturers Association, American Textile Manufactures Institute, Associated General Contractors (AGC) of America, the Auditing Roundtable, Cement Kiln Recycling Coalition, Global Environment & Technology Foundation Public Entity EMS Resource (PEER) Center, Greening of Industry Network (GIN), International Carwash Association, National Association of Chemical Distributors, National Paint and Coatings Association, National Defense Industrial Association, National Pollution Prevention Roundtable, National Ready Mixed Concrete Association, National Stone, Sand and Gravel Association, NORA (an Association of Responsible Recyclers), North American Die Casting Association, Screenprinting and Graphic Imaging Association International, Steel Manufacturers Association (SMA), Synthetic Organic Chemical Manufacturers Association (SOCMA), Voluntary Protection Programs Participants' Association, and Wildlife Habitat Council.

C. What Incentives for Members Are Envisioned?

The Performance Track Program Description at *http://www.epa.gov/performancetrack/*, (publication number EPA–240–F–01–002) provides a list of incentives the Agency originally intended to make available to member facilities. EPA currently offers several incentives that are available to members when they enter the Program (*e.g.*, recognition, networking opportunities, low priority for routine inspection). EPA is also in the process of developing other incentives in areas of the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), and the Clean Air Act (CAA). These incentives include policy, guidance, and regulatory approaches. In some cases, other actions also must be completed before a facility may take advantage of an incentive. For example, states are responsible for implementing parts of many federal environmental programs. In such cases, states may need to revise regulations, seek EPA approval of a revised program, re-issue permits, or take other actions. EPA has made funds available to approximately 20 states to identify where existing state laws may need to be revised to support the National Environmental Performance Track. EPA maintains ongoing contact with State regulators to keep them apprised of new developments, and learn about their approaches. Further information is available at *epa.gov/performancetrack/benefits/index.htm.*

In the Program Description, EPA also committed to propose specific regulatory changes as incentives for membership in the Performance Track. The changes in today's final rule fulfill one aspect of EPA's follow up on this commitment.

EPA is issuing today's regulatory changes to encourage membership in the Program and to acknowledge and further promote realization of the environmental and other benefits resulting from the actions of member facilities. EPA excluded incentives that would involve a relaxation of substantive standards of performance or

that would require statutory change. EPA identified incentives that would apply broadly to different types of facilities, that reduce the reporting and other operating costs of the current system, and that can be implemented nationally.

EPA believes it is important to offer the kinds of incentives described here for several reasons. First, the achievements of these facilities deserve public recognition. Second, some of the reporting and other administrative requirements that apply to the broader regulated community may not be needed for Performance Track facility members because they have implemented appropriate environmental management systems, have consistently met their regulatory commitments, and have agreed to make information regarding their performance publicly available. Third, these incentives may offer the opportunity for member facilities to apply their resources to achieving even better environmental performance. And finally, the availability of these incentives should encourage other facilities to make environmental improvements that will enable them to qualify for membership.

In this final rule, EPA is changing certain regulatory provisions of the CAA and RCRA. These incentives provisions are applicable exclusively to members of Performance Track. They include:

- Reducing the frequency of reports required under the CAA, and in some circumstances submitting an annual certification in lieu of an annual report. In this incentive, first EPA reduces the frequency of required MACT reporting for all eligible Performance Track facilities to an interval that is twice the length of the regular reporting period. This incentive does not apply to major air sources, but it does apply to area air sources if they are not required to hold CAA Title V permits. The second part of this air incentive provides Performance Track facilities with three options to submit an annual certification that all required monitoring and recordkeeping requirements have been met in lieu of the periodic report. For major air sources and area sources required to hold CAA Title V permits however, reports must still be submitted at least semi-annually in order to meet CAA Title V statutory requirements.
- Allowing large quantity hazardous waste generators who are members of the Performance Track up to 180 days (and 270 days if the waste must be transported 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status, provided that these generators meet certain conditions. This incentive will result in fewer loads of hazardous waste being transported.

EPA also proposed changes to certain Clean Water Act regulations (CWA) in August 2002. The incentives proposed streamlined reporting requirements for Publicly Owned Treatment Works (POTWs). EPA has decided not to adopt the changes proposed in this rulemaking. This decision is based primarily on public comments that such changes should be offered to all POTWs, not only Performance Track members. The agency will continue to consider this matter.

EPA acknowledges comments received on another potential regulatory incentive—the opportunity for Performance Track Facilities to consolidate reporting under various environmental statutes into a single report. Comments included recommendations for a pilot program with a cross-section of facilities, facility sizes, and states and the need to ensure compliance and include performance metrics in exchange for any consolidated reporting incentive. EPA will continue to explore the potential for this incentive with EPA's Office of Environmental Information.

The incentives in today's final rule are part of a broad series of incentives that EPA is currently developing and intends to provide for Performance Track members in the future. That is, EPA continues to seek, analyze, develop, and implement new incentives that apply only to its Performance Track members. As an example, on May 15, 2003, EPA proposed a MACT rule (68 FR 26249) that would further promote improved environmental performance through incentives that are only available to facilities participating in the Performance Track program. Also, on October 29 2003, EPA published a Notice of Data Availability (NODA) in RCRA (69 FR 61662) as part of EPA's burden reduction initiative. The NODA supplemented EPA's January 17, 2002 proposal entitled "Resource Conservation and Recovery Act Burden Reduction Initiative" at 67 FR 2518. This provision proposes to decrease the frequency of facility self-inspections for certain types of storage units for Performance Track member facilities.

D. What Is EPA's Rationale for This Rule?

EPA believes that facilities who demonstrate top environmental performance through membership in the Performance Track Program should be provided with incentives, recognition and rewards for such behavior. By providing regulatory incentives only available to members of Performance Track, EPA believes membership in the Program will increase over time. As membership increases, so will the number of environmental commitments members make, and therefore the quantity of improvements to the environment. Each facility member of Performance Track commits to quantified, measurable environmental goals that are identified as significant in their environmental management system. Members also commit to report to EPA on an annual basis with the quantified results of progress towards their commitments. As these goals are achieved, and in some cases exceeded, impacts to the environment are reduced, notably in some cases in areas that are not regulated by EPA or States. These quantified, incremental environmental improvements and required reporting are the core of EPA's Performance Track Program.

It is critically important to EPA that members of Performance Track are truly top environmental performers. Regulatory incentives of the nature envisioned by EPA for Performance Track members should be available only to top environmental performers. To ensure that members of Performance Track fit this general criterion, EPA developed specific criteria for applicants to meet in order to be accepted. These are described in moderate detail below.

Facilities must satisfy the four entry criteria to be accepted into the Performance Track:

(1) Facilities must be in compliance with applicable Federal, State, Local, and Tribal environmental regulations.

(2) Facilities must operate a well-designed environmental management system (EMS) as part of their overall management system.

(3) Facilities must demonstrate a record of environmental improvements for the previous two years beyond the minimums required of them. Facilities also must take additional future actions and commit to further improvements in the succeeding three years.

(4) Facilities must engage the public, and each year must report publicly on their progress toward meeting the goals that they have chosen, as well as summarize their compliance and the performance of their EMS. EPA makes the applications and annual performance reports of each facility member available to the public.

These criteria are the key to generating environmental improvements; they were designed to work as an integrated approach. No single criterion, standing alone, would provide EPA with the necessary

assurance that the changes finalized here will lead to increased compliance or performance. However, the Agency believes that these criteria in combination ensure that facilities eligible for regulatory incentives are both capable of and committed to maintaining beyond-compliance environmental performance and that any lapses will be rare and quickly corrected by facility management. Further, the Agency and the public will continue to receive information on facility compliance and performance. Nothing in this final rule will compromise the ability of the Agency to investigate and take action on suspected environmental violations.

History of Sustained Compliance With Environmental Regulations: EPA believes that a strong compliance history is a critical factor in defining performance in the Performance Track. EPA, in cooperation with State, local, and Tribal authorities to the extent possible, reviews the compliance history of all applicants. Performance Track members must have a record of compliance with environmental laws and be in compliance with all applicable environmental requirements. They also commit to maintaining the level of compliance needed to qualify for the Program.

EPA screens all applications consistent with EPA's *Compliance Screening for EPA Partnership Programs: Policy Overview* (located at *http://www.epa.gov/performancetrack/program/guidance.pdf*). In evaluating an applicant's compliance record, EPA, along with its state partners, consults available databases and enforcement information sources. EPA encourages applicants to assess their own compliance record as they make decisions regarding participation in this program. Applicants can check their compliance record with EPA's Enforcement and Compliance History Online (ECHO) database located at (*http://www.epa.gov/echo*).

Participation in the Performance Track is denied if the compliance screen identifies any of the following criminal or civil activity issues under Federal or State law:

Criminal Activity

- Corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the corporation or a corporate officer within the past 5 years.
- Criminal conviction or plea of employee at the same facility for environmentally-related violations of criminal laws within the past 5 years.
- Ongoing criminal investigation/prosecution of corporation, corporate officer, or employee at the same facility for violations of environmental law.

Civil Activity

- Three or more significant violations at the facility in the past 3 years.
- Unresolved, unaddressed Significant Non-Compliance (SNC) or Significant Violations (SV) at the facility.
- Planned but not yet filed judicial or administrative action at the facility.
- Ongoing EPA- or state-initiated litigation at the facility.
- Situation where a facility is not in compliance with the schedule and terms of an order or decree.

Environmental Management Systems: To satisfy the second program criterion, a Performance Track member facility must have a mature environmental management system. These systems integrate environmental considerations into routine decision-making at facilities, establish work practices that consistently reduce environmental risks and releases, evaluate environmental performance, and set management priorities based on the environmental impacts of individual facilities. Because they organize and consolidate information on a facility's environmental obligations and potential weaknesses for management, an EMS often improves the facility's compliance record and reduces accidents. However, many EMS frameworks address unregulated environmental impacts as well as regulated impacts. Thus, an EMS provides a facility with the ability to assess and mitigate impacts that are most significant for the facility or that pose the most risk to the ecosystem and community surrounding the facility. An EMS allows a facility to take additional environmental mitigation actions that are highly effective and appropriate, providing better environmental results as well as more flexibility than the existing regulatory structure alone.

The EMS provisions in Performance Track are designed to ensure that member facilities will continue not only to meet their regulatory obligations, but also to perform better than required by regulation. The Performance Track criterion specifies that a qualifying facility must have an EMS that includes detailed elements in the following categories: Environmental policy (including compliance with both legal requirements and voluntary commitments), planning, implementation and operation, checking and corrective action, and management review. Additionally, qualifying EMSs must have been in full operation for at least one review cycle (generally one year) and must have been audited. The EMS requirements are described in more detail in EPA's National Environmental Performance Track Program description at *www.epa.gov/PerformanceTrack*.

Past and future environmental improvements: Facilities must demonstrate their commitment to continuous environmental improvement. To do this, facilities must identify accomplishments in specific categories. The categories are: energy use, water use, materials use, air emissions (including greenhouse gases), waste, discharges to water, accidental releases, habitat preservation/restoration, and product performance. Past improvements must have been beyond regulatory requirements. In addition, Performance Track facilities must make use of their EMSs to set and commit to achieving environmental performance goals that go beyond regulatory requirements and that mitigate some facility-selected significant environmental impacts. These performance goals must be chosen among the specific categories identified above, including both regulated and unregulated environmental impacts.

Because these performance goals and accomplishments go beyond regulatory requirements and, in some cases, well beyond areas covered by existing environmental regulations, EPA believes that facilities that qualify for Performance Track have demonstrated a serious commitment to real environmental improvement. By virtue of their willingness to undertake greater environmental responsibilities, these facilities have earned the confidence that they will maintain compliance with regulatory requirements under the streamlined procedures outlined in this final rule.

Public commitments: To satisfy the fourth Program criterion, Performance Track facilities publicly disclose progress toward their commitments and other performance information each year in an annual progress report, including summary information regarding their EMS and compliance with legal requirements. Because these commitments and the performance reporting go beyond those required by current regulation, communities have access to more information about the performance of local facilities. This public scrutiny also provides an incentive for firms to make meaningful commitments and achieve them.

EPA believes that facilities that make the choice to apply and to demonstrate their commitments to environmental

improvements in the public spotlight impose upon themselves a unique and particularly strong set of pressures to deliver this heightened level of performance.

In time, EPA expects the Performance Track Program to produce additional environmental gains as a result of the more efficient use of the resources of federal, state, and local environmental authorities. Because EPA expects the entry criteria to result in member facilities that are carrying out their environmental obligations in a manner beyond what is required of them, EPA believes that other authorities will be able to shift enforcement and compliance resources to other facilities in the regulated community. EPA believes this resource reallocation may bring further environmental improvements, as limited compliance resources are applied more effectively.

The regulatory changes EPA is issuing today will enable eligible Performance Track members to reduce their reporting or other compliance costs.

1. What Environmental Benefits Will the Performance Track Program Bring to Society?

Over the past three years the Performance Track program has already produced substantial environmental benefits beyond its member facilities' legal requirements. Some of these environmental benefits include reducing: energy use by 1.1 million mmBtus, water use by 475 million gallons, hazardous materials use by 908 tons, emissions of volatile organic compounds by 329 tons, emissions of air toxics by 57 tons, emissions of nitrogen oxides by 152 tons, discharges to water of biochemical oxygen demand, chemical oxygen demand, and total suspended solids by 1,327 tons, toxic discharges to water by 5,543 tons, solid waste by 150,000 tons, and hazardous waste by 692 tons. Member facilities in the Program have also increased their use of reused and recycled materials by 10,823 tons and have preserved or restored 2,698 acres of wildlife habitat. In addition to these benefits, which should continue to increase, with additional membership into the Program, EPA believes that the refocusing of resources made possible by the Program may lead to additional environmental benefits as well as increased compliance by non-member facilities. The public recognition and administrative burden relief offered by Performance Track, to the extent that they affect company's bottom lines, may also influence company decisions to undertake additional non-regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

2. How Will These Incentives Maximize the Benefits of the Performance Track Program?

Incentives play a crucial role in maximizing the environmental benefits of any voluntary program. Facilities must perceive a benefit to themselves that is at least equal to their perceived costs of membership in a voluntary program. These costs include the administrative burden of membership, as well as any costs incurred in meeting the substantive requirements of the Program. Facility members of the Performance Track Program also face the additional risk of adverse public reaction if they fail to meet their environmental goals or if their audits of compliance or EMS performance reveal problems. These public risks are unique to Performance Track facilities. Facilities participating in other EPA voluntary programs, as well as facilities that do not participate in any voluntary program, may and do keep audit information confidential. Improved public information about the environmental performance of facilities is an important component and public benefit of the Performance Track Program and it significantly raises the costs perceived by facility managers for internal oversights or lapses.

As more benefits to facility members in the Performance Track Program become available and increase, more facilities will be encouraged to apply. Increased program incentives may also generate environmental benefits from non-members. If facilities that do not currently meet the Performance Track Program criteria believe that membership would benefit them, they may work to improve their management systems and environmental performance to become eligible.

3. Will These Incentives Undercut Existing Environmental Protections?

The incentives in today's rule do not undercut existing environmental protections. EPA believes the 180-day accumulation period for hazardous waste and the reporting changes for MACT standards will have no direct deleterious effects on the environmental performance of Performance Track facilities. EPA and other regulatory bodies will receive compliance information from Performance Track facilities less frequently; however, all recordkeeping requirements remain in effect. As a safeguard, EPA and the other governmental authorities retain their ability to take enforcement actions against any facility that fails to comply with permits or other obligations. The risk of a public removal from this Program for failure to comply adds an extra incentive to comply with Program requirements. EPA believes that this, and the fact that facilities may be perceived by the public and by governmental offices as better environmental performers than their competitors, reduces the risk that any environmental damages will result from this program or the regulatory changes EPA is adopting.

4. How Does the Performance Track Program Design Limit Membership to a Uniquely Appropriate Set of Facilities?

EPA designed the Performance Track Program to generate improvements in environmental performance of facilities. EPA believes that the entry criteria and ongoing obligations for continued membership in Performance Track (as summarized in the introduction to section D) will bring about benefits to the environment such as decreased releases of pollutants to the air, water, and land; greater efficiency in energy and raw material usage; and decreased risks of accidental releases of hazardous substances. These incremental environmental benefits will stem from the facilities' activities that are tied to their membership in Performance Track, which justifies making available to this category of facilities the benefits of the modified requirements issued today.

Further, EPA believes that there are controls and safeguards built into the Performance Track Program that reduce the possibility a facility will receive the benefits of today's modified requirements without the facility delivering improved environmental performance.

EPA's announcement of this Program (*www.epa.gov/PerformanceTrack*) describes how applications are reviewed and facilities that meet the entry criteria are selected. It also summarizes other steps EPA takes in running the Program, including conducting site visits at up to 20 percent of the member facilities each year, and the removal of facilities found not to be meeting the commitments they have made. EPA believes this approach is capable of identifying the set of facilities that belong in the Program and differentiating them from tens of thousands of other facilities in the United States. EPA also believes that the combination of the administrative controls of the Performance Track Program and the public reporting voluntarily accepted by program

members will, as a rule, be effective in limiting membership to only such facilities that deliver improved environmental performance.

III. Final Rulemaking Changes

A. Maximum Achievable Control Technology (MACT)

1. Definition of Pollution Prevention

As part of the MACT provision in today's rule, EPA is defining the term "Pollution Prevention." The Pollution Prevention Act (42 U.S.C. 13102) defines "source reduction." EPA equates Pollution Prevention with source reduction. In today's rule, the statutory definition of source reduction is adopted as the definition of Pollution Prevention. Thus, EPA defines Pollution Prevention to mean source reduction.

In its August 13, 2002 proposal (67 FR 52674), EPA included a definition of Pollution Prevention (P2). The proposed regulatory definition was taken from EPA's guidance from May 1992, and later elaborated upon by then Administrator Carol Browner in "P2 Policy Statement: New Directions for Environmental Protection" issued on June 14, 1993 (found at *http://www.epa.gov/p2/p2policy/definitions.htm*). EPA's Policy Statement definition of P2 is not identical to the statutory definition of P2. The Policy Statement of P2 adds a few clauses to the statutory definition of P2, and removes another.

Consistent with EPA's Policy Statement definition of P2, the 2002 proposal did not include the following clause from the statutory definition: "The term 'source reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service." Although this clause from the statute was not included in the 2002 proposal, it was still applicable since EPA cited the statute.

In addition, the language in the 2002 proposal included an additional clause that is not part of the statute, again taken from EPA's Policy Statement definition of P2: "and other practices that reduce or eliminate the creation of pollutants through: Increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation."

Subsequently, EPA changed its approach in a proposed rule on May 15, 2003. In that action, EPA proposed the statutory definition of P2 verbatim (68 FR 26249). This change stemmed from EPA's conclusion that the statutory definition of P2 was more appropriate for this rule than the Policy Statement definition.

The May 2003 proposed rule was intended primarily to provide alternative compliance options for major sources who reduce their Hazardous Air Pollutants. Also in that proposal were two provisions applicable only to Performance Track members. Since the 2003 proposal included provisions for Performance Track members, EPA provided the public with the opportunity to comment on the interface between the 2003 proposed definition of P2 and Performance Track.

EPA received public comments on the 2002 proposal, but no commenters suggested changes to the P2 definition language. Public comments discussed how the P2 provision was used in this rule. One commenter suggested that all regulated entities that achieve MACT or better through pollution prevention measures be eligible for reporting reductions. Another commenter supported the proposed reporting reductions based on pollution prevention activities. One commenter suggested that EPA reduce or eliminate MACT if a source exceeded its performance goal, or if a major source lowered emissions to below major thresholds through pollution prevention or operational changes.

EPA also received comments on the 2003 proposal, and like the 2002 proposal, there were no comments that directly addressed the definition of P2 as it relates to Performance Track. There were, however, many comments that discussed how the definition of P2 is used in the 2003 proposal. EPA will address these comments when it takes final action on that proposed rule in the future since none of those comments had any relevance to today's rule.

Therefore, today EPA is adopting the definition of P2 that was proposed on May 15, 2003, without modification because it is the most appropriate definition for today's regulatory action.

2. Reduced Frequency of Required Mact Reporting for All Eligible Performance Track Facilities

Facilities covered by the MACT provisions of the Clean Air Act must meet a variety of record-keeping, monitoring, and reporting requirements as specified in 40 CFR Part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories.

For facility members in the Performance Track, EPA is reducing reporting frequency while assuring the continued availability of information required for assessing compliance with MACT standards.

Because of the high-level environmental performance of Performance Track facilities, EPA believes it is appropriate to provide these facilities the opportunity to reduce their reporting frequency under part 63. Since the underlying data required from these facilities will still be gathered, the Agency can still receive the information needed to identify any lapses in compliance.

Current MACT reporting requirements differentiate between facilities, based on facility performance, with respect to reporting frequency. For example, reporting frequency may be increased from semi-annually to quarterly for some reports based on the frequency of excursions outside of required performance parameters. The approach the Agency is adopting today applies a similar concept by reducing reporting frequency for top environmental performers.

Today's rule reduces the frequency of certain required periodic MACT reports for eligible Performance Track facilities. Periodic reports include a range of reports that are required to be sent in to the Permit Authority at intervals that range from quarterly, or more frequently if required by special circumstances, to semi-annually. The reports are different from records, which must be kept on site and incorporated into the periodic reports and other reports. There are general reporting requirements in 40 CFR part 63, subpart A, and additional reporting requirements under other subparts applying to specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants. Performance Track facilities that choose to take advantage of this incentive should notify their State Authority that the facility will submit reports on an annual, rather than semi-annual, basis.

Today's rule doubles the reporting intervals for these reports by amending 40 CFR 63.2 and 63.10, and adding a new 40 CFR 63.16. For major sources and area sources required to hold Title V permits, however, reports must still be submitted at least semi-annually to meet Title V permitting requirements specified in section 504(a) of the Clean Air Act. Public comments expressed concern about the applicability of this incentive, noting specifically that the six-month statutory reporting frequency floor for such air sources may limit the incentive to minor (or synthetic minor) air sources. EPA acknowledges these concerns. EPA is issuing this incentive provision as proposed because of its potential value to any current and future

Performance Track facilities that are regulated as minor sources and not required to hold Title V permits. This final rule does not revise other requirements concerning event reporting, record keeping, and monitoring. EPA also recognizes that because membership in Performance Track is for three years and Clean Air Act permits are for five years, coordination between these event cycles will be required.

3. Reporting Reductions for Performance Track Facilities That Achieve Mact or Better Emission Levels Through Pollution Prevention Methods Such as Process Changes

Today's rule also reduces the level of detail of the required reporting, under some circumstances, for those facilities that reduce emissions below 25 tons per year of aggregate hazardous air pollutant (HAP) emissions and 10 tons per year of any individual HAP, and that have reduced emissions to a level that is fully in compliance with the applicable MACT standard.

For those Performance Track facilities that are below the thresholds for major sources of HAPs (25 tons per year aggregate and 10 tons per year for an individual HAP), and that have reduced the levels of all HAP emissions to at least the level required by full compliance with the applicable standard, additional reductions in reporting requirements are available, depending on the nature of the requirement and the means the facility is using to meet the requirement. As above, however, for major sources, reports must still be submitted at least semi-annually to meet Title V permitting requirements.

For those facilities using pollution prevention technologies or techniques to meet MACT standards, reductions in reporting burden depend on the requirements of the part 63 standard, as well as facility performance.

(1) If the standard calls for control technology and the facility complies using control technology:

The facility can substitute a simplified annual report to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use the control technology to meet the emission standard, and are running it properly. The facility must still fulfill all monitoring and recordkeeping requirements.

(2) If the emission standard is based on performance of a particular control technology and the facility complies using P2:

The facility can substitute a simplified annual report to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels at or below the MACT standard requirements. The facility must still maintain records demonstrating the veracity of the certification.

(3) If the standard calls for pollution prevention and the facility complies by using pollution prevention and the facility reduces emissions by an additional 50% or greater than required by the standard:

The facility can substitute a simplified annual report, to meet all required reporting elements in the applicable Part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels below the MACT standard. The facility must still maintain records demonstrating the veracity of the certification.

Performance Track facilities that choose to take advantage of this incentive should notify their State Authority that the facility will submit a simplified annual report to meet all required reporting elements covered by today's rule.

For each of the above alternatives, if the facility no longer meets the criteria for continued membership in the Program, the incentive will no longer apply.

B. 180-Day Accumulation Time for Performance Track Hazardous Waste Generators

1. Background

Today EPA is adopting provisions, with certain modifications in response to numerous public comments as discussed below, that allow large quantity hazardous waste generators who are members of the Performance Track Program up to 180 days (or up to 270 days in certain cases) to accumulate hazardous waste without a RCRA permit or without having interim status. This regulatory flexibility is intended to provide a benefit to current members of Performance Track, and an incentive for potential members to join the Program. EPA believes the regulatory flexibility provided in this rule will not compromise protection of human health and the environment at Performance Track facilities because of the strict nature of the requirements to become and remain a member of Performance Track. These requirements were described in Section I. D. of this document.

The RCRA incentives in today's rule are consistent with the general objectives of Performance Track, as discussed in Section I of this preamble. In addition, this aspect of the final rule may assist EPA in learning more about how accumulation times for hazardous waste generators may affect the ultimate disposition of hazardous wastes (*e.g.*, recycling vs. disposal), the economics of hazardous waste generation and accumulation, and the overall environmental performance of hazardous waste generator facilities. More specifically, EPA believes that additional accumulation time will allow generators to accumulate enough waste to make transportation to waste management facilities more cost-effective and efficient for the generator. EPA also believes that additional accumulation time may result in environmental benefits related to the reduction in the movement and handling of hazardous waste on-site, as well as fewer off-site shipments. This additional accumulation time for Performance Track members is consistent with the rationale used for the F006 (metal finishing) hazardous waste rule (65 FR 12377, March 8, 2000).

2. What Are the Current Requirements for Large Quantity Generator Accumulation?

The current standards under 40 CFR part 262 for generators of hazardous waste who generate greater than 1,000 kilograms of hazardous waste per month (or one kilogram or more of acute hazardous waste), known as large quantity generators (LQGs), limit the amount of time hazardous waste can be accumulated at the generator's facility without a RCRA permit. Under § 262.34, LQGs may accumulate hazardous waste on-site for up to 90 days without having to obtain a RCRA permit. The generator must comply with certain unit-specific standards (*e.g.*, tank, container, containment building, and drip pad standards) for accumulation units, and certain general facility requirements such as those for marking and labeling of containers, preparedness and prevention, and emergency response procedures. Generators may also petition the EPA Regional Administrator to grant an extension of up to 30 days to the 90-day accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis (*see* § 262.34(b)).

Today's final rule does not make any changes to the existing regulations that apply generally to 90-day accumulation by LQGs; EPA did not solicit comment in its proposed rule on those provisions

or any other existing provision of § 262.34. This includes the provisions for extended accumulation times for F006 wastes, which are specified at § 262.34(g). Those provisions, which apply only to generators who accumulate F006 wastes, allow for extended accumulation times that are similar in many respects (including the time limits) to those in today's rule for Performance Track members. It is therefore possible that when today's rule is implemented a generator of F006 waste who is also a member in Performance Track could take advantage of extended accumulation times under either regulatory provision (*i.e.*, under § 262.34(g), (h) and (i), or under § 262.34(j), (k) and (l)).

3. What Is in Today's Final Rule?

Today's final rule allows LQGs of hazardous waste that are members of the Performance Track Program to accumulate hazardous waste at their facilities for longer than the 90 days currently specified in § 262.34, subject to certain limitations and conditions. The rule does not affect other existing generator requirements; for example, Performance Track members are required to manifest their hazardous waste shipments (*see* subpart B of part 262) and to comply with other generator requirements in part 262 (*e.g.*, packaging and labeling of waste shipments).

The requirements for Performance Track facility extended accumulation times are added as new paragraphs (j), (k) and (l) to § 262.34. The following is a discussion of each provision.

Time Limits. Section 262.34(j)(1) specifies that hazardous waste generators who are Performance Track members may accumulate hazardous wastes for an extended period of time—up to 180 days, or up to 270 days if the generator must transport waste, or offer waste for transportation, over a distance of 200 miles or more. Such generators do not need to have RCRA permits or to have interim status if they stay within these limits. Note that these extended accumulation time limits are consistent with the current limits for generators of F006 wastes (*see* § 262.34(g)).

Initial Notice. Under § 262.34(j)(2), Performance Track generators need to give prior notice to EPA or the authorized state agency of their intent to accumulate hazardous waste in excess of 90 days in accordance with this rule. These notices will assist EPA and state agencies in monitoring implementation of this incentive. Public comments to the proposal expressed concern that such notifications may place additional burden on facilities with dynamic waste streams if re-notifications are required for each new waste stream. EPA acknowledges this concern, clarifies that notifications are generally one-time events, and estimates that this burden will be of minimal impact to member facilities.

Notices filed under § 262.34(j)(2) must identify the generator and facility, specify when extended accumulation at the facility will begin, and include a description of the wastes that will be accumulated for extended time periods and the units that will be used for that purpose.

The initial notice must also include a statement that the facility has made all changes to its operations, procedures, and equipment necessary to accommodate extended time periods for accumulating hazardous wastes (§ 262.34(j)(2)(iii)). This addresses situations in which longer accumulation times may involve, for example, changing the design, location, or capacity of the unit(s) in which the wastes are accumulated. Such changes could affect how the facility addresses other generator requirements, such as those for personnel training or emergency response procedures. Including this statement in the notice helps ensure in advance that Performance Track members are aware of and have implemented any changes at the facility that may be needed to accommodate extended accumulation times.

For generators who intend to accumulate hazardous waste for up to 270 days because the waste must be transported, or offered for transport, more than 200 miles from the generating facility, the notice submitted by the generator must contain a certification that an off-site permitted or interim status hazardous waste treatment, storage, or disposal facility (TSD) capable of accepting the waste is not located within 200 miles of the generator. In response to comments received on this issue, EPA has clarified in this final rule the situations under which Performance Track generators may accumulate hazardous waste for up to 270 days without a permit. The provision for accumulation up to 270 days is intended to address situations where wastes must be transported for considerable distances to off-site facilities because a permitted or interim status TSD is not located within 200 miles, and where extended accumulation time may thereby enable the facility to more efficiently ship fewer, larger loads of wastes to those facilities.

Section 3001(d)(6) of RCRA allows small quantity generators to accumulate hazardous waste on-site without a permit or interim status for up to 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility. While EPA does not necessarily consider the 200 mile exception under RCRA 3001(d)(6) for small quantity generators as an outer boundary on what would be permissible under today's rule, it does suggest that Congress was not comfortable with providing more flexibility for small quantity generators. Accordingly, EPA believes that the 200 mile exception is a reasonable boundary to maintain for large and small quantity generators under the Performance Track program. At least one commenter has stated that a 200 mile exception would encourage generators under the Performance Track program to utilize the closest treatment, storage or disposal facility, rather than the best facility. In response, EPA would like to note that any facility receiving hazardous waste from a generator under the Performance Track program must be a federally permitted or interim status facility and therefore should be able to handle the waste responsibly.

EPA also received one comment questioning the necessity of the certification requirement related to 270 day accumulation. Currently small quantity generators and generators of F006 wastes are able to accumulate wastes for up to 270 days without certifying to the absence, within 200 miles of the generator, of an off-site permitted or interim status hazardous waste treatment, storage, or disposal facility capable of accepting the waste. EPA has included the certification requirement in this incentive because this rule will allow significantly larger quantities of all hazardous wastes to be accumulated for up to 270 days than is authorized by current rules. The certification requirement is minimally burdensome and constitutes a reasonable trade-off in light of the breadth of operational flexibility that this rule affords to Performance Track members.

Standards for Accumulation Units. Another condition (§ 262.34(j)(3)) in today's rule requires Performance Track generators to accumulate hazardous wastes in storage units (such as containers, tanks, drip pads, and containment buildings) that meet the standards for storing hazardous wastes at RCRA interim status facilities (*see* subparts I, J, W, and DD of 40 CFR part 265, respectively). These are standard requirements for large quantity generators.

If Performance Track facilities use containers for extended accumulation of hazardous wastes, today's rule

additionally requires secondary containment systems for containers to prevent releases into the environment that might be caused by handling accidents, deterioration, or other circumstances. Secondary containment is a standard requirement for RCRA-permitted facilities that use containers to store hazardous wastes containing free liquids and certain listed hazardous wastes (*i.e.*, F020, F021, F023, F026, and F027). It is not, however, typically required for hazardous waste generators or interim status facilities. Public comments on the secondary containment requirement included support for the proposal, concerns about the costs of secondary containment, and recommendations for more stringent requirements. EPA believes that requiring secondary containment in the context of this rule is a reasonable, common-sense precaution to take in exchange for extending accumulation time limits and increasing the volume limit.

Volume Limit. Under § 262.34(j)(4), Performance Track member generators are allowed to accumulate no more than 30,000 kilograms of hazardous waste at the facility at any one time. The Agency has information that the typical capacity for a hazardous waste truck transport vehicle ranges from an average of approximately 16,400 kg to a maximum of approximately 27,300 kg.[1] In addition, generators shipping hazardous waste by rail may have capacities of approximately 50,000 kg.[2] While one public comment asked EPA to consider a significantly higher waste stream-specific accumulation limit, comments on balance did not support modifications to the proposal. EPA believes that a 30,000 kg waste accumulation limit is reasonable and appropriate in ensuring economical shipments of wastes in a wide range of transport vehicle sizes.

Recordkeeping, Labeling, and Marking. Section 262.34(j)(5) specifies the types of records that program members must maintain at their facilities as a condition for extended accumulation times. These records are primarily intended to document that the accumulation time limits are not exceeded. Retaining these records is a standard requirement for all LQGs of hazardous waste.

Similarly, § 262.24(j)(6) requires that tanks and container units used for extended accumulation be marked or labeled with the words "Hazardous Waste," and that containers be marked to indicate when the accumulation period begins. These are also standard conditions for hazardous waste generators, and are specified in this rule mainly for the sake of clarity.

General Facility Standards. Under current regulations, all hazardous waste generators are subject to certain general facility standards relating to personnel training, preparedness and prevention, and contingency plans and emergency procedures. These general facility requirements also apply to Performance Track generators, and have been included in this rule for the sake of clarity.

Pollution Prevention. The Agency sought comment on whether it is appropriate to require Performance Track facilities to implement pollution prevention practices as a condition for using extended accumulation times in § 262.34(j)(8). A public comment suggested this provision duplicates requirements at § 262.41(a)(6–7). EPA acknowledges the provisions in these two sections are similar. However, the existing provision § 262.41(a)(6–7) is intended for one purpose and today's § 262.34(j)(7) for another.

Final § 262.41(a)(6 and 7) state: "(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated. (7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984." This provision is required as part of the Biennial report that RCRA generators must submit to the Agency or State.

Final § 262.34 (8) states: "The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and" This new provision is required for RCRA generators who are members of Performance Track. The information must be submitted annually along with the Performance Track member's annual report to the Agency. Requiring this information as part of the annual report is consistent with the core provisions of the Performance Track program. Further, EPA believes any burden associated with this requirement is negligible.

Annual Report. Under final § 262.34(j), Performance Track generators accumulating their hazardous waste for more than 90 days are required to provide information regarding the impact of the additional accumulation time. This information will be submitted as part of the Annual Performance Report, currently required of all Performance Track members (*see www.epa.gov/PerformanceTrack,* or the document entitled "National Environmental Performance Track Program Guide," EPA 240–F–01–002). Specifically, the report must include, for the previous year, information on the quantity of each hazardous waste that was accumulated for extended time periods, the number of off-site waste shipments, identification of destination facilities and how the wastes were managed at those facilities, information on the impact of extended accumulation time limits on the facility's operations (including any cost savings that may have occurred), and information on any on-site or off-site spills or other environmental problems associated with handling these wastes. Certain public comments expressed concern about the burden imposed by the proposed additional reporting requirements. EPA does not believe that the additional reporting elements constitute an unreasonable burden upon Performance Track members. The information submitted in these reports will assist the Agency in evaluating the success of this Performance Track Program incentive, and may inform future Agency decisions pertaining to hazardous waste accumulation. The provisions of this rule are supplementary to the existing recordkeeping and reporting requirements applicable to Generators, such as those found at 40 CFR part 262, subpart D.

Accumulation Time Extensions. Today's final rule also adds a new paragraph (k) to § 262.34, to address extensions of accumulation time limits in certain situations. This provision is consistent with the current regulations that apply generally to LQGs (*see* § 262.34(b)), and has been included in today's rule for the sake of clarity. Specifically, it allows the overseeing agency the option of granting a Performance Track generator an additional 30 days of accumulation time, if such extra time is needed due to unforseen, temporary, and uncontrollable circumstances. Requests for such time extensions will be reviewed and approved (or disapproved) in the same manner as they currently are for non-Performance Track LQGs.

[1] Unit Cost Compendium, prepared by DPRA Incorporated, for USEPA, Office of Solid Waste, September 30, 2000 and personal communication with DPRA.

[2] Rail car capacities vary depending on whether the transport unit is a mail box car (from 160 cubic yards to 370 cubic yards), a rail gondola (from 15 cubic yards to 262 cubic yards), or a rail tanker (22,000 gallons), R.S. Means, *Environmental Remediation Estimating Methods,* 1997. In general, one cubic yard of solid equals 1.5 tons and one cubic yard of liquid equals 1 ton.

Withdrawal/Termination From Program. Final § 262.34(l) addresses situations in which a Performance Track facility that has been accumulating hazardous wastes for extended periods of time under this rule decides to withdraw from the Program, or when EPA has for some reason decided to terminate the generator's membership in the Program. In such cases, the generator will need to comply with the previously applicable regulations as soon as possible (the standard requirement for less-than-90-day accumulation by large quantity generators), but no later than six months after withdrawal or termination.

4. How Will Today's Rule Affect Applicability of RCRA Rules in Authorized States?

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. (*See* 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, a State continues to have enforcement responsibilities under its law to pursue violations of its hazardous waste program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003.

After authorization, Federal rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. New Federal requirements imposed by those rules that predate HSWA do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

Today's final rule is not promulgated under HSWA authorities. Consequently, it does not amend the authorized program for states upon promulgation, as EPA does not implement the rule. The authorized RCRA program will change when EPA approves a State's application for a revision to its RCRA program.

For today's Performance Track rule, EPA encourages States to expeditiously adopt Performance Track regulations and begin program implementation. To revise the federally-authorized RCRA program, States need to seek formal authorization for the Performance Track rule after program implementation. EPA encourages States to begin implementing this incentive as soon as it is allowable under State law, while the RCRA authorization process proceeds.[3]

IV. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Cost and Economic Impacts?

Today's final action will reduce costs for the facilities eligible to take advantage of the rule. Most of these cost reductions result from reduced reporting hours burden for facilities, or reduced waste management costs.

EPA has completed seven enrollment periods for the Performance Track Program. There are currently a total of 344[4] facilities in the Program (mostly industrial facilities, but also a number of facilities in the service sector, several federal facilities and a POTW). The economic estimates for today's rule are based on the most recent data that EPA has obtained, and reflects Program membership through round six. EPA intends to solicit and to accept additional facilities into the Program generally, so therefore it is not possible to project cost and burden hour reductions with complete accuracy. Another factor that hinders such projections is that, just as membership in Performance Track is voluntary, it is up to the facilities themselves to decide which incentives apply to them and of which to avail themselves.

Maximum Achievable Control Technology: A total of 309[5] facilities have been accepted into the Performance Track program during the first six open enrollment periods. Of those facilities, EPA estimates that 93 facilities are likely to be eligible for the MACT incentive in today's rule. Performance Track facilities likely to be eligible for the MACT incentive include those members permitted as minor or synthetic minor air sources and in a NAICS sector likely to be to be subject to a MACT requirement. An analysis of EPA's IDEA database yielded 106 potential minor or synthetic minor air sources (*See http://www.epa.gov/compliance/planning/data/multimedia/idea/index.html*). EPA then screened out 13 Performance Track members in sectors unlikely to be subject to MACT requirements (*i.e.*, nine members in the Public Facilities and Institutions sector; two members in the Mining and Construction sector; and two members in the Wholesale Retail and Shipping sector). This analysis resulted in 93 eligible facilities in the current membership. EPA estimates the annual increase in Performance Track members likely to be eligible for the MACT incentive by applying the percentage eligible among the current membership (*i.e.*, 30 percent) to subsequent years.

Extended Accumulation Time for Hazardous Waste Generators: EPA estimates that 125 facilities are likely to be eligible for the RCRA incentives in today's rule.[6] The number of Performance Track facilities that could potentially be affected by the RCRA portion of the rule was assembled from the list of all Performance Track facilities that identified themselves as hazardous waste generators. EPA then relied on the RCRA 2001 Hazardous Waste Data (*i.e.*, Biennial Reporting System) to determine the quantity of waste generated by each facility per year (*See http://www.epa.gov/epaoswer/hazwaste/data/index.htm*). The next step involved excluding Performance Track facilities that are small quantity generators (SQGs), since SQGs may already accumulate hazardous waste for up to 180 days, and thus would not benefit from today's final rule. Again, EPA estimates the annual increase in Performance Track members likely to be eligible for the RCRA incentive by applying the percentage of the current membership to subsequent years.

Total Estimated Impact of Final Rule on Costs and Labor Hours

The estimated cost and hour burden for respondents for today's rule in total is negative 7,954 hours over the three years of the Information Collection Request, equating to a cost savings of $706,846. The estimated cost and hour burden for respondents for today's rule, disaggregated, is negative 16.6 hours per facility per year, that is, a reduction of 16.6 hours from current requirements. The costs are negative $1,350.80 per facility per year, that is, cost reductions/savings of $1350.80.

[3] EPA encourages States to take this approach for less stringent federal requirements where rapid implementation is important. For example, EPA encouraged States to implement State Corrective Action Management Unit Regulations, once adopted as a matter of State law, prior to authorization (*see* 58 FR 8677, February 16, 1993).

[4] The economic estimates for today's rule are based on the most recent data that EPA has obtained, and reflects Program membership through round six.

[5] 5 The economic estimates for today's rule are based on the most recent data that EPA has obtained, and reflects Program membership through round six.

[6] Memorandum dated December 5, 2003, from Industrial Economics, Incorporated (IEc) to EPA's Office of Policy, Economics, and Innovation.

B. What Are the Health, Environmental, and Energy Impacts?

EPA expects there to be no adverse effects on the environment from the direct impacts of today's rule changes. As discussed above, most of the changes relate to reporting or waste management, and do not in any way loosen the underlying environmental obligations of the Performance Track facilities. EPA expects that the reporting changes will not result in any of these facilities becoming more lax in their diligence.

EPA believes that its refocus of resources may lead to additional environmental compliance. Public recognition and relief from regulatory requirements, to the extent that they affect each company's bottom line, may influence company decisions to undertake regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

V. Effective Date for Today's Requirements

The changes contained in this final rule will take effect in the Federal MACT and RCRA programs on April 22, 2004. This rule cannot apply to sources complying with alternative requirements approved through the approval options in subpart E of the section, unless the source reapplies for and demonstrates that the equivalency demonstration for that source shows that this source would be eligible for this program (*see* 64 CFR 55810–55846, September 14, 2000).

This also means that these RCRA rules will apply on April 22, 2004, in any State without an authorized RCRA program, but will not apply in any State with an authorized RCRA program until EPA approves a State's application for a revision to its RCRA program. These rule changes apply only to members of the Performance Track, which is a voluntary program. The changes are intended to provide regulatory relief and do not impose new requirements. Because regulated entities will not need time to come into compliance, the rule changes made today will be effective upon publication.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The estimated cost and hour burden for respondents for today's rule in total is negative 7,954 hours over the three years of the Information Collection Request, equating to a cost savings of $706,846. The estimated cost and hour burden for respondents for today's rule, disaggregated, is negative 16.6 hours per facility per year, that is, a reduction of 16.6 hours from current requirements. The costs are negative $1,350.80 per facility per year, that is, cost reductions/savings of $1350.80.

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

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collected pursuant to today's rule is a combination of new information, and a reduction of other information the Agency currently collects. This information will be used so that the Agency will know that facilities eligible for today's provisions are properly implementing them, and also that States have implemented them, if they so choose. This information will enable the Agency to assess compliance with today's final provisions. Responses to the information request are required by respondents to retain provided in today's rule under the Authority: 42 U.S.C. 7401, *et seq.*, and Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938. Responses by States for today's provisions are voluntary.

The estimated cost and hour burden for respondents for today's rule in total is negative 7,954 hours over the three years of the Information Collection Request equating to a cost savings of $706,846. The estimated cost and hour burden for respondents for today's rule, disaggregated, is negative 16.6 hours per facility per year, that is, a reduction of 16.6 hours from current requirements. The costs are negative $1,350.80 per facility per year, that is, cost reductions/savings of $1350.80. The frequency of the responses are a combination of one-time and annual, that is, there are different types of responses required. For instance, if a Performance Track facility seeks to extend its storage time under today's provisions, a one time notification is required. In addition, the facility must provide certain information on an annual basis to the authorized State. The estimated mean number of annual respondents between 2004 and 2006 is 277. The Paperwork Reduction Act requires that the Agency report to the Office of Management and Budget only positive burden hours for Industry and States via its "83–I" reporting form. Therefore, the total burden hours reported to OMB is 8950. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule 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 according to the Small Business Administration definition for the business's NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of 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 proposed 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 will relieve regulatory burden and result in cost savings to entities, including any small entities, that are members of the Performance Track Program. Many small entities (both businesses and governments) and their association representatives were invited to, and attended, the public hearings EPA conducted early in 2000 on the design of the Performance Track Program. EPA has 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), Public Law 04–4, 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 this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Participation by facilities in the Performance Track is voluntary, and so is participation by State or local government agencies. There are no significant or unique effects on State, local, or Tribal governments, however there may be some minor effects incurred by these entities. EPA projects these costs to be very low. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, as discussed in section I B and elsewhere, EPA did engage these stakeholders in the process of developing the National Environmental Performance Track Program.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule provides incentives that States can adopt to provide benefits to their State member facilities in the National Performance Track Program. As a voluntary program, Performance Track allows States the option to adopt the provisions in this rule. Thus, Executive Order 13132 does not apply to this rule.

Stakeholders, including many States, were consulted during the development of the Performance Track Program. Many suggestions and ideas generated by States and other stakeholders provided the basis for some of the provisions in this rule. The stakeholder involvement process undertaken is fully discussed in Section I B of this document. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically sought comment on the proposed rule from State and local officials.

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." "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. Any effects that Tribes may accrue from this rule will result in cost savings. Thus, Executive Order 13175 does not apply to this rule. Stakeholder involvement is discussed in Section I. B. of this document. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically sought additional comment on the proposed rule from Tribal officials.

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

Executive Order 13045: "Protection of Children from Environmental Health & 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. In the proposed rule, EPA invited the public to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to the provisions of this rule. No such studies or data were identified.

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, EPA has concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards 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 (such as materials specifications, test methods, sampling procedures, business practices) 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 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 final rule does not involve technical standards. Thus, the provisions of NTTAA do not apply to this rule and 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 this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule is effective on April 22, 2004.

VII. Statutory Authority

The statutory authority for the MACT portion of this action is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601). The statutory authority for the RCRA portion of this action is provided by sections 2002 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6912 and 6922).

VIII. Judicial Review

Under section 307(b)(1) of the Clean Air Act, judicial review of the MACT portion of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 21, 2004. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements. Under section 6976(a) of the Resource Conservation and Recovery Act, judicial review of the RCRA portion of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 21, 2004. Under this same section 6976(a) of RCRA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

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 262

Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Dated: April 14, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, we amend parts 63 and 262 of title 40, chapter I of the Code of the Federal Regulations 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 63.2 is amended by adding, in alphabetical order, definitions for the terms *Pollution Prevention* and *Source at a Performance Track member facility* to read as follows:

§ 63.2 Definitions.

* * * * *

Pollution Prevention means *source reduction* as defined under the Pollution Prevention Act (42 U.S.C. 13101–13109). The definition is as follows:

(1) *Source reduction* is any practice that:

(i) Reduces the amount of any hazardous substance, pollutant, or

contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

(2) The term *source reduction* includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(3) The term *source reduction* does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

* * * * *

Source at a Performance Track member facility means a major or area source located at a facility which has been accepted by EPA for membership in the Performance Track Program (as described at *www.epa.gov/PerformanceTrack*) and is still a member of the Program. The Performance Track Program is a voluntary program that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

* * * * *

■ 3. Section 63.10 is amended by:

a. Revising paragraph (d)(1); and

b. Adding paragraph (e)(3)(i)(D).

The revision and addition read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * * (1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, and except as provided in § 63.16, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

* * * * *

(e) * * *

(3) * * *

(i) * * *

(D) The affected source is complying with the Performance Track Provisions of § 63.16, which allows less frequent reporting.

* * * * *

■ 4. Section 63.16 is added to subpart A and reads as follows:

§ 63.16 Performance Track Provisions.

(a) Notwithstanding any other requirements in this part, an affected source at any major source or any area source at a Performance Track member facility, which is subject to regular periodic reporting under any subpart of this part, may submit such periodic reports at an interval that is twice the length of the regular period specified in the applicable subparts; provided, that for sources subject to permits under 40 CFR part 70 or 71 no interval so calculated for any report of the results of any required monitoring may be less frequent than once in every six months.

(b) Notwithstanding any other requirements in this part, the modifications of reporting requirements in paragraph (c) of this section apply to any major source at a Performance Track member facility which is subject to requirements under any of the subparts of this part and which has:

(1) Reduced its total HAP emissions to less than 25 tons per year;

(2) Reduced its emissions of each individual HAP to less than 10 tons per year; and

(3) Reduced emissions of all HAPs covered by each MACT standard to at least the level required for full compliance with the applicable emission standard.

(c) For affected sources at any area source at a Performance Track member facility and which meet the requirements of paragraph (b)(3) of this section, or for affected sources at any major source that meet the requirements of paragraph (b) of this section:

(1) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using add-on control technology, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is meeting the emission standard by continuing to use that control technology. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act section 114(a)(3).

(2) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using pollution prevention, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions to levels at or below those required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act section 114(a)(3).

(3) If the emission standard to which the affected source is subject is based on pollution prevention, and the affected source complies by using pollution prevention and reduces emissions by an additional 50 percent or greater than required by the applicable emission standard, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions by an additional 50 percent or greater than required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act section 114(a)(3).

(4) Notwithstanding the provisions of paragraphs (c)(1) through (3), of this section, for sources subject to permits under 40 CFR part 70 or 71, the results of any required monitoring and recordkeeping must be reported not less frequently than once in every six months.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 5. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 6. Section 262.34 is amended by adding paragraphs (j), (k), and (l) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(j) A member of the Performance Track Program who generates 1000 kg or

greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that:

(1) The generator accumulates the hazardous waste for no more than 180 days, or for no more than 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility; and

(2) The generator first notifies the Regional Administrator and the Director of the authorized State in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this section. Such advance notice must include:

(i) Name and EPA ID number of the facility, and specification of when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this section; and

(ii) A description of the types of hazardous wastes that will be accumulated for extended periods of time, and the units that will be used for such extended accumulation; and

(iii) A Statement that the facility has made all changes to its operations, procedures, including emergency preparedness procedures, and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

(iv) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that a facility that is permitted (or operating under interim status) under part 270 of this chapter to receive these wastes is not available within 200 miles of the generating facility; and

(3) The waste is managed in:

(i) Containers, in accordance with the applicable requirements of 40 CFR part 265 subpart I; or

(ii) Tanks, in accordance with the requirements of 40 CFR part 265, subpart J, and § 265.200; or

(iii) Drip pads, in accordance with subpart W of 40 CFR part 265; or

(iv) Containment buildings, in accordance with subpart DD of 40 CFR part 265; and

(4) The quantity of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg; and

(5) The generator maintains the following records at the facility for each unit used for extended accumulation times:

(i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable), a description of the waste generation and management practices at the facility showing that they are consistent with the extended accumulation time limit, and documentation that the procedures are complied with; or

(ii) Documentation that the unit is emptied at least once every 180 days (or 270 days, if applicable); and

(6) Each container or tank that is used for extended accumulation time periods is labeled or marked clearly with the words "Hazardous Waste," and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection; and

(7) The generator complies with the requirements for owners and operators in 40 CFR part 265, with § 265.16, and with § 268.7(a)(5). In addition, such a generator is exempt from all the requirements in subparts G and H of part 265, except for §§ 265.111 and 265.114; and

(8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and

(9) The generator includes the following with its Performance Track Annual Performance Report, which must be submitted to the Regional Administrator and the Director of the authorized State:

(i) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods; and

(ii) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (*e.g.*, recycling, treatment, storage, or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this section; and

(iii) Information for the previous year on any hazardous waste spills or accidents occurring at extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

(iv) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that a facility that is permitted (or operating under interim status) under part 270 of this chapter to receive these wastes is not available within 200 miles of the generating facility; and

(k) If hazardous wastes must remain on-site at a Performance Track member facility for longer than 180 days (or 270 days, if applicable) due to unforseen, temporary, and uncontrollable circumstances, an extension to the extended accumulation time period of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(l) If a generator who is a member of the Performance Track Program withdraws from the Performance Track Program, or if the Regional Administrator terminates a generator's membership, the generator must return to compliance with all otherwise applicable hazardous waste regulations as soon as possible, but no later than six months after the date of withdrawal or termination.

[FR Doc. 04–9042 Filed 4–21–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7651–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by OxyVinyls, LP (OxyVinyls) to exclude (or delist) a certain liquid waste generated by its Houston, TX Deer Park VCM Plant from the lists of hazardous wastes. This final rule responds to the petition submitted by OxyVinyls to delist K017, K019, and K020 Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS) EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 919,990 cubic yards per year of the Incinerator Offgas Treatment Scrubber Water. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in accordance with TPDES regulations.

PENNSYLVANIA–SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
VI. Northwest Pennsylvania Intrastate AQCR:				
(A) WarrenCounty:				
Conewango Twp				X
Mead Twp				X
Clarendon Boro				X
Warren Boro				X
Pleasant Township				X
Glade Township				X
* * * * * * *				

* * * * *

[FR Doc. 04–14822 Filed 6–30–04; 8:45 am]

BILLING CODE 6560–50–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 (§§ 63.1200 to 63.1439), revised as of July 1, 2003, on page 575, in § 63.1427, the first equation in paragraph (e)(2) is corrected to read as follows:

§ 63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction technique.

* * * * *

(e) * * *

(2) * * *

$$R_{batchcycle} = \left[1 - \frac{P_{epox,f}}{P_{epox,i}}\right] * 100 \qquad \text{[Equation 11]}$$

* * * * *

In the same title and volume, in the tables to subpart PPP, the headings of Table 2 and Table 7 to Subpart PPP are corrected to read as follows:

* * * * *

Table 2 to Subpart PPP of Part 63—Applicability of Subparts F, G, H, and U to Subpart PPP Affected Sources

* * * * *

Table 7 to Subpart PPP of Part 63—Operating Parameters For Which Monitoring Levels Are Required To Be Established for Process Vents Streams

* * * * *

[FR Doc. 04–55516 Filed 6–30–04; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 154, 158, 159, 168, and 178

[OPP–2004– 0216; FRL–7368–4]

Office of Pesticide Programs Address Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing this technical amendment to update the regulations of the Office of Pesticide Progams (OPP) to change several addresses and mail codes for OPP that have been changed in recent months.

DATES: This final rule is effective on July 1, 2004.

ADDRESSES: EPA has established a docket for this action under Docket identification number OPP–2004–0216. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5944; e-mail address:*frane.jean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency has not included in this technical amendment a list of those who may be potentially affected by this

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0010, FRL–7786–9]

RIN 2060–AH69

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On January 25, 1995, the EPA promulgated national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks under section 112 of the Clean Air Act (CAA). On June 5, 2002, we proposed amendments to the rule. This action promulgates amendments to the emission limits, definitions, compliance provisions and performance test requirements in the standards for chromium emissions from hard and decorative chromium electroplating and anodizing tanks.

DATES: Effective July 19, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID Nos. OAR–2002–0010 and A–88–02. 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. 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: Mr. Phil Mulrine, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Metals Group, (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–5289, electronic mail address: *mulrine.phil@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action include facilities engaged in hard chromium electroplating, decorative chromium electroplating, and chromium anodizing of metal or plastic parts either as a primary activity or as an activity incidental to a larger fabricating or manufacturing establishment. Regulated categories and entities include sources listed under the North American Information Classification System (NAICS) U.S. Industries code 332813, as well as sources listed under numerous industry codes within industry subsector 332, titled "Fabricated Metal Product Manufacturing."

Category	NAICS	Examples of regulated entities
Manufacturing	332813	Electroplating and anodizing facilities.
Manufacturing	332	Establishments primarily engaged in both fabricating and electroplating or anodizing products are classified in the Manufacturing sector according to the product made.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0010 and Docket ID No. A–88–02. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to obtain all materials relevant to the final rule amendments. Although a part of the official public docket, the public docket does not include Confidential Business Information or other information the disclosure of which is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, 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 Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. Electronic versions of the documents filed under Docket No. OAR–2002–0010 are available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document also will be available on the WWW. Following the Administrator's signature, a copy of this action will be posted at *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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the 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 17, 2004. 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 amendments 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
II. Response to Comments
A. Use of Fume Suppressants for Controlling Chromium Emissions from Hard Chromium Electroplating Tanks
B. Revised Surface Tension Limit When Measuring Surface Tension with a Tensiometer
C. Emission Limit for Hard Chromium Electroplating Tanks Equipped with Enclosing Hoods
D. Chromium Electroplating and Chromium Anodizing Tank Definitions
E. Pressure Drop Monitoring Requirement for Composite Mesh Pads
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

On January 25, 1995, we promulgated national emission standards for hazardous air pollutants (NESHAP) for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks (60 FR 4963) under the authority of section 112 of the CAA. Due to recent changes in control technology, additional information related to the monitoring required by the NESHAP, and problems with implementing some of the requirements of the NESHAP, we proposed amendments to the NESHAP on June 5, 2002 (67 FR 38810). The proposed amendments to the NESHAP addressed five technical areas: (1) The use of fume suppressants for controlling chromium emissions from hard chromium electroplating tanks; (2) a revised surface tension limit for decorative chromium electroplating tanks when measuring surface tension with a tensiometer; (3) an alternate emission limit for hard chromium electroplating tanks equipped with enclosing hoods; (4) revised definitions for chromium electroplating and chromium anodizing tanks; and (5) the pressure drop monitoring requirement for composite mesh pad (CMP) control systems.

Based on recommendations made by the Common Sense Initiative (CSI) Metal Finishing Subcommittee and research conducted by our Office and Research and Development (ORD), we proposed allowing owners and operators of hard chromium electroplating sources to meet a surface tension limit as an alternative to the chromium emissions concentration limit specified in the NESHAP. The data from recent emission tests conducted on hard chromium electroplating tanks indicates that compliance with the 0.015 milligram per dry standard cubic meter (mg/dscm) emission limit can be achieved when the surface tension of the electroplating tank bath is maintained below certain levels. Based on those data, we proposed surface tension limits of 45 dynes per centimeter (dynes/cm), when measured using a stalagmometer, and 35 dynes/cm, when measured using a tensiometer, for hard chromium electroplating tanks.

The research performed by ORD and other data show that, when used to measure the surface tension of chromium electroplating baths, tensiometers typically read about 20 percent lower than surface tension measurements of the same bath made using a stalagmometer. Because the 45 dynes/cm surface tension limit specified in the NESHAP for decorative chromium electroplating tanks is based on measurements using a stalagmometer, we proposed adding a separate surface tension limit of 35 dynes/cm when using a tensiometer to measure decorative chromium electroplating bath surface tension.

Since the promulgation of the NESHAP, several chromium electroplating facilities have installed state-of-the-art electroplating tanks equipped with enclosing hoods. Because the ventilation rates for these enclosed tanks are considerably lower than ventilation rates for conventional hooding, some facilities with enclosed tanks have had difficulty meeting the chromium emission concentration limit specified in the NESHAP, even when emissions from those tanks are well controlled. To rectify this situation, we proposed an alternative mass emission rate limit for chromium electroplating tanks equipped with enclosing hoods.

The NESHAP defined affected source as any chromium electroplating tank or chromium anodizing tank located at a facility that performs hard chromium electroplating, decorative chromium electroplating, or chromium anodizing. We have become aware that, in at least one case, this definition of affected source has resulted in the replacement of an existing electroplating tank being treated as a reconstruction, thereby triggering the emission limits for new sources. Because tank replacement is considered routine maintenance, it was not our intent to require more stringent emission limits when a facility replaced an existing chromium electroplating tank. Therefore, we proposed an amended definition of affected source that includes the peripheral equipment, such as rectifiers and anodes, that is essential for the chromium electroplating process.

Finally, we proposed an amendment to the requirement for establishing the operating limit for any source controlled with a CMP. In the promulgated NESHAP, owners and operators of affected sources controlled with a CMP are required to maintain the pressure drop across the CMP within 1 inch of water column (in. w.c.) of the pressure drop established during the initial performance test. However, we have recently become aware that the pressure drop across a CMP often exceeds the pressure drop operating limit by more than 1 in. w.c. immediately following the cleaning or replacement of pads. Consequently, we proposed increasing the allowable range of pressure drops from ±1 in. w.c. to ±2 in. w.c.

We received a total of 16 public comments on the proposed amendments to the NESHAP. Two of the 16 comments requested an extension of the public comment period, 2 comments expressed general opposition to the amendments, and the other 12 comments addressed the technical issues associated with the proposed amendments. In addition, some commenters suggested changes to other requirements of the NESHAP not specifically addressed by the proposed amendments. Comments were submitted by five State and local air pollution control agencies, one environmental justice organization, four companies that perform chromium electroplating, and one Federal agency. Three industry trade associations submitted a joint set of comments, and two concerned citizens also submitted comments.

After full and careful consideration of the comments, we are promulgating the amendments as proposed with two minor clarifications. Both clarifications pertain to the requirement for establishing operating limits for the pressure drop across a CMP system. We have added paragraph (iii) to § 343(c)(1) of the final rule to indicate that an owner or operator can establish a new operating limit for the pressure drop across a CMP system by repeating the performance test. In such cases, the new operating limit will be based on the pressure drop established during the repeat performance test ±2 in. w.c. We also have added paragraph (iv) to § 343(c)(1) to indicate that the ±2 in.

w.c. requirement for the pressure drop across a CMP system does not apply during automatic washdown cycles of the CMP system.

II. Response to Comments

A. Use of Fume Suppressants for Controlling Chromium Emissions From Hard Chromium Electroplating Tanks

Comment: One commenter stated that the proposed change is based on a single emissions test, and that there are other data available, collected from the same facility and from other facilities, that contradict the findings of that test. To support that argument, the commenter summarized the results from three studies of the effectiveness of fume suppressants in controlling emissions from chromium electroplating tanks that were performed under EPA's CSI. The 2000 CSI report included the results of three emission tests conducted at a hard chromium electroplating facility. The results of the first test were used as the basis for the proposed amendment. In the second test, emissions were measured at higher surface tensions (32 to 34 dynes/cm) and higher process loading (3,973 to 5,652 ampere-hours (amp-hr)); emissions of total chromium exceeded the NESHAP limit of 0.015 mg/dscm, but hexavalent chromium concentrations were within the 0.015 mg/dscm limit. In the third test, emissions were measured at similar loading levels (4,700 to 5,000 amp-hr), but at even higher surface tensions (32 to 36 dynes/cm). Although there were problems with the test, the results indicated exceedances of the emission limit in two of three runs. During a 1998 CSI study, emissions from a hard chromium electroplating tank were below the 0.015 mg/dscm limit when surface tensions were maintained between 24 and 29 dynes/cm using a fluorinated chemical fume suppressant, which is referred to as a "third generation" fume suppressant. In the other study, six tests were performed on hard chromium electroplating tanks that contained fume suppressants. For the five valid tests, the results of two tests indicated compliance with the emission limit when surface tensions were 23 and 28 dynes/cm, respectively; for the other three tests, chromium emissions exceeded the 0.015 mg/dscm limit when surface tensions were maintained at 22, 32, and 41 dynes/cm, respectively.

Response: We have reviewed the additional test data referenced by the commenter, and we disagree with the commenter that other available data contradict the results of the test that we used as the basis for the proposed amendment. The additional studies that the commenter references present the results of 17 emission tests on hard chromium electroplating tanks. Two emission tests were conducted in May 1996 at the Diamond Chrome Plating, Incorporated, (Diamond) facility in Howell, Michigan. The tests were performed on five hard chromium electroplating tanks that were exhausted to a common duct. Each test consisted of three 2-hour runs using Method 306. During the first test, the surface tensions of the electroplating solutions in the five tanks ranged from 38 to 44 dynes/cm and averaged 41 dynes/cm. The total chromium emission concentration for that test was 0.0062 mg/dscm, and the hexavalent chromium concentration for the test was 0.0048 mg/dscm, both of which are far below the emission limit of 0.015 mg/dscm. During the other test, foam was discovered in the exhaust hood. Therefore, the results of that test are not valid.

Six emission tests were conducted during July and August 1997 at the Modern Hard Chrome Company (Modern) facility in Warren, Michigan. Three tests were performed on each of two hard chromium electroplating tanks. Each test consisted of three 2-hour Method 306 runs. For each tank, one of the tests was conducted without the addition of a fume suppressant to the electroplating bath. For the other four tests, a wetting agent fume suppressant was added to the electroplating bath, and the average surface tensions of the electroplating solutions ranged from 22 to 41 dynes/cm. The testing demonstrated compliance with the 0.015 mg/dscm emission limit in only one of the four controlled tests. However, the concentrations of total chromium varied considerably over the four tests, and the results were inconsistent with the other available data on the effectiveness of fume suppressants in controlling emissions from hard chromium electroplating tanks. Whereas one test indicated total chromium emissions to be 0.17 mg/dscm at a surface tension of 32 dynes/cm, another test conducted at a significantly higher surface tension of 41 dynes/cm indicated a much lower total chromium concentration of 0.050 mg/dscm. The other two tests were conducted at surface tensions of 22 to 23 dynes/cm. In one test, the total chromium concentration was 0.011 mg/dscm, but for the other test, the total chromium concentration was determined to be 0.028 mg/dscm. These variations are a strong indication of problems with the testing and/or source operation. However, we have been unable to obtain a complete copy of the report for this test to corroborate the test results and ensure that there were no problems with process operations or test procedures that could bias the results of the tests. Consequently, we do not consider the results for the tests at Modern to be valid.

Between September 1997 and January 1998, six emission tests were conducted at the Hohman Plating and Manufacturing (Hohman) facility in Dayton, Ohio. The tests were all conducted on the same hard chromium electroplating tank. Five of the tests consisted of six 2-hour test runs using Method 306; the other test consisted of four 2-hour Method 306 runs. One of the tests was conducted under baseline conditions, without the addition of a fume suppressant to the electroplating solution. For the other five tests, a wetting agent fume suppressant was added to the tank, and the electroplating bath surface tensions were maintained between 24.5 and 29.0 dynes/cm. The total chromium concentrations in the exhaust for the five controlled tests ranged from 0.0017 to 0.0050 mg/dscm and were all well below the emission limit of 0.015 mg/dscm.

Three emission tests were conducted at the Acme Hard Chrome, Incorporated, (Acme) facility in Alliance, Ohio. The tests took place in August 1998, October 1998, and January 1999 and were conducted on three hard chromium electroplating tanks that are exhausted to a common control system. Each test consisted of three 2-hour test runs using Method 306. The results of the first test were used as the basis for the proposed amendment. The surface tensions in the tanks during the first test ranged from 28 to 30 dynes/cm, and the total and hexavalent chromium emission concentrations for the test were 0.0034 mg/dscm and 0.0030 mg/dscm, respectively. In the second test, the surface tensions in the tanks ranged from 32 to 34 dynes/cm. An error in the test report indicated the total chromium concentration to be 0.018 mg/dscm. However, the corrected concentration of total chromium was actually 0.0092 mg/dscm, which is well below the 0.015 mg/dscm emission limit. The hexavalent chromium concentration for the second test was 0.0079 mg/dscm. In the third test, foam was discovered in the exhaust hood, so the results of that test are not considered to be valid.

To summarize, we were able to obtain the results of 14 emission tests on hard chromium electroplating tanks controlled with wetting agent fume suppressants. Eight of the 14 tests provided valid results of fume suppressant performance. In all eight valid emission tests, the total chromium

concentration was determined to be less than the 0.015 mg/dscm emission limit for hard chromium electroplating tanks. Therefore, we have concluded that the available data do support the proposed amendment to allow hard chromium electroplating sources to comply with a surface tension limit as an alternative to the chromium emission concentration of 0.015 mg/dscm.

Comment: One commenter disagreed that the data, which were used as the basis for the proposed change, are conclusive. The commenter pointed out that the emission test was conducted at low production levels (227 to 1,405 amp-hr). Therefore, he believes that the test data are not representative of normal hard chromium electroplating operations.

Response: We agree with the commenter that the emission test that was used as the basis for the proposed amendment was conducted under relatively low process loads. However, the results from other tests on hard chromium electroplating tanks demonstrate that wetting agent fume suppressants are effective in controlling chromium emissions at higher process loads. For example, in the tests conducted at Acme, compliance was demonstrated at a process load of 5,000 amp-hr, and compliance was demonstrated at a process rate of 13,480 amp-hr for the tests at Diamond. These process loads are more typical of the hard chromium electroplating industry than the process load for the test that was used as the basis for the proposed amendment.

Comment: One commenter pointed out that the proposed amendment is based on tests using a "new generation" of fume suppressants, implying that other fume suppressants on the market may not perform as well. A second commenter concurred with this comment. The commenter pointed out that the 1998 CSI study indicates that some fume suppressants may be more effective than others in controlling emissions. However, the proposed amendment does not specify the type of fume suppressants that can be used in hard chromium electroplating tanks. The two commenters requested that the final rule specify the types of fume suppressants acceptable for use on hard chromium electroplating tanks that would comply with the proposed surface tension limits.

Response: Based on the available data, we have concluded that chromium emission concentrations from hard chromium electroplating tanks are primarily a function of the electroplating solution surface tension when wetting agent fume suppressants are used as the only emission control. If the surface tension is maintained below the proposed levels (*i.e.*, 35 dynes/cm when measured by tensiometer and 45 dynes/cm when measured by stalagmometer), the concentration of total chromium in the exhaust will be no greater than the 0.015 mg/dscm emission limit for hard chromium electroplating tanks. Furthermore, the available data do not indicate that emission control levels are a function of the type of fume suppressant used in the tank solution, as suggested by the commenters. We did indicate in the preamble to the June 5, 2002 proposal that the amendment was based on a test conducted using a new generation of fume suppressants. However, the term "new generation" actually was meant to apply to the performance of fume suppressants with respect to product quality (*e.g.*, the relative degree of pitting in the finished plate) and not to the effectiveness of those fume suppressants in reducing emissions from chromium electroplating tanks. Sources will be in compliance with the emission limits provided the surface tension is maintained at or below the proposed limits, regardless of the type of fume suppressant used.

Comment: One commenter stated that numerous factors affect emissions from chromium electroplating tanks, such as temperature, chromium concentration, and amperage applied, and it is not possible to account for all of those factors in a single emissions test. Another commenter stated that other factors that affect emissions from chromium electroplating tanks should be evaluated, including the degree of air agitation, bath temperature, collection efficiency, mist particle size, tank freeboard, and chromium dust levels in the ductwork and around the facility. The first commenter requested that we consider all of the available data and proceed with the amendment as proposed only if the data are conclusive. If the data are not conclusive, additional testing should be performed before a final decision is made to promulgate the amendments. Another commenter agreed that the data that we considered in proposing the amendment are not conclusive, and additional testing is warranted before allowing the use of fume suppressants as the only means of emissions control on hard chromium electroplating tanks.

Response: Since proposing the amendments, we have evaluated the results of several other emission tests that demonstrate the performance of wetting agent fume suppressants in controlling chromium emissions from hard chromium electroplating tanks. Those tests were conducted under a range of design and operating conditions, including type of fume suppressant, process load, and tank size and configuration. Although measurements of the other parameters listed by the commenters (*e.g.*, bath temperature, tank freeboard, degree of agitation) are not available for comparison, we expect that there were variations in those parameters for the electroplating tanks tested. Despite those variations, the data from all eight of the valid emission tests clearly demonstrate a strong relationship between surface tension and chromium emissions. When the surface tension is maintained at relatively low levels (below 35 dynes/cm), chromium emissions are below 0.015 mg/dscm. Therefore, we have concluded that the effects of those other design and operating parameters on chromium emissions are secondary to surface tension. Furthermore, an industry expert concurred with this conclusion that surface tension is the primary factor in determining chromium emissions from hard chromium electroplating baths.

Comment: Three commenters opposed the amendment because it would allow existing add-on emission controls to be removed from hard chromium electroplating tanks. The commenters believe that existing controls are necessary to protect public health given the toxicity of hexavalent chromium and the proximity of many hard chromium electroplating shops to residences. One of the commenters pointed out that most hard chromium electroplaters already have purchased and installed add-on emission controls, so continuing to require add-on controls would not result in additional control costs for existing sources.

Response: We recognize that, under the proposed amendment, owners and operators of hard chromium electroplating tanks that choose to comply with the proposed surface tension limit could remove existing add-on emission controls. However, the available data on the performance of wetting agent fume suppressants demonstrate that control of chromium emissions equivalent to the level achieved by add-on emission controls can be achieved by maintaining the electroplating bath surface tension below the limits specified in today's amendments. With respect to the public health risks associated with emissions of hexavalent chromium emissions, we have begun evaluating the residual risk for the chromium electroplating and chromium anodizing source category, as required under section 112(f)(2) of the

CAA. If our assessment indicates that the risk due to emissions from the facilities within this source category is unacceptable, we will consider additional measures for mitigating that risk. We agree with the commenter that most hard chromium electroplating facilities have purchased and installed add-on emission controls to comply with the NESHAP. However, we do not feel compelled to require facilities to continue to operate those controls because maintaining electroplating tank solution surface tensions below the proposed limits will ensure adequate control of chromium emissions from those sources.

Comment: One commenter pointed out that the proposed amendment would eliminate the requirement for hard chromium electroplating operations to conduct emission tests to demonstrate compliance with emission limits. The commenter believes that emission tests are necessary for determining compliance with the NESHAP.

Response: We agree that hard chromium electroplating facilities would not be required to conduct performance tests under the proposed amendment if the facility owner or operator decided to comply with the proposed surface tension limits. However, the data on the performance of wetting agent fume suppressants demonstrate that compliance with the 0.015 mg/dscm chromium emission limit will be ensured if surface tension is maintained at or below 35 dynes/cm as measured by a tensiometer, or 45 dynes/cm as measured using a stalagmometer. Consequently, performance tests are not necessary when wetting agent type fume suppressants are maintained below the proposed limits. Furthermore, not requiring performance tests helps to ease the burden on small businesses that are subject to the final rule.

Comment: Two commenters summarized the results of a study performed by the San Diego Air Pollution Control District and the California Air Resources Board in the Barrio Logan community of San Diego County (Barrio Logan Study) from December 3, 2001, to May 12, 2002. During the study, a total of 431 ambient samples were collected at six locations in the vicinity of two electroplating facilities: a decorative chromium electroplating facility and a hard chromium electroplating facility. The study indicated that chromium emissions from the decorative chromium electroplating shop, which used fume suppressants for emission control, resulted in high levels of ambient hexavalent chromium concentrations. The same study also showed that emissions from the adjacent hard chromium electroplating shop, which used an add-on control, were much lower and did not contribute significantly to ambient hexavalent chromium concentrations. The study included estimates of cancer risk, based on 70-year exposures to the average hexavalent chromium concentrations measured during the 5-month study period. The risk assessment indicated that the average cancer risk ranged from 23 to 114 per million, depending on the location, and the overall average risk for all locations was 63 per million. The commenters stated that we should consider the results and implications of that study before proceeding with an amendment that would allow fume suppressants as the only means of emission control for hard chromium electroplating tanks. One of the commenters also requested that the study reports be included in the docket for the final rule.

Response: We have begun evaluating the residual risk associated with the chromium electroplating and chromium anodizing source category, as required under section 112(f)(2) of the CAA. The implications of the Barrio Logan Study would best be addressed within the context of residual risk, and we intend to give the data and results from that study full consideration as we evaluate the residual risk for the chromium electroplating and chromium anodizing source category. We cannot argue with the conclusion of the Barrio Logan Study that emissions from the decorative chromium electroplating shop were the main contributor to high ambient concentrations of chromium. However, the data do not support the conclusion that emissions from the decorative electroplating shop were higher simply because the facility used a fume suppressant and did not have add-on emission controls. Wetting agent fume suppressants are an effective means of emission control when they are used properly, but there are indications that the decorative chromium facility that was the focus of the Barrio Logan Study was not using their fume suppressant properly. Measurements made by the local air pollution control agency indicate that the decorative chromium electroplating facility was not in compliance with the surface tension limit of 45 dynes/cm during at least part of 40 of the 45 days surface tensions were recorded. This lack of adequate control of surface tension certainly contributed to the high ambient concentrations of chromium. In addition, there are indications that other factors, such as poor housekeeping practices, may also have contributed significantly to the ambient chromium concentrations.

B. Revised Surface Tension Limit When Measuring Surface Tension With a Tensiometer

Comment: Five commenters opposed the proposed amendment that would specify a lower maximum surface tension when the surface tension is measured using a tensiometer. One commenter noted that the proposed limit for tensiometer-measured surface tension is based on a single emission test, and the data from that test do not support the proposed surface tension limit of 35 dynes/cm. The commenter stated that surface tensions ranged from 28 to 30 dynes/cm during the test. Although the data demonstrated that the chromium emission limit was achieved at surface tensions below 30 dynes/cm, the data cannot be extrapolated to 35 dynes/cm. At the proposed surface tension limit of 35 dynes/cm, emission concentrations are very likely to be higher than the concentrations measured during the emission test in question. There are no data that demonstrate that emission concentrations will be below the chromium concentration limit of 0.015 mg/dscm when surface tensions are 35 dynes/cm, as measured using a tensiometer.

Response: We have obtained data from eight emission tests that measured chromium emissions from hard chromium electroplating tanks that were controlled only with wetting agent fume suppressants. In two of those tests, emissions were quantified at bath surface tensions of 32 dynes/cm or higher. The second Acme test was conducted at surface tensions of 32 to 34 dynes/cm, and the resulting concentrations of total chromium (0.0092 mg/dscm) and hexavalent chromium (0.0079 mg/dscm) were well under the 0.015 mg/dscm emission limit. Although we would expect the emission concentrations to be slightly higher if the test had been conducted at a surface tension of 35 dynes/cm, it is very unlikely the concentrations would have exceeded 0.015 mg/dscm (*i.e.*, would have been more than 50 percent higher) at the marginally higher surface tension. In the emission test performed at Diamond, the electroplating tank solution surface tension was 41 dynes/cm, and the concentrations in the tank exhaust were 0.0061 mg/dscm for total chromium and 0.0048 mg/dscm for hexavalent chromium, both of which also are well below the 0.015 mg/dscm

emission limit. This test demonstrated that, in some cases, the emission limit can be met even with a surface tension in excess of 35 dynes/cm. In the other six emission tests, surface tensions were below 30 dynes/cm and the measured emissions of chromium were well below the 0.015 mg/dscm emission limit. The results of all eight tests, and the two with the higher surface tensions in particular, demonstrate that compliance with the hard chromium electroplating tank emission limit will be achieved when surface tensions are maintained at or below the proposed limit of 35 dynes/cm.

Comment: One commenter stated that there are no data that demonstrate that chromium emissions from hard chromium electroplating operations will be below the chromium concentration limit of 0.015 mg/dscm when a stalagmometer indicates the surface tension is 45 dynes/cm. The commenter stated that additional testing should be performed before establishing a surface tension limit to ensure that chromium emission concentrations are achieved on a consistent basis when surface tensions are maintained below the limits of 35 and 45 dynes/cm for tensiometers and stalagmometers, respectively.

Response: Although the proposed surface tension limit for hard chromium electroplating tanks was based on measurements made using a tensiometer and not a stalagmometer, the data support a 45 dynes/cm limit for stalagmometer-based surface tension measurements. The test data clearly show that when surface tension, as measured using a tensiometer, is no more than 35 dynes/cm, the chromium emission concentration is no more than 0.015 mg/dscm. When simultaneous surface tension measurements of the same electroplating solution using both types of instruments are compared, the data indicate that the measurement differential is at least 10 dynes/cm when a stalagmometer indicates the surface tension to be 45 dynes/cm. In other words, if a stalagmometer measures the surface tension to be 45 dynes/cm, a tensiometer would measure the surface tension of the same electroplating bath to be no more than 35 dynes/cm. Therefore, when a tensiometer measures a surface tension of 35 dynes/cm or less, the chromium emission concentration meets the emission limit of 0.015 mg/dscm. We have concluded that the data also support the 45 dynes/cm limit for surface tensions measured using a stalagmometer.

Comment: One commenter stated that if hard chromium electroplating facilities are allowed to comply with the NESHAP by maintaining surface tensions below the limits of 35 dynes/cm and 45 dynes/cm, those facilities should be required to conduct an emission test to demonstrate compliance with the emission limits. Regardless of the instrument used to measure surface tension, the emission tests should be conducted over a range of operating conditions. Another commenter stated that when a fume suppressant is used with an add-on control device, the facility should be required to conduct an emissions test and establish an operating limit for surface tension.

Response: We disagree with the commenters that an emission test should be required when a hard chromium electroplating facility chooses to comply with the surface tension limits of 35 dynes/cm by tensiometer or 45 dynes/cm by stalagmometer. The test data clearly show that when the surface tension is maintained below these surface tension limits, chromium emission concentrations are no more than 0.015 mg/dscm. Therefore, emission tests are unnecessary in such cases. We also recognize that chromium electroplating tank operating parameters differ from facility to facility. However, surface tension has a more significant impact on chromium emissions than any of other chromium electroplating tank operating parameters because surface tension directly impacts the specific mechanism by which chromium is emitted; that is, the bursting of bubbles at the surface of the electroplating tank solution. The other operating parameters may affect how much fume suppressant is needed to reduce the surface tension to a level at or below 35 dynes/cm, but surface tension has the greatest impact on emission levels. An industry expert also has concurred with this conclusion that surface tension is the primary factor in determining chromium emissions from hard chromium electroplating baths. Therefore, we have concluded that there is no need to measure emissions over a range of operating parameters, as suggested by the commenter, provided the surface tension is maintained below the proposed limits.

Regarding the comment about establishing an operating limit for surface tension when an add-on control device is used with a fume suppressant, § 343(c)(5) of the NESHAP specifies a provision for allowing an affected facility to establish an operating limit for surface tension and subsequently monitor surface tension to demonstrate continuing compliance. This provision addresses the commenter's concern. However, as stated previously in this response, an emission test is not necessary to show initial compliance with the emission limit provided the surface tension is maintained below the 35 dynes/cm and 45 dynes/cm limits for tensiometer and stalagmometer measurements, respectively.

Comment: One commenter stated that the differences in surface tension observed by ORD when comparing measurements made using a tensiometer and a stalagmometer indicate that there is a serious measurement error associated with one or both of the analytical methods used in those instruments. Therefore, it is inappropriate for EPA to establish limits on surface tension using those data. The commenter recommended that we either determine the nature of the flaws in the two analytical methods or obtain additional data that demonstrate the relationship between surface tension and emission concentrations.

Response: Neither tensiometers nor stalagmometers measure surface tension directly. Tensiometers measure the force on a plate or ring as it is pulled from the surface of the liquid, and stalagmometers use a drop weight method, in which the number and weight of drops of the liquid are compared to those of a reference liquid. Both instruments measure *indicators* of surface tension. Because the indicators measured (force and drop weight) are different, stalagmometers and tensiometers may produce different values for the surface tension of a solution. We disagree that this measurement differential indicates a measurement error. We acknowledge that there is a difference in how the two instruments characterize surface tension, and we have addressed that difference in today's final rule by specifying a different surface tension limit for stalagmometers and for tensiometers. We are confident that the emission limit of 0.015 mg/dscm is being met when the surface tension is below 35 dynes/cm, as measured with a tensiometer, or 45 dynes/cm, as measured with a stalagmometer.

Comment: Two commenters disagreed with our conclusion that the available data support a 10 dynes/cm differential between surface tensions measured with a tensiometer and with a stalagmometer. One commenter pointed out that the study, which was the basis for the proposed amendment, shows that surface tension measurements using the two instruments varied by as much as 33 dynes/cm when measuring a known surface tension of approximately 40 dynes/cm. The commenter also stated that the same study shows that other factors, such as temperature and stalagmometer drop rate, can affect

surface tension measurements significantly. One commenter stated that the measurement difference between the two instruments is not linear but highly variable, with the greatest variations in the range of 30 to 50 dynes/cm. The commenter noted that, within this range, the measurement differences for the two instruments is much greater than 10 dynes/cm. The commenter also stated that the available data indicate that a reduction in surface tension from 45 dynes/cm to approximately 30 dynes/cm can affect emission rates by an order of magnitude. The commenter stated that, in view of the uncertainties in the data, the NESHAP should require the use of only one type of instrument, a stalagmometer, for monitoring surface tension in plating tanks. Both commenters believe that additional data must be collected and evaluated to determine how measurements made by tensiometers and stalagmometers differ. One of the commenters also stated that his agency is collecting additional data and can provide the data to us.

Response: We agree with the commenters that the available data indicate that the difference in surface tension measurements between tensiometers and stalagmometers is not 10 dynes/cm under all conditions, but varies depending on the surface tension of the liquid, the type of fume suppressant used, and possibly other factors. The data indicate that within the range of surface tensions characteristic of chromium electroplating baths that include wetting agents, stalagmometer measurements of surface tension are higher than measurements made using a tensiometer. For surface tensions in the range of the proposed surface tension limit of 35 dynes/cm for tensiometer measurements, stalagmometers can indicate surface tensions that are 20 to 30 dynes/cm higher. For surface tensions of 25 to 30 dynes/cm, which represents the lower end of the range of surface tensions typically found in chromium electroplating tanks, the difference in measurements between tensiometers and stalagmometers is closer to 10 dynes/cm. In addition, other data that we have obtained since proposing the amendments to the NESHAP also support the 10 dynes/cm differential between tensiometers and stalagmometers.

For the proposed amendment, we selected the surface tension limit of 35 dynes/cm for tensiometer measurements because the limit is based on measurements made using a tensiometer, and the data support that surface tension limit. On the other hand, the surface tension limit of 45 dynes/cm, which is specified in the NESHAP for decorative chromium electroplating tanks, is based on measurements of surface tensions using a stalagmometer. Thus, we based the surface tension limits for tensiometers and stalagmometers on two different sets of data.

We agree that the data from direct comparisons of measurements using the two types of instruments show a larger differential at surface tensions greater than 30 dynes/cm. However, if a stalagmometer indicates the surface tension is in compliance (*i.e.*, no greater than 45 dynes/cm), the surface tension measured using a tensiometer would certainly be no greater than 35 dynes/cm. Consequently, the 10 dynes/cm differential is appropriate.

We disagree with the suggestion by one of the commenters that the NESHAP should allow the use only of stalagmometers for demonstrating compliance with the surface tension limit. Many chromium electroplating facilities currently use tensiometers to monitor surface tension. Furthermore, the proposed amendment to allow owners and operators of affected hard chromium electroplating tanks to meet a surface tension limit rather than an emission limit is based on surface tension measurements using a tensiometer. Therefore, we do not want to prohibit the use of tensiometers for surface tension measurements.

C. Emission Limit for Hard Chromium Electroplating Tanks Equipped With Enclosing Hoods

Comment: One commenter supported the proposed mass emission limit as an alternative to the emission concentration limit for enclosed hard chromium electroplating tanks. However, the commenter believes emission rates increase when enclosing hoods are used because the hoods increase capture efficiency. He also pointed out that the use of enclosing hoods is recommended for worker safety.

Response: We appreciate the commenter's support for the proposed amendment. We also agree with the commenter's statement that enclosing hoods increase capture efficiency, and we concur with the commenter's statement that enclosing hoods provide an added benefit by reducing worker exposure to electroplating tank emissions. However, we disagree with the commenter's statement that overall emissions are greater when an enclosed hard chromium electroplating tank is used. It is true that the lower ventilation rates that are characteristic of electroplating tanks with enclosing hoods may result in increases in emission concentrations due to the introduction of less dilution air into the exhaust stream. However, when an enclosing hood is used, actual mass emission rates (*e.g.*, pounds per hour) typically are no more than 50 percent of the mass emission rate for a comparable electroplating tank with conventional hooding and ventilation rates. Therefore, enclosing hoods actually achieve a net decrease in electroplating tank emissions.

D. Chromium Electroplating and Chromium Anodizing Tank Definitions

Comment: One commenter supported the proposed change to the definition of affected source. However, the commenter suggested that the definition of affected source be expanded to include ventilation equipment.

Response: As indicated in § 63.2 of the general provisions to 40 CFR part 63, we have defined stationary source in terms of emissions. Any equipment, peripheral device, or facility that is to be considered either a source or part of a source must contribute to the generation of emissions of a regulated pollutant. In most installations, ventilation systems do not themselves contribute to emissions. In the case of chromium electroplating, ventilation systems do not generate emissions but capture and collect emissions from the source and direct the emissions to a control system or to a stack for release to the atmosphere. Therefore, we do not agree with the commenter that the definition of affected source should be expanded to include ventilation equipment.

Comment: One commenter supported the proposed change to the definition of affected source but stated that the proposed definition is still too vague and may be interpreted to include processes immediately prior to and after the plating operation. Therefore, the final rule should list examples of what is and is not ancillary equipment. The commenter suggested that the ancillary equipment that should be included in cost analyses should consist only of the equipment necessary for the electroplating process to function, or, in other words, equipment required for electroplating while the rectifier is supplying energy to the anode. In addition, the commenter requested that the final rule also clarify that tanks, which qualify neither as anodizing tanks nor as electroplating tanks, are not subject to the NESHAP.

Response: We agree with the commenter's remark that the summary of the amendments in the preamble to the proposal could be misleading because the summary did not

adequately define what constitutes an affected source. However, the intent of the summary is to provide an overview of the amendments, not to provide all of the details. The language presented in the final rule is the basis for determining compliance, and clearly defines what we consider to be part of an affected source. For chromium electroplating, the proposed amendment would expand the definition of affected source to include rectifiers, anodes, heat exchanger equipment, circulation pumps, and air agitation systems. It would be difficult to develop a comprehensive list that includes all of the equipment that could be interpreted to be part of the electroplating process, and such a list might complicate the final rule unnecessarily. Therefore, we have decided against expanding the definition of affected source further, as suggested by the commenter.

Concerning the commenter's request that we clarify that process tanks, other than electroplating and anodizing tanks, are not subject to the final rule, we point out that § 63.340, which addresses the applicability of the NESHAP, lists several types of process tanks associated with chromium electroplating that are not subject to the NESHAP. Section 63.340(c) of the final rule already addresses the commenter's concern.

E. Pressure Drop Monitoring Requirement for Composite Mesh Pads

Comment: Five commenters supported the proposed change to the operating limit for the pressure drop across a CMP system from ± 1 in. w.c. to ± 2 in. w.c. However, one commenter does not believe that the pressure drop requirement for CMP systems applies "* * * at all times * * *," as stated in the preamble to the proposed amendments. The commenter explained that during automatic washdown cycles currently required by the rule as proposed and recommended by CMP manufacturers, the pressure drop across a CMP system may exceed the ±2 in. w.c. operating limit for a brief time. The commenter believes the proposed amendment was intended to apply to changes in pressure drop following comprehensive cleaning of mesh pads and not to short-term changes in pressure drop associated with automatic washdown cycles. The commenter believes the final rule should clarify that the pressure drop requirement does not apply to these automatic washdown cycles. The commenter also provided suggested rule language to that effect.

Response: We agree with the commenter that the proposed change was not meant to apply during the automatic washdown cycles of a CMP system. We consider automatic washdowns to be part of the normal operation of such control systems, whereas the proposed amendment was intended to apply to periodic maintenance that entails removing mesh pads and cleaning or replacing the pads. Although we stated in the preamble to the proposal that the pressure drop requirement applies "* * * at all times * * *," the final rule clearly specifies that compliance is determined through a daily measurement of pressure drop across the CMP system. Owners or operators of affected sources that are controlled with a CMP system can determine when to measure the pressure drop and, presumably, they would choose to take pressure drop measurements outside of automatic washdown cycles. However, to avoid any further misunderstanding of this requirement, we have indicated in the final rule that the pressure drop requirement does not apply during automatic washdown cycles.

Comment: One commenter stated that the proposed amendment specifies that the ±2 in. w.c. pressure drop requirement would apply during the initial performance test, but does not address the retesting of an affected source. The commenter believes that if a source is retested and shown to be in compliance, the affected facility should be allowed to establish a new operating limit at ±2 in. w.c. of the pressure drop measured during that subsequent performance test.

Response: We agree with the commenter and have written the final rule amendments to reflect this change. The final rule indicates that the affected facilities may establish a new operating limit at ±2 in. w.c. of the pressure drop measured during subsequent performance tests.

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 the final rule amendments do not constitute a "significant regulatory action" because none of the listed criteria applies to this action. 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. The final rule amendments provide to owners and operators of affected sources alternatives to existing requirements. The existing alternatives will still be available for those owners and operators who choose to use them. The final rule amendments will increase the flexibility of compliance with the current regulations without imposing any additional recordkeeping requirements. The OMB has previously approved the information collection requirements specified in the final NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and assigned the OMB control number 2060–0327.

A copy of the information collection request (ICR) support document prepared by EPA for the approved information collection requirements (ICR No. 1611.02) may be obtained from Susan Auby by mail at U.S. EPA, 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. You may also download a copy from the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB control number in any correspondence.

The recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency procedures 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 current 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)

The RFA generally requires an agency to prepare a regulatory flexibility analysis for 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 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 amendments will not have a significant economic impact on a substantial number of small entities because the amendments only provide options that are designed to provide increased flexibility to affected facilities. The final rule amendments will not impose any additional requirements on any small entities and are expected to relieve the burden for some 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 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 sections 202 and 205 of the UMRA. In addition, EPA has determined that today's final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the amendments contain no requirements that apply to such governments or impose obligations upon them. Therefore, 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. 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 is owned or operated by State governments, and the final rule amendments will not supersede State regulations that are more stringent. 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 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, 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, EPA 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 that EPA considered.

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 the amendments are based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the 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

Today's final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because the amendments 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 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards 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 directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's final rule amendments do not involve technical standards other than those standards already specified in the final rule. Therefore, EPA is not considering the use of any voluntary consensus standards in connection with 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 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 amendments 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 8, 2004.

Michael O. Leavitt,

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 N—[Amended]

■ 2. Section 63.341(a) is amended as follows:

■ a. Removing the definition "Chromium electroplating or chromium anodizing tank".

■ b. Revising the definitions "Stalagmometer" and "Tensiometer".

■ c. Adding in alphabetical order definitions "Chromium anodizing tank", "Chromium electroplating tank", "Enclosed hard chromium electroplating tank"; and "Open surface hard chromium electroplating tank".

§ 63.341 Definitions and nomenclature.

(a) * * *

Chromium anodizing tank means the receptacle or container along with the following accompanying internal and external components needed for chromium anodizing: rectifiers fitted with controls to allow for voltage adjustments, heat exchanger equipment, circulation pumps, and air agitation systems.

Chromium electroplating tank means the receptacle or container along with the following internal and external components needed for chromium electroplating: Rectifiers, anodes, heat exchanger equipment, circulation pumps, and air agitation systems.

* * * * *

Enclosed hard chromium electroplating tank means a chromium electroplating tank that is equipped with an enclosing hood and ventilated at half the rate or less that of an open surface tank of the same surface area.

* * * * *

Open surface hard chromium electroplating tank means a chromium electroplating tank that is ventilated at a rate consistent with good ventilation practices for open tanks.

* * * * *

Stalagmometer means an instrument used to measure the surface tension of a solution by determining the mass of a drop of liquid by weighing a known number of drops or by counting the number of drops obtained from a given volume of liquid.

* * * * *

Tensiometer means an instrument used to measure the surface tension of a solution by determining the amount of force needed to pull a ring from the liquid surface. The amount of force is proportional to the surface tension.

* * * * *

■ 3. Section 63.342 is amended by:

■ a. Revising paragraph (b)(1),

■ b. Revising paragraph (c),

■ c. Revising paragraph (d)(2), and

■ d. Revising paragraph (f)(2)(ii)(B).

The revisions and additions read as follows:

§ 63.342 Standards.

* * * * *

(b) *Applicability of emission limitations.* (1) The emission limitations in this section apply during tank operation as defined in § 63.341, and during periods of startup and shutdown as these are routine occurrences for affected sources subject to this subpart. The emission limitations do not apply during periods of malfunction, but the work practice standards that address operation and maintenance and that are required by paragraph (f) of this section must be followed during malfunctions.

* * * * *

(c)(1) *Standards for open surface hard chromium electroplating tanks.* During tank operation, each owner or operator of an existing, new, or reconstructed affected source shall control chromium emissions discharged to the atmosphere from that affected source by either:

(i) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.015 milligrams of total chromium per dry standard cubic meter (mg/dscm) of ventilation air (6.6×10^{-6} grains per dry standard cubic foot (gr/dscf)) for all open surface hard chromium electroplating tanks that are affected sources other than those that are existing affected sources located at small hard chromium electroplating facilities; or

(ii) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.03 mg/dscm (1.3×10^{-5} gr/dscf) if the open surface hard chromium electroplating tank is an existing affected source and is located at a small, hard chromium electroplating facility; or

(iii) If a chemical fume suppressant containing a wetting agent is used, by not allowing the surface tension of the electroplating or anodizing bath contained within the affected tank to exceed 45 dynes per centimeter (dynes/cm) (3.1×10^{-3} pound-force per foot (lb_f/ft)) as measured by a stalagmometer or 35 dynes/cm (2.4×10^{-3} lb_f/ft) as measured by a tensiometer at any time during tank operation.

(2) *Standards for enclosed hard chromium electroplating tanks.* During tank operation, each owner or operator of an existing, new, or reconstructed affected source shall control chromium emissions discharged to the atmosphere from that affected source by either:

(i) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.015 mg/dscm (6.6×10^{-6} gr/dscf) for all enclosed hard chromium electroplating tanks that are affected sources other than those that are existing affected sources located at small, hard chromium electroplating facilities; or

(ii) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.03 mg/dscm (1.3×10^{-5} gr/dscf) if the enclosed hard chromium electroplating tank is an existing affected source and is located at a small, hard chromium electroplating facility; or

(iii) If a chemical fume suppressant containing a wetting agent is used, by not allowing the surface tension of the electroplating or anodizing bath contained within the affected tank to exceed 45 dynes/cm (3.1×10^{-3} lb_f/ft) as measured by a stalagmometer or 35 dynes/cm (2.4×10^{-3} lb_f/ft) as measured by a tensiometer at any time during tank operation; or

(iv) Not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate determined by using the calculation procedure in § 63.344(f)(1)(i) for all enclosed hard chromium electroplating tanks that are affected sources other than those that are existing affected sources located at small, hard chromium electroplating facilities; or

(v) Not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate determined by using the calculation procedure in § 63.344(f)(1)(ii) if the enclosed hard chromium electroplating tank is an existing affected source and is located at a small, hard chromium electroplating facility.

(3)(i) An owner or operator may demonstrate the size of a hard chromium electroplating facility through the definitions in § 63.341(a). Alternatively, an owner or operator of a facility with a maximum cumulative potential rectifier capacity of 60 million amp-hr/yr or more may be considered small if the actual cumulative rectifier capacity is less than 60 million amp-hr/yr as demonstrated using the following procedures:

(A) If records show that the facility's previous annual actual rectifier capacity was less than 60 million amp-hr/yr, by using nonresettable ampere-hr meters and keeping monthly records of actual ampere-hr usage for each 12-month rolling period following the compliance date in accordance with § 63.346(b)(12). The actual cumulative rectifier capacity for the previous 12-month rolling period shall be tabulated monthly by adding the capacity for the current month to the capacities for the previous 11 months; or

(B) By accepting a federally-enforceable limit on the maximum cumulative potential rectifier capacity of a hard chromium electroplating facility and by maintaining monthly records in accordance with § 63.346(b)(12) to demonstrate that the limit has not been exceeded. The actual cumulative rectifier capacity for the previous 12-month rolling period shall be tabulated monthly by adding the capacity for the current month to the capacities for the previous 11 months.

(ii) Once the monthly records required to be kept by § 63.346(b)(12) and by this paragraph (c)(3)(ii) show that the actual cumulative rectifier capacity over the previous 12-month rolling period corresponds to the large designation, the owner or operator is subject to the emission limitation identified in paragraph (c)(1)(i), (iii), (c)(2)(i), (iii), or (iv) of this section, in accordance with the compliance schedule of § 63.343(a)(5).

(d) * * *

(2) If a chemical fume suppressant containing a wetting agent is used, by not allowing the surface tension of the electroplating or anodizing bath contained within the affected source to exceed 45 dynes/cm (3.1×10^{-3} lb_f/ft) as measured by a stalagmometer or 35 dynes/cm (2.4×10^{-3} lb_f/ft) as measured by a tensiometer at any time during operation of the tank.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(B) Fails to provide for the proper operation of the affected source, the air pollution control techniques, or the control system and process monitoring equipment during a malfunction in a manner consistent with good air pollution control practices; or

* * * * *

■ 4. Section 63.343 is amended by:

■ a. Revising paragraphs (b)(2)(i) and (iii),

■ b. Revising paragraph (c)(1), and

■ c. Revising paragraphs (c)(5)(i) and (ii).

The revisions read as follows:

§ 63.343 Compliance provisions.

* * * * *

(b) * * *

(2) * * *

(i) The affected source is a hard chromium electroplating tank, a decorative chromium electroplating tank or a chromium anodizing tank; and

* * * * *

(iii) The owner or operator complies with the applicable surface tension limit of § 63.342(c)(1)(iii), (c)(2)(iii), or (d)(2) as demonstrated through the continuous compliance monitoring required by paragraph (c)(5)(ii) of this section.

* * * * *

(c) * * *

(1) *Composite mesh-pad systems.* (i) During the initial performance test, the owner or operator of an affected source, or a group of affected sources under common control, complying with the emission limitations in § 63.342 through the use of a composite mesh-pad system shall determine the outlet chromium concentration using the test methods and procedures in § 63.344(c), and shall establish as a site-specific operating parameter the pressure drop across the system, setting the value that corresponds to compliance with the applicable emission limitation, using the procedures in § 63.344(d)(5). An owner or operator may conduct multiple performance tests to establish a range of compliant pressure drop values, or may set as the compliant value the average pressure drop measured over the three test runs of one performance test and accept ±2 inches of water column from this value as the compliant range.

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, except for hard chromium electroplaters and chromium anodizing operations in California, which have until January 25, 1998, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the composite mesh-pad system once each day that any affected source is operating. To be in compliance with the standards, the composite mesh-pad system shall be operated within ±2 inches of water column of the pressure drop value established during the initial performance test, or shall be operated within the range of compliant values for pressure drop established during multiple performance tests.

(iii) The owner or operator of an affected source complying with the emission limitations in § 63.343 through the use of a composite mesh-pad system may repeat the performance test and establish as a new site-specific operating parameter the pressure drop across the composite mesh-pad system according to the requirements in paragraphs (c)(1)(i) or (ii) of this section. To establish a new site-specific operating parameter for pressure drop, the owner or operator shall satisfy the requirements specified in paragraphs (c)(1)(iii)(A) through (D) of this section.

(A) Determine the outlet chromium concentration using the test methods and procedures in § 63.344(c);

(B) Establish the site-specific operating parameter value using the procedures § 63.344(d)(5);

(C) Satisfy the recordkeeping requirements in § 63.346(b)(6) through (8); and

(D) Satisfy the reporting requirements in § 63.347(d) and (f).

(iv) The requirement to operate a composite mesh-pad system within the range of pressure drop values established under paragraphs (c)(1)(i) through (iii) of this section does not apply during automatic washdown cycles of the composite mesh-pad system.

* * * * *

(5) *Wetting agent-type or combination wetting agent-type/foam blanket fume suppressants.* (i) During the initial performance test, the owner or operator of an affected source complying with the emission limitations in § 63.342 through the use of a wetting agent in the electroplating or anodizing bath shall determine the outlet chromium concentration using the procedures in § 63.344(c). The owner or operator shall establish as the site-specific operating parameter the surface tension of the bath using Method 306B, appendix A of this part, setting the maximum value that corresponds to compliance with the applicable emission limitation. In lieu of establishing the maximum surface tension during the performance test, the owner or operator may accept 45 dynes/cm as measured by a stalagmometer or 35 dynes/cm as measured by a tensiometer as the maximum surface tension value that corresponds to compliance with the applicable emission limitation. However, the owner or operator is exempt from conducting a performance test only if the criteria of paragraph (b)(2) of this section are met.

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, except for hard chromium electroplaters and chromium anodizing operations in California, which have until January 25, 1998, the owner or operator of an affected source shall monitor the surface tension of the electroplating or anodizing bath. Operation of the affected source at a surface tension greater than the value established during the performance test, or greater than 45 dynes/cm as measured by a stalagmometer or 35 dynes/cm as measured by a tensiometer if the owner or operator is using this value in accordance with paragraph (c)(5)(i) of this section, shall constitute noncompliance with the standards. The surface tension shall be monitored according to the following schedule:

(A) The surface tension shall be measured once every 4 hours during operation of the tank with a stalagmometer or a tensiometer as specified in Method 306B, appendix A of this part.

(B) The time between monitoring can be increased if there have been no exceedances. The surface tension shall be measured once every 4 hours of tank operation for the first 40 hours of tank operation after the compliance date. Once there are no exceedances during 40 hours of tank operation, surface tension measurement may be conducted once every 8 hours of tank operation. Once there are no exceedances during 40 hours of tank operation, surface tension measurement may be conducted once every 40 hours of tank operation on an ongoing basis, until an exceedance occurs. The minimum frequency of monitoring allowed by this subpart is once every 40 hours of tank operation.

(C) Once an exceedance occurs as indicated through surface tension monitoring, the original monitoring schedule of once every 4 hours must be resumed. A subsequent decrease in frequency shall follow the schedule laid out in paragraph (c)(5)(ii)(B) of this section. For example, if an owner or operator had been monitoring an affected source once every 40 hours and an exceedance occurs, subsequent monitoring would take place once every 4 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation, monitoring can occur once every 8 hours of tank operation. Once an exceedance does not occur for 40 hours of tank operation on this schedule, monitoring can occur once every 40 hours of tank operation.

* * * * *

■ 5. Section 63.344 is amended by adding paragraph (f) to read as follows:

§ 63.344 Performance test requirements and test methods.

* * * * *

(f) *Compliance provisions for the mass rate emission standard for enclosed hard chromium electroplating tanks.* (1) This section identifies procedures for calculating the maximum allowable mass emission rate for owners or operators of affected sources who choose to meet the mass emission rate standard in § 63.342(c)(2)(iv) or (v).

(i)(A) The owner or operator of an enclosed hard chromium electroplating tank that is an affected source other than an existing affected source located at a small hard chromium electroplating

facility who chooses to meet the mass emission rate standard in § 63.342(c)(2)(iv) shall determine compliance by not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate calculated using equation 9:

$$MAMER = ETSA \times K \times 0.015 \text{ mg/dscm} \quad (9)$$

Where:

MAMER = the alternative emission rate for enclosed hard chromium electroplating tanks in mg/hr.

ETSA = the hard chromium electroplating tank surface area in square feet(ft^2).

K = a conversion factor, 425 dscm/(ft^2 × hr).

(B) Compliance with the alternative mass emission limit is demonstrated if the three-run average mass emission rate determined from Method 306 testing is less than or equal to the maximum allowable mass emission rate calculated from equation 9.

(ii)(A) The owner or operator of an enclosed hard chromium electroplating tank that is an existing affected source located at a small hard chromium electroplating facility who chooses to meet the mass emission rate standard in § 63.342(c)(2)(v) shall determine compliance by not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate calculated using equation 10:

$$MAMER = ETSA \times K \times 0.03 \text{ mg/dscm.} \quad (10)$$

(B) Compliance with the alternative mass emission limit is demonstrated if the three-run average mass emission rate determined from testing using Method 306 of appendix A to part 63 is less than or equal to the maximum allowable mass emission rate calculated from equation 10.

■ 6. Section 63.347 is amended by revising paragraph (c)(1)(viii) to read as follows:

§ 63.347 Reporting requirements.

* * * * *

(c) * * *

(1) * * *

(viii) For sources performing hard chromium electroplating, a statement of whether the owner or operator of an affected source(s) will limit the maximum potential cumulative rectifier capacity in accordance with § 63.342(c)(2) such that the hard chromium electroplating facility is considered small; and

* * * * *

[FR Doc. 04–16206 Filed 7–16–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1735; MM Docket No. 03–141; RM–10703]

Radio Broadcasting Services; Corona de Tucson and Sierra Vista, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to petition for rule making filed by this document substitutes Channel 267C3 for Channel 269A at Sierra Vista, Arizona, reallots Channel 267C3 to Corona de Tucson, Arizona, and modifies the Station KKYZ license to specify operation on Channel 267C3 at Corona de Tucson. In doing so, it dismissed a counterproposal filed by Christian County Network proposing that Channel 267C3 be reserved for noncommercial educational use. This allotment is also conditioned on concurrence from the Mexican government. *See* 68 FR 42665, July 18, 2003. The reference coordinates for the Channel 267C3 allotment at Corona de Tucson, Arizona, are 31–57–24 and 110–41–38.

DATES: Effective August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No.03–141 adopted June 23, 2004, and released June 25, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio Broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202(b) [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 269A at Sierra Vista, and by adding Corona de Tucson, Channel 267C3.

Federal Communications Commission.

John A. Karousos,

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[FR Doc. 04–16367 Filed 7–16–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1730, MB Docket No. 03–258, RM–10833, 10864]

Radio Broadcasting Services; Centennial, WY, Gering, NE, Newcastle, WY, Pine Haven, WY, Scottsbluff, NE, and Warren AFB, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Michael Radio Group, licensee of Station KRKI(FM), Newcastle, Wyoming by substituting Channel 258C0 for Channel 258A at Newcastle and by modifying the license of Station KRKI(FM) accordingly. To accommodate the allotment at Newcastle, this document also substitutes Channel 260A for Channel 259A at Pine Haven, Wyoming. *See* 69 FR 611, published January 6, 2004. Channel 258C0 can be allotted to Newcastle, Wyoming, in compliance with the minimum distance separation requirement of the Commission's rules, provided there is a site restriction 36.5 kilometers (22.7 miles) east of the community. The reference coordinates for Channel 258C0 at Newcastle are 43–52–10 NL and 103–45–04 WL. Channel 260A can be allotted to Pine Haven, in compliance with the minimum distance separation requirement of the Commission's Rules at city reference coordinates. The reference coordinates for Channel 260A at Pine Haven are 44–21–28 NL and 104–48–36 WL. Additionally, this document grants, in part, a counterproposal filed by Tracy Broadcasting Corporation by



Federal Register

Friday,
July 30, 2004

Part IV

Environmental Protection Agency

40 CFR Parts 63 and 429
National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 429

[OAR–2003–0048, FRL–7634–1]

RIN 2060–AG52

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category under the Clean Air Act (CAA) and revisions to the effluent limitations, guidelines and standards for the timber products processing source category under the Clean Water Act (CWA).

The EPA has determined that the PCWP source category contains major sources of hazardous air pollutants (HAP), including, but not limited to, acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. These HAP are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, damage to nasal membranes, gastrointestinal irritation) and acute health disorders (*e.g.*, irritation of eyes, throat, and mucous membranes, dizziness, headache, and nausea). Three of the six primary HAP emitted have been classified as probable or possible human carcinogens. This action will implement section 112(d) of the CAA by requiring all major sources subject to the final rule to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The final rule will reduce HAP emissions from the PCWP source category by approximately 5,900 to 9,900 megagrams per year (Mg/yr) (6,600 to 11,000 tons per year (tons/yr)). In addition, the final rule will reduce emissions of volatile organic compounds (VOC) by 13,000 to 25,000 Mg/yr (14,000 to 27,000 tons/yr).

The EPA is also amending the effluent limitations, guidelines and standards for the timber products processing point source category (veneer, plywood, dry process hardboard, particleboard manufacturing subcategories). The amendments adjust the definition of process wastewater to exclude certain sources of wastewater generated by air pollution control devices expected to be installed to comply with the final PCWP NESHAP.

The EPA is also amending the list of categories that was developed pursuant to section 112(c)(1) of the CAA. The EPA is delisting a low-risk subcategory of the PCWP source category. This action is being taken in part to respond to comments submitted by the American Forest & Paper Association (AF&PA) and in part upon the Administrator's own motion, pursuant to section 112(c)(9) of the CAA. This action is based on EPA's evaluation of the available information concerning the potential hazards from exposure to HAP emitted by PCWP affected sources, and includes a detailed rationale for removing low-risk PCWP affected sources from the source category list.

DATES: The final NESHAP and the amendments to the effluent guidelines are effective September 28, 2004. The incorporation by reference of certain publications listed in the final NESHAP is approved by the director of the Office of the Federal Register as of September 28, 2004.

ADDRESSES: Docket numbers OAR–2003–0048 and A–98–44, containing supporting documentation used in development of this action, are available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460. These dockets also contain documentation supporting the amendments to 40 CFR part 429.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in 40 CFR 63.13. For information concerning the analyses performed in developing the final rule, contact Ms. Mary Tom Kissell, Waste and Chemical Processes Group, Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4516, electronic mail (e-mail) address *kissell.mary@epa.gov*. For information concerning test methods, sampling, and monitoring information, contact Mr. Gary McAlister, Source Measurement Analysis Group, Emission Monitoring and Analysis Division (D243–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1062, e-mail address *mcalister.gary@epa.gov*. For information concerning the economic impacts and benefit analysis, contact Mr. Larry Sorrels, Innovative Strategies and Economics Group, Air Quality Strategies and Standards Division (C339–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5041, e-mail address *sorrels.larry@epa.gov*. For information concerning the effluent guidelines, contact Mr. Donald Anderson, Engineering and Analysis Division (4303T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (202) 566–1021, *anderson.donaldf@epa.gov*.

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

Category	Rule	SIC code[a]	NAICS code[b]	Examples of regulated entities
Industry	NESHAP	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 (particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).
		2439	321213	Structural Wood Members, Not Elsewhere Classified (engineered wood products plants).
Effluent Guidelines		2436	321212	Softwood plywood and veneer plants.
		2493	321219	Reconstituted wood products (particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard 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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2231 of the final 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.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR–2003–0048 and Docket ID No. A–98–44. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to this rule. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, 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 Air Docket is (202) 566–1742.

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/*. You may also access a copy of this document through the Technology Transfer Network (TTN) at *http://www.epa.gov/ttn/atw/plypart/plywoodpg.html*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and 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 through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the standards and limitations 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 28, 2004. 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. Under section 509(b)(1) of the CWA, judicial review of today's effluent limitations guidelines and standards is available in the United States Court of Appeals by filing a petition for review within 120 days from the date of promulgation of those guidelines and standards. In accordance with 40 CFR 23.2, the water portion of today's final rule shall be considered promulgated for the purposes of judicial review at 1 p.m. Eastern time on August 13, 2004. Moreover, under section 307(b)(2) of the CAA and section 509(b)(2) of the CWA, the requirements established by the final rule 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. Introduction
A. What Is the Source of Authority for Development of Today's Regulations?
B. What Criteria Are Used in the Development of NESHAP?
C. How Was the Final Rule Developed?
D. What Are the Health Effects of the Pollutants Emitted From the PCWP Industry?
E. Incorporation by Reference of NCASI Test Methods
F. Incorporation by Reference of ASTM Test Method
II. Summary of the Final Rule
A. What Process Units Are Subject to the Final Rule?
B. What Pollutants Are Regulated by the Final Rule?
C. What Are the Compliance Options?
D. What Operating Requirements Are in the Final Rule?
E. What Are the Work Practice Requirements?
F. When Must I Comply With the Final Rule?
G. How Do I Demonstrate Initial Compliance With the Final Rule?
H. How do I Demonstrate Continuous Compliance With the Final Rule?
I. How Do I Demonstrate That My Affected Source Is Part of the Low-risk Subcategory?
III. Summary of Environmental, Energy, and Economic Impacts
A. How Many Facilities Are Impacted by the Final Rule?
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?
H. What Are the Social Costs and Benefits?
IV. Summary of Responses to Major Comments and Changes to the Plywood and Composite Wood Products NESHAP
A. Applicability
B. Overlap With Other Rules
C. Amendments to the Effluent Guidelines for Timber Products Processing
D. Existing Source MACT
E. New Source MACT
F. Definition of Control Device
G. Compliance Options
H. Testing and Monitoring Requirements
I. Routine Control Device Maintenance Exemption (RCDME)
J. Startup, Shutdown, and Malfunction (SSM)
K. Risk-Based Approaches
V. 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. What Is the Source of Authority for Development of Today's Regulations?

Section 112(c) of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The PCWP source category was originally listed as the plywood and particleboard source category on July 16, 1992 (57 FR 31576). The name of the source category was changed to plywood and composite wood products on November 18, 1999 (64 FR 63025), to more accurately reflect the types of manufacturing facilities covered by the source category. In addition, when we proposed the PCWP rule on January 9, 2003 (68 FR 1276), we broadened the scope of the source category to include lumber kilns located at stand-alone kiln-dried lumber manufacturing facilities or at any other type of facility. Major sources of HAP are those that have the potential to emit 9.1 Mg/yr (10 tons/yr) or more of any one HAP or 22.3 Mg/yr (25 tons/yr) or more of any combination of HAP.

Section 112(d) of the CAA directs us to adopt emission standards for

categories and subcategories of HAP sources. In cases where emission standards are not feasible, section 112(h) of the CAA allows us to develop design, equipment, work practice, and/or operational standards. The collection of compliance options, operating requirements, and work practice requirements in today's final rule make up the emission standards and work practice standards for the PCWP NESHAP.

We are promulgating the amendments to 40 CFR part 429 under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the CWA.

Section 112(c)(9) of the CAA allows us to delete categories and subcategories from the list of HAP sources to be subject to MACT standards under section 112(d) of the CAA, if certain substantive criteria are met. (The EPA construes this authority to apply to listed subcategories because doing so is logical in the context of the general regulatory scheme established by the statute, and is reasonable since section 112(c)(9)(B)(ii) expressly refers to subcategories.) To delete a category or subcategory the Administrator must make an initial demonstration that no source in the category or subcategory: (1) Emits carcinogens in amounts that may result in a lifetime cancer risk exceeding one in a million to the individual most exposed; (2) emits noncarcinogens in amounts that exceed a level which is adequate to provide an ample margin of safety to protect public health; and (3) emits any HAP or combination of HAP in amounts that will result in an adverse environmental effect, as defined by section 112(a)(7) of the CAA.

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

Section 112(d)(1) of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. Section 112(d)(2) of 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 the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that ensures that all major sources achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT under section 112(d)(2) of the CAA, we must also consider any control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. How Was the Final Rule Developed?

We proposed standards for PCWP on January 9, 2003 (68 FR 1276). The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. The public comment period lasted from January 9, 2003, to March 10, 2003. Industry representatives, regulatory agencies, environmental groups, and the general public were given the opportunity to comment on the proposed rule and to provide additional information during the public comment period. We also offered at proposal the opportunity for a public hearing concerning the proposed rule, but no hearing was requested. We met with stakeholders on several occasions.

We received a total of 57 public comment letters on the proposed rule during the comment period. Comments were submitted by industry trade associations, PCWP companies, State regulatory agencies, local government agencies, and environmental groups. Today's final rule reflects our consideration of all of the comments received during the comment period. Major public comments on the proposed rule, along with our responses to those comments, are summarized in this preamble.

D. What Are the Health Effects of the Pollutants Emitted From the PCWP Industry?

The final rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. The organic HAP from PCWP process units that have been detected in one or more emission tests include acetaldehyde, acetophenone, acrolein, benzene, biphenyl, bromomethane, carbon disulfide, carbon tetrachloride, chloroform, chloroethane, chloromethane, cresols, cumene, ethyl benzene, formaldehyde, hydroquinone methanol, methylene chloride, methylene diphenyl diisocyanate (MDI), methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), n-hexane, phenol, propionaldehyde, styrene, toluene, xylenes, 1,1,1-trichloroethane, bis-(2-ethylhexyl phthalate), 4-methyl-2-pentanone, and di-n-butyl phthalate. Many of these HAP are rarely detected and occur infrequently. The predominant organic HAP emitted (*i.e.*, those most likely to be emitted in detectable quantities and with high mass relative to other HAP) by PCWP facilities include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. Exposure to these compounds has been demonstrated to cause adverse health effects when present in concentrations higher than those typically found in ambient air. This section discusses the health effects associated with the predominant HAP emitted by the PCWP industry, as well as the health effects of the HAP contributing the most to cancer and noncancer risks associated with these PCWP facilities (organic HAP and some metal HAP) that must be included in any demonstration of eligibility for the low-risk subcategory of PCWP sources.

We do not have the necessary data on each PCWP facility and the people living around each facility to determine the actual population exposures to the HAP emitted from these facilities and the potential health effects. Our screening assessment, conducted using health-protective assumptions, indicates that potential noncancer health impacts were negligible to target organ systems other than the central nervous and respiratory systems. Furthermore, only acrolein and formaldehyde showed the potential for acute exposures of any concern. Therefore, noncancer effects other than those effecting the central nervous or respiratory systems are not expected to occur prior to or after regulation, and are provided below only to illustrate the nature of the contaminant's effects at high dose. However, to the extent the adverse effects do occur, today's final rule would reduce emissions by sources subject to the standards and subsequent exposures to such emissions.

1. Acetaldehyde

Acetaldehyde is ubiquitous in the environment and may be formed in the body from the breakdown of ethanol (ethyl alcohol). In humans, symptoms of chronic (long-term) exposure to

acetaldehyde resemble those of alcoholism. Long-term inhalation exposure studies in animals reported effects on the nasal epithelium and mucous membranes, growth retardation, and increased kidney weight. We have classified acetaldehyde as a probable human carcinogen (Group B2) based on animal studies that have shown nasal tumors in rats and laryngeal tumors in hamsters.

2. Acrolein

Acute (short-term) inhalation exposure to acrolein may result in upper respiratory tract irritation and congestion. The major effects from chronic (long-term) inhalation exposure to acrolein in humans consist of general respiratory congestion and eye, nose, and throat irritation. Acrolein is a strong dermal irritant in humans. We consider acrolein to be a possible human carcinogen (Group C) based on limited animal cancer data suggesting an increased incidence of tumors in rats exposed to acrolein in the drinking water.

3. Formaldehyde

Both acute (short-term) and chronic (long-term) exposure to formaldehyde irritates the eyes, nose, and throat. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. We consider formaldehyde a probable human carcinogen (Group B2).

4. Methanol

Chronic (long-term) exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to high concentrations of methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. We have not classified methanol with respect to carcinogenicity.

5. Phenol

Oral exposure to small amounts of phenol may cause irregular breathing and muscular weakness. Anorexia, progressive weight loss, diarrhea, vertigo, salivation, and a dark coloration of the urine have been reported in chronically (long-term) exposed humans. Gastrointestinal irritation and blood and liver effects have also been reported. No studies of developmental or reproductive effects of phenol in humans are available, but animal studies have reported reduced fetal body weights, growth retardation, and abnormal development in the offspring of animals exposed to relatively high doses of phenol by the oral route. We have classified phenol in Group D, not classifiable as to human carcinogenicity.

6. Propionaldehyde

Animal studies have reported that inhalation exposure to high levels of propionaldehyde results in anesthesia and liver damage. No information is available on the chronic (long-term), reproductive, developmental, or carcinogenic effects of propionaldehyde in animals or humans. We have not classified propionaldehyde for carcinogenicity.

7. 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. Inorganic arsenic exposure in humans by the inhalation route has been shown to be strongly associated with lung cancer. We have classified inorganic arsenic as a Group A, human carcinogen.

8. Beryllium

Chronic (long-term) inhalation exposure of humans to beryllium has been reported to cause chronic beryllium disease (berylliosis), in which granulomatous (noncancerous) lesions develop in the lung. Inhalation exposure to 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.

9. Cadmium

Chronic (long-term) 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 at high doses in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. We have classified cadmium as a Group B1, probable human carcinogen when inhaled; data are inadequate to determine whether cadmium is carcinogenic when ingested.

10. Chromium

Chromium may be emitted from PCWP facilities in two forms, trivalent chromium (chromium III) or hexavalent chromium (chromium VI). The respiratory tract is the major target organ for chromium VI toxicity. Bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic high concentration exposure. 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 a carcinogen, resulting in an increased risk of lung cancer. We have classified chromium VI as a Group A, human carcinogen by the inhalation exposure route.

Chromium III is much 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 oral intake of 50 to 200 micrograms per day (μg/d) recommended for an adult. Data on adverse effects of high oral exposures of chromium III are not available for humans, but a study with mice suggests possible damage to the male reproductive tract. We have not classified chromium III for carcinogenicity.

11. Manganese

Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic (long-term) 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 inhalation exposure to high levels of manganese by inhalation in humans results primarily in central nervous system (CNS) 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 high-dose inhalation exposures. We have classified manganese as Group D, not classifiable as to human carcinogenicity.

12. 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, hands, and forearms, is the most common effect in humans from chronic (long-term) skin contact with nickel. Respiratory effects have also been reported in humans from inhalation exposure to nickel. No information is available regarding the reproductive or developmental effects of nickel in humans, but animal studies have reported such effects, although a consistent dose-response relationship has not been seen. The forms of nickel which might be emitted from PCWP facilities include soluble nickel, nickel subsulfide, and nickel carbonyl. We have classified nickel refinery dust and nickel subsulfide as Group A, human carcinogens, and nickel carbonyl as a Group B2, probable human carcinogen, by inhalation exposure. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel subsulfide. Animal inhalation studies of soluble nickel compounds (*i.e.*, nickel carbonyl) have reported lung tumors.

13. Lead

Elemental lead may cause a variety of effects at low oral or inhaled dose levels. Chronic (long-term) exposure to high levels of lead in humans results in effects on the blood, CNS, 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. We have classified lead as a Group B2, probable human carcinogen.

14. MDI

The MDI has been observed to irritate the skin and eyes of rabbits. Chronic (long-term) inhalation exposure to MDI may cause asthma, dyspnea, and other respiratory impairments in workers. We have classified MDI within Group D, not classifiable as to human carcinogenicity.

15. Benzene

Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. We have classified benzene as a Group A, known human carcinogen.

E. Incorporation by Reference of NCASI Test Methods

Today's final rule amends 40 CFR 63.14 by revising paragraph (f) to incorporate by reference two test methods developed by the National Council of the Paper Industry for Air and Stream Improvement (NCASI): (1) Method CI/WP–98.01, "Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol'; and (2) NCASI Method IM/CAN/WP–99.02, "Impinger/Canister Source Sampling Method for Selected HAPs and Other Compounds at Wood Products Facilities." These methods are available from NCASI, Methods Manual, P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org.* They are also available from the docket for the final rule (Docket Number OAR–2003–0048 and Docket Number A–98–44). These documents were 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.

F. Incorporation by Reference of ASTM Test Method

Today's final rule amends 40 CFR 63.14 by adding paragraph (b)(54) to incorporate by reference a test method developed by the American Society for Testing and Materials (ASTM), ASTM D6348–03, "Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy." This test method is available from ASTM, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106. This document has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51.

II. Summary of the Final Rule

A. What Process Units Are Subject to the Final Rule?

The final rule regulates HAP emissions from PCWP facilities that are major sources. Plywood and composite wood products are manufactured by bonding wood material (fibers, particles, strands, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. 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, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams. Table 1 of this preamble lists the process units at PCWP facilities and indicates which process units are subject to the control requirements in today's final rule. "Process unit" means equipment classified according to its function such as a blender, dryer, press, former, or board cooler.

The affected source for the final rule is the combination of all PCWP manufacturing operations, including PCWP process units, onsite storage of raw materials, onsite wastewater treatment operations associated with PCWP manufacturing, and miscellaneous coating operations located at a major source facility. One of the implications of this definition of affected source is that the control requirements, or "floor," as defined in section 112(d)(3), are determined for the entire PCWP facility. Therefore, except for lumber kilns not otherwise located at PCWP facilities, the final rule contains the control requirements that represent the MACT level of control for the entire facility. For lumber kilns not otherwise located at PCWP facilities, the final rule contains the control requirements that represent the MACT level of control only for lumber kilns.

TABLE 1.—PROCESS UNITS THAT ARE SUBJECT TO THE FINAL CONTROL REQUIREMENTS

For the following process units . . .	Does today's final rule include control requirements for . . .	
	Existing affected sources?	New affected sources?
Softwood veneer dryers[a]; primary tube dryers; secondary tube dryers; rotary strand dryers; conveyor strand dryers; green rotary dryers; hardboard ovens; reconstituted wood product presses; and pressurized refiners.	Yes.	Yes.
Press predryers; fiberboard mat dryers; and board coolers	No.	Yes.
Dry rotary dryers[a]; veneer redryers[a]; softwood plywood presses; hardwood plywood presses; engineered wood products presses; hardwood veneer dryers[a]; humidifiers; atmospheric refiners; formers; blenders; rotary agricultural fiber dryers; agricultural fiber board presses; sanders; saws; fiber washers; chippers; log vats; lumber kilns; storage tanks; wastewater operations; miscellaneous coating operations (including group 1 miscellaneous coating operations[a]); and stand-alone digesters.	No.	No.

[a] These process units have work practice requirements in today's final rule in addition to or instead of control requirements. Group 1 miscellaneous coating operations include application of edge seals, nail lines, logo (or other information) paint, shelving edge fillers, trademark/grade-stamp inks, and wood putty patches to PCWP (except kiln-dried lumber) on the same site where the PCWP are manufactured. Group 1 miscellaneous coating operations also include application of synthetic patches to plywood at new affected sources.

B. What Pollutants Are Regulated by the Final Rule?

The final rule regulates HAP emissions from PCWP facilities. For the purpose of compliance with 40 CFR part 63, subpart DDDD, we defined "total HAP" to be the sum of the emissions of six primary HAP emitted from PCWP manufacturing. The six HAP that define total HAP make up 96 percent of the nationwide HAP emissions from PCWP facilities and are acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. Other HAP are sometimes emitted and controlled along with these six HAP, but in lower quantities. Depending upon which of the compliance alternatives you choose, you could be required to measure emissions of total HAP, total hydrocarbon (THC), methanol, or formaldehyde as surrogates for measuring all HAP. For the purpose of determining whether your facility is a major source, you would have to include all HAP as prescribed by rules and guidance pertaining to determination of major source.

C. What Are the Compliance Options?

Today's final rule includes a range of compliance options, which are summarized in the following subsections. You must use one of the compliance options to show compliance with the final rule. In most cases, the compliance options are the same for new and existing sources. Dilution to achieve compliance is prohibited, as specified in 40 CFR 63.4.

1. Production-Based Compliance Options

Today's final rule includes production-based compliance options (PBCO), which are based on total HAP and vary according to type of process unit. Total HAP emissions are defined in today's final rule as the total mass emissions of the following six HAP: acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The PBCO are in units of mass of pollutant per unit of production. Add-on control systems may not be used to meet the production-based compliance options. For pressurized refiners and most dryers, the PBCO are expressed as pounds per oven-dried-ton of wood (lb/ODT). For presses, hardboard ovens, and some dryers, the PBCO are expressed as pounds per thousand square feet of board (lb/MSF), with a reference board thickness. There is no PBCO for conveyor strand dryers.

2. Add-On Control System Compliance Options

If you operate a process unit equipped with an add-on control system, you may use any one of the following six compliance options. "Add-on control system" or "control system" means the combination of capture and control devices used to reduce HAP emissions to the atmosphere.

(1) Reduce THC emissions (as carbon, and minus methane if you wish to subtract methane) by 90 percent.

(2) Reduce methanol emissions by 90 percent.

(3) Reduce formaldehyde emissions by 90 percent.

(4) Limit the concentration of THC (as carbon, and minus methane if you wish to subtract methane) in the outlet of the add-on control system to 20 parts per million by volume, dry basis (ppmvd).

(5) Limit the concentration of methanol in the exhaust from the add-on control system to 1 ppmvd (can be used only if the concentration of methanol entering the control device is greater than or equal to 10 ppmvd).

(6) Limit the concentration of formaldehyde in the exhaust from the add-on control system to 1 ppmvd (can be used only if the concentration of formaldehyde entering the control device is greater than or equal to 10 ppmvd).

In the first three options ((1) through (3)), the 90 percent control efficiency represents a total control efficiency. Total control efficiency is defined as the product of the capture efficiency and the control device efficiency. For process units such as rotary strand dryers, capture efficiency is not an issue because the rotary strand dryer has a single exhaust point which is easily captured by the control device. However, for presses and board coolers, the HAP emissions cannot be completely captured without installing an enclosure. If the enclosure meets the criteria for a wood products enclosure as defined in § 63.2292 in today's final rule, then you would assign the enclosure a capture efficiency of 100 percent. You must test other enclosures to determine capture efficiency using EPA Test Methods 204 and 204A through 204F (as appropriate) found in 40 CFR part 51, appendix M, or the alternative tracer gas procedure in appendix A to today's final rule. For the three concentration options ((4) through (6)), you must have an enclosure that either meets the criteria for a wood products enclosure or achieves a capture efficiency greater than or equal to 95 percent.

The six compliance options are equivalent ways to express the HAP control levels that represent the MACT floor. Because the compliance options are equivalent for controlling HAP emissions, you are required to meet only

one of the six compliance options for add-on control systems. However, you must designate in your permit which one of the six options you have selected for the affected process unit. If you plan to operate a given process unit under different conditions, you may incorporate multiple compliance options for the add-on control system into your permit, as long as each separate operating condition is identified along with the compliance option that corresponds to that operating condition.

3. Emissions Averaging Compliance Option

Emissions averaging is a means of achieving the required emissions reductions in a less costly way. Therefore, if you operate an existing affected source, for each process unit you could choose to comply with the emissions averaging provisions instead of the production-based compliance options or add-on control system compliance options.

Emissions averaging is a system of debits and credits in which the credits must equal or exceed the debits. "Debit-generating process units" are the PCWP process units that are required to meet the control requirements but that you choose to either not control or under-control. "Credit-generating process units" are the PCWP process units that you choose to control that are not required to be controlled under the standards. When determining your actual mass removal (AMR) of HAP, you may include partial credits generated from debit-generating process units that are under-controlled (*e.g.*, you may receive credit for 25 percent control of a debit-generating process unit). Control devices used for credit-generating process units may not be assigned more than 90 percent control efficiency.

Under the emissions averaging provisions, you would determine the required mass removal (RMR) of total HAP from debit-generating process units for a 6-month compliance period. Total HAP is defined in today's final rule to include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The RMR would be based on initial total HAP measurements for each debit-generating process unit, your process unit operating hours for a 6-month period, and the required 90 percent control system efficiency. One hundred percent of the RMR for debit-generating process units would have to be achieved or exceeded by the AMR of total HAP achieved by credit-generating process units. The AMR is determined based on initial performance tests, the total HAP removal efficiency (not to exceed 90 percent) of the control systems used to control the credit-generating process units, and your process unit operating hours over the 6-month period.

There are some restrictions on use of the emissions averaging provisions in today's final rule. You must limit emissions averaging to the process units located within your affected source. Emissions averaging may not be used at new affected sources. You may not include in an emissions average those process units that are not operating or that are shut down. Only PCWP process units using add-on control systems may be used to generate credits.

D. What Operating Requirements Are in the Final Rule?

The operating requirements in today's final rule apply to add-on control systems used to comply with the final rule and to process units meeting the final production-based compliance options or emissions averaging provisions without an add-on control device (*e.g.*, debit-generating process units). For incineration-based control devices and biofilters, the final rule specifies that you must either monitor operating parameters or use a THC continuous emission monitoring system (CEMS) to demonstrate continuous compliance. The final operating requirements are summarized below:

- If you operate a thermal oxidizer, such as a regenerative thermal oxidizer (RTO), you must maintain the firebox temperature at a level that is greater than or equal to the minimum temperature established during the performance test. If you operate a combustion unit that accepts process exhaust into the flame zone, you are exempt from the testing and monitoring requirements described above for thermal oxidizers.
- If you operate a catalytic oxidizer, such as a regenerative catalytic oxidizer (RCO) or thermal catalytic oxidizer (TCO), you must maintain the average catalytic oxidizer temperature at or above the minimum temperature established during the performance test. You must also check the activity level of a representative sample of the catalyst at least every 12 months.
- If you operate a biofilter, you must maintain the average biofilter bed temperature within the range you develop during the initial performance test or during qualifying previous performance tests using the required test methods. If you use values from previous performance tests to establish the operating parameter ranges, you must certify that the biofilter and associated process unit(s) have not been modified subsequent to the date of the performance tests.
- If you operate an add-on control system not listed in today's final rule, you must establish operating parameters to be monitored and parameter values that represent your operating requirements during the performance test, subject to prior written approval by the Administrator.
- If you operate a process unit that meets the production-based compliance options or a process unit that generates debits in an emissions average without an add-on control device, you must maintain on a daily basis the process unit controlling operating parameter(s) within the ranges established during the performance test corresponding to the representative operating conditions identified during the performance test.
- As an alternative to monitoring the operating parameters specified above for thermal oxidizers, catalytic oxidizers, biofilters, other control devices, and process units that meet compliance options without add-on control systems, you may monitor THC concentration in the outlet stack with a THC CEMS. If you select this option, you must maintain the outlet THC concentration below the maximum concentration established during the performance test. You may choose to subtract methane from the THC concentration measured by the CEMS if you wish to do so.

E. What Are the Work Practice Requirements?

The work practice requirements in today's final rule apply to softwood veneer dryers, dry rotary dryers, veneer redryers, hardwood veneer dryers, and group 1 miscellaneous coating operations. For softwood veneer dryers, the work practice requirements require you to minimize fugitive emissions from the veneer dryer doors (by applying appropriate operation and maintenance procedures) and from the green end of the dryers (through proper balancing of hot zone exhausts). For group 1 miscellaneous coating operations, the work practice requirements specify that you must use a non-HAP coating. The work practice requirements also specify parameters that you must monitor to demonstrate that each dry rotary dryer, veneer redryer, and hardwood veneer dryer continuously operates in a manner consistent with the definitions of these process units provided in today's final rule, as follows:

- If you operate a dry rotary dryer, you must maintain the inlet dryer temperature at or below 600°F and maintain the moisture content of the wood particles entering the dryer at or below 30 weight percent, on a dry basis.

- If you operate a veneer redryer, you must maintain the moisture content of the wood veneer entering the dryer at or below 25 percent, by weight.
- If you operate a hardwood veneer dryer, you must process less than 30 percent, by volume, softwood species each year.

F. When Must I Comply With the Final Rule?

Existing PCWP facilities must comply within 3 years of September 28, 2004. New sources that commence construction after January 9, 2003, must comply immediately upon initial startup or on September 28, 2004, whichever is later.

Existing sources that wish to be included in the delisted low-risk subcategory must receive EPA approval of their eligibility demonstrations no later than 3 years after September 28, 2004, or be in compliance with the final rule. New sources that wish to be included in the delisted low-risk subcategory must receive EPA approval of their eligibility demonstrations no later than initial startup or on September 28, 2004, which ever is later, or be in compliance with the final rule.

G. How Do I Demonstrate Initial Compliance With the Final Rule?

The initial compliance requirements in today's final rule vary with the different compliance options.

1. Production-Based Compliance Options

If you are complying with the PBCO in today's final rule, you must conduct an initial performance test using specified test methods to demonstrate initial compliance. You must test the efficiency of your emissions capture device during the initial performance test if the process unit is a press or board cooler. The actual emission rate of the press or board cooler is equivalent to the measured emissions divided by the capture efficiency. You must test prior to any wet control device operated on the process unit. During the performance test, you must identify the process unit controlling parameter(s) that affect total HAP emissions; these parameters must coincide with the representative operating conditions you describe in the performance test. For each parameter, you must specify appropriate monitoring methods and monitoring frequencies, and for continuously monitored parameters, you must specify averaging times not to exceed 24 hours. You must install process monitoring equipment or establish recordkeeping procedures to be used to demonstrate compliance with the operating requirements for the parameters you select. During the initial performance test, you must use the process monitoring equipment or recordkeeping procedures to establish the parameter value (e.g., maximum, minimum, average, or range, as appropriate) that represents your operating requirement for the process unit. Alternatively, you may install a THC CEMS and monitor the process unit outlet THC concentration and establish your THC operating requirement during the performance test.

2. Add-On Control System Compliance Options

If you use the compliance options for add-on control systems, you must conduct an initial performance test using specified test methods to demonstrate initial compliance. With the exception of the 20 ppmvd THC concentration option, you must test at both the inlet and the outlet of the HAP control device. For HAP-altering controls in sequence, such as a wet control device followed by a thermal oxidizer, you must test at the functional inlet of the control sequence (e.g., prior to the wet control device) and at the outlet of the control sequence (e.g., thermal oxidizer outlet). If you use a wet control device as the sole means of reducing HAP emissions, you must develop and implement a plan to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere such that the desired emission reduction is obtained. If you use any of the six compliance options for add-on control systems, and the process unit is a press or a board cooler without a wood products enclosure, you must also test the capture efficiency of your partial wood products enclosure. Prior to the initial performance test, you must install control device parameter monitoring equipment or THC CEMS to be used to demonstrate compliance with the operating requirements for add-on control systems in today's final rule. During the initial performance test, you must use the control device parameter monitoring equipment or THC CEMS to establish the parameter values that represent your operating requirements for the control systems. If your add-on control system is preceded by a particulate control device (e.g., baghouse or wet electrostatic precipitators (WESP)), you must establish operating parameter values for the HAP control system and not for the particulate control device. If your control device is a biofilter, then you may use values recorded during previous performance tests for the biofilter to establish your operating requirements as long as you were in compliance with the emission limits in today's final rule when the data were collected, the test data were obtained using the test methods in today's final rule, and no modifications were made to the process unit or biofilter subsequent to the date of the performance tests.

3. Emissions Averaging Compliance Option

If you elect to comply with the emissions averaging compliance option in today's final rule, you must submit an Emissions Averaging Plan (EAP) to the Administrator for approval. The EAP must describe the process units you are including in the emissions average. The plan also must specify which process units will be credit-generating units (including under-controlled, debit-generating process units that also generate credits) and which process units will be debit-generating units. The EAP must also include descriptions of the control systems used to generate emission credits, documentation of the total HAP measurements made to determine the RMR, calculations and supporting documentation to demonstrate that the AMR will be greater than or equal to the RMR, and a summary of the operating parameters that will be monitored.

Following approval of your EAP, you must conduct performance tests to determine the total HAP emissions from all process units included in the EAP. The credit-generating process units must be equipped with add-on control systems; therefore, for those process units, you must follow the procedures for demonstrating initial compliance as outlined above for add-on control systems. For debit-generating process units without air pollution control devices (APCD), you must follow the same procedure for establishing your operating requirements as outlined above for process units meeting the PBCO. The emissions averaging provisions require you to conduct all total HAP measurements and performance test(s) when the process units are operating under representative operating conditions. Today's final rule defines "representative operating conditions" as those conditions under which the process unit will typically be operating following the compliance date. Representative conditions include such things as using a representative range of materials (*e.g.*, wood material of a typical species mix and moisture content, typical resin formulations) and

operating the process unit at typical operating temperature ranges.

4. Work Practice Requirements

The work practice requirements in today's final rule do not require you to conduct any initial performance tests. To demonstrate initial compliance with the work practice requirements for dry rotary dryers, you must install parameter monitoring devices to continuously monitor the dryer inlet operating temperature and the moisture content (dry basis) of the wood furnish (*i.e.*, wood fibers, particles, or strands used for making board) entering the dryer. You must then use the parameter monitoring devices to continuously monitor and record the dryer temperature and wood furnish moisture content for a minimum of 30 days. If the monitoring data indicate that during the minimum 30-day demonstration period, your dry rotary dryer continuously processed wood furnish with an inlet moisture content less than or equal to 30 percent, and the dryer was continuously operated at an inlet dryer temperature less than or equal to 600°F, then your dryer meets the definition of a dry rotary dryer in today's final rule. You must submit the monitoring data as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for hardwood veneer dryers, you must calculate the annualized percentage of softwood veneer processed in the dryer by volume, using veneer dryer production records for the 12-month period prior to the compliance date. If the total annual percentage by volume of softwood veneer is less than 30 percent, your veneer dryer meets the definition of hardwood veneer dryer. You must then submit a summary of the production data for the 12-month period and a statement verifying that the veneer dryer will continue to process less than 30 percent softwoods as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for softwood veneer dryers, you must develop a plan for minimizing fugitive emissions from the veneer dryer green end and heated zones. You must submit the plan with your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for veneer redryers, you must install a device that can be used to continuously monitor the moisture content (dry basis) of veneer entering the dryer. You must then use the moisture monitoring device to continuously monitor and record the inlet moisture content of the veneer for a minimum of 30 days. If the monitoring data indicate that your veneer dryer continuously processed veneer with a moisture content less than or equal to 25 percent during the minimum 30-day demonstration period, then your veneer dryer meets the definition of a veneer redryer in today's final rule. You must submit the monitoring data as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirement for group 1 miscellaneous coating operations, you must submit a signed statement with your notification of compliance status report stating that you are using non-HAP coatings. You must also have a record (*e.g.*, material safety data sheets) showing that you are using non-HAP coatings as defined in today's final rule.

H. How Do I Demonstrate Continuous Compliance With the Final Rule?

The continuous compliance requirements in today's final rule vary with the different types of compliance options.

1. Production-Based Compliance Options

If you comply with the PBCO, then you must monitor and/or record the controlling operating parameter(s) identified as affecting total HAP emissions from the process unit(s) in the performance test. For each parameter, you must use the monitoring methods, monitoring frequencies, and averaging times (for continuously monitored parameters not to exceed 24 hours) specified in your performance test and Notification of Compliance Status. For each operating parameter, you must maintain on a daily basis the parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established during the performance test.

Instead of monitoring process operating parameters, you may operate a CEMS for monitoring THC concentration to demonstrate compliance with the operating requirements in today's final rule. If you choose to operate a THC CEMS in lieu of a continuous parameter monitoring systems (CPMS), you must demonstrate continuous compliance, as described in the following subsection.

2. Add-On Control System Compliance Options

For add-on control systems, you must install a CPMS to monitor the temperature or install a CEMS to monitor THC concentration to demonstrate compliance with the operating requirements in today's final rule. If you operate a CPMS, you must have at least 75 percent of the required recorded readings for each 3-hour or 24-hour block averaging period to calculate the data averages. You must operate the CPMS at all times the process unit is operating. You must also conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you must calculate and record the average values of each operating parameter according to the specified averaging times.

For thermal oxidizers, you must continuously maintain the 3-hour block average firebox temperature at or above the minimum temperature established during the performance test. For catalytic oxidizers, you must continuously maintain the 3-hour block average catalytic oxidizer temperature at or above the minimum value established during the performance test. You must also check the activity level of a representative sample of the catalyst at least every 12 months and take any necessary corrective action to ensure that the catalyst is performing within its design range.

For biofilters, you must continuously maintain the 24-hour block average biofilter bed temperature within the operating range you establish during the performance test. You must also conduct a repeat performance test using the applicable method(s) within 2 years following the previous performance test and within 180 days after each replacement of any portion of the biofilter bed with a different media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.

If you choose to operate a CEMS for monitoring THC concentration instead of operating a CPMS, you must install, operate, and maintain the CEMS according to Performance Specification 8 in 40 CFR part 60, appendix B. You must also comply with the CEMS data quality assurance requirements in Procedure 1 of appendix F of 40 CFR part 60. You must conduct a performance evaluation of the CEMS according to 40 CFR 63.8 and Performance Specification 8. The CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Using the data collected with the CEMS, you must calculate and record the 3-hour block average THC concentration for thermal or catalytic oxidizers. For biofilters, you must calculate and record the 24-hour block

average THC concentration. You must continuously monitor and maintain the 24-hour block average THC concentration at or below the maximum established during the performance test. You may use a CEMS that subtracts methane from the measured THC concentration if you wish to do so.

If you comply with today's final rule using an add-on control system, you may request a routine control device maintenance exemption from the Administrator. Your request for a routine control device maintenance exemption must document the need for routine maintenance on the control device and the time required to accomplish the maintenance, describe the maintenance activities and the frequency of these activities, explain why the maintenance cannot be accomplished during process shutdowns, describe how you plan to make reasonable efforts to minimize emissions during these maintenance activities, and provide any other documentation required by the Administrator. If your request for the routine control device maintenance exemption is approved by the Administrator, it must be incorporated into your title V permit. The compliance options and operating requirements would not apply during times when control device maintenance covered under your approved routine control device maintenance exemption is performed. The routine control device maintenance exemption may not exceed 3 percent of annual operating uptime for each green rotary dryer, tube dryer, rotary strand dryer, or pressurized refiner controlled. The routine control device maintenance exemption is limited to 0.5 percent of the annual operating uptime for each softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, conveyor strand dryer, or fiberboard mat dryer controlled. If your control device is used to control a combination of equipment with different downtime allowances (*e.g.*, a tube dryer and a press), then the highest (*i.e.*, 3 percent) downtime allowance applies.

3. Emissions Averaging Compliance Option

To demonstrate continuous compliance with the emissions averaging provisions, you must continuously comply with the applicable operating requirements for add-on control systems (described in the previous subsection). You also must maintain records of your operating hours for each process unit included in the EAP. For each semiannual compliance period, you must demonstrate that the AMR equals or exceeds the RMR using your initial (or most recent) total HAP measurements for debit-generating units, initial (or most recent) performance test results for credit-generating units, and the operating hours recorded for the semiannual compliance period.

4. Work Practice Requirements

To demonstrate continuous compliance with the work practice requirements for dry rotary dryers and veneer redryers, you must operate all dry rotary dryers and veneer redryers so that they continuously meet the definitions of these process units in today's final rule. For dry rotary dryers, you must continuously monitor and maintain the inlet furnish moisture content at or below 30 percent and the inlet dryer operating temperature at or below 600°F. You must also calibrate the moisture monitor based on the procedures specified by the moisture monitor manufacturer at least once per semiannual compliance period to verify the readings from the moisture meter. For veneer redryers, you must continuously monitor and maintain the inlet veneer moisture content at or below 25 percent.

To demonstrate continuous compliance with the work practice requirements for softwood veneer dryers, you must follow the procedures in your operating plan for minimizing fugitive emissions from the green end and heated zones of the veneer dryer and maintain records documenting that you have followed your plan. For hardwood veneer dryers, you must continue to process less than 30 percent softwood veneer by volume and maintain records on veneer dryer production.

To demonstrate continuous compliance with the work practice requirements for group 1 miscellaneous coating operations, you must keep records showing that you continue to use non-HAP coatings as defined in the final rule.

I. How Do I Demonstrate That My Affected Source Is Part of the Low-Risk Subcategory?

For your affected source to be part of the delisted low-risk subcategory, you must have a low-risk demonstration approved by EPA, and you must then have federally enforceable conditions reflecting the parameters used in your EPA-approved demonstration incorporated into your title V permit to ensure that your affected source remains low-risk. Low-risk demonstrations for eight facilities were conducted by EPA, and no further demonstration is required for them. They will, however, need to obtain title V permit terms reflecting their status. (We will provide these sources and their title V permitting authorities with the necessary parameters for establishing corresponding permit terms and conditions.) These facilities are listed in Table 2 to this preamble. Other facilities may demonstrate to EPA that their PCWP affected source is low risk by using the look-up tables in appendix B to 40 CFR part 63, subpart DDDD or conducting a site-specific risk assessment as specified in appendix B to subpart DDDD. Appendix B to subpart DDDD also specifies which process units and pollutants must be included in your low-risk demonstration, emissions testing methods, the criteria for determining if an affected source is low risk, risk assessment methodology (look-up table analysis or site-specific risk analysis), contents of the low-risk demonstration, schedule for submitting and obtaining approval of your low-risk demonstration, and methods for ensuring that your affected source remains in the low-risk subcategory. If you demonstrate that your affected source is part of the delisted low-risk subcategory of PCWP manufacturing facilities, then your affected source is not subject to the MACT compliance options, operating requirements, and work practice requirements in the final PCWP rule (subpart DDDD).

1. Low-Risk Criteria

We may approve your affected source as eligible for membership in the delisted low-risk subcategory of PCWP sources if we determine that it is low risk for both carcinogenic and noncarcinogenic effects. To be considered low risk, the PCWP affected source must meet the following criteria: (1) The maximum off-site individual lifetime cancer risk at a location where people live is less than one in one million for carcinogenic chronic inhalation effects; (2) every maximum off-site target-organ specific hazard index (TOSHI) (or, alternatively, an appropriately site-specific set of 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 your affected source's HAP mixture) at a location where people live is less than or equal to 1.0 for noncarcinogenic chronic inhalation effects; and (3) the maximum off-site acute hazard quotients for acrolein and formaldehyde are less than or equal to 1.0 for

noncarcinogenic acute inhalation effects. These criteria are built into the look-up tables included in appendix B to subpart DDDD. Facilities conducting site-specific risk assessments must explicitly demonstrate that they meet these criteria. Facilities need not perform site-specific multipathway human health risk assessments or ecological risk assessments since EPA performed a source category-wide screening assessment which demonstrates that these risks are insignificant for all sources.

2. PCWP Affected Sources Delisted in Today's Action

Eight PCWP affected sources are being delisted today as part of the low-risk subcategory. They are listed below in Table 2 of this preamble. If your affected source is part of the low-risk subcategory and you do not wish it to remain in the subcategory, you may notify us, in writing, and we will remove your affected source from the low-risk subcategory. Any affected sources removed from the low-risk subcategory are subject to the requirements of subpart DDDD, as applicable. Please address your written notification to Ms. Mary Tom Kissell (see **FOR FURTHER INFORMATION CONTACT** section).

TABLE 2. — LOW - RISK AFFECTED SOURCES IN THE LOW-RISK PCWP SUBCATEGORY

Name of Affected Source	Location
Georgia-Pacific Plywood Plant.	Monroeville, AL.
Georgia-Pacific—Hawthorne Plywood Mill.	Hawthorne, FL.
Oregon Panel Products (Lebanite).	Lebanon, OR.
Hardel Mutual Plywood Corporation.	Chehalis, WA.
Hood Industries, Incorporated.	Wiggins, MS.
Plum Creek Manufacturing, LP.	Kalispell, MT.
Potlatch Corporation—St. Maries Plywood.	St. Maries, ID.
SierraPine Limited, Rocklin MDF.	Rocklin, CA.

We performed a risk assessment to determine the magnitude of potential chronic human cancer and noncancer risks and the potential for acute noncancer risks and adverse environmental impacts associated with the sources in the PCWP source category. The risk assessment was performed for 181 of the 223 major PCWP affected sources. Affected sources where available location data were ambiguous or where all of their site-specific information was requested to be treated as confidential were excluded from the analysis, leaving a total of 181 affected sources in the assessment. For the risk assessment, we used our baseline emission estimates (developed using average emission factors and, if available, site-specific process throughput data) and model PCWP emissions release characteristics as inputs into our Human Exposure Model (HEM) to generate cancer and non-cancer risk estimates for the 181 PCWP affected sources. The risk assessment methodology is explained in detail in the supporting information for this final rule.

Because our risk estimates include model emissions release information, they are not as rigorous as the risk demonstrations we are requiring PCWP affected sources to perform. Therefore, to ensure the affected sources listed in Table 2 of this preamble meet the low risk criteria in appendix B to subpart DDDD, we subjected them to more stringent standards than required for risk demonstrations based on better (*i.e.*, site-specific) data. First, we increased the level of protection to human health by a factor of 10. Instead of using the criteria established in appendix B to subpart DDDD of one in 1 million risk for cancer and TOSHI of less than or equal to 1.0, PCWP affected sources with cancer risk greater than 0.1 in 1 million or a TOSHI greater than 0.1 were excluded. For the remaining PCWP affected sources, we estimated emission factors based on the highest emissions test data we had. We remodeled these PCWP affected sources using worst-case (*i.e.* highest) emission factors and the January 2004 IRIS cancer URE for formaldehyde. From this analysis, affected sources with hazard index values greater than 0.2 or cancer risks greater than one in 1 million were excluded. Of the remaining affected sources, we eliminated those that are closed, have pending enforcement actions, and that did not submit or claimed as confidential site-specific throughput data. We also consulted with an industry trade association and they removed various affected sources from the list for various reasons.

3. Determining HAP Emissions From the Affected Source

You must include in your low-risk demonstration every process unit within the PCWP affected source that emits one or more of the following HAP: acetaldehyde, acrolein, arsenic, benzene, beryllium, cadmium, chromium, formaldehyde, lead, MDI, manganese, nickel, and phenol. You must conduct emissions testing using the methods specified in appendix B to subpart DDDD. For reconstituted wood product presses or reconstituted wood product board coolers, you must determine the capture efficiency of the capture device. If you use a control device for purposes of demonstrating that your affected source is part of the low-risk subcategory, then you must collect monitoring data and establish operating limits for the control system using the same methods specified in subpart DDDD.

4. Low-Risk Demonstrations

Once you have conducted emissions testing, you may perform a lookup table analysis or site-specific risk analysis. Regardless of the type of risk analysis used, you must use the most recent EPA-approved dose-response values as posted on our Air Toxics Website at *http://www.epa.gov/ttn/atw/toxsource/summary.html* to demonstrate that your affected source may be part of the low-risk subcategory. If you can demonstrate that your affected source is low-risk based on the look-up table analysis, then you need not complete a site-specific risk analysis. If your affected source is not low-risk based on the look-up table analysis, then you may elect to proceed with site-specific risk analysis. Appendix B to subpart DDDD specifies what your low-risk demonstration must contain.

Look-up table analysis. You may use the look-up tables (Tables 3 and 4 to 40 CFR part 63, subpart DDDD, appendix B) to determine if your affected source may be part of the low-risk subcategory. Table 3 to appendix B to subpart DDDD provides the maximum allowable toxicity-weighted carcinogen emission rate, and Table 4 to appendix B to subpart DDDD provides the maximum allowable toxicity-weighted noncarcinogen emission rate that your affected source can emit. To use the look-up tables, you must determine your toxicity-weighted carcinogen and noncarcinogen emission rates using the equations in appendix B to subpart DDDD; the average stack height of all PCWP emission points at your affected source; and the minimum distance from any emission point to the nearest property boundary. If the total toxicity-weighted carcinogen and noncarcinogen emission rates for your affected source are less than or equal to the values in both look-up tables, then EPA may approve your affected source as part of the low-risk subcategory of PCWP affected sources.

Site-specific risk assessment. You may use any scientifically-accepted peer-reviewed risk assessment methodology to demonstrate to EPA that

your affected source may be low risk. An example 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 Reference Library." However, this approach may not be appropriate for all affected sources, and EPA may require that any specific affected source use an alternative approach. You may obtain a copy of the "Air Toxics Risk Assessment Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document" through EPA's air toxics website at *www.epa.gov/ttn/atw.*

For EPA to approve your low-risk demonstration, you must demonstrate that: (1) The maximum off-site individual lifetime cancer risk at a location where people live is less than one in one million for carcinogenic chronic inhalation effects; (2) every maximum off-site TOSHI at a location where people live is less than or equal to 1.0 for non-carcinogenic chronic inhalation effects; and (3) the maximum off-site acute hazard quotients for acrolein and formaldehyde are less than or equal to 1.0 for noncarcinogenic acute inhalation effects.

5. When Must I Submit Risk Demonstrations to EPA?

You must submit your low-risk demonstration to EPA for approval. If you have an existing affected source, you must submit your low-risk demonstration no later than July 31, 2006. To facilitate the review and approval process, EPA encourages facilities to submit their assessments as soon as possible. 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 the effective date of subpart DDDD, then you must complete and submit for EPA approval your low-risk demonstration no later than July 31, 2006. 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 the effective date of subpart DDDD, then you must complete and submit for approval your low-risk demonstration no later than 12 months after you become a major source or after initial startup of your affected source as a major source, whichever is later.

If you have a new or reconstructed affected source you must conduct the emission tests upon initial startup and use the results of these emissions tests to complete and submit your low-risk demonstration within 180 days following your initial startup date. If your new or reconstructed affected source starts up before the effective date of subpart DDDD, for EPA to find that you are included in the low-risk subcategory, your low-risk demonstration must show that you were eligible for the low-risk subcategory no later than the effective date of subpart DDDD. If your new or reconstructed source starts up after the effective date of subpart DDDD, for EPA to find that you are included in the low-risk subcategory, your low-risk demonstration must show that you were eligible for the low-risk subcategory upon initial startup of your affected source.

Affected sources that are not part of the low-risk subcategory within 3 years after the effective date of subpart DDDD must comply with the requirements of 40 CFR part 63, subpart DDDD. Facilities may not request compliance extensions from the permitting authority if they fail to demonstrate they are part of the low-risk subcategory or to request additional time to install controls to become part of the low-risk subcategory. All approved low risk sources must then obtain title V permit revisions including terms and conditions reflecting the parameters used in their approved demonstrations, according to the schedules in their applicable part 70 or part 71 title V permit programs.

6. Remaining in the Low-Risk Subcategory

You must ensure that your affected source is low risk by periodically certifying your affected source is low risk, monitoring applicable HAP control device parameters, and by maintaining certain records. 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. Your certification must consider process changes that increase HAP emissions, population shifts, and changes to dose-response values. If your affected source commences operating outside of the low-risk subcategory, it is no longer part of the low-risk subcategory. 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. You must be in compliance with all of the applicable requirements of 40 CFR part 63, subpart DDDD beginning on the date when your affected source commences operating outside the low-risk subcategory if you had a process change that increases HAP emissions. If you are operating outside of the low-risk subcategory due to a population shift or change to dose-response values, then you must comply with all of the applicable requirements of 40 CFR part 63, subpart DDDD no later than three years from the date your affected source commences operating outside the low-risk subcategory.

III. Summary of Environmental, Energy, and Economic Impacts

A. How Many Facilities Are Impacted by the Final Rule?

Facilities with estimated potential to emit 25 tons or more of total HAP or 10 or more tons of an individual HAP are major sources of HAP and are subject to the final rule. Approximately 223 PCWP major source facilities nationwide are expected to meet the applicability criteria defined in today's final rule. These major source facilities generally manufacture one or more of the following products: Softwood plywood, softwood veneer, medium density fiberboard (MDF), oriented strandboard (OSB), particleboard, hardboard, laminated strand lumber, and laminated veneer lumber. However, only 212 of these facilities have equipment that is subject to the control requirements of the final rule. In addition, there are approximately 34 major source sawmill facilities that produce kiln-dried lumber; although these major source sawmill facilities meet the applicability criteria in the final rule, there are no control requirements for any of the equipment located at the sawmills.

The number of impacted facilities was determined based on the estimated potential to emit (*i.e.*, uncontrolled HAP emissions) from each facility, whether each facility has any process units subject to the compliance options, whether or not the facility already operates control systems necessary to meet the final rule, and whether or not the affected source is currently eligible (or may later demonstrate eligibility) for inclusion in the delisted low risk subcategory. Of the 223 major source facilities, an estimated 162 are expected to install add-on control systems to reduce emissions. The remaining facilities already have installed add-on controls, do not have any process units subject to the compliance options, are expected to comply with work practice requirements only, or are one of the eight facilities currently eligible for inclusion in the delisted low-risk subcategory. We estimate that eventually as many as 147 of the 223 major source PCWP facilities may demonstrate eligibility for the low-risk subcategory, leaving 58 facilities expected to install add-on control systems to reduce emissions. Some of the 147 facilities expected to eventually

be included the low-risk subcategory were not expected to install controls to meet MACT because they either already have the necessary controls or do not have process units subject to the compliance options in today's final rule.

The environmental and cost impacts presented in this preamble represent the estimated impacts for the range of facilities, from 58 facilities estimated to be impacted following completion of eligibility demonstrations for the low-risk subcategory, to 162 facilities estimated to be impacted today. The impact estimates were based on the use of RTO (or in some cases a combination WESP and RTO) because RTO are the most prevalent HAP emissions control technology used in the PCWP industry. However, technologies other than RTO could be used to comply with today's final rule. For a facility that we feel already achieves the emissions reductions required by today's final rule, only testing, monitoring, reporting and recordkeeping cost impacts were estimated.

B. What Are the Air Quality Impacts?

We estimate nationwide baseline HAP emissions from the PCWP source category to be 17,000 Mg/yr (19,000 tons/yr) at the current level of control. We estimate that today's final rule will reduce total HAP emissions from the PCWP source category by about 9,900 Mg/yr (11,000 tons/yr). In addition, we estimate that today's final rule will reduce VOC emissions (approximated as THC) by about 25,000 Mg/yr (27,000 tons/yr) from a baseline level of 45,000 Mg/yr (50,000 tons/yr). Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, these emission reductions could change to 5,900 Mg/yr (6,600 tons/yr) for HAP or 13,000 Mg/yr (14,000 tons/yr) for VOC.

In addition to reducing emissions of HAP and VOC, today's final rule will also reduce emissions of criteria pollutants, such as carbon monoxide (CO) from direct-fired emission sources and particulate matter less than 10 microns in diameter (PM_{10}). We estimate that today's final rule will reduce CO emissions by about 9,500 Mg/yr (10,000 tons/yr). We also estimate that the final rule will reduce PM_{10} emissions by about 11,000 Mg/yr (12,000 tons/yr). Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, these emission reductions could change to 7,600 Mg/yr (8,400 tons/yr) for CO and 5,300 Mg/yr (5,900 tons/yr) for PM_{10}.

Combustion of exhaust gases in an RTO generates some emissions of nitrogen oxides (NO_X). We estimate that the nationwide increase in NO_X emissions due to the use of RTO will be about 2,100 Mg/yr (2,400 tons/yr). This estimated increase in NO_X emissions may be an overestimate because some plants may select control technologies other than RTO to comply with today's final rule. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the estimated NO_X emission increase could fall to 1,100 Mg/yr (1,200 tons/yr).

Secondary air impacts of today's final rule could result from increased electricity usage associated with operation of control devices. The secondary air emissions of NO_X, CO, PM_{10}, sulfur dioxide (SO2) depend on the fuel used to generate electricity and on other factors. The EPA believes SO2 emissions may not increase from electric generation since that the requirements of the Acid Rain trading program will keep power plants from increasing their SO2 emissions. Furthermore, we believe that NO_X emissions increases from power plants may be limited. The EPA expects the emissions trading program that is part of the NO_X SIP call will likely keep NO_X emissions in the eastern United States from increasing as result of additional power generation to operate RTOs.

C. What Are the Water Quality Impacts?

Wastewater is produced from WESP blowdown, washing out of RTO, and biofilters. We based all of our impact estimates on the use of RTO (with or without a WESP upstream depending on the process unit). We estimate that the wastewater generated from WESP blowdown and RTO washouts will increase by about 100,000 cubic meters per year (m^3/yr) (27 million gallons per year (gal/yr)) as a result of today's final rule. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the wastewater impacts could fall to 90,000 cubic meters per year (m^3/yr) (24 million gallons per year (gal/yr)). According to the data in our MACT survey, this nationwide increase in wastewater flow is within the range of water flow rates handled by individual facilities. Facilities would likely dispose of this wastewater by sending it to a municipal treatment facility, reusing it onsite (*e.g.*, in log vats or resin mix), or hauling it offsite for spray irrigation. In addition, we are amending the effluent limitations, guidelines for the timber products processing point source category to allow facilities (on a case-by-case basis) to obtain a permit to discharge wastewaters from APCD installed to comply with today's final rule.

D. What Are the Solid Waste Impacts?

Solid waste is produced in the form of solids from WESP and by RTO or RCO media replacement. We estimate that 4,500 Mg/yr (4,900 tons/yr) of solid waste will be generated as a result of today's final rule. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the solid waste increase could change to 2,800 Mg/yr (3,000 tons/yr). Some PCWP facilities have been able to use RTO or RCO media as aggregate in onsite roadbeds. Some facilities have also been able to identify a beneficial reuse for wet control device solids (such as giving them away to local farmers for soil amendment).

E. What Are the Energy Impacts?

The overall energy demand (*i.e.*, electricity and natural gas) is expected to increase by about 4.3 million gigajoules per year (GJ/yr) (4.1 trillion British thermal units per year (Btu/yr)) nationwide under today's final rule. The estimated increase in the energy demand is based on the electricity requirements associated with RTO and WESP and the fuel requirements associated with RTO. Electricity requirements are expected to increase by about 711 gigawatt hours per year (GWh/yr) under today's final rule. Natural gas requirements are expected to increase by about of 44 million m^3/yr (1.6 billion cubic feet per year (ft^3/yr)) under the final rule. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, these energy estimates could fall to 2.3 million GJ/yr (2.2 trillion Btu/yr) for overall energy demand, 378 GWh/yr for the increase in electricity requirements, and 24 million m^3/yr (0.9 billion ft^3/yr) for the increase in natural gas requirements.

F. What Are the Cost Impacts?

The cost impacts estimated for today's final rule represent a high-end estimate of costs. Although the use of RTO technology to reduce HAP emissions represents the most expensive compliance option, we based our nationwide cost estimates on the use of RTO technology at all of the impacted facilities because: (1) RTO technology can be used to reduce emissions from all types of PCWP process units; and (2) we could not accurately predict which facilities would use emissions averaging or PBCO or install add-on control devices that are less costly to operate, such as RCO and biofilters. Therefore, our cost estimates are likely to be

overstated as we anticipate that owners and operators of impacted sources will take advantage of available cost saving opportunities.

The high-end estimated total capital costs of today's final rule are $471 million. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the capital costs could fall to $240 million. These capital costs apply to existing sources and include the costs to purchase and install both the RTO equipment (and in some cases, a WESP upstream of the RTO) and the monitoring equipment, and the costs of performance tests. Wood products enclosure costs are also included for reconstituted wood products presses.

The high-end estimated annualized costs of the final standards are $140 million. Depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory, the annualized costs could fall to $74 million. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, and recordkeeping and reporting costs. Potential control device cost savings and increased recordkeeping and reporting costs associated with the emissions averaging provisions in today's final rule are not accounted for in either the capital or annualized cost estimates.

G. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increases for affected output would range from 0.4 to 1.3 percent as a result of the NESHAP for PCWP manufacturers. The expected change in production of affected output is a reduction of 0.06 to 0.4 percent for PCWP manufacturers as a result of today's final rule. No plant closures are expected out of the 223 facilities affected by the final rule. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the final rule, such as hardboard, softwood plywood and veneer, engineered wood products, and other wood composites.

H. What Are the Social Costs and Benefits?

Our assessment of costs and benefits of today's final rule is detailed in the "Regulatory Impact Analysis for the Proposed Plywood and Composite Wood Products MACT." The Regulatory Impact Analysis (RIA) is located in Docket number A–98–44 and Docket number OAR–2003–0048.

It is estimated that 3 years after implementation of the final rule requirements, reductions of formaldehyde, acetaldehyde, acrolein, methanol, phenol and several other HAP from existing PCWP emission sources would be 5,900 Mg/yr (6,600 tons/yr) to 9,900 Mg/yr (11,000 tons/yr), depending on how many affected sources are in the low-risk subcategory. The health effects associated with these HAP are discussed earlier in this preamble.

At this time, we are unable to provide a comprehensive quantification and monetization of the HAP-related benefits of the final rule. Nevertheless, it is possible to derive rough estimates for one of the more important benefit categories, *i.e.*, the potential number of cancer cases avoided and cancer risk reduced as a result of the imposition of the MACT level of control on this source category. Our analysis suggests that imposition of the MACT level of control would reduce cancer cases by less than one case per year, on average, starting some years after implementation of the standards. We present these results in the RIA. This risk reduction estimate is uncertain and should be regarded as an extremely rough estimate and should be viewed in the context of the full spectrum of unquantified noncancer effects associated with the HAP reductions.

The control technologies used to reduce the level of HAP emitted from PCWP sources are also expected to reduce emissions of CO, PM_{10}, and VOC. Depending on how many affected sources are in the low-risk subcategory, it is estimated that CO emissions reductions total approximately 7,600 Mg/yr (8,400 tons/yr) to 9,500 Mg/yr (10,000 tons/yr), PM_{10} emissions reductions total approximately 5,300 Mg/yr (5,900 tons/yr) to 11,000 Mg/yr (12,000 tons/yr), and VOC emissions reductions (approximated as THC) total approximately 13,000 Mg/yr (14,000 tons/yr) to 25,000 Mg/yr (27,000 tons/yr). These estimated reductions occur from existing sources in operation 3 years after the implementation of the requirements of the final rule and are expected to continue throughout the life of the sources. Human health effects associated with exposure to CO include cardiovascular system and CNS effects, which are directly related to reduced oxygen content of blood and which can result in modification of visual perception, hearing, motor and sensorimotor performance, vigilance, and cognitive ability. The VOC emissions reductions may lead to some reduction in ozone concentrations in areas in which the affected sources are located. There are both human health and welfare effects that result from exposure to ozone, and these effects are listed in Table 3 of this preamble.

TABLE 3.—UNQUANTIFIED BENEFIT CATEGORIES FROM HAP, OZONE-RELATED, AND PM EMISSIONS REDUCTIONS

	Unquantified effects categories associated with HAP	Unquantified effect categories associated with ozone	Unquantified effect categories associated with PM
Health Categories ...	Carcinogenicity Genotoxicity Pulmonary function decrement Dermal irritation Eye irritation Neurotoxicity Immunotoxicity Pulmonary function decrement Liver effects Gastrointestinal effects Kidney effects Cardiovascular impairment Hematopoietic (Blood disorders) Reproductive/Developmental effects	Airway responsiveness Pulmonary inflammation Increased susceptibility to respiratory infection Acute inflammation and respiratory cell damage Chronic respiratory damage/Premature aging of lungs Emergency room visits for asthma Hospital admissions for respiratory diseases Asthma attacks Minor restricted activity days	Premature mortality Chronic bronchitis Hospital admissions for chronic obstructive pulmonary disease, pneumonia, cardiovascular diseases, and asthma Changes in pulmonary function Morphological changes Altered host defense mechanisms Cancer Other chronic respiratory disease Emergency room visits for asthma Lower and upper respiratory symptoms Acute bronchitis Shortness of breath Minor restricted activity days Asthma attacks Work loss days.

TABLE 3.—UNQUANTIFIED BENEFIT CATEGORIES FROM HAP, OZONE-RELATED, AND PM EMISSIONS REDUCTIONS—Continued

	Unquantified effects categories associated with HAP	Unquantified effect categories associated with ozone	Unquantified effect categories associated with PM
Welfare Categories	Corrosion/Deterioration Unpleasant odors Transportation safety concerns Yield reductions/Foliar injury Biomass decrease Species richness decline Species diversity decline Community size decrease Organism lifespan decrease Trophic web shortening	Ecosystem and vegetation effects in Class I areas (*e.g.*, national parks) Damage to urban ornamentals (*e.g.*, grass, flowers, shrubs, and trees in urban areas) Commercial field crops Fruit and vegetable crops Reduced yields of tree seedlings, commercial and non-commercial forests Damage to ecosystems Materials damage Reduced worker productivity	Materials damage Damage to ecosystems (*e.g.*, acid sulfate deposition) Nitrates in drinking water.

At the present time, we cannot provide a monetary estimate for the benefits associated with the reductions in CO. We also did not provide a monetary estimate for the benefits associated with the changes in ozone concentrations that result from the VOC emissions reductions since we are unable to do the necessary air quality modeling to estimate the ozone concentration changes. For PM_{10}, we did not provide a monetary estimate for the benefits associated with the reduction of the emissions, although these reductions are likely to have significant health benefits to populations living in the vicinity of affected sources.

There may be increases in NO_X emissions associated with today's final rule as a result of increased use of incineration-based controls. These NO_X emission increases by themselves could cause some increase in ozone and particulate matter (PM) concentrations, which could lead to impacts on human health and welfare as listed in Table 3 of this preamble. The potential impacts associated with increases in ambient PM and ozone due to these emission increases are discussed in the RIA. In addition to potential NO_X increases at affected sources, today's final rule may also result in additional electricity use at affected sources due to application of controls. As such, the final rule may result in additional health impacts from increased ambient PM and ozone from these increased utility emissions. We did not quantify or monetize these health impacts.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references.

In determining the overall economic consequences of the final rule, it is essential to consider not only the costs and benefits expressed in dollar terms but also those benefits and costs that we could not quantify. A full listing of the benefit categories that could not be quantified or monetized in our analysis is provided in Table 3 of this preamble.

IV. Summary of Responses To Major Comments and Changes to the Plywood and Composite Wood Products NESHAP

We proposed the PCWP NESHAP on January 9, 2003 (68 FR 1276), and received 57 comment letters on the proposal during the comment period. In response to the public comments received on the proposed rule, we made several changes in developing today's final rule. Table 4 of this preamble provides a list of the major changes that we made to the final rule. The major comments and our responses are summarized in the following sections. A complete summary of the comments received during the comment period and responses thereto can be found in the background information document (BID) for the promulgated rule, which is available from several sources (see **SUPPLEMENTARY INFORMATION** section).

TABLE 4.—SUMMARY OF MAJOR CHANGES TO SUBPART DDDD OF PART 63

Proposed section	Final section	Change from proposal
§ 63.2231	§ 63.2231	Revised section to state that subpart DDDD does not apply to facilities that are part of the low-risk subcategory of PCWP manufacturing facilities.
§ 63.2232(b)	§ 63.2232(b)	Description of affected source revised to be consistent with revised definition.
§ 63.2240	§ 63.2240	Clarified application of compliance options to a single process unit.
§ 63.2240(a)	§ 63.2240(a)	Added wet control device to the list of devices that may not be used to meet the PBCO.
§ 63.2240(b)	§ 63.2240(b)	Changed press enclosure reference from "PTE" to "wood products enclosure."

TABLE 4.—SUMMARY OF MAJOR CHANGES TO SUBPART DDDD OF PART 63—Continued

Proposed section	Final section	Change from proposal
§ 63.2240(c)(1)	§ 63.2240(c)(1)	Revised definition of AMR and $OCEP_i$ in emissions averaging calculations to clarify that sources can receive partial credits from debit-generating process units that are undercontrolled; revised definition of CD_i to address test method for biological treatment units that do not meet the definition of biofilter.
§ 63.2240(c)(2)(iii)	§ 63.2240(c)(2)(iii)	Revised restriction on emissions average related to process units that are already controlled.
	§ 63.2241(c)	Added new section that exempts dry rotary dryers, hardwood veneer dryers, and veneer redryers from work practice requirements if they comply with more stringent standards in § 63.2240.
§ 63.2250(a)	§ 63.2250(a)	Revised section to clarify that SSM refers to both process unit and control device SSM.
§ 63.2250(d)	§ 63.2250(a)	Moved and revised section to consolidate explanation of SSM provisions.
	§ 63.2250(d)	Added specific example of a shutdown for direct-fired burners and a specific example of a startup for direct-fired softwood veneer dryers.
§ 63.2250(e)		Removed requirement to record control device maintenance schedule.
§ 63.2250(f)		Removed requirement to maintain and operate catalyst according to manufacturer's specifications.
§ 63.2251(a)	§ 63.2251(a)	Added partial list of events eligible for a routine control device exemption; clarified duty to minimize emissions.
§ 63.2251(b)(1)	§ 63.2251(b)(1)	Specified type of strand dryer controlled by a control device eligible for a routine control device maintenance exemption of 3 percent of annual uptime.
§ 63.2251(b)(2)	§ 63.2251(b)(2)	Added conveyor strand dryer to list of process units controlled by a control device eligible for a routine control device maintenance exemption of 0.5 percent of annual uptime.
§ 63.2251(e)	§ 63.2251(e)	Removed requirement to schedule control device maintenance at the beginning of each semi-annual period.
§ 63.2260(a)	§ 63.2260(a)	Expanded exemption from testing and monitoring requirements to all combustion units that introduce process unit exhaust into the flame zone.
§ 63.2262(d)	§ 63.2262(d)(1)	Added sampling location requirements for control devices in sequence, process units with no control device, and process units with a wet control device.
	§ 63.2262(d)(2)	
§ 63.2262(g)	§ 63.2262(g)(1)	Reworded and renumbered section to allow for one case in which non-detect data is not considered to be one-half the method detection limit.
	§ 63.2262(g)(2)	Added exception to requirement to treat non-detect data as one-half the detection limit.
§ 63.2262(k)(1)	§ 63.2262(k)(1)	Clarified requirements for establishing the minimum firebox temperature for thermal oxidizers.
§ 63.2262(k)(2)		Removed sections on establishing operating parameter limits for static pressure and stack gas flow for thermal oxidizers.
§ 63.2262(k)(3)		
§ 63.2262(k)(4)	§ 63.2262(k)(2)	Removed references to static pressure and gas flow rate operating parameters.
§ 63.2262(k)(5)	§ 63.2262(k)(3)	Revised eligibility criteria for exemptions from performance testing and operating requirements for thermal oxidizers.
§ 63.2262(l)(1)	§ 63.2262(l)(1)	Clarified requirements for establishing the minimum catalytic oxidizer temperature.
§ 63.2262(l)(2)		Removed sections on establishing operating parameter limits for static pressure and stack gas flow for catalytic oxidizers.
§ 63.2262(l)(3)		
§ 63.2262(l)(4)	§ 63.2262(l)(2)	Removed references to static pressure and gas flow rate operating parameters.
§ 63.2262(m)(1)	§ 63.2262(m)(1)	Revised requirements for establishing biofilter operating limits (temperature range).
§ 63.2262(m)(2)	§ 63.2262(m)(2)	
§ 63.2262(n)(1)	§ 63.2262(n)(1)	Revised monitoring requirements for process units that meet compliance options without the use of an add-on control device.
§ 63.2267	§ 63.2267	Added initial compliance criteria for a wood products enclosure.
	§ 63.2268	Added criteria for demonstration of initial compliance for a wet control device.
§ 63.2268(a)(1)	§ 63.2269(a)(1)	Revised continuous parameter monitoring system requirements.
§ 63.2268(a)(3)	§ 63.2270(d)	Revised and moved sections regarding determination of block averages and valid data to section on continuous compliance requirements.
§ 63.2268(a)(4)	§ 63.2270(e)	
§ 63.2268(b)(2)	§ 63.2269(b)(2)	Clarified temperature measurement requirements.
§ 63.2268(b)(3)	§ 63.2268(b)(3)	
§ 63.2268(c)		Removed sections regarding pH, pressure, and flow monitoring.
§ 63.2268(d)		
§ 63.2268(e)		

TABLE 4.—SUMMARY OF MAJOR CHANGES TO SUBPART DDDD OF PART 63—Continued

Proposed section	Final section	Change from proposal
§ 63.2268(f)(1)	§ 63.2269(c)(1)	Revised requirements for wood moisture monitoring.
§ 63.2268(f)(2)	§ 63.2269(c)(2)	
	§ 63.2269(c)(5)	Added equation for converting moisture measurements from wet basis to dry basis.
§ 63.2270(c)	§ 63.2270(c)	Added language to specify that data recorded during periods of SSM may not be used in data averages and calculations used to report emission or operating levels.
	§ 63.2270(f)	Added requirement that 75 percent of readings recorded and included in block averages must be based on valid data.
§ 63.2280(f)(6)	§ 63.2280(f)(6)	Revised EAP submission requirements to include information on debit-generating process units.
	§ 63.2282(e)	Added requirement to keep records of annual catalyst activity checks and subsequent corrective actions for catalytic oxidizers.
§ 63.2291	§ 63.2291	Revised section to state that EPA retains authority to review eligibility demonstrations for the low-risk subcategory.
	§ 63.2292	Added definitions of "agricultural fiber," "combustion unit," "conveyor strand dryer," "conveyor strand dryer zone," "flame zone," "group 1 miscellaneous coating operations," "non-HAP coating," "one-hour period," "partial wood products enclosure," "primary tube dryer," "rotary strand dryer," "secondary tube dryer," "wet control device," and "wood products enclosure."
§ 63.2292		Removed definitions of "permanent total enclosure," "plant site," and "strand dryer."
§ 63.2292	§ 63.2292	Revised definitions of "affected source," "biofilter," "deviation," "fiber," "fiberboard," "hardboard," "medium density fiberboard," "miscellaneous coating operations," "particle," "particleboard," "plywood and composite wood products (PCWP) manufacturing facility," "softwood veneer dryer," and "thermal oxidizer."
Table 1A	Table 1A	Changed "tube dryers" to "primary tube dryers" and added "secondary tube dryers"; added PBCO limit for secondary tube dryers; revised PBCO limit for reconstituted wood product board coolers; changed "strand dryers" to "rotary strand dryers."
Table 1B	Table 1B	Added "rotary strand dryers," "conveyor strand dryer zone one (at existing affected sources)," and "conveyor strand dryer zones one and two (at new affected sources)" to the list of process units.
Table 2, Line 1	Table 2, Line 1	Reduced thermal oxidizer operating requirements to maintaining the average firebox temperature above the minimum temperature.
Table 2, Line 2	Table 2, Line 2	Reduced catalytic oxidizer operating requirements to maintaining the temperature above a minimum temperature and checking the activity level of a representative sample of the catalyst every 12 months.
Table 2, Line 3	Table 2, Line 3	Reduced biofilter operating requirements to maintaining the biofilter bed temperature within a range.
Table 2, Line 5	Table 2, Line 5	Revised operating requirements for process units without control devices.
	Table 3, Line 5	Added work practice requirements for group 1 miscellaneous coating operations.
Table 4, Line 9	Table 4, Line 9	Revised the performance test criteria for reconstituted wood product presses and reconstituted wood product board coolers.
Table 4, Line 11	Table 4, Line 11	Revised text to clarify that performance test requirements apply to all process units in an emissions average plan.
Table 5, Line 7	Table 5, Line 7	Removed minimum heat input capacity criterion for combustion units.
	Table 5, Line 8	Added criteria for performance testing and initial compliance demonstrations for wet control devices.
	Table 6, Line 5	Added initial compliance demonstration for Group 1 miscellaneous coating operations.
Table 7, Line 1	Table 7, Line 1	Revised "at or above the maximum, at or below the minimum" to read "at or above the minimum, at or below the maximum."
	Table 7, Line 3	Added continuous compliance requirements (periodic testing) for biofilters.
	Table 7, Line 4	Added continuous compliance requirements (annual catalyst activity check) for catalytic oxidizers.
	Table 7, Line 5	Added continuous compliance requirements for process units achieving compliance without an add-on control device.
Table 8, Line 1	Table 8, Line 1	Specified block averages of 24 hours for moisture and temperature measurements for dry rotary dryers.
Table 8, Line 4	Table 8, Line 4	Specified block average of 24 hours for moisture measurements for veneer dryers.
	Table 8, Line 5	Added continuous compliance requirements for Group 1 miscellaneous coating operations.
Table 10, § 63.8(g)	Table 10, § 63.8(g)	Added "rounding of data" to description of the General Provisions section.

TABLE 4.—SUMMARY OF MAJOR CHANGES TO SUBPART DDDD OF PART 63—Continued

Proposed section	Final section	Change from proposal
Appendix A to Subpart DDDD	Appendix A to Subpart DDDD	Made various revisions throughout to reflect the removal of a permanent total enclosure (PTE) as a requirement for reconstituted wood products presses and board coolers.
	Appendix B to Subpart DDDD	Added appendix B to specify procedure for demonstrating that an affected source is part of the low-risk subcategory.

A. Applicability

1. Definition of Affected Source

Comment: Several commenters requested that we clarify that the PCWP affected source includes refining and resin preparation activities such as mixing, formulating, blending, and chemical storage, and suggested that boilers be excluded. The commenters wanted to ensure that onsite resin preparation activities are specifically mentioned in and regulated by the final PCWP rule to avoid duplicate regulation of those activities under the Miscellaneous Organic Chemical Manufacturing NESHAP (subpart FFFF) or the Miscellaneous Coating Manufacturing NESHAP (subpart HHHHH). Commenters also recommended changing the proposed definition of affected source by revising the definition of "plant site," which was used in the affected source definition at proposal. The commenters asked that we make the definition of "plant site" consistent with the definition of "major source" as defined for title V permitting in 40 CFR 70.2. According to the commenters, the proposed definition of "plant site" expanded the definition of a source beyond that used for title V permitting or MACT applicability in general.

Response: We agree with the commenters that changes should be made to the definition of affected source, and the definition was adjusted in the final rule. We added resin preparation activities to the definition of "affected source" to clarify that these activities are part of the PCWP source category and are not subject to subpart FFFF to 40 CFR part 63 or subpart HHHHH to 40 CFR part 63. Resin preparation includes any mixing, blending, or diluting of resins used in the manufacture of PCWP products which occurs at the PCWP manufacturing facility. We feel this change is appropriate because the MACT analysis for resin preparation activities was conducted under the PCWP final rulemaking. (As explained in the proposal BID and supporting documentation, we determined that MACT for new and existing blenders and resin storage/mixing tanks is no emissions reductions.) Subpart FFFF to 40 CFR part 63 and subpart HHHHH to 40 CFR part 63 exclude activities included as part of the affected source for other source categories. Thus, onsite resin preparation activities at a PCWP manufacturing facility are not subject to subpart FFFF to 40 CFR part 63 or subpart HHHHH to 40 CFR part 63.

We added refiners to the definition of affected source to clarify that these sources are part of the affected source and were part of the MACT analysis for the PCWP source category. (For new and existing pressurized refiners, we determined that MACT is based on the use of incineration-based control or a biofilter, and for new and existing atmospheric refiners, we determined that MACT is no emissions reductions.)

We removed all references to "plant site" from the final rule and replaced references to "plant site" with the term "facility" to eliminate confusion regarding which emission sources constitute the affected source and which emission sources would be considered when making a major source determination. The term "plant site" was used only in the proposed definitions of "affected source" and "plywood and composite wood products manufacturing facility." Inclusion of the term "plant site" in the proposed definition of affected source unintentionally broadened the definition such that emission sources not related to PCWP manufacturing could be construed as being part of the affected source. For example, under the proposed definitions of "affected source" and "plant site," if a company operated both a PCWP manufacturing facility and a wood building products surface coating facility at the same site, both operations might be considered to be part of the PCWP affected source because the "plant site" would encompass both operations, even though these two operations are regulated under separate NESHAP. We removed the term "plant site" from the final rule to clarify that the requirements in the final rule would only apply to the affected source, which is the PCWP manufacturing facility. However, we note that any major source determination would be based on total emissions from both operations since the two operations are colocated and under common control. (See definition of major source in the General Provisions (40 CFR part 63, subpart A).)

We did not incorporate the commenters' suggestion to specifically exclude boilers from the definition of "affected source" because it is possible for a boiler to be subject to both the PCWP NESHAP and the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP (*e.g.*, if a portion of the boiler exhaust is used to direct fire dryers while the remaining portion of the boiler exhaust is vented to the atmosphere). However, in most cases, combustion units would only be subject to one MACT. The overlap between the PCWP NESHAP and the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP is also discussed in this preamble.

2. Process Definitions

Comment: Commenters recommended that a number of definitions included in the proposed rule be revised to better distinguish between particleboard, MDF and hardboard and/or to be consistent with definitions developed by the American National Standards Institute (ANSI).

Response: We made changes to several of the proposed process-related definitions including the definitions of particle, fiber, hardboard, MDF, and particleboard. These minor changes incorporate some of the wording in similar definitions used by ANSI but do not affect the scope or applicability of the final rule. We also added a definition of agricultural fiber recommended by commenters because the term "agricultural fiber" appears in the definition of plywood and composite wood products facility.

Comment: Several commenters requested that the proposed definition of tube dryer be changed so that stages in multistage tube dryers would be considered as separate tube dryers. With this change, different control options could be applied to different dryer stages.

Response: Under the proposed definition of tube dryer, a multistage tube dryer with more than one control

device and emissions point would be considered one process unit. In developing the proposed rule, we noted that the function of tube dryers is the same regardless of single-or multistage configuration and that distinguishing between dryer configurations would not change the results of the MACT floor analysis, despite the fact that the majority of the HAP emissions exhaust from the primary stage. Therefore, we made no distinction between single-stage and multistage tube dryers at proposal. However, we agree with the commenters that defining the stages of multistage tube dryers separately would allow facilities the flexibility of choosing different compliance options for each stage of the tube dryer, and we have included separate definitions of primary tube dryer and secondary tube dryer in the final rule. The MACT floor for both primary tube dryers and secondary tube dryers is the same (*e.g.*, 90 percent reduction in emissions), but facilities may choose different control options for the primary and secondary tube dryers. For example, a facility with a multistage tube dryer could use an add-on control device to reduce emissions from the primary tube dryer only and then use emissions averaging to offset the uncontrolled emissions from the secondary tube dryer.

3. Lumber Kilns

Comment: We received comments from representatives of sawmills and wood treating facilities disagreeing with the inclusion of lumber kilns in the PCWP source category. The commenters stated that owners and operators of kilns that are not located at a PCWP facility may be subject to other requirements of the rule, as proposed, that do not truly apply to them, including costly monitoring, recordkeeping, and reporting. One commenter was concerned that the owners and operators of non-colocated lumber kilns could find themselves in violation of the May 15, 2002, case-by-case "MACT Hammer" deadline even though they did not anticipate being included in the rule, as proposed, and thus did not apply for the case-by-case consideration.

Response: At proposal, we broadened the PCWP source category to include non-colocated lumber kilns (*i.e.*, lumber kilns located at stand-alone kiln-dried lumber manufacturing facilities or at any other type of facility). In the preamble to the proposed rule, we noted that if non-colocated lumber kilns were not included in the PCWP NESHAP, then kiln-dried lumber manufacturing could be listed as a major source category under section 112(c) of the CAA in the future, requiring a separate CAA section 112(d) rulemaking and potentially becoming separately subject to the provisions of section 112(g) of the CAA as well. We felt it was reasonable to include non-colocated lumber kilns in the PCWP source category because the design and operation of lumber kilns are essentially the same regardless of whether the kilns are located at a sawmill or are colocated with PCWP or other types of manufacturing operations. At proposal, we noted that there are no currently applicable controls at any lumber kilns and that it would be both more efficient and expeditious to include all lumber kilns in the MACT analysis for the final PCWP rule than to separately address them in a rulemaking that likely would not result in meaningful emissions reductions from lumber kilns. In addition, we noted that including all lumber kilns in the final PCWP MACT results in placing them on a faster schedule for purposes of future residual risk analysis under CAA section 112(f).

In an attempt to better understand the concerns of the commenters, we met with wood products industry representatives who requested that lumber kilns be included in the PCWP source category and with the commenters who disagreed that non-colocated lumber kilns should be included in the PCWP source category. After consideration of concerns expressed by all of the commenters on this issue, we maintain that it is more efficient for EPA, State regulators, and lumber kiln operators for EPA to include all lumber kilns in the final PCWP NESHAP. Because the MACT floor determination for lumber kilns is no emission reduction (as explained in the proposal preamble), there will not be a significant monitoring, recordkeeping, and reporting burden for facilities with only non-colocated lumber kilns. Only those facilities that are major sources of HAP emissions are subject to the final PCWP NESHAP. Facilities with non-colocated lumber kilns that are classified as major sources of HAP must submit an initial notification form required by the final PCWP NESHAP and the Part 1 "MACT Hammer" application required by section 112(j) of the CAA. We note that both of these forms simply ask the facilities to identify themselves to EPA. We acknowledge that operators of non-colocated lumber kilns were not aware that they were included in the PCWP source category until the proposed PCWP NESHAP was printed in the **Federal Register** on January 9, 2003, and therefore, would not have known to submit a Part 1 application by May 15, 2002.

4. Regulated HAP

Comment: One commenter objected to the fact that the proposed rule only set standards for six HAP. The commenter asserted that, according to the CAA and *National Lime Ass'n* v. *EPA*, 233 F.3d 625, 633–634 (D.C. Cir. 2000), we are required to set standards for every HAP listed in CAA section 112(b)(1) emitted by PCWP operations, not just the ones that are the easiest to measure. Other commenters disagreed and noted that a requirement that EPA impose an emission standard for every listed HAP, without regard to whether or not there are applicable methods for reducing HAP emissions or whether the MACT floor sources actually use such method, contradicts the plain language of the statute. These commenters contended that the statute specifically frames the inquiry in terms of degrees of reduction.

Response: Today's final PCWP rule contains numerical emission limits in terms of methanol, formaldehyde, THC, or total HAP (which is defined in the final rule as the sum of six HAP including acrolein, acetaldehyde, formaldehyde, methanol, phenol, and propionaldehyde). The nationwide PCWP emissions of total HAP are 18,190 tons/yr, which is 96 percent of the nationwide emissions of all HAP (19,000 tons/yr) emitted by PCWP facilities. The six HAP that comprise total HAP are found in emissions from all PCWP product sectors that contain major sources and in emissions from most process units. At proposal, when we stated that other HAP are emitted "in low quantities that may be difficult to measure," we were referring to HAP that are often emitted at levels below test method detection limits (68 FR 1276, January 9, 2003). Our data clearly show that these other HAP are difficult or impossible to measure because they are either emitted in very low quantities or are not present. Such low quantities are not detectable by the applicable emission testing procedures (which are sensitive enough to detect HAP at concentrations below 1 part per million (ppm)). Many of these other HAP were detected in less than 15 percent of test runs, or for only one type of process unit.

Based on our emissions data, we determined that methanol, formaldehyde, THC, or total HAP are appropriate surrogates for measuring all organic HAP measurably-emitted by the PCWP source category. The PBCO and emissions averaging compliance options in today's final PCWP rule are based on total HAP. Review of the emission

factors used to develop the emissions estimates for the PCWP source category indicates that uncontrolled emissions of HAP (other than the six HAP) are always lower than emissions of the six HAP for every process unit with MACT control requirements. Thus, process units meeting the PBCO based on total HAP also would have low emissions of other organic HAP. The emissions averaging provisions and add-on control device compliance options involve use of add-on APCD. The available data show that a reduction in one predominant HAP (or THC) correlates with a reduction in other HAP if the other HAP is present in detectable quantities and at sufficient concentration. The data also show that the mechanisms in RTO, RCO, and biofilters that reduce emissions of formaldehyde and methanol reduce emissions of the remaining HAP. In addition, an analysis of the physical properties of the organic HAP emitted from PCWP processes indicates that nearly all of the HAP would be combusted at normal thermal oxidizer operating temperatures. Today's standards are based on the use of add-on control devices because the available emissions data do not reveal any process variables that could be manipulated (without altering the product) to achieve a quantifiable reduction in emissions. Furthermore, nothing in the data suggests that process variables could be manipulated in a way that would alter the relationship between formaldehyde and methanol reduction and reduction of other HAP. We determined that it is appropriate for the final PCWP rule to contain compliance options in terms of total HAP, THC, formaldehyde, or methanol because the same measures used to reduce emissions of these pollutants also reduce emissions of other organic HAP.

B. Overlap With Other Rules

1. Overlap With Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP

Comment: Commenters expressed support for our proposal to regulate emissions from combustion units used to direct fire dryers and to exclude these emissions from the requirements of the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP. However, the commenters expressed concern about potential NESHAP applicability questions that could arise during short periods when the exhaust gases from these combustion units are not exhausting through the dryers and would bypass any controls applied to these dryers. The commenters noted that in some of the combustion units associated with direct-fired dryers, a small percentage of combustion gas is routed to indirect heat exchange and then is normally and predominantly routed to direct-fired gas flow. According to the commenters, in these hybrid units, typically only a small fraction of combustion gas (*e.g.*, less than 10 percent of total capacity) is routed to indirect heat exchange for hot oil/steam generation. This fraction of the combustion unit exhaust then generally exhausts through the direct-fired dryers and the emissions are treated by the add-on control device at the dryers' outlet. However, under certain circumstances (*e.g.*, during startups, shutdowns, emergencies, or periods when dryers are down for maintenance but steam/thermal oil is still needed for plant and/or press heat), some systems may exhaust directly to the atmosphere without passing through the direct-fired dryers and the associated control systems. The commenters recommended that this small subset of combustion units be assigned a primary purpose (based on the predominant allocation of British thermal units per hour (Btu/hr) capacity and/or predominant mode of operation) and regulated accordingly. In the above example, the commenters assumed that the primary purpose is as a direct-fired dryer, such that the equipment would be subject to the final PCWP MACT and not to the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP.

Response: In considering the commenters' request, we reviewed available information on direct-fired dryers and the associated combustion units at PCWP facilities. The available information indicates that there are many configurations of combustion units, dryers, and thermal oil heaters in the PCWP industry. While some systems have the hybrid configurations described by the commenters whereby a portion of the combustion gas is routed to indirect heat exchange, other systems retain all of the combustion gas within the direct-fired system. We do not have sufficient information (and no such information was provided by the commenters) to fully evaluate the need for a primary purpose designation for PCWP combustion units, to establish the percentage-of-operating-time or British thermal unit (Btu) limits for such a primary purpose designation, or to determine MACT for combustion units that would meet the primary purpose designation. For example, we do not know how many combustion units are configured to incorporate both indirect and direct heat exchange, and for these units we do not know the amount of time or the percentage of Btu allocation that is devoted to indirect heat exchange or the controls used to reduce emissions during indirect heat exchange. We expect that all of these factors vary substantially from facility to facility for those facilities that have these hybrid combustion units. We also lack information on the emissions reduction techniques (*e.g.*, control devices) applied to combustion units associated with direct-fired PCWP dryers that may bypass the dryers for some unknown percentage of time. Therefore, we feel it would be inappropriate for us to establish a primary purpose designation which could inadvertently allow facilities to configure their systems to direct a portion of their uncontrolled emissions to the atmosphere without these emissions' being subject to the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP. Also, we wish to clarify that the final PCWP rule regulates only that portion of emissions from a combustion unit that are routed through the direct-fired dryers. Any emissions from a combustion unit that are not routinely through the direct-fired dryers would be subject to the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP. Therefore, if the emissions from a combustion unit are split such that only a portion of the emissions are routed through a direct-fired dryer, then the combustion unit would be subject to both rules.

For those occasions when a facility must shut down its direct-fired dryers but still wants to operate the combustion unit to heat oil for the press, the facility could propose in its startup, shutdown, and malfunction (SSM) plan to route exhaust through the thermal oil heater (and then to the atmosphere) during these periods. The permitting authority would then decide on a facility-specific basis if heating of the thermal oil heater (and the associated uncontrolled emissions) should be allowed during dryer SSM considering the amount of time that this condition occurs, the fraction of combustion unit Btu used to heat the thermal oil heater, and the type of control used to reduce combustion unit emissions.

2. Overlap With Wood Building Products (WBP) NESHAP

Comment: Commenters on the proposed Wood Building Products (Surface Coating) rule (subpart QQQQ to 40 CFR part 63) asserted that neither asphalt-coated fiberboard nor ceiling tiles are coated with HAP-containing

materials and that regulating such products would be burdensome. These commenters requested that we include asphalt coating of fiberboard and ceiling tiles in today's final PCWP rule by including these coating operations under the definition of miscellaneous coating operations (for which the proposed MACT was no emissions reductions), so that these operations would be subject to the final PCWP rule and not the WBP rule, as proposed.

Response: In the proposed rule, we addressed overlap between the WBP and PCWP NESHAP by including specific surface coating activities (which occur onsite at a PCWP manufacturing facility) in the definition of "miscellaneous coating operations." Inclusion of these activities in the definition of miscellaneous coating operations means that these activities are subject to the final PCWP rule and not to the WBP rule, as proposed. We made changes to the definition of miscellaneous coating operations in today's final rule in response to the public comments we received on the proposed WBP rule relating to asphalt-coated fiberboard and ceiling tiles.

We evaluated the types of coatings and processes used to make asphalt-coated fiberboard and found that only a few facilities in the United States make these products, with varying manufacturing and coating processes. An asphalt emulsion can be added during the fiberboard forming process, or asphalt can be applied to the fiberboard substrate. Information we collected on asphalt coatings suggests that they contain no HAP. Depending on the company and the process, the coating can be applied before or after the final dryer with the product allowed to air dry. Ceiling tiles are usually coated using non-HAP slurries of titanium dioxide and various clays, and no organic solvents are used. Most of the coatings associated with these types of products are applied during the substrate forming process (*i.e.*, to the wet mat being formed) or prior to the final substrate drying operation, fiberboard coating operations (including those used in the manufacture of asphalt-coated fiberboard and ceiling tiles). Because no HAP are contained in the above-mentioned coatings, the coatings are applied as part of the manufacturing process, and MACT for these coating processes is no emissions reductions, we changed the definition of miscellaneous coating operations to include "application of asphalt, clay slurry, or titanium dioxide coatings to fiberboard at the same site of fiberboard manufacture." These products are not subject to the final WBP surface coating rule.

C. Amendments to the Effluent Guidelines for Timber Products Processing

Comment: Several commenters requested that we address potential conflicts between the PCWP rule as proposed and the effluent guidelines for the Timber Products Processing Point Source Category. These commenters noted that the effluent guidelines state that "there shall be no discharge of process wastewater pollutants into navigable waters." However, according to the commenters, at the time that statement was written, air pollution controls were not common, and EPA was not aware of the large volumes of water that can be produced by APCD. The commenters recommended that we address this issue by revising the effluent guidelines at 40 CFR part 429. Specifically, these commenters asked us to amend the definition of process wastewaters at 40 CFR part 429.11(c) so that the discharge prohibition in 40 CFR part 429 would not apply to wastewaters associated with APCD operation and maintenance when installed to comply with the final PCWP MACT rule. These commenters asserted that effluent limitations for these wastewaters should be developed by permit writers on a case-by-case basis based upon best professional judgment. These commenters noted that the language we included in the preamble to the proposed rule would generally accomplish this purpose with some minor changes (see 68 FR 1276, January 9, 2003). The commenters also provided rationale and data to support their recommendation. The commenters contended that we: (1) Underestimated the volume of wastewater that would be generated by the application of MACT and as a result, underestimated the associated costs of disposing of this wastewater; (2) failed to address the achievability/feasibility of MACT if the discharge of air pollution control wastewaters is prohibited; and (3) did not consider wastewater from air pollution control devices when the Timber Products zero discharge effluent guidelines were originally developed. The commenters submitted several case studies to demonstrate the variability in the volume of wastewater generated at various PCWP facilities and to show how each facility currently recycles, reuses, and disposes of wastewater generated from the operation and maintenance of RTO, WESP and biofilters. The commenters also argued that the available data do not support a conclusion that wastewaters generated from MACT control devices can, with Best Available Technology (BAT), be managed in a way that does not involve a discharge.

Response: At the time we proposed the PCWP rule, we indicated that we would consider amending the definition of process wastewater in 40 CFR part 429 to exclude those wastewaters generated by APCD operation and maintenance when installed to comply with the proposed PCWP NESHAP. We indicated in the preamble to the proposal that we would amend the definition of process wastewaters if information and data were submitted to support the industry's assertions that PCWP facilities in certain subcategories would not be able consistently to achieve the effluent limitations guidelines and standards applicable to them if they were to comply with the proposed PCWP NESHAP. As part of the PCWP proposal, we described with specificity how we would revise 40 CFR part 429 if we were convinced that such revisions were appropriate and solicited data and information.

Based on the data and information submitted by the commenters, we have concluded that facilities subject to 40 CFR part 429, subpart B (Veneer subcategory), subpart C (Plywood subcategory), subpart D (Dry Process Hardboard subcategory), and subpart M (Particleboard Manufacturing subcategory) are unable to comply consistently with the existing 40 CFR part 429 effluent limitations guidelines and standards, which prohibit the discharge of process wastewater pollutants, because of the volume of wastewaters generated by APCD that are installed to comply with the final PCWP NESHAP and because the technology basis for those effluent limitations guidelines and standards is insufficient, in light of that wastewater volume and the pollutant content, to achieve the prohibition on process wastewater discharges for these NESHAP-related APCD wastewaters. Therefore, we are excluding from the definition of process wastewaters in 40 CFR 29.11(c) the following wastewaters associated with APCD used by PCWP facilities covered by subparts B, C, D, and M to comply with 40 CFR 63.22: wastewater from washout of thermal oxidizers and catalytic oxidizers, wastewater from biofilters, and wastewater from WESP used upstream of thermal oxidizers or catalytic oxidizers.

In addition, we agree with comments that we will need considerably more data and information to promulgate new effluent limitations guidelines and standards for the process wastewaters at issue today. In particular, we will need

information to adequately characterize the quantity and quality of wastewater that would be generated as result of compliance with the MACT standards. The volume and pollutant content of wastewater generated at these facilities are related to production processes, air pollution control equipment that generate wastewater, the extent of opportunities for internal recycling of wastewater, and the availability of other process uses for wastewater. Until we promulgate effluent limitations guidelines and standards for pollutants in these process wastewaters, Best Practicable Technology (BPT) and BAT effluent limitations should be established on a case-by-case basis under 40 CFR 125.3. Thus, individual facilities seeking a discharge permit will have the opportunity, on a case-by-case basis, to characterize and obtain discharge allowances for their wastewaters from APCD installed to comply with the final PCWP NESHAP. The permit writer would be expected to determine, based upon best professional judgment (BPJ), the appropriate effluent limitations for these APCD wastewaters. (*See* 40 CFR 125.3.) The permit writer can take into account facility-specific information on wastewater volumes and pollutants, available wastewater control and treatment technologies, costs and effluent reduction benefits, receiving water quality, and any applicable State water quality standards. At a later date, we expect to consider whether to amend the existing effluent limitations guidelines and standards for the Timber Processing Industry to cover these process wastewaters. Such an effort would involve gathering and analyzing the information and data necessary to establish revised categorical effluent limitations affecting subparts B, C, D, and M of 40 CFR part 429 for these APCD wastewaters generated in complying with the final PCWP NESHAP.

Today's amendment to the final rule is based on regulatory language included in the preamble accompanying the proposed NESHAP for PCWP facilities (68 FR 1276, January 9, 2003). The preamble described the relationship of the proposed MACT rule to the amendment to 40 CFR part 429 under consideration. The preamble explained that the entities affected by the proposed MACT rule would also be affected by the proposed amendment to 40 CFR part 429; presented both the terms and substance of the amendment under consideration; and described the subjects and issues involved. In addition, we solicited comments on whether to amend 40 CFR 429.11(c) and information relevant to that decision. While at that time we indicated that we were considering employing a direct final rule to promulgate any such amendment, we have concluded with support from commenters that that procedure was unnecessary and instead are taking final action on the amendment today without further process.

D. Existing Source MACT

1. OSB Strand Dryers

Comment: One commenter requested that further consideration be given to the emission standards for low-temperature OSB conveyor strand dryers. The commenter stated that because these conveyor strand dryers emit less HAP than rotary strand dryers and have been recognized as best available control technology (BACT) in Minnesota, they should be exempted from control requirements in the final PCWP rule. The commenter noted that the 12 conveyor strand dryers used by their company have three drying zones, each with its own heating system and exhaust vent(s). When drying hardwoods, no VOC control is required; however, when drying pine the company controls emissions from zones 1 and 2. Zone 3 serves as a final conditioning zone and is exhausted to the atmosphere without need for VOC control. The proposed PCWP rule would have required the sum of the emissions from all three zones to be reduced to MACT levels (*e.g.*, 90 percent reduction).

Response: The MACT analysis we conducted at proposal treated conveyor strand dryers as a separate equipment group from rotary strand dryers. We noted that rotary strand dryers operate at much higher inlet temperatures (*e.g.*, often greater than or equal to 900°F) than conveyor strand dryers (*e.g.*, typically less than 400°F) and that rotary dryers provide greater agitation of the wood strands than conveyor strand dryers. As a result, the emissions from conveyor strand dryers are lower than the emissions from rotary strand dryers. The emissions test data we have for conveyor strand dryers (only formaldehyde and THC data are available) indicate that formaldehyde emissions from conveyor strand dryers are 1 to 2 orders of magnitude lower than for rotary strand dryers. The THC emissions are also lower for conveyor strand dryers than for rotary dryers. Our MACT analysis for conveyor strand dryers at proposal concluded that three of the eight conveyor strand dryers used in the U.S. operated with process incineration. Because there are less than 30 conveyor strand dryers, the MACT floor was based on the control level achieved by the third best-controlled dryer. Thus, at proposal, we determined that the MACT floor control system for new and existing conveyor strand dryers was the emissions reductions achievable with incineration-based control. We included one definition of "strand dryers" in the proposed PCWP rule since MACT for both rotary and conveyor strand dryers was represented by incineration-based control.

As pointed out by the commenter, conveyor strand dryers have distinct zones, with each zone having its own heating system and exhaust. We reviewed our MACT survey data and learned that all of the conveyor strand dryers in the U.S. have three zones. Upon further scrutiny of the MACT analysis at proposal, we learned that the three conveyor strand dryers that formed the basis for the MACT floor at proposal were routing the emissions from zone 1 only to an onsite combustion unit for incineration. The remaining five conveyor strand dryers have no HAP control. Thus, our conclusions regarding the MACT floor for conveyor strand dryers at proposal were overstated. The third best-controlled conveyor strand dryer has incineration-based control only on zone 1 as opposed to controls on all zones. Therefore, we revised our analysis to reflect that the MACT floor for existing conveyor strand dryers is the emissions reduction achievable with incineration-based control on zone 1. To implement this change, we added definitions for "conveyor strand dryer" and "conveyor strand dryer zone" to the final rule.

The commenter mentioned operating 12 conveyor strand dryers. Six of these conveyor strand dryers are located at new plants that were not included in our pre-proposal MACT floor analysis. These six conveyor strand dryers route emissions from zones 1 and 2 to a closed-loop incineration system for emissions control. Given that newer facilities are incinerating conveyor strand dryer exhaust from zones 1 and 2, we determined that the MACT floor for conveyor strand dryers at new sources is the emissions reductions achievable with incineration-based control for exhausts from zones 1 and 2.

As described in the promulgation BID and supporting documentation, we determined that the environmental benefit of controlling additional conveyor dryer zones would not justify the cost for existing or new conveyor strand dryers.

2. Wood Products Press Enclosures

Comment: Many commenters argued that EPA Method 204 compliance should not be a part of the PCWP MACT floor for presses because most of the press enclosures that were described in the industry survey data as having permanent total enclosures (PTE) were never certified by Method 204 criteria. The commenters noted that most of these enclosures were designed according to Method 204 design criteria; however, the permits for these facilities never required them to comply fully with Method 204 certification. The commenters contended that, of the 26 presses identified as having PTE, only 2 had actually undergone Method 204 certification.

The commenters also argued that Method 204 cannot be applied practically to the hot presses that are used at PCWP facilities. The commenters stated that Method 204 was developed for applications where the emissions have consistent properties; however, the temperature and density of emissions from a typical multiple-opening batch wood products press are constantly changing as the press opens and closes, which creates layers of gases with different physical properties within the enclosure. According to the commenters, instead of mixing and exiting the enclosure, the layers of gases can accumulate. The layers of gas in the upper region of the enclosure have a higher temperature and pressure than the air outside the press, and the lower layers of gas have a lower temperature and pressure than the air outside the press. The commenters maintained that to force the gases outside the enclosure, the operator would have to increase the airflow through the system to a rate that is three to four times higher than would be necessary for an enclosure operating at a homogenous temperature and pressure. The commenters contended that, while many of the wood products presses were designed to follow the Method 204 design criteria, they were not designed to overcome this phenomenon and may not be able to certify that all of the emissions are captured and contained.

The commenters recommended that we address the press capture efficiency issue by implementing work practice requirements for enclosures. The commenters suggested that we replace the proposed definition of PTE with a definition that includes four of the five design criteria found in EPA Method 204, and replaces the requirement that "all VOC emissions must be captured and contained for discharge through a control device" with a requirement that "fugitive emissions shall be minimized through appropriate operation and maintenance procedures applied to the PTE system."

Response: At proposal, we stated that the MACT floor determination for reconstituted wood products presses was based, in part, on the assumption that a sufficient number of these presses had enclosures that had been certified as PTE according to EPA Method 204. Presses equipped with Method 204 certified PTE would be allowed to claim 100 percent capture efficiency, and thus, the rule requirements (*e.g.*, 90 percent emissions reductions) would effectively apply only to the captured emissions.

Based on our review of available permit information, we agree with the commenters' assessment that few permits have required full Method 204 certification for reconstituted wood products press enclosures, even though many of these press enclosures were constructed based on the Method 204 design criteria. We also agree that the nature of the batch pressing operations in the PCWP industry can make Method 204 certification difficult. Unlike in the printing and publishing industry, for which Method 204 was originally developed, batch PCWP presses are heated, cyclical operations. Because of the internal pressurization within PCWP press enclosures, small amounts of fugitive emissions may appear around the outside of these enclosures. The percentage of press emissions that may be escaping from some of these enclosures has not been quantified but is expected to be small based on available information. We understand the commenters' concern that, due to the presence of these small amounts of fugitive emissions, facilities cannot certify that their Method 204 designed press enclosure can achieve all the Method 204 criteria, in particular the criteria in Method 204 section 6.2 which states that "All VOC emissions must be captured and contained for discharge through a control device." While we feel that PCWP press enclosures should be designed to capture emissions under normal operating conditions, we do not feel it is necessary for PCWP facilities to increase the flow rate from their press enclosures (and the size of their APCD) three to four times to overcome the pressurization within the press enclosure. For the PCWP industry, we feel it would be particularly inappropriate to require such a large increase in exhaust flow to the APCD because the exhaust flows from PCWP process equipment, including presses, are already high volume, low concentration emission streams. High volume, low concentration exhaust streams generally are more costly to treat than low volume, high concentration emission streams. The best-performing press enclosures that defined the MACT floor surround heated presses and are all expected to have pressurization within the press enclosure. In addition, we note that board cooler exhaust is sometimes directed into press enclosures and that enclosures around board coolers have not been certified according to EPA Method 204.

Therefore, instead of requiring EPA Method 204 certification of PCWP press and board cooler enclosures as proposed, today's final rule sets forth slightly different criteria for press and board cooler enclosures. These criteria are based on the design criteria for PTE included in EPA Method 204, as recommended by the commenters; however, the criterion to capture and contain all VOC emissions has been replaced with a requirement that the enclosure be "designed and maintained to capture all emissions for discharge through a control device." To effect this change, we removed references to PTE in the final rule and replaced the proposed definition of PTE with a new definition of "wood products enclosure" that lists the design criteria that must be met to comply with MACT. Enclosures that meet the definition of wood products enclosure do not have to test to determine the capture efficiency of these enclosures, but can assume 100 percent capture, such that the control requirements (*e.g.*, 90 percent reduction) apply only to the captured emissions (*i.e.*, the small amount of fugitive emissions outside the enclosure is disregarded).

We also replaced the proposed definition of "partial enclosure" with a slightly revised definition of "partial wood products enclosure" to eliminate any references to PTE in the final rule. Because the capture efficiency of partial wood products enclosures is unknown, today's final rule requires facilities to test the capture efficiency of partial wood products enclosures using EPA Methods 204 and 204A–F (as appropriate), or using the alternative tracer gas procedure included in appendix A to subpart DDDD of 40 CFR part 63. In addition, facilities have the option of using other methods for determining capture efficiency subject to the approval of the Administrator. As was proposed and suggested by the commenters, today's final rule requires facilities using partial wood products enclosures to demonstrate a combined 90 percent capture and control efficiency for those facilities showing

compliance with the percent reduction requirements for APCD. If the partial wood products enclosure does not achieve high capture efficiency, then facilities must offset the needed capture efficiency by achieving a higher destruction efficiency or with emissions averaging (with the press being an under-controlled process unit).

Comment: One commenter objected to the proposed MACT floor for continuous presses and questioned the applicability of EPA Method 204 to continuous presses. The commenter requested that we divide continuous and batch presses into two different process unit groups for the purpose of determining the MACT floor. The commenter provided information from environmental engineering firms and press manufacturers regarding the fundamental differences between the two types of presses. The commenter noted that continuous presses are much longer than batch presses, reaching lengths of 200 feet (ft), which makes them difficult to completely enclose. The commenter was unaware of any continuous presses that have Method 204 certified PTE. The commenter stated that enclosing a continuous press would cause operational problems, such as heat build-up and impaired visibility, which can lead to mechanical failures and unscheduled downtime. The commenter also cited potential safety concerns, such as increased fire risk and the possibility of unhealthy levels of HAP trapped inside the enclosure. The commenter further noted that the capital and operating costs of PTE applied to continuous presses would exceed those associated with batch presses due to the large size of the enclosure and the increased maintenance costs resulting from heat build-up within the enclosure. In addition, the commenter provided VOC emissions data based on measurements made at different points along the length of one of their continuous presses to demonstrate that emissions from the front stages are minimal and that the majority of emissions are from the last 40 percent of the press length, referred to as the "decompression zone." The commenter contended that gathering the emissions from all stages of the continuous press will result in a more dilute stream, which will be less cost-effective to treat, and that the large volume of exhaust to be treated would likely preclude the use of biofilters, which are more practical for treating smaller volumes of air.

To remedy the situation, the commenter recommended that we divide batch and continuous presses into two different process unit groups for the purpose of determining the MACT floor. Because there are fewer than 30 continuous presses, the MACT floor for existing continuous presses would be determined based on the average emissions limitation achieved by the five best-performing continuous presses. The commenter provided information to support the commenter's contention that none of the continuous presses achieved 100 percent capture and suggested that the MACT floor for capture efficiency is 80 percent capture of emissions from the decompression stages.

Response: As explained in the proposal preamble, we based the MACT floor determinations for PCWP equipment on process units that are similar with respect to design, operation, and emissions. We acknowledge that continuous presses have a different design than multiopening batch presses. However, continuous presses have emissions that are within the same range as those from batch presses on a lb/MSF of board basis. Therefore, we feel it is reasonable to group batch and continuous presses together for purposes of determining the MACT floor. The MACT floor for continuous presses would be the same as the MACT floor for batch presses regardless of whether batch and continuous presses were placed in separate equipment groups. As explained below, we disagree that the MACT floor capture efficiency for continuous presses is 80 percent, as suggested by the commenter.

The commenter was incorrect in suggesting that there are no continuous presses with Method 204 certified PTE. The two existing press enclosures in the PCWP industry identified as being Method 204 certified surround continuous presses. The lengths of these two continuous presses are 41.5 ft and 110 ft. Due to the presence of these presses plus additional continuous presses equipped with total enclosures not certified via Method 204, the MACT floor for new and existing continuous presses is still a total enclosure and incineration-based control or biofilter, regardless of whether or not batch and continuous presses are treated as separate equipment groups. In addition, there is a Method 204 certified PTE around a 181-ft continuous press at a newer PCWP facility (which was not included in original data collection efforts and the pre-proposal MACT floor determination); however, this press has had some operational problems associated with its PTE. It is not clear if the operational problems experienced by this 181-ft-long press are the result of poor PTE design or inherent technical difficulties associated with enclosing long continuous PCWP presses.

Long continuous presses are generally being installed at new PCWP facilities, as opposed to being retrofit at existing facilities. Given that there is at least one long continuous press (110 ft) with a Method 204 certified PTE that has not experienced operational problems with its press enclosure, we feel that wood products enclosures (as defined in today's final rule) can be designed around long continuous presses. We recognize that higher cost may be associated with wood products enclosures around long continuous presses than for batch presses, but the CAA does not allow us to consider cost at the MACT floor control level.

We note that enclosures greater than 200 ft in length are common in the printing/publishing industry. However, we do recognize there are differences in the enclosures used in the printing/publishing industry and those in the PCWP industry. Although not cyclical in operation like batch presses, continuous presses are heated operations and may also have internal pressurization issues similar to those raised by the commenters for batch presses. Therefore, we feel it is appropriate for the same definition of wood products enclosure promulgated for batch presses to apply to long continuous presses as well (as opposed to Method 204 certification).

3. MACT Floor Determinations of No Emissions Reductions

Comment: Industry commenters supported our proposed MACT floor determinations of no emissions reductions for some process units, arguing our approach was fully consistent with applicable case law in the U.S. Court of Appeals for the D.C. Circuit. EPA properly determined that the average of the best-performing 12 percent of certain existing PCWP process units did not reflect the use of any control technology, and that no other universally applicable variables would affect HAP emissions, industry commenters stated. The commenters also claimed that EPA looked at pollution prevention (P2) measures and other approaches to determining the MACT floor, found none that are universally applicable, and therefore was permitted to base a no emissions reduction floor on the PCWP record.

Response: As explained in the proposal preamble and supporting documentation, for those process units not required to meet the control requirements in the PCWP rule as proposed, we determined that: (1) the MACT floor level of control is no

emissions reductions, and beyond-the-floor control options are too costly to be feasible; or (2) insufficient information is available to conclude that the MACT floor level of control is represented by any emissions reductions. We based our MACT floor determinations for PCWP emission sources on the presence or absence of an add-on air pollution control device because we are not aware of any demonstrated P2 techniques that can be universally applied across the industry, and we have no information on the degree of emissions reduction that can be achieved through P2 measures. Therefore, to our knowledge the use of add-on controls is the only way in which PCWP sources can currently limit HAP emissions, and the only way to identify the MACT floor for these sources is to identify a level that corresponds to that achieved by the use of add-on controls. When determining the MACT floor, we ranked the process units by control device rather than by actual unit-specific emissions reductions because we have limited inlet/outlet emissions data. Based on the available information, we are not aware of any significant design or operational differences among each type of control system evaluated that would affect the ranking of process units. Furthermore, we are not aware of factors other than the type of control system used that would significantly affect the ranking of process units. An analysis of the available emissions data does not reveal any process variables that can be manipulated (without altering the product) to achieve a quantifiable reduction in emissions. Ranking process units according to control device, we determined that the MACT floor is no emissions reductions for several process unit groups including press predryers, fiberboard mat dryers, and board coolers at existing affected sources; and dry rotary dryers, veneer redryers, softwood plywood presses, hardwood plywood presses, engineered wood products presses, hardwood veneer dryers, humidifiers, atmospheric refiners, formers, blenders, rotary agricultural fiber dryers, agricultural fiber board presses, sanders, saws, fiber washers, chippers, log vats, lumber kilns, storage tanks, wastewater operations, miscellaneous coating operations, and stand-alone digesters at new and existing affected sources. As explained in the promulgation BID and supporting documentation, we also determined that beyond-the-floor control options are too costly for these process unit groups.

At proposal, we requested comment on whether no emissions reductions for miscellaneous coating operations and for wastewater operations is appropriate (68 FR 1276, January 9, 2003). We also requested that commenters on this issue submit any information they might have on HAP or VOC emissions from miscellaneous coating operations and wastewater operations. However, no additional information on these operations was received from any of the commenters on the proposed rule. Following proposal, we reviewed our MACT analyses for miscellaneous coating and wastewater operations, as described in the following paragraphs and in the promulgation BID and supporting documentation. For miscellaneous coating operations, we gathered some additional information and were able to revise our conclusions regarding MACT in the absence of specific information on the emissions reduction achieved. However, we have no more reason to feel now than we did at proposal that PCWP wastewater operations are in fact subject to any emission control measures.

Based on the available information, we have no basis to conclude that the MACT floor for new or existing sources is represented by any emission reductions for several of miscellaneous coating processes (*i.e.*, anti-skid coatings, primers, wood patches applied to plywood, concrete forming oil, veneer composing, and fire retardants applied during forming), and we determined that there are no cost-effective beyond-the-floor measures to reduce HAP from these coating processes. However, some facilities reported use of water-based (non-HAP) coatings in their MACT survey responses for other types of coatings (including edge seals, nail lines, logo paint, shelving edge fillers, and trademark/gradestamp inks). Other facilities reported use of solvent-based coatings for these processes. In some instances, a few respondents provided information on the percent HAP content of a solvent-based coating. Solvent-based coatings do not always contain HAP (*e.g.*, the solvent may be mineral oil which does not contain HAP), and water-based coatings typically do not contain HAP. Thus, many of the coatings reported in the MACT survey responses are non-HAP coatings. While the emission reduction achieved as a result of coating substitutions cannot be determined, it is clear that use of non-HAP coatings represents the MACT floor because of the large number of facilities reporting use of non-HAP coatings. Beyond-the-floor options were not considered for edge seals, nail lines, logo paint, shelving edge fillers, and trademark/gradestamp inks because no further emissions reductions can be achieved than through use of non-HAP coatings. Based upon our revised MACT analysis, the final PCWP rule requires use of non-HAP coating for processes identified as group 1 miscellaneous coating processes.

The definition of non-HAP coating included in the final rule was based on the description of non-HAP coatings in the final WBP NESHAP (subpart QQQQ to 40 CFR part 63). This definition allows for unavoidable trace amounts of HAP that may be contained in the raw materials used to produce certain coatings. Through the definition of group 1 miscellaneous coatings in the final rule, kiln-dried lumber is excluded from the requirement to use non-HAP coatings because application of coatings used at kiln-dried lumber manufacturing facilities is not part of the PCWP source category. Although trademarks/gradestamps are applied to kiln-dried lumber, lumber kilns are the only processes at kiln-dried lumber manufacturing facilities covered under the PCWP source category.

For wastewater operations, we concluded that we had insufficient information to conclude that the MACT floor level of control is represented by any emissions reductions. The available information on wastewater operations collected as part of the MACT survey of the PCWP industry and information contained in State permits indicated that these sources of emissions were not the subject of control requirements and were not expected to be significant sources of HAP or VOC emissions. As stated above, we received no comments containing additional information on emissions reduction measures or HAP/VOC emissions from wastewater operations. Thus, we have no more reason to feel now than we did at proposal that PCWP wastewater operations are in fact subject to any control measures. As a result, since no information shows that these PCWP operations use add-on controls, there is no identifiable numerical emissions level that would correspond to a MACT floor level reflecting the use of controls, and the only floor level demonstrable based on current data is no emissions reduction. Furthermore, given that our best data show that the emissions from wastewater operations are less than 1 ton/yr, we concluded that application of the control measures mentioned above would not be cost effective beyond-the-floor options. In response to the commenter's objection to the incompleteness of the data set for these PCWP operations, we note that the D.C. Circuit does not require EPA to obtain complete data as long as we are able to otherwise estimate the MACT floor

(*Sierra Club* v. *EPA*, 167 F.3d 658,662 (D.C. Cir. 1999)). Unlike dryers and presses at PCWP plants, wastewater operations have not been subjected by permitting authorities to controls for HAP emissions. We expended much effort in the early stages of the project gathering complete and accurate information on the PCWP processes with the most potential for HAP emissions and the greatest potential for emission control (*i.e.*, the processes that have been the focus of permit requirements limiting HAP/VOC emissions) and the final PCWP rule addresses emissions from these process units.

Had we been given reason to feel that there were emissions control measures associated with wastewater operations, we would have gathered more information for these processes earlier in the project. Even though we have determined that the current MACT floor for these PCWP operations is no emission reduction, since available information indicates they are not controlled, the HAP emissions from wastewater operations (and other PCWP sources with MACT determinations reflecting no emissions reductions) will be considered further when we review residual risk as required under section 112(f).

E. New Source MACT

Comment: One commenter objected to our determination that MACT is the same degree of control for new and existing sources for many process units based on the fact that the best technology is the same for new and existing sources (*i.e.*, incineration-based controls or biofilters). The commenter pointed out that, according to the proposal BID, the maximum percent control efficiency is in the upper 90s for THC, formaldehyde, and methanol. The commenter noted that the CAA requires the MACT floor to be based on the degree of emissions reduction achieved in practice by the best-controlled similar source. Thus, the commenter requested that we revise the new source MACT requirements for process units based upon the greatest reductions recorded.

Response: As explained in the preamble to the proposed rule and supporting documentation, the MACT floor for both new and existing sources is based on the estimate of the performance achieved through application of RTO, RCO, or biofilters. We acknowledge that some incineration-based controls and biofilters can achieve greater than 90 percent reduction in HAP or THC during a single performance test or a test run within a performance test. However, we also recognize that the percent reduction achieved can vary according to pollutant inlet concentration, a factor that is not directly controllable from a process or control device standpoint. Other unknown factors may also cause variability in control system performance. For example, we have THC percent reduction data for an RTO used to control emissions from three tube dryers and a press at an MDF plant for two emission tests conducted at different times. In 1996, the RTO achieved 92.7 percent reduction of THC, and in 1998 the same RTO achieved 98.9 percent reduction of THC. In addition, we have emissions test data for the same process unit and control system for multiple years, and these data show different emission factors, indicating that variability is inherent within each process unit and control system combination. Thus, we estimate that the best MACT technology achieves 90 percent HAP reductions when variations in operations and measurements are considered.

F. Definition of Control Device

Comment: Several commenters requested that we add scrubbers and adsorbers to the proposed definition of "control device" and that condensers be omitted from the definition. One of the commenters operates a particleboard press that is equipped with a condenser that condenses steam from the press exhaust and then routes the condensate to an onsite wastewater treatment system. The remaining noncondensed gases are combusted in an onsite boiler as supplemental fuel. This commenter would like to be able to comply with the PBCO for reconstituted wood products presses rather than demonstrate compliance with one of the add-on control system compliance options (*e.g.*, 90 percent emissions reduction) or emissions averaging provisions; however, the commenter noted that PBCO only apply to uncontrolled emission sources. Therefore, the commenter requested that the definition of control device be limited only to those add-on control systems that were designed with HAP removal as the primary goal.

Response: We disagree with the commenters that the proposed definition of control device should be changed. The definition in the final rule does not include scrubbers or absorbers but does include condensers and combustion units that incinerate process unit exhausts. For purposes of MACT standards development, the reason a control device is installed is immaterial. All control devices or techniques that reduce HAP emissions are considered when setting MACT standards. We note that the PBCO were developed and included in the PCWP rule for inherently low-emitting process units or process units with P2 techniques and not for process units with add-on control systems. Therefore, the particleboard press equipped with the condenser and combustion unit described by the commenter cannot comply using the PBCO.

In the proposed PCWP rule, we intentionally omitted absorbers (*e.g.*, wet scrubbers) from the list of potential control devices because these technologies generally are not reliable for reducing HAP emissions. These wet systems may achieve short-term reductions in THC or gaseous HAP emissions; however, the HAP and THC control efficiency data, which range from slightly positive to negative values, indicate that the ability of these wet systems to absorb water-soluble compounds (such as formaldehyde) diminishes as the recirculating scrubbing liquid becomes saturated with these compounds. We wished to limit the examples included in the definition of control device to those devices for which we have data to demonstrate that they are effective in reducing HAP emissions from PCWP facilities. However, we note that the definition includes the phrase "but not limited to" and does not exclude other types of controls. We are aware that new technologies (some of which may be adsorption-based or absorption-based) may be developed that effectively reduce HAP emissions from PCWP sources. The definition of control device does not prevent their development or use.

Facilities using wet scrubbers or WESP to meet the add-on APCD or emissions averaging compliance options can petition the Administrator for approval of site-specific operating requirements to be used in demonstrating continuous compliance. Alternatively, facilities using a wet scrubber or WESP may use a THC CEMS to show that the THC concentration in the APCD exhaust remains below the minimum concentration established during the performance test. In addition, facilities using wet control devices (*e.g.*, wet scrubber or WESP) as the sole means of reducing HAP emissions must submit with their Notification of Compliance Status a plan for review and approval to address how organic HAP captured in the wastewater from the wet control device are contained or destroyed to minimize re-release to the atmosphere such that the desired emission reduction is obtained. Because wet scrubbers or WESP are add-on

APCD and have variable effects on HAP emissions, today's final rule specifies that sources cannot use add-on control systems or wet control devices to meet PBCO. As part of this change, we added a definition of "wet control device" to today's final rule. We note that PCWP facilities demonstrating compliance with the PBCO for process units equipped with any wet control device that effects HAP emissions must test prior to the wet control device.

G. Compliance Options

1. Add-On Control System Compliance Options

Comment: We received a number of comments related to the six add-on control systems compliance options and how these options might be implemented at an actual PCWP facility. One commenter argued that the use of multiple compliance options for add-on control systems will make it difficult for State agencies to determine if a facility is actually in compliance. The commenter pointed out that, if a facility tested for two options but passed only one, it would still be in compliance. However, the commenter stated that the rule as proposed was unclear whether a facility would be in violation if the facility chose to test for one option, failed that test, and then conducted another test to determine compliance with a different option. The commenter contended that this would constitute a violation of the standard, and any retesting to determine compliance with a different option would not reverse the initial violation. Therefore, the commenter requested that we clarify that the option to use the most beneficial results of two or more test methods applies only when these tests are conducted during a single performance test. According to the commenter, any facility that chose to use only one test method during the compliance test would have to accept the results of that test.

Other commenters argued that a facility should be able to switch among the six add-on control options as needed to maintain compliance. To illustrate the necessity of the ability to switch from one add-on control option to another, the commenters provided an example whereby the operator of a veneer dryer might want to demonstrate compliance with the 90 percent THC reduction option (option 1 in Table 1B to the final rule) under certain operating conditions and with the 20 parts per million by volume (ppmv) THC option (option 2 in Table 1B to the final rule) under other operating conditions. One of the commenters also noted that production starts and stops and minor malfunctions are common at PCWP facilities, and most of them do not affect the performance of the air pollution control device. However, frequent SSM events resulting in a low concentration to the inlet of the control device could affect a facility's ability to comply with the percent reduction option. In this case, the commenter stated that the freedom to switch compliance options would be valuable. For these reasons, the commenters requested that we explicitly state in the final PCWP rule that "a facility only need comply with any one of the six options at any one time, and that it can change between them as needed to fit process operating conditions."

Response: We understand the commenters' concerns on this issue and have written the final rule to clarify our intentions regarding how the add-on control system compliance options should be implemented at PCWP facilities. The proposed rule states at 40 CFR 63.2240 that "You cannot use multiple compliance options for a single process unit." We included this provision to prevent PCWP sources from partitioning emissions from a single process unit and then applying different control options to each portion of the emissions stream. The MACT floor determinations and compliance options were all based on the full flow of emissions from process units, and therefore, compliance options should be applied to the same mass of emissions to ensure that the required MACT floor emissions reductions are achieved. When including this restriction, we did not intend necessarily to limit PCWP facilities to only one of the six options for add-on control systems. We did assume that each source would likely select only one option, and that at any point in time for purposes of assessing compliance, the given compliance option would have been pre-selected and reflected as applicable in the source's permit. In fact, in discussions with industry representatives prior to proposal, they expressed concern that the final rule be written to make it clear that a source would only have to comply with one option and not all six.

Based on available data, we expect that most facilities will be able to demonstrate compliance with more than one of the compliance options for add-on control systems. When developing the six compliance options for add-on control systems, we felt that PCWP facilities would conduct emissions testing (*e.g.*, inlet and outlet testing for THC, methanol, and formaldehyde over a range of APCD operating temperatures) and then, based on the results of testing, select the option that provides them with the most operating flexibility as well as an acceptable compliance margin (*i.e.*, select the option that they feel will be easiest for them to meet on a continuous basis under varying conditions). The operating parameter limit to be reflected in the source's permit (*e.g.*, minimum temperature) would be based on the measurements made during the compliant test runs. For example, if test results show that a facility can achieve 90 percent reduction for formaldehyde, 92 percent reduction for methanol, and 94 percent reduction for THC, then the facility may decide to reduce THC emissions by 90 percent, since this option appears to provide the greatest compliance margin. The corresponding operating parameter level measured during the testing (*e.g.*, minimum 15-minute RTO temperature during a three-run test) would then be set as the operating limit in the permit for that source. In this example, if the RTO operating temperature drops below the operating limit, that would be a deviation, and any subsequent retesting done by the facility would presumably be done based on the chosen compliance option (*e.g.*, reduce THC emissions by 90 percent). Determining compliance in this case is relatively straightforward. However, we are aware that State agencies may simply refer to a NESHAP as part of a permit and not stipulate which compliance option the facility must meet. In these cases, we agree with the commenter who was concerned that compliance can be complicated when the referenced NESHAP contains multiple options, and that such a broad reference would not be adequate to identify the particular option (and parameter operating limits) applicable to the source. We also agree that, if a facility selects multiple options under the compliance options for add-on control systems, it should be required to conduct all necessary testing associated with compliance with the selected options concurrently. In addition the facility should obtain permit terms reflecting these options as alternate operating scenarios that clearly identify at what points and under what conditions the different options apply, such that compliance can be determined during a single time frame. For example, if the source wishes to include options 1, 3, and 5 in their permit, then it must perform inlet and outlet testing for THC, methanol, and formaldehyde any time the State agency has reason to require a repeat performance test (if all three options are simultaneously applicable) or test for the single applicable option

that corresponds to the given time and condition (if the options apply as alternate operating scenarios under different conditions). With this approach, we would avoid situations where a facility retests to determine compliance with a compliance option, fails to demonstrate compliance with that option, and then conducts additional testing to determine compliance with other options that are not pre-established as applicable at a later date.

The final rule clarifies our intentions regarding the use of multiple control options with respect to add-on control systems versus the combining of control options for a single process unit. The language in 40 CFR 63.2240 of the final rule has been modified to remove the proposed text stating that a source "cannot use multiple compliance options for a single process unit" and replace it with a statement that a source "cannot combine compliance options in paragraphs (a) [PBCO], (b) [add-on control systems compliance options] or (c) [emissions averaging provisions] for a single process unit." We feel that this wording change clarifies our intention to prevent sources from applying different control options to different portions of the emissions from a single process unit, while leaving open the potential for PCWP facilities to be able to include multiple compliance options for add-on control systems (*i.e.*, one option per defined operating condition) in a State permit. Although add-on controls are used in emissions averaging plans to achieve full or partial control of emissions from a given process unit, the emissions from a single process unit cannot be parceled such that a portion of the emissions meets one of the add-on control system compliance options and another portion is used as part of an EAP. The final rule continues to state that sources must meet at least one of the six options for add-on control systems.

2. PBCO Limits

Comment: Several commenters requested that PCWP facilities be allowed to use add-on control methods to achieve the PBCO limits. The commenters argued that allowing compliance with the PBCO using APCD is consistent with other MACT rules and P2 approaches. According to the commenters, numerous NESHAP allow emissions limits to be reached using add-on controls, P2 techniques, or a combination of both. The commenters stated that there was no legal or policy basis for imposing restrictions on the use of PBCO in the PCWP MACT. The commenters also stated that using add-on controls to comply with PBCO will benefit facilities that have process units that emit low levels of HAP. According to the commenter, some companies have already implemented P2 strategies that have been established as BACT in a prevention of significant deterioration (PSD) permit. Because these P2 strategies may fall short of the PBCO, companies implementing these strategies would be unable to achieve compliance with the proposed rule without abandoning the P2 strategy and installing full control. The commenters also stated that incorporating add-on controls in the PBCO would provide incentives to find low-energy pollution control equipment. The commenters gave an example whereby part of the emission unit exhaust could be used as combustion air for an onsite boiler. The commenters noted that in most cases, the boiler could only handle a portion of the exhaust from multiple dryer stacks. The commenters stated that by combining this type of partial control approach with low-temperature drying, a facility may be able to meet the applicable dryer PBCO limit. According to the commenters, in this case, allowing for partial control would exclude the need for RTO technology and would provide a net benefit to the environment with a reduction of collateral oxidizer emissions. The commenters gave another example in which a facility with a conveyor strand dryer could send the exhaust from the first dryer section to a burner and then send the heat back to the dryer; the emissions from the remaining dryer sections would be uncontrolled if the total emissions were below the PBCO limit. In a third example provided by the commenters, a facility would remove enough HAP to comply with the PBCO limit using a scrubber, which would require less energy than incineration.

Response: As in the proposed rule, the final rule does not allow sources to comply with the PBCO through the use of add-on control systems. Our intention for including the PBCO was to provide an alternative to add-on controls (*e.g.*, allow for and encourage the exploration of P2, which currently has not been demonstrated as achieved by PCWP sources) and not to create another compliance option for sources equipped with add-on control systems that could inadvertently allow add-on control equipped systems to not perform to expected control efficiencies. Sources equipped with add-on control systems already have six different compliance options from which to choose, in addition to the emissions averaging compliance option. We note that the six options for add-on control systems are based on emissions reductions achievable with MACT control devices and thus are a measure of the performance of MACT control devices. This might not be true if a source combined PBCO and add-on controls, as explained below.

At proposal, we established PBCO limits for 10 process unit groups. Initially, we felt that we needed total HAP data for at least one process unit in each process unit group that was equipped with a control system in order to establish the PBCO limits. However, we had to discard this approach because controlled total HAP data are not available for half (5 of 10) of the process unit groups. We developed a number of other approaches to establishing PBCO, and then compared the results of these approaches, where possible, with actual emissions in the outlet of MACT control devices. The approach that yielded results closest to actual emissions in the control device outlets was an approach based on a 90 percent reduction from the average emissions each process unit group. Thus, this approach was the one that resulted in limits that would most closely represent an alternative to the six compliance options for add-on control systems. However, our intention was not to develop an alternative limit to the six limits already established for add-on control devices. Our intention was to develop an alternative for P2 techniques. We decided to select an approach that allows sources that develop P2 techniques (or are otherwise inherently low-emitting sources) to comply and that reduces HAP emissions without generating the NO_X emissions associated with incineration-based controls. As a result, we selected a 90 percent reduction from the highest data point within each process unit group, because the results appeared to be at levels that would not preclude the development of environmentally beneficial P2 options as MACT.

If PBCO were allowed as another option for measuring the performance of add-on control devices, operators could run the APCD so that the APCD would not achieve MACT level emissions reductions, but would meet the PBCO. We note that we did not develop the methanol and formaldehyde add-on control options (options 4 and 6 in Table 1B to the final rule) based on typical or maximum levels of methanol and formaldehyde found in the outlet of the control devices, but instead looked at the performance of the MACT control devices in reducing these HAP, set the levels based on the method detection limits for these compounds, and

included a minimum inlet concentration requirement for the use of the outlet concentration options to ensure that HAP emissions reductions are achieved. Allowing the use of APCD to comply with PBCO could allow circumvention of such optimization, which could render the MACT control itself to be less effective than MACT.

Regarding the other MACT standards referenced by the commenters, we agree that these other rules may allow facilities more flexibility in meeting a production-based option (*e.g.*, "lb/ton" emission limit); however, we cannot allow add-on controls to be used to meet the PBCO in the final PCWP rule because doing so would render these limits not equivalent to the other compliance options. For example, consider a typical wood products press with an annual production rate of 100 million square feet of board per year and a total HAP emission rate of 1.0 pound per thousand square feet of board on a ¾-inch basis (lb/MSF ¾"). On an annual basis, the example press emits 50 tons of HAP per year. If the example press complies with the 90 percent HAP reduction requirement, then the HAP emissions reductions achieved will be at least 45 tons/yr. However, if this same press were allowed to comply with the applicable PBCO limit (0.30 lb/MSF ¾") using an APCD (*e.g.*, RTO), then the emissions reductions achieved could be as little as 35 tons/yr if the APCD is only applied to a portion of the press' emissions or if the APCD is not operated at MACT-level efficiency. Not only would a significantly lower HAP emission reduction be achieved in this situation, but there also would not be any net benefit to the environment to justify the lower HAP reduction (*i.e.*, NO_X emissions would still be created). Therefore, we feel it is appropriate and in keeping with the MACT floor to require PCWP process units with uncontrolled HAP emissions above the PBCO thresholds to achieve the full 90 percent reduction in emissions. We also wish to clarify that a PCWP facility may use any number of compliance options, as long as these options are not combined for an individual process unit. For example, a facility may choose to meet the applicable PBCO limit for one dryer, control emissions from a blender to avoid controlling emissions on the remaining two dryers as part of an emissions average, and comply with one of the add-on control systems compliance options for the press.

Regarding the examples cited by the commenter as candidates for a PBCO if add-on controls were allowed, we note that the final rule includes a revised MACT floor for existing conveyor strand dryers, such that existing conveyor strand dryers that send the emissions from the first dryer section back to the combustion unit that heats the dryer should be able to meet the rule requirements without additional controls. In addition, partial control (*e.g.*, routing part of the emission stream from a process unit to an onsite combustion unit for incineration) is allowed as part of an EAP as long as the actual emissions reductions achieved are greater than or equal to the required emissions reductions. When partial control is used as part of an EAP, the overall reductions are equivalent to what would be achieved if a source elected to comply using the add-on control system compliance options; however, the same would not be true if partial control were used to comply with a PBCO limit. Therefore partial incineration control is not allowed in the PBCO.

Regarding the use of scrubbers to comply with a PBCO, as stated earlier in this preamble, the PCWP industry's own data do not support wet scrubbers as a reliable control technology for HAP, and sources equipped with wet control devices will be required to test prior to the wet control device if they elect to comply with a PBCO.

Comment: Several commenters stated that PCWP facilities should be allowed to neglect nondetect HAP measurements for PBCO calculations. The commenters argued that if a facility is forced to use values of one-half the detection limit for nondetect HAP, that facility may be unable to use PBCO because the mass of emissions attributed to undetected compounds may consume 50 percent or more of the PBCO limit. The commenters also noted that the detection levels measured in the field by the NCASI test method, NCASI IM/CAN/WP–99.01, generally range between 0.35 and 1 ppm, and the detection levels of the FTIR method averages about 1 ppm. According to the commenters, even at these low concentrations, using one-half the detection limit for nondetect compounds can put the PBCO out of reach for a high-flow-rate PCWP stream. The commenters also provided a sample calculation to demonstrate the effect that the detection level has on the compliance calculation.

Response: In responding to this request, we reviewed the information supplied by the commenters and analyzed the potential effects of making the requested change using available emissions data. After reviewing the total HAP data used to establish the PBCO limits, we decided that sources should be able to treat nondetect measurements for an individual HAP as zero for the sole purpose of determining compliance with the PBCO, if, and only if, the following two conditions are met: (1) The detection limit for that pollutant is set at a value that is less than or equal to 1 ppmvd, and (2) emissions of that pollutant are nondetect for all three test runs. We included the first condition to prevent test contractors from setting the detection limits too high, and thus generating false zeroes. We selected 1 ppmvd as the maximum detection limit value because it matches the detection limits achievable with the test methods included in the final PCWP rule. We included the second condition to ensure that the source is truly low-emitting, as evidenced by three nondetect test runs. If emissions of the HAP are detected during any one test run, then any nondetect runs must be treated as being equal to one-half the detection limit. The option to treat nondetect measurements as zero does not apply to the compliance options for add-on control systems because treating the outlet emissions from a control device as zero would artificially increase the calculated control efficiency for that pollutant to 100 percent.

To ensure that the PBCO limits were developed in a manner consistent with how they would be applied, the PBCO limits were recalculated using zero for nondetect measurements when all test runs were nondetect. As a result, the PBCO limit for reconstituted wood product board coolers changed from 0.015 to 0.014 lb/MSF ¾". No other PBCO limits changed as a result of using zero for nondetects when calculating the PBCO limits.

We added a new PBCO limit to the final rule for secondary tube dryers. This new limit corresponds to our decision to treat primary and secondary tube dryers as separate process units, as discussed previously in this preamble. The final rule also differentiates between rotary strand dryers and conveyor strand dryers, as discussed previously in this preamble; however, no new PBCO limits have been added for these two process units groups. The final PBCO limit for rotary strand dryers is the same as the proposed limit for strand dryers because the data used to establish the proposed PBCO limit was based on data from rotary strand dryers exclusively. We do not have the necessary data to establish a PBCO for conveyor strand dryers, and thus the final rule does not include a PBCO limit for that process unit group.

3. Emissions Averaging Provisions

Comment: Industry commenters generally expressed support for the

inclusion of an emissions averaging program in the PCWP rule as proposed, but requested that the proposed provisions be modified to allow for broader use of emissions averaging at PCWP facilities. Requested modifications include allowing sources to receive credit for achieving emissions reductions greater than 90 percent; basing compliance on a single pollutant; allowing sources to combine emissions averaging with PBCO; and allowing sources to receive credit for P2 alternatives as part of an EAP.

Response: We included an emission averaging compliance option in the proposed rule as an equivalent, more flexible, and less costly alternative to the compliance options for add-on control systems. Unlike previous MACT standards with emissions averaging, the proposed (and final) emissions averaging provisions in the PCWP rule do not include (1) limits on the number of sources that can be included in an emissions average, (2) requirements for a hazard or risk analysis, or (3) application of a 10 percent discount factor to emissions credit calculations. In addition, the emissions averaging provisions in the final PCWP rule require that credits for emissions reductions be achieved using APCD, and that the EAP be based on emissions of the six predominant HAP emitted from PCWP process units, referred to as total HAP. Also, the emissions averaging provisions do not allow credit for reductions beyond 90 percent.

We disagree with the commenters' request to allow credit for achieving greater than 90 percent control of HAP as part of an EAP. We note that the 90 percent MACT floor level (upon which the emissions averaging provisions are based) reflects the inherent variability in uncontrolled emissions from PCWP process units and the decline in performance of control devices applied to these process units. The data set used to establish the MACT floor is composed of point-in-time test reports, some of which show a greater than 90 percent control efficiency; however, we selected 90 percent as the MACT floor level of control to reflect inherent performance variability. Therefore, it would be inappropriate to allow PCWP facilities to receive credit for similar point-in-time performance tests showing greater than 90 percent control, considering that the same types of control technologies would be used.

Regarding the commenters' request to allow credit for greater than 90 percent control for those sources with no MACT control requirements, we maintain that this would be inappropriate because the same issues of emissions variability and control device performance apply to those emission sources, and they likely would share control devices with PCWP process units that do have MACT control requirements.

We have rejected the commenters' suggestion to base the emissions averaging provisions on a single pollutant (*e.g.*, THC, methanol or formaldehyde), and retained the requirement in the final rule that the EAP must be based on total HAP. The predominant HAP emitted from a given process unit varies, with some process units emitting methanol as the predominant HAP and others emitting formaldehyde or acetaldehyde as the predominant HAP. However, the predominant HAP will always be one of the six we have identified in the definition of total HAP in the final PCWP rule. If we based the EAP on only one pollutant, process units that emit the target HAP in small quantities will not be correctly accounted for in the EAP, resulting in potentially less stringent control and greater potential risk than would result with other control options. As noted above, we did not include a hazard/risk study as part of the proposed EAP because we were requiring that the emissions reductions be based on total HAP, and PCWP process units generally emit the same six primary HAP, although in different quantities and ratios. Basing the EAP on a single pollutant would eliminate our rationale for not requiring a risk analysis. We also note that, while THC emissions are an acceptable surrogate for monitoring the performance of an add-on control device (same control device mechanisms that reduce THC emissions reduce HAP emissions), THC emissions are not an accurate surrogate for establishing baseline HAP emissions for uncontrolled process units, and thus the EAP should not be based solely on THC emissions. Although all PCWP process units emit THC, uncontrolled THC emissions from softwoods are substantially higher than from hardwoods due to non-HAP compounds (*e.g.*, pinenes) present in softwoods. Therefore, allowing sources without add-on controls to focus on THC reductions achieved by increasing hardwood usage might reduce THC emissions but would have a minimal impact on HAP emissions. For these reasons, we feel that, for the purpose of the final rulemaking, THC should only be used as a surrogate for HAP when assessing the performance of an add-on control device, and should not be used as a surrogate for establishing the required and actual mass removal of HAP as part of an EAP.

We disagree with the commenters that combining the emissions averaging option and PBCO will result in equivalent emissions reductions. As we stated in our response to previous comments in this section regarding PBCO, we developed the PBCO limits to provide an option for sources that develop P2 techniques. The PBCO limits represent applicability cutoffs such that sources with emissions below the applicable PBCO thresholds are not required to further reduce those emissions below MACT levels. By combining PBCO limits with the EAP, as proposed by the commenter, we would be allowing higher-emitting sources (*i.e.*, those that cannot meet a PBCO and which should be controlled) to escape controls by artificially lowering their emissions (using the credits from the EAP) to levels that would qualify as low-emitting (below PBCO limits). This is counter to the intent of the PBCO and would result in lower emissions reductions than would be achieved without combining these two compliance options; therefore, this does not represent an option that is equivalent to the MACT floor and is not allowed in the final rule.

We also disagree with the commenters' suggestion to modify the emissions averaging provisions to allow sources to receive credit for P2 projects because: (1) Compliance options (*i.e.*, PBCO) already exist for any P2 projects that prove feasible, and (2) inclusion of currently undemonstrated P2 projects within EAP would unnecessarily complicate these plans and hamper enforcement. As we noted previously in this preamble, the final rule allows PCWP facilities to use both P2 (*i.e.*, the PBCO) and emissions averaging at the same facility; sources are only limited in that they cannot apply both options to the same process unit. We also disagree with the commenters' assertion that quantifying the emissions reductions from P2 projects would not be difficult. Quantifying the emissions reductions associated with P2 projects has historically been a contentious issue, especially when a baseline emission level must be established from which to calculate the emissions reduction. We feel that the same issues apply for PCWP facilities, especially given the fact that P2 techniques have not been widely used or documented in the PCWP industry. In contrast, emissions reductions achieved through the use of add-on control systems are easily documented. The PBCO were established to address the future development and implementation of P2 techniques; however, the resultant

PBCO limits do not require that emissions reductions be determined. Instead, sources simply demonstrate that they are below the PBCO limit and will continue to operate in a manner that ensures they will remain below the PBCO limit.

Regarding the suggested P2 option of increasing a facility's use of hardwood species, in addressing other issues, commenters stressed the difficulties associated with maintaining a consistent wood material flow in terms of species, moisture content, etc., which would suggest that an operating condition based on maintaining a set level of wood species would be unworkable. Furthermore, for veneer dryers, where species identification (hardwood vs. softwood), and thus enforcement, is fairly straightforward from the standpoint of both visual inspection and end-product, we have already established separate MACT floors for softwood and hardwood veneer dryers (and require no further emissions reductions from hardwood veneer dryers). When the end product is particleboard or MDF, and the raw material is in the form of wood chips, planer shavings, or sawdust, determining how much of that material is softwood versus hardwood would be very difficult, and likely unenforceable. Because of commenters' concerns that an operating condition based on wood species is technically unworkable and the associated enforcement issues, we feel this option is not viable.

Regarding process changes such as reformulation, lowering dryer temperature, and routing process unit exhaust to existing combustion devices, the final rule already includes compliance options that would accommodate all of these strategies. For example, product reformulation and lowering dryer temperature are potential P2 options, and the PBCO limits would apply if the P2 efforts sufficiently lower emissions. The final PCWP rule distinguishes between green (high temperature, high moisture) rotary dryers and dry (low temperature, low moisture) rotary dryers and requires no further emissions reductions from dry rotary dryers. Regarding the use of existing combustion units as control devices, the final rule allows sources to route emissions to onsite combustion units for incineration. The final rule also allows sources to control a portion of a process unit's emission stream as part of an emissions average. However, we disagree that incineration of emissions in onsite process units is a P2 measure. Therefore, compliance with the PBCO using process incineration is not allowed in the final rule. The add-on control system and emissions averaging compliance options are available for process units controlled by routing exhaust to an onsite combustion unit.

The final PCWP rule does not allow production curtailment to be counted as part of an EAP. As stated in the preamble to the proposed rule (68 FR 1276, January 9, 2003), we do not have facility-wide uncontrolled emissions data and facility-wide controlled emissions data for each PCWP facility to determine the baseline emissions and percent reduction in HAP achieved by each facility. Therefore, the MACT floor is not based on facility-wide emissions and emissions reductions achieved during year "x." Instead, the MACT floor is based on (1) the presence or absence of certain MACT controls (in place as of April 2000) on certain types of process units and (2) test data showing that these controls reduce emissions by greater than or equal to 90 percent. We applied the MACT floor methodology at the process unit level because we had the most accurate data at the process-unit level, making this approach the most technically and legally sound. The PCWP industry is very dynamic, with frequent shutdowns of equipment for maintenance, and occasionally longer shutdowns (*e.g.*, month-long), if demand drops. The final PCWP rule requires emissions from specified process units at impacted PCWP facilities to be reduced by 90 percent, regardless of what the levels of emissions are for those facilities in a particular year. Therefore, implementation of the final PCWP rule at individual PCWP facilities will result in greater emissions reductions in years of greater production and lesser emissions reductions during years of lower production. As mentioned in the response to the previous comment, the emissions averaging provisions must achieve emissions reductions that are greater than or equal to those that would be achieved using the add-on control system compliance options, which specify which process units must be controlled. If we allowed credit for production curtailments, the overall emissions reductions achieved through the emissions averaging provisions would not be equivalent to what would be achieved through the use of the add-on control system compliance options, and therefore, the EAP would not be a MACT-equivalent alternative. For example, if we allowed production curtailments to count toward an emissions average, then a facility that shuts down one of two parallel production lines (each of which includes dryers and a press, plus HAP-emitting equipment that does not have associated control requirements) may not be required to control the emissions from any of the dryers or press on the remaining production line. However, if the same facility opted to comply with the add-on control system compliance options, then it would be required to control the press and dryer emissions from the remaining production line by 90 percent regardless of whether or not the other production line was shut down. In order to maintain equivalency between the emissions averaging provisions and the add-on control system compliance options and to preserve the required HAP emissions reductions, the final PCWP rule does not allow production curtailment to be counted as part of an EAP.

Comment: One commenter objected to the inclusion of the emissions averaging option in the rule primarily because of the lack of a requirement to conduct a hazard or risk study. This commenter asserted that removing a certain mass of HAP regardless of identity is not equivalent to the other compliance options, and when the dose-response and exposure data are examined, it should be obvious that trading one HAP for another to meet a RMR is not an acceptable option. The commenter noted that there are currently no methods for weighting the toxicity of HAP and that the effects of simultaneous exposure to several HAP also are unknown.

Response: We disagree with commenter's assertion that inclusion of the emissions averaging provisions will potentially increase toxic emissions at certain PCWP process units. As stated in the preamble to the proposed rule (68 FR 1289, January 9, 2003), PCWP facilities have fewer pollutants of concern (as compared to HON facilities) and are likely to have similar HAP emissions from the emission points (process units) that would be used to generate debits and credits. The PCWP facilities emit six primary HAP, whereas HON facilities may emit over 140 different HAP. The PCWP facilities choosing to comply through emission averaging must account for the emissions of the six primary HAP (total HAP), which represent greater than 96 percent of the mass of HAP emitted from PCWP process units. Because the MACT control technologies are effective in reducing the emissions of all six of these HAP, and the emissions averaging provisions require the use of add-on control technologies for credit-generating sources in an EAP, we feel that the emissions averaging provisions will achieve a hazard/risk benefit

comparable to what would be achieved through point-by-point compliance. Although the final rule does not require a hazard/risk study, States will still have the discretion to require a PCWP facility that requested approval of an EAP to conduct a hazard/risk study (or could preclude the facility from using emissions averaging altogether).

Comment: Several commenters requested that we write the definitions of some of the variables used in the emissions averaging equations in the final rule to clarify that sources can take credit for emission reductions achieved through partial control of debit-generating process units.

Response: We agree with the commenters' request and have written the definitions of some of the variables used in the emissions averaging equations in today's final rule to clarify that partial credits generated from debit-generating process units that are undercontrolled can be included in the calculation of the AMR. For example, a PCWP facility may decide to control 30 percent of the emissions from a green rotary dryer and 80 percent of the emissions from a blender as part of an EAP in order to achieve a HAP reduction that is the same as or greater than what the facility would have achieved by controlling the green dryer emissions alone by 90 percent. In this example, the green rotary dryer is a debit-generating unit because it has MACT control requirements; however, the green dryer can receive credit in the AMR calculation for any partial emissions reductions that are achieved.

H. Testing and Monitoring Requirements

1. Test Methods

Comment: Several commenters noted that one of the NCASI test methods, NCASI IM/CAN/WP–99.01, has been updated, and requested that the final rule refer to the revised version. One of the commenters provided a revised version of the method, identified as NCASI IM/CAN/WP–99.02. This commenter noted that the trained NCASI sampling team was able to get good consistent results with the original version of the method both in the laboratory and in the field, but that sampling contractors had difficulty obtaining valid results. The commenter maintained that the revised version is easier to understand, includes more details, and reflects the comments of the contractors that have experience with the original method. The commenter also stated that the quality assurance requirements were strengthened in the revised version to ensure good results. Several commenters also noted that NCASI is currently developing a new method for measuring the six HAP (total HAP) listed in the PCWP rule as proposed. Therefore, the commenters requested that we include language in the final rule that would allow PCWP facilities to use future methods once they have been reviewed by EPA and have passed Method 301 validation at a PCWP plant.

Response: We reviewed the revised NCASI method IM/CAN/WP–99.02 supplied by the commenter and agree that the revised method is appropriate for measurement of the six HAP that comprise "total HAP;" therefore, we have included NCASI IM/CAN/WP–99.02 in the today's final rule. Regarding the development of future test methods, if and when a new method for measuring HAP from PCWP sources is developed and validated via EPA Method 301, we will issue an amendment to the final rule to include the use of that method as an alternative to the methods included in the final rule for measuring total HAP (*i.e.*, NCASI Method IM/CAN/WP/99.02 and EPA Method 320—Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR). In the meantime, if the new method is validated using Method 301, then the Method 301 results can be used to request approval to use the new method on a site-specific basis.

Comment: Several commenters noted that the tracer gas method for determining capture efficiency, developed by a PCWP company and included in the proposed rule (68 FR 1276, appendix A to 40 CFR part 63), is a work in progress. These commenters included with their comments a copy of field validation tests conducted at a PCWP facility. The commenters noted that future tests are planned using the tracer gas method and that the results of these tests should help EPA improve the use and application of the proposed tracer gas test.

Response: We have reviewed the results of the first field validation test of the tracer gas method and note that the commenters did not provide any specific recommendations for modifying the tracer gas method as it was proposed. Therefore, other than a few minor wording changes, we did not make any substantive changes to the tracer gas method in the final rule. If the results of subsequent field tests demonstrate a need to (further) modify the tracer gas method, we will issue an amendment to the final rule to incorporate the necessary changes.

2. Sampling Locations

Comment: Several commenters recommended that the final rule be reworded to clearly state that inlet sampling should take place at the functional inlet of a control device sequence or at the primary HAP control device inlet. For example, the commenters noted that the final rule needs to clarify that sampling should take place at the inlet of a WESP that precedes an RTO instead of between the two devices. The commenters noted that many WESP–RTO control systems are too closely coupled to allow for a sampling location in between that meets the requirements of Method 1 or 1A, 40 CFR 60, appendix A.

Response: We agree with the commenters and have written the final PCWP rule to indicate that, for HAP-altering controls in sequence, such as a wet control device followed by a thermal oxidizer, sampling sites must be located at the functional inlet of the control sequence (*e.g.*, prior to the wet control device) and at the outlet of the control sequence (*e.g.*, thermal oxidizer outlet) and prior to any releases to the atmosphere. In addition, as discussed previously in this preamble, the final rule also clarifies that facilities demonstrating compliance with a PBCO limit for a process unit equipped with a wet control device must locate the sampling site prior to the wet control device.

3. Testing Under Representative Operating Conditions

Comment: Several commenters objected to the proposed requirement to test process units under representative operating conditions. The commenters argued that, because the initial compliance tests determine the outer limits of compliance, those tests should be conducted at the boundaries of expected performance for the process and control units. These commenters noted that testing at representative conditions would not accurately simulate true operating conditions, and thus, the operating parameter limits would be too narrow. Therefore, the commenters contended that the final rule should specify that initial compliance tests should be conducted at the extremes of the expected operating range for the parameter and control device function. In addition, one of the commenters noted that the testing provisions should also address potential conflicts with traditional State requirements to test at maximum or design conditions.

Response: The proposed rule defined representative operating conditions as

those conditions under which "the process unit will typically be operating in the future, including use of a representative range of materials[* * *] and representative temperature ranges." We disagree that the proposed requirement to test under representative operating conditions will conflict with State requirements and result in operating parameter limits/ranges that are too narrow. We wish to clarify that the definition of representative operating conditions refers to the full range of conditions at which the process unit will be operating in the future. We expect that facilities will test under a variety of conditions, including upper and/or lower bounds, to better define the minimum or maximum operating parameter limit or broaden their operating limit ranges (where applicable). For example, if a facility generally operates a process unit (equipped with an RTO) under conditions that require the RTO to be operated at a minimum temperature of 1450°F to ensure compliance with the standards, but at other times operates that process unit under conditions such that the minimum RTO operating temperature must be 1525°F to ensure compliance, then the facility has two options. One option is for the facility to incorporate both of these operating conditions into their permit such that they are subject to two different operating parameter limits (minimum temperatures), one for each (defined) operating condition. As an alternative, the facility could decide to comply with the parameter limit associated with the worst-case operating conditions (most challenging conditions for the RTO), which in this example would correspond to maintaining a minimum RTO operating temperature of 1525°F, and thus, they could demonstrate continuous compliance regardless of the operating condition as long as they maintained the RTO temperature at or above 1525°F. We have revised the monitoring requirements for process units without control devices to allow these sources to establish a range of compliant parameter values. In addition, those PCWP facilities operating biofilters must maintain their biofilter bed temperature within the range established during the initial performance test and, if available, previous performance tests. If the final PCWP rule required testing at maximum operating conditions, there would be no way for facilities to identify their operating parameter ranges. For these reasons, we maintain that the requirement to test at representative operating conditions is appropriate for the PCWP rule.

4. Process Incineration Monitoring Requirements

Comment: Several commenters expressed approval for the proposed exemption from testing and monitoring requirements for those process units with emissions introduced into the flame zone of an onsite combustion unit with a capacity greater than or equal to 44 megawatts (MW) (150 million Btu/hr). In addition, several of these commenters requested that we expand upon this exemption in the final rule. First, the commenters requested that we extend the exemption to include situations where the process unit exhaust is introduced into the combustion unit with the combustion air. The commenters noted that we had included such exemptions in the HON (40 CFR part 63, subpart G) and in the Pulp and Paper Cluster Rule (40 CFR part 63, subpart S) in recognition of the fact that boilers greater than 44 MW typically had greater than ¾-second residence time, ran hotter than 1,500°F, and usually had destruction efficiencies greater than 98 percent (see 65 FR 3909, January 25, 2000, and 65 FR 80762, December 22, 2000, at § 63.443(d)(4)(ii)). The commenters stated that the design and construction of PCWP boilers follow the same principles that would allow for these operating conditions. Second, the commenters requested that we also exempt smaller combustion units (less than 44 MW, or 150 million Btu/hr) from the testing and monitoring requirements if the process unit exhaust is introduced into the flame zone of the combustion unit. The commenters noted that most of the combustion units associated at PCWP facilities are smaller units and that testing of these units can be complicated by their configuration and integration with other process units.

Response: After reviewing available information on process incineration at PCWP facilities, we decided to include smaller combustion units in the exemption from testing and monitoring requirements if the process exhaust enters into the flame zone. As part of this change, we have included definitions of "flame zone" and "combustion unit" in the final rule. However, we decided not to include an exemption for PCWP combustion units that introduce the process exhaust with the combustion air. As noted by the commenters, the HON and the final pulp and paper MACT I rule exempt from testing and monitoring requirements combustion devices with heat input capacity greater than or equal to 44 MW. The HON also exempts from testing and monitoring combustion devices with capacity less than 44 MW if the exhaust gas to be controlled enters with the primary fuel. If the exhaust gas to be controlled does not enter with the primary fuel, then testing and continuous monitoring of firebox temperature is required by the HON. Similarly, the final pulp and paper MACT I rule exempts from testing and monitoring requirements combustion devices (including recovery furnaces, lime kilns, boilers, or process heaters) with capacity less than 44 MW if the exhaust stream to be controlled enters into the flame zone or with the primary fuel. Similar to the HON and pulp and paper MACT I rules, the final PCWP rule extends the exemption from testing and monitoring requirements to combustion units with heat input capacity less than 44 MW, provided that the exhaust gas to be treated enters into the combustion unit flame zone. If the exhaust gas enters into the combustion unit flame zone, the required 90 percent control efficiency may be assumed. If the exhaust gas does not enter into the flame zone, then the testing and monitoring requirements for thermal oxidizers will apply.

As noted by the commenter, the HON and the final pulp and paper MACT I rule exempted boilers (and recovery furnaces at pulp and paper mills) with heat input capacity greater than 44 MW from testing and monitoring requirements because performance data showed that these large boilers achieve at least 98 percent combustion of HAP when the emission streams are introduced with the primary fuel, into the flame zone, or with the combustion air. Lime kilns at pulp and paper mills were excluded from this provision because we did not have any data to show that lime kilns can achieve the required destruction efficiency when the HAP emission stream is introduced with the combustion air. Therefore, lime kilns at pulp and paper mills that accept HAP emission streams must introduce the stream into the flame zone or with the primary fuel. We do not have the data to show that the design and construction of large (greater than 44 MW) combustion units at PCWP plants would be similar to boilers found at pulp and paper mills. Furthermore, combustion units at PCWP plants with heat input capacity of greater than 44 MW are less prevalent than smaller (*i.e.*, less than 44 MW) PCWP combustion units, and many of these smaller combustion units are not boilers. As stated above, the final rule exempts these smaller combustion units from the testing and monitoring requirements

provided that the HAP emission stream is introduced into the flame zone. For these reasons, the final PCWP rule does not extend the exemption from testing and monitoring to those boilers greater than 44 MW that introduce the HAP emission stream with the combustion air.

5. Selection of Operating Parameter Limits for Add-On Control Systems

Comment: Several commenters stated that the inlet static pressure to a thermal or catalytic oxidizer is not a reliable indicator of the flow through the oxidizer, the destruction efficiency, or the capture efficiency. The commenters also noted that the preamble to the PCWP rule stated that monitoring the static pressure can indicate to the operator when there is a problem such as plugging. However, the commenters stated that static pressure is usually the last indicator of these types of control device problems. As discussed in the promulgation BID, the commenters agreed that measuring those parameters helps to assess the overall condition of the oxidizer but provided reasons why setting limits on these parameters is inappropriate. The commenters further noted that monitoring the static pressure helps to control the speed of the fan or the oxidizer dampers so that all the air flows are balanced. According to the commenters, static pressure is adjusted to avoid vacuum conditions in the ductwork of multiple-dryer systems treated by one control device when one dryer is shut down, to improve emission collection efficiency and prevent fugitive emissions, and to adjust the pressure drop across a bag filter as it fills with particulates, among other reasons. However, the commenters stated that, if operators are required to keep the static pressure within an operating range, it will limit their ability to maintain capture efficiency. The commenters expressed similar concerns regarding air flow rate monitoring and noted that numerous factors affect the air flow through the control device, including the rate of water removal in dryers, leakage of tramp air into the process, the number of processes operating for control units that receive emissions from multiple production units, and the overall production speed due to process adjustments. The commenters noted that, in those cases where air flow to the oxidizer is not constant, monitoring the air flow through the oxidizer will not be an accurate measure of capture efficiency.

Response: After reviewing the information provided by the commenters, we agree that, while monitoring the static pressure or air flow rate helps to assess the overall condition of the oxidizer and provides an indication that emissions are being captured, setting operating limits on these parameters is not appropriate for the reasons given by the commenters. Therefore, today's final rule does not include the proposed requirement to monitor the static pressure or air flow rate for thermal and catalytic oxidizers.

Comment: Several commenters requested that we modify the procedures for determining the minimum operating temperature (operating limit) for thermal and catalytic oxidizers. The commenters stated that, due to the normal variation in combustion temperatures, a facility will have to perform the initial compliance test at lower-than-normal temperature conditions to ensure that the minimum combustion temperature will be set at a level that they can continuously meet. The commenters requested that we allow facilities to operate the thermal oxidizers up to 50°F lower than the average obtained by the performance test and allow facilities to operate RCO at a level that is 100°F above the minimum operating temperature of the catalyst. The commenters also noted that, when the THC concentration in the inlet is high, the RCO will not need any additional heat and it can operate at temperatures higher than the set point. Therefore, if the initial compliance tests are conducted under these conditions, the operating temperature limit will be too high for production rates at less than full capacity.

Commenters also stated that, for RCO, the thermocouple should be placed in a location to measure the temperature of the gas in the combustion chamber between the catalyst beds instead of in a location to measure the gas stream before it reaches the catalyst bed. The commenters noted that, because the gas flow reverses direction in RCO, the inlet temperature monitor will not consistently measure the gas at the same point in the process such that sometimes the gas temperature will be recorded after the catalyst beds instead of before. The commenters further noted that placement of the monitor inside the combustion chamber would eliminate the need for multiple monitors and avoid problems such as overheating and burnout of the catalyst media caused by the temperature delay between the burner and the RCO inlet.

Response: We disagree with the commenters' request to include a 50°F margin around the minimum operating temperature established during the thermal oxidizer compliance test. In general, selection of the representative operating conditions for both the process and the control device for conducting the performance test is an important, and sometimes complex, task. We maintain that establishing the add-on control device operating limit at the level demonstrated during the performance test is appropriate. We note that the PCWP rule as proposed allows a facility to select the temperature operating limits based on site-specific operating conditions, and the facility is able to consider the need for temperature fluctuations in this selection. The PCWP rule as proposed requires that the operating limit be based on the average of the three minimum temperatures measured during a 3-hour performance test (rather than on the average temperature over the 3-hour period, for example) to accommodate normal variation during operation and ensure that the minimum temperature established represents the lowest of the temperatures measured during the compliant test. For example, during a 3-hour, three-run performance test, the operating limit would be determined by averaging together the lowest 15-minute average temperature measured during each of the three runs. However, continuous compliance with the operating limit is based on a 3-hour block average. For a typical 3-hour set of data, this means that the 3-hour block average will be higher than the average of the three lowest 15-minute averages, so the temperature monitoring provisions already have a built-in compliance margin. In addition, the final rule allows PCWP facilities to conduct multiple performance tests to set the minimum operating temperature for RCO and RTO, so PCWP sources would have the option to conduct their own studies (under a variety of representative operating conditions) in order to establish the minimum operating temperature at a level that they could maintain and that would provide them with an acceptable compliance margin. We feel these provisions allow sufficient flexibility, and an additional tolerance for a 50°F temperature variation is not necessary. Therefore, the final rule does not allow facilities to operate thermal oxidizers 50°F lower than the average temperature during testing.

With regard to RCO, we agree with the commenters that when the THC concentration in the inlet is high, the RCO will not need any additional heat and it can operate at temperatures higher than the set point. Therefore, if the initial compliance tests are conducted under these conditions, the operating temperature limit will be too

high for production rates at less than full capacity. However, the final rule requires emissions testing under representative operating conditions and not maximum operating conditions. In addition, we do not agree with the commenter's solution to set the operating limit at 100°F above the minimum operating (design) temperature of the catalyst. As with RTO, we feel it is incumbent upon the facility to demonstrate performance and establish the operating limits during the compliance demonstration test. Therefore, the final rule requires the facility to establish the minimum catalytic oxidizer operating temperature during the compliance test. However, as noted below, we have provided more flexibility to the facility regarding temperature monitoring for RTO and RCO.

We recognize that in a typical RTO and RCO the combustion chamber contains multiple burners, and that each of these burners may have multiple thermocouples for measuring the temperature associated with that burner. The final rule requires establishing and monitoring a minimum firebox temperature for RTO. In an RTO, the minimum firebox temperature is actually represented by multiple temperature measurements for multiple burners within the combustion chamber. Thus, the final rule clarifies that facilities operating RTO may monitor the temperature in multiple locations within the combustion chamber and calculate the average of the temperature measurements to use in establishing the minimum firebox temperature operating limit.

Regarding RCO, we agree with the commenters that, because the gas flow reverses direction in RCO, the inlet temperature monitor will not consistently measure the gas at the same point in the process, such that sometimes the gas temperature will be recorded after the catalyst beds instead of at the inlet to the beds. We did not intend to require the separate measurement of each inlet temperature by switching the data recording back and forth to coincide with the flow direction into the bed. The intention is to monitor the minimum temperature of the gas entering the catalyst to ensure that the minimum temperature is maintained at the operating level during which compliance was demonstrated. This can be accomplished by measuring the temperature in the regenerative canisters at one or more locations. Measuring the inlet temperatures of each catalyst bed and then determining the average temperature for all catalyst beds is one approach. Even though some of the beds are cooling and others are heating, the average across all of the catalyst beds should not vary significantly. Another acceptable alternative is monitoring the combustion chamber temperature, as suggested by the commenters. The monitoring location(s) selected by the facility may depend on the operating conditions (*i.e.*, THC loading to the unit) during the performance test and how the unit is expected to be operated in the future. The objective is to establish monitoring and operating limits that are representative of the conditions during the compliance demonstration test(s) and representative of the temperature to which the catalyst is exposed. We recognize the need for flexibility in selecting the temperature(s) to be monitored as operating limits for RCO. Therefore, the final rule provides flexibility by allowing facilities with RCO to choose between basing their minimum RCO temperature limit on the average of the inlet temperatures for all catalyst beds or the average temperature within the combustion chamber. If there are multiple thermocouples at the inlet to each catalyst bed, then we would expect facilities to average the measurements from each thermocouple to provide a representative catalyst bed inlet temperature for each individual catalyst bed.

Finally, the final rule also includes an option (in lieu of monitoring oxidizer temperature) for monitoring and maintaining the oxidizer outlet THC concentration at or below the operating limit established during the performance test. Use of the THC monitoring option would eliminate the concerns regarding establishing and monitoring oxidizer operating temperatures (in effect, it provides facilities complete flexibility in operation of the control device, as long as the THC outlet concentration remains below the operating limit).

Comment: One commenter recommended that we require sampling and testing of the catalyst activity level for RCO. The commenter stated that the proposed requirement to monitor inlet pressure may not be sufficient to detect catalyst problems such as poisoning, blinding, or degradation.

Response: We agree with the commenter that a catalyst activity level check is needed because catalyst beds can become poisoned and rendered ineffective. An activity level check can consist of passing an organic compound of known concentration through a sample of the catalyst, measuring the percentage reduction of the compound across the catalyst sample, and comparing that percentage reduction to the percentage reduction for a fresh sample of the same type of catalyst. Generally, the PCWP facility would remove a representative sample of the catalyst from the catalytic oxidizer bed and then ship the sample to a testing company for analysis of its ability to oxidize organic compounds (*e.g.*, by a flame ionization detector).

In response to this comment, we added to the final rule a requirement for facilities with catalytic oxidizers to perform an annual catalyst activity check on a representative sample of the catalyst and to take any necessary corrective action to ensure that the catalyst is performing within its design range. Corrective actions may include washing or baking out the catalytic media, conducting an emissions test to ensure the catalytic media is resulting in the desired emissions reductions, or partial or full media replacement. Catalysts are designed to have an activity range over which they will reduce emissions to the desired levels. Therefore, the final rule specifies that corrective action is needed only when the catalyst activity is outside of this range. It is not our intention for facilities to replace catalyst if the catalytic media is not performing at the maximum level it achieved when the catalyst was new. Also, the final rule specifies that the catalyst activity check must be done on a representative sample of the catalyst to ensure that facilities that may have recently conducted a partial media replacement do not sample only the fresh catalytic media for the catalyst activity check.

Comment: Several commenters stated that the proposed operating requirements for pressure drop across the biofilter bed should be removed from the final PCWP rule. The commenters contended that pressure drop is a good parameter to monitor voluntarily because it indicates the permeability and age of the biofilter bed, helping to determine maintenance and replacement needs; however, it is not an indicator of destruction efficiency. The commenters noted that, because of normal wear and tear, the pressure drop gradually increases over the 2- to 5-year life span of the biofilter, so it would not be possible to maintain a constant operating pressure. The commenters further noted that the supporting materials in the project docket did not provide any information or data that would support the idea that pressure drop is an indication of HAP destruction efficiency, but only indicated that pressure drop was an indication of the age of the biofilter. For these reasons, the commenters argued

that setting an absolute limit on pressure drop was inappropriate.

The commenters also requested that the proposed requirements to monitor the pH of the biofilter bed effluent be removed from the final PCWP rule. The commenters noted that pH is a good parameter to monitor voluntarily because it indicates the environmental conditions inside the biofilter bed and can indicate the presence of organic acids and THC decomposition products, but it is not a reliable indicator of destruction efficiency. According to the commenters, small fluctuations of pH are expected and have little effect on the biofilter performance; therefore, the narrow range of pH values that would be established as an operating range by the initial compliance tests should not be used alone to determine biofilter performance. The commenters also noted some problems associated with continuous measurement of pH. According to the commenters, some biofilter units operate with periodic irrigation of the bed, such that the effluent flow is not constant and continuous monitoring is not possible. The commenters also pointed to an NCASI survey that confirmed that continuous pH monitoring would be impractical for the facilities surveyed. The commenters stated that, because none of the PCWP facilities surveyed could find a link between pH alone and biofilter performance, none of those facilities currently have continuous pH monitors on their biofilters.

In addition, several commenters requested changes to the proposed requirement to monitor the inlet temperature of the biofilter. These commenters agreed that temperature is a parameter that should be monitored for biofilters, but argued that the location of the temperature monitor should be changed from the biofilter inlet to the biofilter bed or biofilter outlet. The commenters noted that the biofilter bed temperature has the greatest impact on biological activity. According to the commenters, the biofilter inlet temperature is not a good indicator of bed temperature and can change very rapidly depending upon the operating rate of the press, the humidity, and the ambient temperature.

Response: We agree with the commenters that increases in pressure drop will occur over time and will not necessarily equate to a reduction in control efficiency, making an absolute limit on pressure drop ineffective in demonstrating continuous compliance. Therefore, we have not included the requirement to monitor pressure drop in the operating requirements for biofilters in the final PCWP rule. We have also removed the requirement to monitor pH from the final rule. Although pH is an indicator of the health of the microbial population inside the biofilter, we agree with the commenters that including continuous pH monitoring as an operating requirement for biofilters may not be appropriate.

We also agree with the commenters that the biofilter bed temperature has the greatest impact on biological activity and that the location for monitoring the biofilter temperature should be changed. We did not propose monitoring of biofilter bed temperature because we thought that monitoring of biofilter inlet temperature would be simpler because only one thermocouple would be required. The temperature inside the biofilter bed can change in different areas of the bed, and therefore, depending on the biofilter, multiple thermocouples may be necessary to get an accurate picture of the temperature conditions inside the biofilter bed. Prior to proposal we rejected the idea of monitoring the biofilter exhaust temperature because temperature measured at this location can be affected by ambient temperature (especially for biofilters with short stacks) more than the temperature inside the biofilter bed. We now conclude that there is no better, more representative way to monitor the temperature to which the biofilter microbial population is exposed than to directly monitor the temperature of the biofilter bed. According to our MACT survey data, most facilities with biofilters are already monitoring biofilter bed temperature. Therefore, the final rule requires continuous monitoring of the temperature inside the biofilter bed.

The proposed rule would have allowed facilities to specify their own monitoring methods, monitoring frequencies, and averaging times for the proposed biofilter operating parameters (*i.e.*, inlet temperature, effluent pH, and pressure drop). However, monitoring of temperature is not as subjective as monitoring biofilter effluent pH and pressure drop; therefore, as an outgrowth of our decision to not require monitoring of biofilter effluent pH and pressure drop, the final rule specifies the monitoring method, frequency, and averaging time for biofilter bed temperature monitoring. The final rule requires that each thermocouple be placed in a representative location and clarifies that multiple thermocouples may be used in different locations within the biofilter bed. The temperature data (*i.e.*, average temperature across all the thermocouples located in the biofilter bed if multiple thermocouples are used) must be monitored continuously and reduced to a 24-hour block average. A 24-hour block average was selected for biofilter temperature monitoring because we recognize that there may be some diurnal variation in temperature. Facilities wishing to reflect a diurnal temperature variation when establishing their biofilter temperature may wish to perform some test runs during peak daily temperatures and other test runs early in the morning, when temperatures are at their lowest.

Facilities may choose to observe parameters other than biofilter bed temperature, but will not be required to record or control them for the final PCWP rule. We feel that many factors can affect biofilter performance, either alone (*e.g.*, a media change) or in concert with one another (*e.g.*, a loss of water flow results in a sharp change in temperature and pH). The factors that have the greatest effect on biofilter performance are likely to be site-specific. However, based on the comments we have received, we conclude that extensive biofilter parameter monitoring is not the best method for ensuring continuous compliance. To promote enforceability of the final PCWP rule, we have added a requirement to perform periodic testing of biofilters. The final rule requires facilities to conduct a repeat test at least every 2 years and within 180 days after a portion of the biofilter bed is replaced with a new type of media or more than 50 percent (by volume) of the biofilter media is replaced with the same type of media. Each repeat test must be conducted within 2 years of the previous test (*e.g.*, 2 years after the initial compliance test, or 2 years after the test following a media change). We are requiring repeat testing after a partial or wholesale change to another media type (considered a modification of the biofilter) because such a modification can impact the performance of the biofilter. Facilities that replace biofilter media with a new type of media (*e.g.*, bark versus synthetic media) must also re-establish the limits of the biofilter bed temperature range. We feel that substantial replacement of the biofilter media (*e.g.*, replacement of more than 50 percent of the media) with the same type of media may affect short-term performance of the biofilter while the replacement media becomes acclimated, and therefore, the final rule requires a repeat performance test following this type of media replacement. However, PCWP facilities that replace biofilter media with the same type of media are not required to re-establish the biofilter

bed temperature range. In the case of same-media replacements, we feel it is appropriate for PCWP facilities to be able to use data from previous performance tests to establish the limits of the temperature range. During repeat testing following replacement with the same type of media, facilities can verify that the biofilter remains within the temperature range established previously or establish a new compliant temperature range. Facilities using a THC CEMS that choose to comply with the THC compliance options (*i.e.*, 90 percent reduction in THC or outlet THC concentration less than or equal to 20 ppmvd) may use the data from their CEMS in lieu of conducting repeat performance testing.

Comment: Several commenters requested that the final rule allow new biofilters a longer period than 180 days to establish operating parameter levels. These commenters suggested a 1-year period, because that would be long enough to observe the full seasonal variation in parameters and find the true operating maxima and minima.

Response: We disagree that more than 180 days is necessary to establish operating parameter limits for biofilters. As mentioned previously, we have eliminated the proposed requirement to establish operating limits for pH and pressure drop. Today's final rule contains two options for biofilter operating parameter limits: biofilter bed temperature range and outlet THC concentration. While allowing 1 year to establish the biofilter bed temperature operating range is reasonable due to seasonal temperature variations, 1 year is not necessary for establishing an outlet THC concentration limit. Furthermore, the final rule already allows facilities to expand their operating ranges (see § 63.2262(m)(3)) through additional emissions testing.

The compliance date for existing facilities is 3 years after promulgation of the final PCWP rule, and existing facilities are allowed 180 days following the compliance date to conduct performance testing and establish the operating parameter limits. If there is concern that 180 days is not long enough for a new biofilter installation to operate under the full range of biofilter bed temperatures, then existing facilities should begin operation of their biofilter well before the compliance date (*e.g.*, 180 days prior to the compliance date if 1 year is needed). Facilities also have the option of testing their biofilter prior to the compliance date to establish one extreme of their biofilter bed temperature range. The compliance date for new PCWP facilities is the effective date of the rule (if startup is before the effective date) or upon initial startup (if the initial startup is after the effective date of the rule), and biofilters installed at new PCWP facilities would have up to 180 days following the compliance date to establish the operating parameter limits. To address situations where a new biofilter is installed at an existing facility more than 180 days after the compliance date (*e.g.*, to replace an existing RTO), we have included section § 63.2262(m)(2) to the final PCWP rule, which allows existing sources that install new biofilters up to 180 days following the initial startup date of the biofilter to establish the operating parameter limits. Thus, new biofilter installations are given time for establishment of operating parameter limits regardless of where they are installed at new or existing sources.

Comment: Multiple commenters supported the option to continuously monitor THC at control device outlets to demonstrate compliance, but suggested that either the procedure for determining the operating limits or the length of the averaging periods be altered. The commenters stated that THC concentration at a control device outlet is not a parameter that can be easily adjusted by operators over short periods of time. The commenters stated that 3 hours is not a long enough block to avoid deviations from compliance given the variability of the process. The commenters provided an analysis of THC data from a biofilter outlet that showed multiple deviations occurring over a two month period when a 3-hour block average was used and few to zero deviations when a 24-hour or 7-day block average was used for the operating limits. The commenters stated that because HAP destruction efficiency of biofilters does not vary much with time, the longer block average would not be environmentally harmful.

Response: While THC emissions at the outlet of a biofilter may vary, the THC emissions at the outlet of a thermal or catalytic oxidizer should not vary greatly. Although, as stated by the commenters, the HAP destruction efficiency of biofilters is not subject to large short-term variations, the same is not true for thermal and catalytic oxidizers (*e.g.*, a sudden significant decrease in temperature could result in a sudden decrease in HAP reduction). Therefore, we feel it is appropriate to maintain the 3-hour block averaging requirement for THC monitoring for thermal and catalytic oxidizers. However, we have expanded the THC averaging requirement for biofilters to a 24-hour block average to provide more flexibility. The THC operating limit for biofilters would be established as the maximum of three 15-minute recorded readings during emissions testing. We also note the continuous monitoring of THC is not required for all APCD, but is an alternative to continuous monitoring of temperature. Furthermore, facilities can conduct multiple performance tests at different operating conditions to increase their maximum THC concentration operating limit.

6. Selection of Monitoring Requirements for Uncontrolled Process Units

Comment: Several commenters recommended that we change the title of proposed § 63.2262(n) (How do I conduct performance tests and establish operating requirements?—Establishing uncontrolled process unit operating requirements) to "Establishing operating requirements for production-based compliance option process units" for the final rule. The commenters stated that the proposed title implied that no controls of any kind are being applied to these process units, when in fact facilities may be using P2 techniques to reduce emissions. The commenters also objected to wording within the proposed section that suggests that temperature is the only parameter affecting HAP emissions from the process units. The commenters suggested that the requirements be revised in the final rule to give sources more flexibility in identifying and documenting those process unit operating parameters that are critical to maintaining compliance with the PBCO limits.

Response: At proposal, our intention was to establish operating requirements for those process units complying with rule requirements without the use of an APCD. There are two situations in the PCWP rule as proposed where process units may not have an add-on control device: (1) When process units meet the PBCO, or (2) when process units used to generate emissions averaging debits do not have an add-on APCD that partially controls emissions. To clarify this for the final rule and to address the commenters' concern regarding applicability of § 63.2262(n), we changed the title of the section to "Establishing operating requirements for process units meeting compliance options without a control device."

We agree with the commenters that temperature alone is not necessarily the sole factor affecting HAP emissions from some process units. A variety of factors can affect HAP emissions, and the controlling parameter for one process unit may be different than the controlling parameter for another process unit. Therefore, the final rule

gives sources more flexibility in selecting and establishing operating limits for process units without add-on controls. The final rule requires facilities to identify and document the operating parameter(s) that affect HAP emissions from the process unit and to establish appropriate monitoring methods and monitoring frequencies. We recognize that it is not practical to continuously monitor every process-unit-specific factor that could affect uncontrolled emissions (*e.g.*, there is no way to monitor and determine a 3-hour block average of wood species mix for a particleboard plant). However, some parameters are suitable for continuous monitoring (*e.g.*, process operating temperature, furnish moisture content) and are already monitored as part of normal operation but not for compliance purposes. We feel that daily records of most parameters would be sufficient to ensure ongoing compliance (*e.g.*, daily average process operating temperature, furnish moisture, resin type, wood species mix) if the parameters do not deviate from the ranges for these parameters during the initial compliance test. Therefore, in the final PCWP rule, we have replaced the proposed 3-hour block average temperature monitoring requirements for process units without control devices with a requirement to maintain, on a daily basis, the process unit operating parameter(s) within the ranges established during the performance test. This gives facilities the flexibility to decide which parameters they will monitor and control, while providing enforcement personnel with records that can be used to assess and compare the day-to-day operation of the process unit to the controlling operating parameters. Facilities are also allowed to decide for each parameter the appropriate monitoring methods, monitoring frequencies, and averaging times (not to exceed 24 hours for continuously monitored parameters such as temperature and wood furnish moisture). Also, to ensure that the HAP emissions measured during the compliance tests are representative of actual emissions, the final rule requires testing at representative operating conditions, as defined in the rule.

7. Data Collection and Handling

Comment: Several commenters requested clarifications and changes to the proposed requirements related to data collection and handling for CPMS. The commenters stated that the requirement that a valid hour of data must include at least three equally spaced data values for that hour is ambiguous and should be revised. The commenters recommended that the final rule require facilities to average at least three data points taken at constant intervals, provided the interval is less than or equal to 15 minutes. The commenters further noted that a better approach would be to drop the concept of an hourly average altogether and simply calculate the block average as the average of all evenly spaced measurements in the block period with a maximum measurement interval of 15 minutes. The commenters also noted that the proposed rule did not specify how to calculate the 3-hour block average when one or more of the individual hours does not contain at least three valid data values.

Commenters also requested that the final rule consolidate and clarify the requirements in proposed §§ 63.2268 and 63.2270 regarding data that should be excluded from block averages. The commenters recommended that the final rule explicitly state that any monitoring data taken during periods when emission control equipment are not accepting emissions from the production processes should be excluded from hourly or block averages. The commenters also noted inconsistencies in the proposed rule language that seemed to imply that data collected during production downtime and SSM events would be included in the hourly averages but not in the block averages. The commenters stated that, because SSM events occur when the process is not in operation, there is no need to collect data from these periods.

Response: We agree with the commenters that the proposed rule language regarding acceptable data and data averaging was somewhat ambiguous and have revised the language accordingly. Following the commenters' recommendation, we removed the concept of an hourly average from the final rule to allow block averages to be calculated as the average of all evenly spaced measurements in the 3-hour or 24-hour block period with a maximum measurement interval of 15 minutes. In place of the requirement for a valid hourly average to contain at least three equally spaced data values for that hour, we added a minimum data availability requirement. The minimum data availability requirement specifies that to calculate data averages for each 3-hour or 24-hour averaging period, you must have at least 75 percent of the required recorded readings for that period using only recorded readings that are based on valid data. The minimum data availability requirement appears in § 63.2270(f) of today's final rule. To clarify what constitutes valid data and how to calculate block averages, we rearranged proposed §§ 63.2268 and 63.2270. We moved proposed § 63.2268(a)(3) and (4) to final § 63.2270 (now § 63.2270(d) and (e)) of today's final rule. Rather than repeating which data should be excluded from data averages in § 63.2270(d) and (e), these new sections now refer to § 63.2270(b) and (c) when discussing data that should not be included in data averages. We also added data recorded during periods of SSM to the list of data that should be excluded from data averages in § 63.2270. We feel these changes to the structure and wording of the rule should fully address the commenters' concerns.

Comment: Several commenters noted that the proposed PCWP rule does not provide any alternatives to the definition of a 1-hour period found in the MACT general provisions (40 CFR 63.2), which states that a 1-hour period is any 60-minute period commencing on the hour. These commenters requested that facilities be given the option of beginning a 1-hour period at a time that is convenient depending on shift changes, employee duties at the end of a shift, and settings on the systems that record data.

Response: We agree with the commenters and have included a definition of 1-hour period in today's final rule that omits the phrase "commencing on the hour."

8. Performance Specifications for CPMS

Comment: Several commenters requested that we write sections of the final rule language that address temperature measurement. The commenters stated that the phrase "minimum tolerance of 0.75 percent," found in proposed sections 63.2268(b)(2), 63.2268(c)(3), and 63.2268(e)(2), should be revised to read "accurate within 0.75 percent of sensor range." The commenters argued that, because tolerances usually refer to physical dimensions, this revision more accurately reflects the intent of the final PCWP rule. Commenters also recommended that the sensitivity for chart recorders be changed from a sensitivity in the minor division of at least 20°F to minor divisions of not more than 20°F. The commenters noted that the wording in the proposed rule means that minor divisions could be 30°F or 50°F, but assumed that we probably meant that 20°F is the largest minor division that a facility can use, and therefore, stated that the suggested revision is more accurate.

Response: We agree that the proposed temperature measurement requirements should be clarified. In today's final rule,

we wrote the requirement in § 63.2269(b)(2) (formerly proposed § 63.2268(b)(2)) to read "minimum accuracy of 0.75 percent of the temperature value." We eliminated proposed sections §§ 63.2268(c) and 63.2268(e) from the final rule because we removed the requirements for monitoring of pressure or flow. We also wrote proposed § 63.2268(b)(3) to state that "If a chart recorder is used, it must have a sensitivity with minor divisions of not more than 20°F."

Comment: Several commenters requested changes to the proposed work practice requirements for dry rotary dryers and veneer redryers related to moisture monitoring. The commenters noted that the proposed requirement to use a moisture monitor with a minimum accuracy of 1 percent was appropriate for rotary dry dryers in the 25 to 35 percent moisture content range. However, the commenters stated that less stringent accuracy requirements should be included for veneer redryers to better correspond with current practices at softwood plywood and veneer facilities. Specifically, the commenters requested that the final rule revise the proposed performance specifications for moisture monitors for veneer redryers to allow the use of monitors with an accuracy of ±3 percent in the 15 to 25 percent moisture range. Several commenters also requested that the proposed calibration procedures for moisture monitors be revised in the final rule to eliminate grab sampling and to allow facilities to follow the calibration procedures recommended by the manufacturer. The commenters argued that the proposed grab sampling procedure is impractical and that obtaining a representative grab sample would be difficult.

Response: We agree with the commenters that the proposed moisture monitoring requirements should be adjusted in the final rule and have made the requested changes to the accuracy requirements for moisture monitors used with rotary dry dryers and veneer redryers. We have also adjusted the calibration procedures in the final rule to eliminate grab sampling and to allow facilities to follow the manufacturer's recommended calibration procedures for moisture monitors.

I. Routine Control Device Maintenance Exemption (RCDME)

Comment: Several commenters requested that the proposed requirements for the RCDME be modified in the final rule to give PCWP facilities more flexibility. First, the commenters requested that the proposed RCDME allowances (expressed as a percentage of the process unit operating hours) be increased. The commenters argued that the proposed downtime allowance periods are too short to allow for proper maintenance. The commenters noted that the NCASI survey that was used to set the downtime allowance only included data from 1999, and many facilities may have conducted nonannual maintenance and repairs in the years preceding or following that year. According to the commenters, the 1999 survey was also limited in that the majority of the RTO included in the survey were less than 5 years old, and as the equipment ages over a lifetime of 5 to 15 years, performance will degrade below the levels seen in the 1999 survey. Therefore, the commenters suggested that we reexamine the NCASI downtime data and use the 79th percentile instead of the 50th percentile to select downtime allowances that represent the time needed for nonannual events.

Response: After reviewing our previous analysis of the downtime data, we maintain that the percentage downtime we proposed (3 percent for some process units and 0.5 percent for others) calculated on an annual basis is appropriate for the final PCWP rule. The downtime allowance allowed under the RCDME is intended to allow facilities limited time to perform routine maintenance on their APCD without shutting down the process units being controlled by the APCD. We included the downtime allowance in the proposed rule because we recognize that frequent maintenance must be performed to combat particulate and salt buildup in some RTO and RCO for PCWP drying processes. The downtime allowance is not intended to cover every APCD maintenance activity, only those maintenance activities that are routine (*e.g.*, bakeouts, washouts, partial or full media replacements) and do not coincide with process unit shutdowns. Most APCD maintenance should occur during process unit shutdowns; the RCDME is a downtime allowance in addition to the APCD maintenance downtime that occurs during process unit shutdowns. We note that most PCWP plants do not operate 8,760 hours per year without shutdowns. For example, the MACT survey responses indicate that softwood plywood plants operate for an average 7,540 hours per year, which would allow 1,220 hours for control device maintenance without the RCDME. Furthermore, the RCDME is allowed in addition to APCD downtime associated with SSM events covered by the SSM plan (*e.g.*, electrical problems, mechanical problems, utility supply problems, and pre-filter upsets). For these reasons, the final rule retains the RCDME allowances included in the proposed rule.

Comment: Several commenters objected to the proposed requirement that the maintenance be scheduled at the beginning of the semiannual period. The commenters argued that scheduling maintenance activities at the beginning of each semiannual period is neither consistent with industry practice nor practical. The commenters noted that downtime for maintenance is scheduled as the need arises, and downtime schedules change with need and production requirements. The commenters stated that most facilities have a general idea of when they intend to conduct routine maintenance activities and will schedule those activities whenever possible to coincide with process downtime as it approaches. The commenters further noted that the proposed PCWP rule does not clarify what would happen if maintenance were necessary before the scheduled date. Therefore, the commenters concluded that deleting the requirement to set the maintenance schedule at the beginning of each semiannual period would eliminate confusion and better represent industry practice.

Response: We agree with the commenters and have removed the requirement to record the control device maintenance schedule for the semiannual period from the final rule. We agree that the proposed requirement would be impractical because process unit shutdowns are not scheduled semiannually. Also, the SSM provisions do not require scheduling of maintenance, and therefore, requiring scheduling of routine maintenance covered under the RCDME would be more restrictive than the requirements for SSM. To the extent possible, APCD maintenance should be scheduled at the same time as process unit shutdowns. Thus, today's final rule retains the requirement that startup and shutdown of emission control systems must be scheduled during times when process equipment is also shut down.

Comment: Commenters also requested that the proposed RCDME requirement that facilities must minimize emissions to the greatest extent possible during maintenance periods be revised to require that facilities make reasonable efforts to minimize emissions during maintenance. The commenters stated that this revision is necessary because the proposed wording could be interpreted to mean that sources should limit production or shut down entirely

during maintenance periods, which is contrary to the intent of the RCDME.

Response: We agree with the commenters and have modified the referenced requirement as suggested by the commenters.

J. Startup, Shutdown, and Malfunction (SSM)

Comment: Several commenters noted inconsistencies between the proposed rule and the NESHAP General Provisions (40 CFR part 63, subpart A) and requested that these inconsistencies be resolved by making the final PCWP rule consistent with the latest version of the General Provisions.

Response: Approximately 1 month prior to publication of the proposed PCWP rule, we published proposed amendments to the NESHAP General Provisions concerning SSM procedures (67 FR 72875, December 9, 2002) and promulgated them in May 2003 (68 FR 32585, May 30, 2003). Due to the timing of the these rulemakings, the proposed PCWP rule language did not reflect our most recent decisions regarding SSM. To avoid confusion and promote consistency, we have written the final rule to reference the NESHAP General Provisions directly, where applicable, and to be more consistent with other recently promulgated MACT standards. Although the amendments to the NESHAP General Provisions regarding SSM plans are currently involved in litigation, the rule requirements promulgated on May 30, 2003, apply to the final PCWP NESHAP unless and until we promulgate another revision. In response to suggestions made by commenters, we also consolidated several sections to clarify the requirements related to SSM and to eliminate redundancies in the final rule. Specifically, we combined proposed § 63.2250(d) with proposed § 63.2250(a) and revised the resulting § 63.2250(a) to clarify that the SSM periods mentioned in proposed § 63.2250(a) apply to both process units and control devices and to clarify when the compliance options, operating requirements, and work practice requirements do and do not apply. We also removed proposed § 63.2250(e) from the final rule because it was a duplication of proposed § 63.2251(e) regarding control device maintenance schedules. In addition, we removed proposed § 63.2250(f) related to RCO catalyst maintenance because this section was misplaced and is not consistent with the RCO monitoring requirements in today's final rule.

K. Risk-Based Approaches

1. General Comments

Risk-Based Approaches

Comment: Numerous commenters encouraged EPA to incorporate risk-based options which would exclude facilities that pose no significant risk to public health or the environment. Commenters stated that inclusion of risk provisions has the potential to achieve overall environmentally superior results in a cost-effective manner, particularly in cases where criteria pollutants from control devices (*i.e.*, incinerators) may result in greater impacts that the HAP emissions that they control. In particular, the commenter referred to EPA's projection that adoption of MACT floor level controls would result in increased emissions of NO_X, a precursor to ozone and PM. According to the commenter, the proposed rule (without risk provisions) would work against the industry's voluntary commitment to reduce the emissions of greenhouse gases by 12 percent over the next 10 years. The commenter concluded that, in its proposed form, the rule would impose significant additional cost with virtually no gain to either the environment or the health. The commenter stated that facilities wishing to take advantage of the risk-based exemption would take a federally-enforceable permit limit that would guarantee that their emissions remain below the risk-based emission standard. This would constitute an emission limitation, within the statutory definition of the term, and it would allow facilities to forego the installation of incinerators where they are not warranted by public health and environmental considerations, the commenter claimed.

Some commenters argued that the risk-based options are legally justified, protective of human health and the environment, and economically sensible. These commenters stated that the risk-based options are supported under the CAA, through EPA's authority under sections 112(d)(4) and 112(c)(9) to set emission standards other than MACT for certain low-risk facilities and delist technology-defined low-risk subcategories, respectively, and through what they claimed is EPA's inherent *de minimis* authority to avoid undertaking regulatory action in the absence of meaningful risk. One commenter pointed out that, by meeting the stringent health benchmarks necessary to qualify for the risk-based compliance approaches, facilities already would have satisfied the residual risk provisions 8 years ahead of the statutory requirements set forth in section 112(f) of the CAA.

Two commenters believed that the risk-based approach would particularly benefit small mills located in rural areas with timber-dependent economies. One commenter stated that, by offering manufacturers an opportunity to apply for subcategorization on a site-specific basis, facilities that are remotely located, or which were originally planned and sited with thorough consideration of airshed impacts, would not be unduly burdened with MACT requirements which yield little or no public health benefits.

Some commenters argued that such low-risk facilities should not be burdened with the requirements of MACT. One commenter noted that the regulatory framework exists within their State to implement a risk-based approach. Another commenter agreed with the concept of a risk-based approach but stated that it would not be appropriate for State and local programs to determine which facilities should be exempted from MACT. Another commenter suggested that exemptions be provided on a case-by-case basis to individual facilities that are able to demonstrate that they pose no significant risk to public health or the environment.

Several commenters opposed the risk-based exemptions. Two commenters stated that the use of risk-based concepts to evade MACT applicability is contrary to the intent of the CAA and is based on a flawed interpretation of section 112(d)(4) written by an industry subject to regulation. One commenter added that the CAA requires a technology-based floor level of control and does not provide exclusions for risk or secondary impacts in applying the MACT floor. The other commenter was concerned about industry's unprecedented proposal to include *de minimis* exemptions and cost in the MACT standard process. The commenter stated that including case-by-case risk-based exemptions would jeopardize the effectiveness of the national air toxics program to adequately protect public health and the environment and to establish a level playing field. A third commenter noted that subcategorization and source category deletions under CAA section 112(c) have been implemented several times since the MACT program began.

Some commenters pointed out that they have not been able to comment on the technical merit of the risk analysis employed by the EPA. They argued that, until the residual risk analysis procedures have been implemented via the CAA section 112(f) process, risk

analysis should not be used in making MACT determinations pursuant to CAA section 112(d)(4). Also, risk analysis could never be used to establish a MACT floor.

One commenter pointed out that, in separate rulemakings and lawsuits, EPA adopted legal positions and policies that they claimed refute and contradict the very risk-based and cost-based approaches contained in the proposal. In these other arenas, EPA properly rejected risk assessment to alter the establishment of MACT standards. The EPA also properly rejected cost in determining MACT floors and in denying a basis for avoiding the MACT floor.

Response: We feel that the assertions by one commenter about the environmental disbenefits of the PCWP rule as proposed are overstated. We disagree that the PCWP industry as a whole poses a small-to-insignificant risk to human health and the environment. However, we acknowledge that there are some PCWP affected sources that pose little risk to human health and the environment. Consequently, we have included an option in today's final PCWP rule that would allow individual affected sources to be found eligible for membership in a delisted low-risk subcategory if they demonstrate that they do not pose a significant risk to human health or the environment. The low-risk subcategory delisting in today's final PCWP rule is based on our authority under CAA sections 112(c)(1) and (9). The statute requires that categories or subcategories meet specific risk criteria in order to be delisted. To determine whether source categories and subcategories, and their constituent sources, meet these criteria, 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. Section 112(d)(1) of the CAA gives us the authority to distinguish among classes, types, and sizes of sources within a category, and CAA section 112(c)(1) does not restrict our authority to base categories and subcategories on other appropriate criteria. As discussed in more detail elsewhere in this notice, we feel these provisions of the CAA allow us to define a subcategory of sources in terms of risk. Thus, the low-risk subcategory of PCWP affected sources is defined in terms of risk, not cost. We are not subcategorizing or determining MACT floors based on cost. Furthermore, because most affected sources will make their low-risk demonstrations following promulgation of today's final PCWP rule, the MACT level of emissions reduction required by today's final rule is not affected by affected sources becoming part of the low-risk subcategory.

We are not pursuing the risk-based exemptions based on CAA section 112(d)(4). We do not feel that a risk-based approach based on section 112(d)(4) is appropriate for the PCWP industry because PCWP facilities emit HAP for which no health thresholds have been established and because the legislative history of the 1990 Amendments to the CAA indicates that Congress considered and rejected allowing us to grant such source-specific exemptions from the MACT floor. We also are not relying on *de minimis* authority. Legal issues associated with the risk-based provisions are addressed elsewhere in this preamble.

In today's final PCWP rule, we are identifying the criteria we will use to identify low-risk PCWP affected sources and requesting that any candidate affected sources, in addition to the affected sources already identified as low risk in today's action, submit information to us based on those criteria so that we can evaluate whether they might be low-risk. Today's final PCWP rule also establishes a low-risk PCWP subcategory based on the criteria (and including several identified affected sources) and delists the subcategory based on our finding that no source that would be eligible to be included in the subcategory based on our adopted criteria emits HAP at levels that exceed the thresholds specified in section 112(c)(9)(B) of the CAA. To be found eligible to be included in the delisted source category, affected sources will have to demonstrate to us that they meet the criteria established by today's final PCWP rule and assume federally enforceable limitations that ensure their HAP emissions do not subsequently increase to exceed levels reflected in their eligibility demonstrations.

The criteria defining the low-risk subcategory of PCWP affected sources are included in appendix B to subpart DDDD of 40 CFR part 63. The criteria in the appendix were developed for and apply only to the PCWP industry and are not applicable to other industries. Today's final PCWP rule provides two ways that an affected source may demonstrate that it is part of the low-risk subcategory of PCWP affected sources. First, look-up tables allow affected sources to determine, using a limited number of site-specific input parameters, whether emissions from their sources might cause a hazard index (HI) limit for noncarcinogens or a cancer benchmark of one in a million to be exceeded. Second, a site-specific modeling approach can be used by those affected sources that cannot demonstrate that they are part of the low-risk subcategory using the look-up tables.

The low-risk subcategory delisting that is included in today's final PCWP rule is intended to avoid imposing unnecessary controls on affected sources that pose little risk to human health or the environment. Facilities will have to select controls or other methods of limiting risk and then demonstrate, using appendix B to subpart DDDD of 40 CFR part 63 and other analytical tools, such as the "Air Toxics Risk Assessment Reference Library," if appropriate in a source's case, that their emissions qualify them to be included in the low-risk subcategory, and, therefore, to not be subject to the MACT compliance options included in today's final PCWP rule.

Comment: Several commenters objected to EPA using the preambles of individual rule proposals as the forum for introducing significant changes in the way that MACT standards are established. The commenter believed that allowing risk-based exemptions requires statutory changes. A third commenter expressed concern that other parties may miss commenting on the risk-based exemptions because they are contained within six separate proposals. The commenter added that to give the issue full consideration, the risk provisions should not be adopted within any of the final rules but should be addressed in one place, such as in revisions to the General Provisions of 40 CFR part 63, subpart A.

Response: The discussion of risk-based provisions in MACT was included in individual proposals for several reasons. First, we recognize that such provisions might only be appropriate for certain source categories, and our decision-making process required source category-specific input from stakeholders. Second, the 10-year MACT standards, which are now being completed, are the last group of MACT standards currently planned for development, and for any risk provisions to be useful, the provisions must be finalized in a timely manner. We do not agree that statutory changes are necessary because of the discretion provided to the Administrator under CAA section 112(d)(1) to distinguish among classes, types, and sizes of sources within a category and under CAA section 112(c)(1) to base categories and subcategories on any appropriate criteria. We consider low-risk affected

sources to be an appropriate subcategory of sources within the PCWP source category.

Comment: Several commenters stated that the risk-based exemption proposal removes the level playing field that would result from the proper implementation of technology-based MACT standards. According to the commenters, establishing a baseline level of control is essential to prevent industry from moving to areas of the country that have the least stringent air toxics programs, which was one of the primary goals of developing a uniform national air toxics program under section 112 of the 1990 CAA amendments. The commenters argued that risk-based approaches would jeopardize future reductions of HAP in a uniform and consistent manner across the nation. One commenter stated that National Air Toxics Assessment (NATA) data show that virtually no area of the country has escaped measurable concentrations of toxic air pollution. The NATA information indicates that exposure to air toxics is high in both densely populated and remote rural areas.

One commenter disagreed with the assertion that the level playing field would be removed. The commenter pointed out that the argument that EPA should impose unnecessary and potentially environmentally damaging controls for the sole purpose of equalizing control costs across facilities would be at odds with the stated purpose of the CAA. According to the commenter, the claim that the risk-based approach would favor facilities located away from population centers is incorrect. As contemplated, the risk-based approaches to the NESHAP would be keyed to the comparison of health benchmarks with reasonable maximum chronic and acute exposures. According to the commenter, the presence or absence of human populations would have no effect on whether facilities would qualify.

Response: We agree that one of the primary goals of developing a uniform national air toxics program under section 112 of the 1990 CAA amendments was to establish a level playing field. We do not feel that defining a low-risk subcategory in today's final PCWP rule does anything to remove the level playing field for PCWP facilities. Today's final PCWP rule and its criteria for demonstrating eligibility for the delisted low-risk subcategory apply uniformly to all PCWP facilities across the nation. Today's final PCWP rule 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. The criteria for the low-risk subcategory are not dependent on local air toxics programs. Therefore, concerns regarding facilities moving to areas of the country with less-stringent air toxics programs 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).

Comment: One commenter stated that the dockets for the MACT proposals that contain the risk approaches make it clear that the White House Office of Management and Budget (OMB) and industry were the driving forces behind the appearance of these unlawful approaches in EPA's proposals. The commenter condemned the industry-driven agenda that it claimed is being promoted by the White House OMB.

A second commenter stated that the accusations that EPA succumbed to industry lobbying and internal pressures are entirely unfounded.

Response: We are required by Executive Order 12866 to submit to OMB for review all proposed and final rulemaking packages that would have an annual effect on the economy of $100 million or more. The comments we received from OMB reflect their position that low-risk facilities do not warrant regulation. However, the commenter is incorrect in implying that we have not exercised our independent judgment in addressing these issues. Our rationale for adopting the risk-based approach in this PCWP rulemaking is that such an approach is fully authorized under the CAA. This rule reflects the EPA Administrator's appropriate use of discretion to use CAA section 112(c)(9) to delist a low-risk subcategory.

Effects on MACT Program

Comment: Several commenters expressed concern about the impact of a risk-based approach on the MACT program. Some commenters stated that the proposal to include risk-based exemptions is contrary to the 1990 CAA Amendments, which calls for MACT standards based on technology rather than risk as a first step. The commenters pointed out that Congress incorporated the residual risk program under CAA section 112(f) to follow the MACT standards, not to replace them. One commenter added that risk-based approaches would be used separately to augment and improve technology-based standards that do not adequately provide protection to the public.

Another commenter believed that CAA section 112(d)(4) and the regulatory precedent established in over 80 MACT standards reject the inclusion of risk in the first phase of the MACT standards process. The commenter argued that the use of risk assessment at this stage of the MACT program is, in fact, directly opposed to title III of the CAA.

Response: We disagree that inclusion of a low-risk subcategory in today's final PCWP rule is contrary to the 1990 CAA Amendments. The PCWP MACT rule is a technology-based standard developed using the procedures dictated by section 112 of the CAA. The only difference between today's final PCWP rule and other MACT rules is that we used our discretion under CAA sections 112(c)(1) and (9) to subcategorize and delist low-risk affected sources, in addition to fulfilling our duties under CAA section 112(d) to set MACT. The CAA requires that categories or subcategories meet specific risk criteria, 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. We feel that today's final PCWP rule is particularly well-suited for a risk-based option because of the specific pollutants that are emitted by PCWP sources. For many affected sources, the pollutants are emitted in amounts that pose little risk to the surrounding population. However, the cost of controlling these pollutants 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 today's final PCWP rule defining the delisted low-risk subcategory are based on sufficient information to develop health-protective estimates of risk and will provide ample protection of human health and the environment.

Inclusion of a low-risk subcategory in today's final PCWP rule does not alter the MACT program or affect the schedule for promulgation of the remaining MACT standards. We recognize that such provisions are only appropriate for certain source categories, and our decision-making process required source category-specific input from stakeholders. The 10-year MACT standards, which are now being completed, are the last group

of MACT standards currently planned for development, and for any risk provisions to be useful, the provisions must be finalized in a timely manner.

Comment: Several commenters stated that the inclusion of a risk-based approach would delay the MACT program and/or promulgation of the PCWP MACT standard. If the proposed approaches are inserted into upcoming standards, the commenters feared the MACT program (which is already far behind schedule) would be further delayed.

One commenter stated that they were strongly opposed to returning to the morass of risk-based analysis in an attempt to preempt the application of technology-based MACT standards and exempt facilities. The commenter stated that designing a risk-based analysis procedure would also take significant resources, as evidenced by the fact that it took five plus pages in the **Federal Register** to discuss just the basic issues to be considered in the analysis. The commenter indicated that the demand on government resources could cause a delay in the application of MACT nationwide. The commenter stated that EPA should also consider the issue of fairness since the rest of the industrial sector whose NESHAP have already been promulgated did not have a risk-based option.

Another commenter stated that it is evident that the proposed risk-based exemptions would require extensive debate and review in order to launch, which would further delay promulgation of the remaining MACT standards. The commenter stated that delays could be exacerbated by litigation following legal challenges to the rules, and such delays would trigger the CAA section 112(j) MACT hammer provision, which would unnecessarily burden the State and local agencies and the industries. The commenter concluded that, obviously, further delay is unacceptable. Another commenter agreed, stating that it is imperative that EPA meet the new deadlines for promulgating the final MACT standards.

Two commenters stated that EPA's proposal to improperly incorporate risk assessment into the technology-based standard process would cripple a MACT program already in disarray. The commenters argued that the risk-based approach could exacerbate the delay in HAP emissions reductions required by CAA section 112. One commenter noted that EPA's Office of Inspector General recently found that EPA is nearly 2 years behind in fulfilling its statutory responsibilities for implementing Phase 1 MACT standards. According to the commenter, this delay potentially harms the public and environment. The inclusion of risk-based exemptions in 10-year MACT standards would only further delay this process. The other commenter noted that EPA lacks adequate emissions and exposure data, source characterization data, and health and ecological effects information to conduct this process anyway. This commenter believed that the air toxics program is flawed and failing to protect public health and the environment and argued that it was irresponsible for EPA to pursue a deregulatory agenda that would further weaken the effectiveness of the air toxics program. The commenter noted that EPA acknowledged the complexity and delays associated with the proposed risk-based approaches in deciding not to adopt the approaches in the final BSCP rule.

Response: We disagree that identification and delisting of a low-risk subcategory in today's final PCWP rule will alter the MACT program or affect the schedule for promulgation of the remaining MACT standards, especially the PCWP MACT rule. In fact, it has not caused such a delay for the final rule. We do not anticipate any further delays in completing the remaining MACT standards. The delisting of a low-risk subcategory in today's final PCWP rule affects only the PCWP rule, and not any other MACT standards.

We feel that the final PCWP rule is particularly well-suited for a risk-based option because of the specific pollutants that are emitted. For many affected sources, the pollutants are emitted in amounts that pose little risk to the surrounding population. However, the cost of controlling these pollutants is high and may not be justified by environmental benefits for these low-risk facilities. Only those PCWP affected sources that demonstrate that they are low risk are eligible for inclusion in the delisted low-risk subcategory. The criteria defining the delisted low-risk subcategory are based on sufficient information to develop health-protective estimates of risk and will provide ample protection of human health and the environment.

The final PCWP NESHAP is being promulgated by the February 2004 court-ordered deadline. Any delays in implementation of the final PCWP NESHAP caused by legal challenges, which could and often do occur for any MACT standard we promulgate without a risk-based approach, are beyond our control.

2. Legal Authority

Section 112(d)(4) of the CAA

Comment: We received multiple comments stating that CAA section 112(d)(4) provides EPA with authority to exclude sources that emit threshold pollutants from regulation. We also received multiple comments disagreeing that CAA section 112(d)(4) can be interpreted to allow exemptions for individual sources. Several commenters supported the use of a CAA section 112(d)(4) applicability cutoffs for both threshold and non-threshold pollutants.

Response: We feel that section 112(d)(4) does not give us the authority to exempt affected sources or emission points from MACT limitations on non-threshold pollutant emissions. All PCWP facilities emit carcinogens (*e.g.*, formaldehyde), that are currently considered non-threshold pollutants. Therefore, we are not using section 112(d)(4) authority to create risk-based options for PCWP.

We are not setting a risk-based emission limit, but, rather, we are using our CAA section 112(c)(9) authority to delist affected sources that demonstrate they meet the risk and hazard criteria for being included in this low-risk subcategory.

De minimis

Comment: Some commenters attempted to identify a source of authority for risk-based approaches under the *de minimis* doctrine articulated by appellate courts. The commenters cited case law which they believe holds EPA may exempt *de minimis* sources of risk from MACT-level controls because the mandate of CAA section 112 is not extraordinarily rigid and the exemption is consistent with the CAA's health-protective purpose. The commenters argued that CAA sections 112(c)(9) and 112(f)(2) indicate that Congress considered a cancer risk below one in a million to be *de minimis* and, therefore, insufficient to justify regulation under section 112. The commenters stated that EPA's exercise of *de minimis* authority has withstood judicial challenge, and that application of *de minimis* authority is based on the degree of risk at issue, not on the mass of emissions to be regulated.

Other commenters argued that *de minimis* authority does not exist to create MACT exemptions on a facility-by-facility or category-wide basis. The commenters stated that EPA lacks *de minimis* authority to delist subcategories based on risk. The commenters further noted that EPA has not revealed any administrative record

justifying a *de minimis* exemption, to demonstrate that compliance with MACT would yield a gain of trivial or no value.

Response: We are not relying on *de minimis* principles for today's action, and therefore, do not need to respond to these comments.

Section 112(c)(9) of the CAA

Comment: Two commenters opposed using subcategorization as a mechanism to exempt facilities. One of the commenters stated that subcategorization is a tool that should be used in the standard setting process, and using it to exempt facilities would have a detrimental effect on the stringency of the MACT floor and would generally degrade the standard. According to the commenter, the two-step subcategorization proposal is inconsistent with how subcategorization has been done in numerous previous NESHAP.

The other commenter argued that EPA's subcategorization theories are unlawful. According to the commenter, CAA section 112(c)(9) does not authorize EPA to separate identical pollution sources into subcategories that are regulated differently to weed out low-risk facilities or reduce the scope/cost of the standard. The commenter stated that subcategories based solely on risk do not bear a reasonable relationship to Congress' technology-based approach or the statutory structure and purposes of CAA section 112, and are not authorized by the CAA. According to the commenter, categories and subcategories are required to be consistent with the categories of stationary sources in CAA section 111. The commenter was not aware of any instance in which EPA has established categories or subcategories based on risk. The commenter stated that EPA routinely defines subcategories based on equipment characteristics (*e.g.*, technical differences in emissions characteristics, processes, control device applicability, or opportunities for P2). According to the commenter, EPA has not offered any explanation for why reinterpreting the statute to ignore nearly 12 years of settled practices and expectations under the MACT program is reasonable, nor why reducing the applicability of HAP emission standards serves Congress's goals in enacting the 1990 CAA Amendments.

The commenter noted that EPA's discussion of the risk-based exemptions was contained in a preamble section entitled, "Can We Achieve the Goals of the Proposed Rule in a Less Costly Manner," which strongly suggests that EPA's motivation for considering these risk-based approaches is consideration of cost. The commenter cited prior EPA documentation and stated that EPA in the past has rejected the notion that cost should influence MACT determination, and this prior, consistently applied interpretation better serves the purposes of CAA section 112. The commenter argued that subcategorizing to set a no-control MACT floor is the same as refusing to set a MACT standard because the benefits would be negligible, which is unlawful.

The commenter also stated that CAA section 112(c)(9)(B)(i) does not authorize EPA to delist subcategories. According to the commenter, section 112(c)(9)(B) contains two subsections: subsection (i) refers only to categories, and subsection (ii) refers to both categories and subcategories. The commenter argued that the absence of the term "subcategories" in section 112(c)(9)(B)(i) indicates a Congressional choice not to permit the Administrator to delist subcategories of sources under section 112(c)(9)(B). The commenter stated that this is consistent with Congress' decision to require a higher standard to delist categories that emit carcinogens. According to the commenter, the section 112(c)(9)(B)(ii) requirement of less than one in a million lifetime cancer risk for the most exposed individual is a higher and more specific standard than the standard for other HAP.

To the contrary, two commenters stated that EPA has ample authority under CAA sections 112(c)(1) and 112(c)(9) to create and delist low-risk categories or subcategories. According to the commenters, section 112(c)(1) provides the Administrator with significant flexibility to create categories and subcategories as needed to implement CAA section 112. One commenter stated that there is nothing in the statute that limits the criteria the Administrator can use in establishing categories and subcategories. The commenter added that there is also nothing in the history of EPA's interpretation of section 112(c) that precludes subcategorization based on risk. In addition, EPA has stated that emission characteristics are factors to be considered when defining categories.

The commenter stated that application of statutory authority to exclude sources from regulation under section 112(d)(3) is also supported by relevant case law, *e.g.*, in the *Vinyl Chloride* case. (*NRDC* v. *EPA*, 824 F.2D 1126 (D.C. Cir. 1987)) According to the commenter, the court in that case established a range of acceptable levels of risk in establishing limits under prior language in section 112, and the establishment of an acceptable level of risk could be used to create a low-risk subcategory that could be delisted. The commenter stated that technological or operational differences among sources may also help discriminate between low-risk and high-risk sources. The commenter stated that effective use of section 112(c)(1) authority to create risk-based subcategories would significantly improve the cost-effectiveness of the section 112 program without undermining its role in protecting public health and the environment.

Both commenters noted that CAA section 112(c)(9)(B) provides EPA with broad authority to remove from MACT applicability those categories and subcategories of facilities whose HAP emissions are sufficiently low as to demonstrate a cancer risk less than one in a million to the most exposed individual in the population (for non-threshold carcinogens) and no adverse environmental or public health effect (for threshold HAP). (The commenter asserted that Congress used the terms category and subcategory interchangeably, indicating that either one can be delisted.) One commenter suggested that sources able to demonstrate a basis for inclusion in the delisted category on a case-by-case basis would then be exempted from the MACT, subject to possible federally-enforceable conditions designed by EPA. The commenter stated that the new category could include the following: all low-risk facilities, facilities producing wood products found to pose no expected risk to human health (*i.e.*, fiberboard, medium density fiberboard and plywood), facilities with acrolein emissions below a certain threshold, or facilities selected on the basis of some other risk criterion. The commenter suggested that the low-risk category be included in the final rule and delisted within 6 months following publication of the final rule. The delisting notices would designate health benchmarks and facilities would be required to submit evidence (*e.g.*, tiered dispersion modeling) demonstrating that their emissions result in exposures that fall below the benchmarks. Following delisting of the category, an affected source could apply to EPA for a determination that it qualifies for inclusion in the low-risk category. After evaluating the source's petition, EPA would issue a written determination of applicability based on the petition that would be binding on the permitting authority (unless the petition was found to contain significant errors or omissions) and appealable by the affected source or interested parties.

The EPA could require all facilities that qualify for inclusion in the delisted category to comply with federally-enforceable conditions, similar to the conditions established in permits for synthetic minor sources (*e.g.*, limits on potential to emit, production limits).

The commenter also responded to objections regarding the subcategorization and delisting of low-risk facilities. The commenter stated that the contrasting of the terms category and subcategory offered a distinction that in no way limited EPA's authority to delist low-risk facilities. According to the commenter, the argument that EPA cannot create subcategories based on risk is contradicted by the statutory language, which expressly states that the categories and subcategories EPA creates under CAA section 112 need not match those created under CAA section 111. Furthermore, prior EPA statements do nothing to detract from EPA's broad discretion to establish categories and subcategories. The subcategorization factors previously discussed by EPA justify subcategorization based on risk. The authority cited by one commenter does not establish that EPA's discretion to alter subcategorization is limited in any way, and even if it were, EPA is not bound by any prior position. The arguments that EPA may not delist subcategories for carcinogens (or sources emitting carcinogens) rest on a formalistic distinction that EPA previously has rejected as meaningless, and that, at any rate, can be remedied with a simple recasting of a subcategory as a category. The commenter stated that doing so is undisputedly within EPA's authority.

Three commenters addressed the issue of subcategorizing PCWP facilities based on characteristics other than risk. One commenter stated that the only option that appears consistent with the CAA, does not create excessive work for State and local agencies, and may be able to be based on science, is the subcategorization and delisting approach. However, the commenter added that the subcategories should be based on equipment or fuel use, not risk. The commenter stated that a subcategory based on site-specific risk creates a circular definition and does not make sense. The commenter also stated that subcategory delisting should occur before the compliance date so that facilities do not put off compliance in the hope or anticipation of delisting.

The second commenter stated that EPA requested comment on the establishment of PCWP subcategories ostensibly based on physical and operational characteristics, but in reality based on risk. According to the commenter, this indirect approach is just a variation on the approach (direct reliance on risk) that it claims EPA itself notes would disrupt and weaken establishment of MACT floors, and is accordingly unlawful. The commenter stated that, even if these approaches were lawful, to the extent that EPA's proposal could be read to suggest that facilities could be allowed to become part of the allegedly low-risk subcategory in the future without additional EPA rulemaking, this too would be unlawful. According to the commenter, CAA section 112(c)(9) provides the EPA Administrator alone the authority to make delisting determinations, and such authority may not be delegated to other government authorities or private parties. The commenter stated that EPA's proposal suggests an approach entirely backward from the statute-allowing sources to demonstrate after-the-fact that they belong in a subcategory that has been delisted under section 112(c)(9), when the statute requires that EPA determine that no source in the category emits cancer-causing HAP above specified levels, or that no source in the category or subcategory emit non-carcinogenic HAP above specified levels, by the time EPA establishes the standard. The commenter stated that EPA has provided no explanation of how the suggested approaches would be lawful or workable.

The third commenter indicated that low risk is an adequate and appropriate criterion for categorization. The commenter disagreed that EPA should create and delist categories on a technology basis when the intent is delisting of low-risk facilities. The commenter believed that seeking a technology-based surrogate for risk is unnecessary within the statutory framework. The commenter noted that the Congressional intent was "to avoid regulatory costs which would be without public health benefit." (S. Rep. No. 228, 101st Cong., 1st. Sess. 175–6 (1990)) Nevertheless, the commenter described some technology-based criteria that they believed could be used to develop low-risk groups of PCWP facilities.

Four commenters addressed the impact that creation of a low-risk subcategory under CAA section 112(c)(9) could have on the establishment of MACT floors for the PCWP category. Two commenters argued that such subcategorization would have a negative effect. One commenter stated that this situation provided a valid reason for EPA not to mix risk-based and technology-based standards development. The commenter added that EPA also did not address how the "once in, always in" policy would apply in such a situation. The other commenter stated that this situation was another compelling reason why the suggested section 112(c)(9) subcategorization approach was unlawful and arbitrary. The commenter stated that the flaw was so obvious, inherent, and contrary to the MACT floor provisions of CAA section 112 and its legislative history, that it proves the undoing of the suggested section 112(c)(9) exemption. According to the commenter, EPA cannot simultaneously exercise its source category delisting authority consistent with section 112(c)(9), establish appropriate MACT floors under CAA section 112(d), and establish subcategory exemptions in the manner suggested by EPA, because the latter approach contravenes both section 112(c)(9) and the section 112(d) floor-setting process. The commenter stated that CAA section 112's major source thresholds and statutory deadlines make clear that sources meeting MACT by the time EPA is required to issue MACT standards must install MACT controls and may not subsequently throw them off or be relieved from meeting the MACT-level standards. While the CAA section 112(f) residual risk process allows EPA to establish more stringent emissions standards, there is nothing in the CAA that suggests EPA possesses authority to relax promulgated MACT standards.

The third commenter indicated that dilution of the MACT floor would not occur if low-risk category delisting occurred as follows: (1) Propose low-risk category with final PCWP rule, (2) promulgate low-risk category 6 months after proposal, and (3) delist facilities prior to MACT compliance deadline. If EPA issued the final PCWP rule-thereby setting the MACT floor-before it allowed affected sources to apply for inclusion in the low-risk category to be delisted, then every affected source would be considered in the establishment of the MACT floor. Thus, as a result of this timing, the MACT floor could not be diluted because no sources would be exempted from MACT before the MACT floor is set.

The fourth commenter believed that a MACT floor reevaluation would be appropriate and would further ensure that only facilities posing significant risk are required to install expensive controls.

Response: We feel that establishing a low-risk PCWP subcategory under CAA section 112(c)(1) and deleting that subcategory under CAA section 112(c)(9) best balances Congress' dual

concerns that categories and subcategories of major sources of HAP be subject to technology-based (and possible future risk-based) emission standards, but that undue burdens not be placed on groups of sources within the PCWP source category whose HAP emissions are demonstrated to present little risk to public health and the environment. We do not contend that the CAA specifically directs us to establish categories and subcategories of HAP sources based on risk, and we recognize that, at the time of the 1990 CAA Amendments, Congress may have assumed that we would generally base categories and subcategories on the traditional technological, process, output, and product factors that had been considered under CAA section 111. However, when properly considered, it becomes apparent that Congress did not intend the unduly restrictive- and consequently over-regulatory-reading of the CAA that some commenters urge regarding low-risk PCWP facilities.

Numerous CAA section 112 provisions evidence Congress' intent that we be able to find that sources, such as those in the PCWP category whose HAP emissions are below identified risk levels, should not necessarily be subject to MACT. These provisions, together with other indications of Congressional intent regarding the goals of section 112, must all be considered in determining whether we may base a PCWP subcategory on risk and delist that group of sources, without requiring additional HAP regulation that would be redundant for purposes of meeting Congress' risk-based goals.

While it is true that CAA section 112(c)(1) provides that "[t]o the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C[,]" the provision also states that "[n]othing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate." Therefore, by its plain terms, section 112(c)(1) does not preclude basing subcategories on criteria other than those traditionally used under section 111 before 1990, or those used after 1990 for sections 111 and 112. Moreover, while after 1990 we have principally used the traditional criteria to define categories and subcategories, such use in general does not restrict how we may define a subcategory in a specific case, "as appropriate," since each HAP-emitting industry presents its own unique situation and factors to be considered. (See, *e.g.*, *Sierra Club* v. *EPA*, D.C. Cir. No. 02–1253, 2004 U.S. App. LEXIS 348 (decided Jan. 13, 2004).)

Even assuming for argument that the language of section 112(c)(1) may initially appear to restrict our authority to define subcategories, section 112(c)(1) cannot be read in isolation. A broad review of the entire text, structure, and purpose of the statute, as well as Congressional intent shows that, applied within the context of CAA section 112(c)(9), our approach of defining a low-risk subcategory of PCWP affected sources is reasonable, at the very least as a way to reconcile the possible tension between the arguably restrictive language of section 112(c)(1) and the Congressional intent behind section 112(c)(9). (See, *e.g.*, *Virginia* v. *Browner*, 80 F.3d 869, 879 (4th Cir. 1996).) Alternatively, even if the language is clear on its face in restricting our ability to define subcategories, we feel that, as a matter of historical fact, Congress could not have meant what the commenter asserts it appears to have said, and that as a matter of logic and statutory structure, it almost surely could not have meant it. (See, *e.g.*, *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d 1075, 1089 (D.C. Cir. 1996).)

Our interpretation of the CAA is a reasonable accommodation of the statutory language and Congressional intent regarding the relationship of the statutory categorization and subcategorization, delisting, MACT and residual risk provisions that apply to the PCWP category. This becomes clear in light of the issue addressed by commenters, which is whether we may delist a subcategory of low-risk PCWP affected sources only if such a group of sources is defined by criteria we have traditionally used to define categories and subcategories for regulatory, rather than delisting purposes. Our approach implements Congressional intent to avoid the over-regulatory result that flows from an overly rigid reading of the CAA. When the CAA is read as a whole, it is apparent that Congress-which in 1990 likely did not fully anticipate the policy considerations that come into play in regulating HAP emissions from PCWP affected sources-has not spoken clearly on the precise issue. Our interpretation is necessary to fill this statutory gap and prevent the thwarting of Congressional intent not to unnecessarily burden low-risk PCWP facilities by forcing them to meet stringent MACT controls when they already meet the risk-based goals of section 112. Our interpretation thus lends symmetry and coherence to the statutory scheme.

While we do not feel that CAA section 112(c)(1) actually restricts our authority to establish a low-risk PCWP subcategory, even if the language is so restrictive, it must be read within the context of Congress' purpose in allowing us to delist categories and subcategories of low-risk sources that are defined according to the traditional criteria under CAA section 111. It is beyond dispute that Congress determined that certain identifiable groups or sets of sources may be delisted if, as a group and without a single constituent source's exception, they are below the enumerated eligibility criteria of CAA section 112(c)(9). There is no apparent reason why such a group or set of sources must be limited to those defined by traditional categorization or subcategorization criteria. This is because, first, Congress in section 112(c)(1) clearly did not absolutely prohibit us from basing categories and subcategories on other criteria generally; and, second, the underlying characteristic of an eligible set or group of sources under section 112(c)(9)-that no source in the set or group presents risks above the enumerated levels-can be applied under several approaches to defining categories and subcategories and is not dependent upon such set or group being traditionally defined in order to implement the purpose of section 112(c)(9). Put another way, there is nothing apparent in the statute that precludes us from delisting a discernible set of low-risk PCWP affected sources just because that set cannot also be defined according to other traditional criteria that have nothing to do with the question of whether each of the constituent PCWP affected sources is low risk. As a matter of logic and statutory structure, Congress almost surely could not have meant to require that every identifiable group of low-risk PCWP affected sources, no matter how large in number or in percentage with respect to higher-risk affected sources in the PCWP category, must remain subject to CAA section 112, simply because that group could not be subcategorized as separate from the higher risk PCWP affected sources by application of traditional subcategorization criteria.

Where Congress squarely confronted the issue, it explicitly provided relief for categories and subcategories, defined by traditional criteria, that also happen to present little risk. (See CAA sections 112(d)(4), 112(c)(9), and 112(f)(2).) These CAA provisions addressing risk-based relief from, or thresholds for, HAP emissions regulation evidence

Congressional concern that the effects of such pollution be taken into account, where appropriate, in determining whether regulation under CAA section 112 is necessary. At the time of the 1990 Amendments, Congress did not consider it necessary to provide express relief for additional groups such as low-risk PCWP facilities, beyond those defined by traditional category and subcategory criteria, because it assumed we could implement a comprehensive regulatory scheme for air toxics that would both address situations where technology-based standards were needed to reduce source HAP emissions to levels closer to the risk-based goals of section 112, and avoid unnecessary imposition of technology-based requirements on groups of sources that were already meeting those goals. Congress enacted or revised various CAA air toxics provisions—including sections 112(c), (d) and (f)—to that end. Had events unfolded in that anticipated fashion, in the case of each industrial category and subcategory, there would have been a perfect correlation between the traditional criteria for defining categories and subcategories and the facts showing whether those groups are either high-or low-risk HAP sources.

This context turned out to be more complex than Congress anticipated, and in the case of PCWP facilities there is no clear differentiation between high-versus low-risk sources that corresponds to our traditional approach for identifying source categories and subcategories. Nevertheless, as in the case of a low-risk source group defined by traditional category or subcategory criteria, for the PCWP industry, we are able to identify a significant group of sources whose HAP emissions pose little risk to public health and the environment, applying the same section 112(c)(9) delisting criteria that would apply to any traditionally-defined source group. We feel it is reasonable to conclude that Congress would not have intended to over-regulate the low-risk PCWP affected sources due to the inability to define such a group by traditional criteria and thereby frustrate the coherent scheme Congress set forth of ensuring that HAP sources ultimately meet common risk-based goals under section 112.

The commenter's assertion that we are inappropriately altering our interpretation of the applicable statutory provisions and departing from the traditional categorization and subcategorization criteria in addressing low-risk PCWP facilities is thus unfounded. As explained above, the complexity of the air toxics problem and the relationship between the traditional criteria and what might be groups of low-risk sources, a context not fully understood by either Congress or EPA at the time of the 1990 Amendments, provides adequate justification for any unique applications of the our approach for low-risk PCWP facilities.

Our approach does not equate to one that Congress considered and rejected that would have allowed source-by-source exemptions from MACT based on individualized demonstrations that such sources are low risk. This is because, contrary to that approach, we rely upon the application of specific eligibility criteria that are defined in advance of any source's application to be included in the low-risk PCWP subcategory, in much the same way as any other applicability determination process works. Moreover, in response to the assertion that our approach nevertheless conflicts with legislative history rejecting a similar (but not identical) approach Congress considered under CAA section 112, this legislative history is not substantive legislative history demonstrating that Congress voted against relief from MACT in this situation-there is no such history. The commenters point to a provision in the House bill that was not enacted but that would have provided in certain situations for case-by-case exemptions for low-risk sources. There is no evidence that this provision was ever debated, considered, or voted upon, so its not being enacted is not probative of congressional intent concerning our ability to identify and delist a group of low-risk PCWP affected sources. Instead, it is reasonable to assume that, had Congress been aware in 1990 of the possibility that an identifiable group of PCWP affected sources is low risk, while that group does not correspond to traditional criteria differentiating categories and subcategories, Congress would have expressly, rather than implicitly, authorized our action here.

Moreover, the commenters are unable to cite any provision in CAA section 112 that would prevent us from being able to add individual or additional groups of low-risk PCWP affected sources to the group we initially identify in our final delisting action, as those additional low-risk PCWP affected sources prove their eligibility for inclusion in the delisted group over time. In fact, the approach we are taking for identifying additional low-risk PCWP affected sources is fully consistent with the approach we have long taken in identifying, on a case-by-case basis and subject to appropriate review, whether individual sources are members of a category or subcategory subject to standards adopted under CAA sections 111 and 112.

Regarding the comment that Congress did not expressly provide relief for carcinogen-emitting low-risk groups of sources within the PCWP category other than as an entire category, we construe the provisions of CAA section 112(c)(9) to apply to listed subcategories as well as to categories. This construction is logical in the context of the general regulatory scheme established by the statute, and it is the most reasonable one because section 112(c)(9)(B)(ii) expressly refers to subcategories. Under a literal reading of section 112(c)(9)(B), no subcategory could ever be delisted, notwithstanding the explicit reference to subcategories, since the introductory language of section 112(c)(9)(B) provides explicit authority to only delist categories. Such a reading makes no sense, at the very least because Congress plainly assumed we might also delist another collection of sources besides either categories or subcategories, even in the case of sources of carcinogens. Both sections 112(c)(9)(B)(i) and (ii) refer additionally to groups of sources in the case of area sources as being eligible for delisting, even though only a category of sources is specifically identified as eligible for delisting in the introductory language of section 112(c)(9)(B). In light of the broader congressional purpose behind the delisting authority, we interpret the absence of explicit references to subcategories in this introductory language and in section 112(c)(9)(B)(i) as representing nothing more than a drafting error.

Regarding the comments about establishing PCWP subcategories based on characteristics other than risk, the criteria for the low-risk subcategory we are delisting are based solely on risk and not on technological differences in equipment or emissions. We performed an analysis to determine which major source PCWP affected sources may be low-risk affected sources. Whether affected sources are low risk or not depends on the affected source HAP emissions; and affected source HAP emissions are a function of the type and amount of product(s) produced, the type of process units (*e.g.*, direct-fired versus indirect-fired dryers) used to produce the product, and the emission control systems in place. Our analysis indicates that the affected sources which show low risk could include affected sources producing various products such as particleboard, molded particleboard, medium density fiberboard, softwood plywood, softwood veneer, fiberboard, engineered wood products, hardboard, and oriented strandboard. However, there are also major sources that

produce these products that are not low risk, and, therefore, product type cannot be used to define the low-risk subcategory. There is no correlation between production rate and low-risk affected sources (*e.g.*, when affected sources are sorted by production rate for their product, the low-risk affected sources are not always at the lower end of the production rate range), so production rate cannot be used as criteria for defining the low-risk subcategory. The low-risk affected sources use a variety of process equipment (*e.g.*, veneer dryers at softwood plywood plants and tube dryer at MDF plants). This same equipment is used at PCWP plants that are not low risk, and, therefore, there is no process unit type distinction that can be used to define the low-risk subcategory. The pollutant that drives the risk estimate can vary from affected source to affected source because of the different types of process units at each affected source. There is no clear distinction among low-risk and non-low-risk affected sources when ranked by emissions of individual pollutants because of other factors that contribute to affected source risk such as presence of a co-located PCWP facility or variability in the pollutants emitted. Thus, there is no emissions distinction that can be used to define the low-risk subcategory. There is no technological basis for creating a subcategory of PCWP affected sources that are low risk. The commonality between all of the low-risk PCWP affected sources is that they are low risk, and, therefore, we have established the low-risk subcategory based on risk.

We do not agree with the commenters' assertions that our approach for the low-risk PCWP subcategory undermines our ability to identify the MACT floor for the larger PCWP category, either in today's final PCWP rule or in any future consideration of technological development under CAA section 112(d)(6). This is because, while low-risk PCWP affected sources will literally be part of a separate subcategory, there is nothing in the CAA that prevents us from including them in any consideration of what represents the best controlled similar source in the new source MACT floor context, and because it is not unprecedented for us to look outside the relevant category or subcategory in identifying the average emission limitation achieved by the best controlled existing sources if doing so enables us to best estimate what the relevant existing sources have achieved. In fact, EPA has taken this very approach in the Industrial Boilers MACT rulemaking, in order to identify the MACT floor for mercury emissions. Moreover, the unique issues presented by the low-risk PCWP subcategory show that it would be unreasonable to exclude any better-performing low-risk PCWP sources from the MACT floor pool for the larger PCWP category. Traditionally, EPA has based categories and subcategories partly on determinations of what pollution control measures can be applied to the relevant groups of sources in order to effectively and achievably reduce HAP. In other words, EPA has identified subcategories for purposes of identifying the MACT floor in a way that accounts for the differences of sources types in their abilities to control HAP emissions. But whether a PCWP source is a low-risk source does not necessarily turn on such a distinction—two sources might have identical abilities to control HAP emissions, but the unique circumstances of one source regarding the impacts of its HAP emissions will determine whether or not it is a low-risk PCWP source. (In fact, it is theoretically possible that between two sources the better performing source will be a high-risk source, and the worse-performing source will be a low-risk source, based on circumstances that are unrelated to the question of what abilities the sources have to control HAP emissions through application of MACT, such as the sources' locations vis a vis exposed human populations.) Therefore, EPA feels that not only is it appropriate to include any better-performing low risk PCWP sources in the MACT floor determinations for the larger PCWP category, but that excluding such sources simply based on the unique facts of the impacts of their emissions, with there being no difference in the abilities of high-risk and low-risk sources to apply HAP emission control measures, could result in an undesirable weakening of the MACT floor for the larger PCWP category. To that end, the MACT floors established for PCWP process units today are in no way affected by our establishment of the low-risk PCWP subcategory.

Finally, we disagree with the argument by one commenter that the low-risk PCWP subcategory approach represents an impermissible cost-based exemption from MACT or factor in determining MACT. Certainly it is true that costs may not be considered in setting the MACT floor. However, there is nothing in the CAA that prevents us from noting the cost impacts, beneficial or adverse, of our actions in setting MACT floors, assessing possible beyond-the-floor measures, or conducting risk-based actions under CAA section 112. In fact, we routinely evaluate the costs of our regulatory actions, even when cost factors may not be used to influence the regulatory decision itself, in order to comply with applicable Executive Order and statutory administrative review requirements. Simply because there is a cost benefit to some members of the PCWP category in our establishing a low-risk PCWP subcategory does not make that action impermissible, provided that our subcategorization and delisting are otherwise properly based on the appropriate risk-based criteria under CAA section 112(c)(9). Section 112 by its own terms does not forbid the goal of achieving environmental protection in a less costly manner. Similarly, it is appropriate for EPA to note the beneficial air pollution-related impacts of not requiring low-risk PCWP sources to, for example, install criteria pollutant emission-producing RTOs. While it is true that such air quality-related impacts could not constitute non-air quality health and environmental impacts that EPA must consider when setting MACT under CAA section 112(d)(2), nothing in the CAA prevents EPA from taking account of such impacts in developing its policy regarding whether it is appropriate to delist a subcategory under section 112(c)(9) when that subcategory otherwise meets the statutory criteria for delisting. Therefore, EPA does not agree with commenters who claim that its approach to delisting the low risk PCWP subcategory conflicts with how it has argued issues regarding either *de minimis* authority, cost-based exemptions from MACT, or the treatment of non-air quality impacts and the consideration of risk in setting the actual MACT standard before the U.S. Court of Appeals for the D.C. Circuit. Nor does our approach contravene any of that Court's rulings on these issues.

3. Criteria for Demonstrating Low Risk Dose-response Values

Comment: Two commenters suggested that EPA incorporate into the PCWP rule the findings of the nationwide wood products risk assessment, which they claim demonstrates that the vast majority of wood products sources cause no meaningful risk to human health or the environment at current emission levels. The commenters stated that the risk assessment used existing air dispersion modeling studies of 34 wood products facilities throughout the U.S. to estimate the maximum annual off-site HAP concentrations at wood products facilities nationwide. According to the commenters, the risk assessment indicates that large

subgroups of facilities that are affected sources under the PCWP rule as proposed (*i.e.*, fiberboard, medium density fiberboard, and plywood facilities) generally are expected to pose insignificant risks to human health, based on a comparison of predicted off-site concentrations with applicable health benchmarks. One of the commenters stated that many of the facilities with low off-site concentrations will likely be smaller plants that would not be able to justify installation of (additional) emission controls and may face closure without a risk-based compliance option. The other commenter stated that a comparison of off-site concentrations of formaldehyde and acetaldehyde with benchmarks reflecting the latest toxicological evidence indicates that exposures to those HAP are well below levels of concern. Acrolein was the only HAP with potential exposures at some affected sources (*i.e.*, subset of fiberboard, medium density fiberboard and plywood affected sources) that exceeded the health benchmark. However, the commenter stated that the acrolein findings may not represent an actual risk to human health because exceedences of the benchmark may be attributable to EPA averaging a large number of non-detects at one-half the detection limit, thereby artificially increasing predicted acrolein emissions. Based on these overall findings, the commenter concluded that the wood products risk assessment indicates that incinerator control is not warranted on the basis of human health concerns for a large number of facilities.

Response: We acknowledge receipt of the industry-sponsored nationwide wood products MACT risk assessment submitted by the commenter. However, we conducted our own risk analysis to evaluate the merits of including and delisting a low-risk subcategory in today's final PCWP rule. The methodology used in our risk analysis differed widely from the methodology used in industry's risk assessment. For example, industry's risk assessment was based on previously conducted air dispersion modeling studies for 34 PCWP facilities, while our analysis used emission estimates developed for each PCWP affected source expected to be a major source of HAP. We used different (generally more protective) human health benchmarks in our risk assessment than were used in industry's risk assessment. We also considered all HAP (including metal HAP) in our risk analysis, whereas industry's risk assessment considered only methanol, formaldehyde, acetaldehyde, acrolein, phenol, and propionaldehyde.

Based on our risk analysis, we conclude that HAP emissions from some PCWP affected sources pose little risk to human health and the environment. Therefore, we have included a subcategory of low-risk PCWP affected sources in today's final PCWP rule, and are delisting that subcategory. Appendix B to subpart DDDD of 40 CFR part 63 includes procedures that facilities may use to demonstrate that they are part of the delisted low-risk subcategory, and, therefore, are not subject to the compliance options included in today's final PCWP MACT rule. To demonstrate eligibility for the low-risk subcategory, facilities must first conduct emissions testing for up to 13 HAP (five organic HAP from all process units, seven metal HAP from direct-fired process units, and MDI from presses processing product containing MDI resin). The rationale for selection of these 13 HAP is described elsewhere in this section and in the supporting documentation for the final rule. Facilities must use the results from emissions testing to preliminarily demonstrate, subject to EPA approval, that they are part of the low-risk subcategory using either a look-up table analysis (based on the look-up tables included in appendix B to subpart DDDD of 40 CFR part 63) or site-specific risk assessment methodology (described in appendix B to subpart DDDD of 40 CFR part 63 and other analytical tools, such as the "Air Toxics Risk Assessment Reference Library" if appropriate for the specific source) and risk benchmarks (described in appendix B to subpart DDDD of 40 CFR part 63).

Regarding acrolein, the commenter is correct in that, when developing AP–42 emission factors, we used a value of one-half the detection limit for all non-detect sample runs if acrolein was detected in any sample runs from the applicable source category. Acrolein has been detected in process unit emissions from all sectors of the PCWP industry, except for hardwood plywood manufacturing. When using emission factors to estimate emissions from PCWP facilities, we did not estimate emissions of a pollutant when all of the emissions test runs were non-detect. However, we did use emission factors that included a mixture of detectable values and values based on one-half of the method detection limit (MDL) when acrolein was detected at least once for a particular type of process unit. We maintain that this approach to handling non-detects is appropriate for the purposes that we used the emissions data. Facilities will conduct emissions tests instead of using emission factors to demonstrate eligibility for the low-risk subcategory. To prevent facilities from including HAP that are not detected in their low-risk demonstrations, appendix B to subpart DDDD of 40 CFR part 63 states that facilities may use zero for non-detects when all of the emission test runs are below the MDL, provided that certain criteria are met to ensure that emissions testing and analysis procedures are adequate to detect low concentrations of HAP.

Comment: One commenter stated that CAA section 112(d)(4) is particularly ill-suited to the PCWP and industrial boiler source categories. The commenter stated that, even if EPA had authority to create individualized MACT exemptions based on health thresholds, it could not do so if there is insufficient evidence on the pollutants emitted to establish a NOEL. According to the commenter, section 112(d)(4) does not apply for chemicals that do not have a well-defined threshold based on reliable science. The commenter stated that available evidence does not establish a no-effect threshold for acetaldehyde, acrolein, benzene, carbon tetrachloride, chloroform, formaldehyde, manganese, methylene chloride, and phenol. As rationale, the commenter presented a summary of the available health effects data for each of these pollutants.

Response: As stated elsewhere in this preamble, we are not pursuing establishment of a threshold emission rate for the PCWP source category under CAA section 112(d)(4) because PCWP affected sources emit non-threshold pollutants. Therefore, this comment is irrelevant in the context of the PCWP rule. Comments pertaining to the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP are addressed in the comment-response document for that rule. (See Docket ID No. OAR–2002–0058.)

Comment: Two commenters expressed concern about the health benchmark data sources that EPA used. The first commenter argued that the proposal inappropriately used draft guidelines and toxicity profiles that had not been subject to public review and/or were not publicly available. The commenter was particularly concerned with the use of non-linear carcinogenic risk values and toxicity profiles (for HAP) that have not been finalized and are not available for review by the public.

The second commenter argued that EPA should not rely solely on the health benchmarks in its Integrated Risk Information System (IRIS) database. The commenter stated that IRIS, while useful for obtaining information about the health effects of chemicals, is far

from definitive, as EPA resource constraints have resulted in many chemical summaries that are significantly outdated and do not reflect the most recent scientific developments. Moreover, the commenter stated that the IRIS database is a non-statutory, in-house EPA activity, and IRIS entries are not subject to formal notice and comment. The commenter noted that EPA management has repeatedly emphasized in directives that other information must be considered, in addition to the IRIS database, when evaluating the health effects of chemicals in a regulatory context. The commenter concluded that EPA must use a scientifically appropriate health benchmark based on a consideration of all relevant information to ensure that the health benchmark is up-to-date and scientifically credible, even if that means departing from the value in IRIS.

A third commenter agreed with EPA's choice to derive their data from IRIS, California EPA (CalEPA), and Agency for Toxic Substances and Disease Registry (ATSDR) for its documentation for establishing risk based threshold and non-threshold values. The commenter added that almost all HAP are being reviewed and reevaluated on a regular basis, and it would be inappropriate to single out formaldehyde and acetaldehyde at this time. The commenter stated that EPA can only rely on what is currently published and has undergone either peer review or EPA review. According to the commenter, the issue of changing health-based guideline values will always be a concern once health-based regulations are promulgated.

Response: We agree with the first two commenters that we should use the best available sources of health effects information for risk or hazard determinations. As we have stated previously, we will not be relying exclusively on IRIS values, but will be considering all credible and readily available assessments.[1] 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 internal and external peer review steps and represent EPA consensus values. When adequate toxicity information is not available in IRIS, 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. For our use, these alternatives need to be grounded in publicly available, peer-reviewed information. Formaldehyde is an example of this situation. We are not using information that does not meet these requirements. We also agree with the third 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. Facilities conducting low-risk demonstrations should refer to appendix B to subpart DDDD of 40 CFR part 63 and other analytical tools, such as the "Air Toxics Risk Assessment Guidance Reference Library" (if appropriate for the specific source) for guidance on choosing appropriate dose-response values.

Comment: With the support of several others, one commenter pointed out that the science with respect to formaldehyde and acetaldehyde has changed since EPA's initial IRIS entries for those pollutants were completed. Consequently, the commenter believed it would be inappropriate for EPA to rely on the unit risk factors for those pollutants in the IRIS database in establishing a property line concentration threshold in the PCWP rule as proposed. The commenter supported EPA's efforts in revising its formaldehyde and acetaldehyde IRIS assessment and noted that both revisions are expected to be finalized before the final PCWP rule is published in 2004. Regarding formaldehyde, the commenter noted that EPA plans on using the model from the Chemical Industry Institute of Technology (CIIT) to revise its formaldehyde IRIS assessment and encouraged this action. The commenter pointed out that the CIIT model has been recognized by several authoritative bodies (*e.g.*, Health Canada/Environment Canada, Organization for Economic Coordination and Development, and World Health Organization) as providing the most scientifically defensible analysis of formaldehyde. (Another commenter added that the IRIS risk criteria for formaldehyde clearly cause formaldehyde risk estimates to be overstated but argued that, even using the very conservative IRIS numbers, risks are still low. A third commenter urged EPA not to use the formaldehyde values in ATSDR, stating that they are fundamentally flawed, as detailed in their comment.) Regarding acetaldehyde, the commenter recommended that EPA use a health benchmark between 27 and 390 micrograms per cubic meter ($\mu g/m^3$) and included their rationale in an attachment to their comment. If EPA is unable to complete its reassessments before the PCWP rule is finalized, the commenter encouraged EPA not to revert to the original IRIS unit risk factors for formaldehyde and acetaldehyde. Instead, the commenter recommended that EPA use the CIIT model (or alternatively defer to Health Canada/Environment Canada) for formaldehyde and, at a minimum, use the IRIS reference concentration (RfC) of 9 $\mu g/m^3$ for acetaldehyde.

Response: With the exception of formaldehyde, we are using the human health values currently used by EPA's air toxics program and available at: *http://www.epa.gov/ttn/atw/toxsource/summary.html.* These dose response values come from several sources including EPA's IRIS, the Centers for Disease Control's ATSDR, and California EPA. See the supporting information for this rulemaking for a summary of the human health values we used in our assessment.

For formaldehyde, we do not use the dose-response value reported in IRIS. The dose-response value in IRIS is based on a 1987 study, and no longer represents the best available science in the peer-reviewed literature. Since that time, significant new data and analysis have become available. We based the dose-response value we used for formaldehyde on work conducted by the CIIT Centers for Health Research (formerly, the Chemical Industry Institute of Toxicology). In 1999, the CIIT published a risk assessment which incorporated mechanistic and dosimetric information on formaldehyde that had been accumulated over the past decade. The risk assessment analyzed carcinogenic risk from inhaled formaldehyde using approaches that are consistent with EPA's draft guidelines for carcinogenic risk assessment. The CIIT model is based on computational fluid dynamics (CFD) models of airflow and formaldehyde delivery to the relevant parts of the rat and human respiratory tract, which are then coupled to a biologically-motivated two-staged clonal growth model that allows for incorporation of different biological

[1] 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)

effects. These biological effects, such as interaction with DNA and cell proliferation, are processes by which formaldehyde may contribute to development of cancer at sites exposed at the portal of entry (*e.g.*, respiratory tract). The two-staged model is a much more advanced approach for examining the relevance of tumors seen in animal models for human populations.

We believe that the CIIT modeling effort represents the best available application of the available mechanistic and dosimetric science on the dose-response for portal of entry cancers due to formaldehyde exposures. We note here that other organizations, including Health Canada, have adopted this approach. Accordingly, we have used risk estimates based on the CIIT airflow model coupled to a two-staged clonal growth model as the basis for the dose-response values for this analysis. This model incorporates state-of-the-art analyses for species-specific dosimetry, and encompasses more of the available biological data than any other currently available model. As with any model, uncertainties exist, and this model is sensitive to the inputs, but we believe it represents the best available approach for assessing the risk of portal-of-entry cancers due to formaldehyde exposures.

Currently, the CIIT information and other recent information, including recently published epidemiological studies, are being reviewed and considered in the reassessment of our formaldehyde unit risk estimate (URE). We plan to bring this reassessment to the Science Advisory Board in the summer of 2004. The feasibility of delisting a subgroup of affected sources based on risk is not compromised by the existing formaldehyde dose-response value because some affected sources would qualify for delisting based on this current value. We are moving forward with the final PCWP rule at this time because there is a court-ordered deadline, and we are including the low-risk PCWP subcategory delisting and basing our review of sources's eligibility on the CIIT model for formaldehyde. We disagree with the statement by one of the commenters that risks are still low using the current IRIS number for formaldehyde. Our analysis has demonstrated that not all PCWP affected sources can be considered low risk when either the current IRIS or CIIT URE for formaldehyde is employed.

While we recognize the similarities between acetaldehyde and formaldehyde with regard to suggested modes of action, the reassessment of acetaldehyde is lagging behind that of formaldehyde. The formaldehyde reassessment is further along because of the preponderance of data specific to formaldehyde and the potentially greater impact of a change in potency to our regulatory decisions. Unlike for formaldehyde, an alternative, peer-reviewed, publicly available assessment does not currently exist for acetaldehyde, leaving us with the current IRIS assessment. We do not feel it is necessary to wait for our acetaldehyde reassessment to be completed, due to the court-ordered deadline for the final PCWP MACT rule, and due to the fact that until otherwise concluded the IRIS values for acetaldehyde reflect the best available source of health effects information. Therefore, we are relying on the IRIS values for acetaldehyde in both cancer and non-cancer risk assessments for the final rule.

Affected sources conducting low-risk demonstrations should refer to appendix B to subpart DDDD of 40 CFR part 63 and other analytical tools, such as the "Air Toxics Risk Assessment Reference Library" (if appropriate for the specific source) for guidance on choosing appropriate dose-response values.

Comment: One commenter stated that EPA should consider formaldehyde and acetaldehyde as carcinogens unless a reassessment classifies them as threshold pollutants. A second commenter argued that formaldehyde and acetaldehyde are properly treated as threshold pollutants. This commenter contended that the legislative history of the CAA makes clear that Congress considered "threshold pollutants" to be those for which a "no observed effect level" can be established. (See, *e.g.*, S. Rep. No. 228, 101st Cong., 1st Sess. 175–176 (1990)). By contrast, a non-threshold pollutant is one for which a no observed effect level cannot be identified, *i.e.*, a pollutant for which adverse effects may be seen at any dose level above zero. The commenter noted that EPA has historically assumed that all carcinogens are non-threshold pollutants that may trigger a carcinogenic effect at any exposure level, no matter how small. However, as mechanistic data on the mode of action of carcinogenesis advances, that conservative assumption may prove not to be accurate for certain pollutants. The commenter stated that the available science strongly suggest that these pollutants act as threshold carcinogens. The commenter contended that there is a no observed effect level for formaldehyde below which the carcinogenic risk either does not exist or cannot be measured, as documented in an attachment to their comment. The commenter stated that acetaldehyde should be viewed similarly because acetaldehyde is similar to formaldehyde structurally and toxicologically, and is expected to behave similarly mechanistically. Because acetaldehyde is a less potent carcinogen than formaldehyde (by an order of magnitude), non-cancer health effects (which clearly are threshold health effects) are the likely risk driver for that pollutant. Finally, the commenter noted that EPA's recently issued Draft Final Guidelines for Carcinogenic Risk Assessment provide that, for non-linear carcinogens, EPA will calculate a reference dose (RfD) or RfC, which are safe lifetime doses (*i.e.*, doses below which adverse effects will not occur). The commenter stated that this is exactly what a threshold pollutant is. Thus, EPA's revised guidelines support the conclusion that formaldehyde and acetaldehyde should be treated as threshold pollutants.

Response: We agree that we should consider formaldehyde and acetaldehyde as carcinogens unless a reassessment classifies them as threshold pollutants. Currently, formaldehyde and acetaldehyde are considered probable human carcinogens. Both are under review, and their dose-response values for carcinogenicity are likely to change. For the final rule, we are using an alternative dose-response value for formaldehyde based on a peer-reviewed, publicly available assessment. However, we do not have comparable quantitative information for acetaldehyde. Therefore, we will use the current IRIS value. Affected sources conducting low-risk demonstrations should refer to appendix B to subpart DDDD of 40 CFR part 63 (and/or the "Air Toxics Risk Assessment Reference Library") for guidance on choosing appropriate dose-response values.

Comment: One commenter expressed concern about some of the health benchmarks that EPA plans to publish. The commenter reviewed various health studies for each pollutant and recommended several RfC values. The commenter noted that, because IRIS does not have an RfC for methanol, EPA has indicated it plans to determine a *de minimis* threshold for methanol using a value of 4.0 milligrams per cubic meter (mg/m^3) as an RfC. The commenter noted that this value is the noncancer chronic reference exposure level (REL) derived by CalEPA. The commenter stated that CalEPA's derivation of that REL contains some errors and inaccurate assumptions. According to the commenter, a more accurate estimate of a human safe level for chronic exposure to methanol by

inhalation, derived from the same mouse study data, is 171 mg/m³, which is discussed further in their comments. The commenter stated that their discussion presents new analyses not previously reviewed by EPA and a ground-breaking new approach to a hazard assessment for methanol. The commenter noted that EPA is currently revising its assessment for acrolein and has provided for public information a draft toxicological review and draft IRIS summary for acrolein. The draft IRIS document states that the proposed new RfC of 0.03 μg/m³ replaces the previous RfC of 0.02 μg/m³, and that this new RfC is based on a more recent interpretation of the database. The commenter noted the basis for the revised acrolein RfC (Feron et al., 1978) and argued that EPA's interpretation of this study is overly conservative. The commenter stated that EPA has used the maximum uncertainty factors that could reasonably be justifiable and thereby developed an RfC that almost certainly goes beyond what is needed to protect human health. The commenter suggested that EPA should instead use the more realistic reference exposure level developed by CalEPA, which is more conservative than the Health Canada Tolerable Concentration.

The commenter noted that EPA has not published a health benchmark for phenol. The commenter agreed with EPA's proposal to use the CalEPA REL of 200 μg/m³ for phenol in implementing the risk-based approach for wood products facilities. According to the commenter, the REL is intended to serve the same goal as an RfC.

The commenter supported using a health benchmark of 110 μg/m³ for propionaldehyde and believed that this value would protect human health with an ample margin of safety. The commenter described how the 110 μg/m³ value was derived based on the threshold limit value (TLV) for propionaldehyde identified by the American Conference of Governmental Industrial Hygienists (ACGIH). The commenter explained that this benchmark is consistent with values developed by other organizations.

Response: We are currently developing an IRIS assessment for methanol, and any new information that exists that has undergone peer review will be considered in this re-evaluation. We publish yearly in the **Federal Register** a list of all chemicals for which we are planning IRIS assessment activity. This action further requests submission of pertinent data for these chemicals. In lieu of the pending IRIS assessment, we will continue to draw on other sources identified by our established default hierarchy of data sources, which have as part of their development processes external or peer review, in addition to extensive internal reviews.

A reassessment of acrolein was completed in June of 2003. The RfC resulting from that reassessment (*i.e.*, an RfC of 0.02 μg/m³, with an uncertainty factor of 1,000) is what is currently on IRIS. As with all announced IRIS reassessments, time was provided for new data or relevant information to be submitted. In addition, each assessment undergoes extensive internal review as well as external peer review to ensure that the data used are scientifically sound. We feel that we have developed the most scientifically sound RfC that will ensure that risk assessments using this number are health-protective. Facilities conducting low-risk demonstrations should refer to appendix B to subpart DDDD of 40 CFR part 63 (and/or the "Air Toxics Risk Assessment Reference Library") for guidance on choosing appropriate dose-response values.

We do not currently have plans to develop an IRIS assessment for phenol. We will continue to rely on our hierarchy of other sources when IRIS values are not available.

We do not have an IRIS file for propionaldehyde, and an assessment is not available from the alternative sources in our default hierarchy. The hierarchy sources do not include ACGIH, as that organization develops reference values for use in occupational exposure settings, as opposed to the ambient air exposures that are the focus of this action. Development of an IRIS assessment for propionaldehyde is currently underway. Once available, it will be used in future risk analyses. In the meantime, this HAP was not included in the assessment conducted for PCWP affected sources.

Comment: One commenter stated that comparison of modeled exposures to the RfC or similarly-derived health benchmark is highly protective and meets the CAA's "ample margin of safety" requirement. Although the commenter claims the CAA does not explicitly define "ample margin of safety," in the *Vinyl Chloride* case, the D.C. Circuit Court of Appeals articulated the purpose of the ample margin of safety determination as obtaining a "reasonable degree of protection" in light of scientific uncertainties and information gaps. (*Natural Res. Def. Council* v. *EPA*, 824 F.2D 1146, 1152–53 (D.C. Cir. 1987)). The commenter stated that, in regulatory practice, the ample margin of safety analysis consists of a consideration of the NOEL for a pollutant and the subsequent application of factors to account for scientific uncertainty surrounding that safe level of exposure. According to the commenter, this is the approach called for by the Senate Report accompanying the 1990 CAA Amendments (S. Rep. No. 228, 101st Cong. Sess. 171 (1990)), and this is exactly what is done in deriving an RfC or similar inhalation health benchmark. The commenter stated that EPA's derivation of the RfC contains multiple layers of conservatism to account for scientific uncertainty. The commenter believed that RfC values and similar inhalation health benchmarks already incorporate sufficient uncertainty factors to fulfill or exceed the ample margin of safety mandate of CAA sections 112(d)(4) and 112(c)(9).

Response: Today's final PCWP rule will utilize CAA section 112(c)(9) rather than CAA section 112(d)(4). We agree that the CAA does not define "ample margin of safety" explicitly. The CAA does, however, in section 112(f) explicitly recognize our **Federal Register** notice of September 14, 1989, which described our interpretation of ample margin of safety in the case of linear carcinogens, and our approach to implementing that interpretation. While the first step identifies the presumptive limit on maximum individual risk, the second step of that 2-step approach describes the setting of the risk-based standard at a level that provides an ample margin of safety, in consideration of a number of factors. As we noted in the 1989 notice, the objective in protecting public health with an ample margin of safety under CAA section 112 is to ensure an individual lifetime risk level no higher than one in a million to the greatest number of persons possible, and to limit to no higher than one in ten thousand the estimated risk for a person living near a plant if they were exposed for 70 years.

In assessing risk or hazard of nonlinear effects, we use the RfC or comparable value. This value represents 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 non-cancer effects during a lifetime. The RfC values and comparable values are derived from assessments of pertinent toxicological information to identify the lowest point of departure (in human equivalent terms) from the experimental data that is also representative of the threshold region (the region where toxicity is apparent from the available data) for the array of toxicity data for that chemical. The objective is to select

a prominent toxic effect that is pertinent to the chemical's key mechanism or mode of action. This approach is based, in part, on the assumption that if the critical toxic effect is prevented, then all toxic effects are prevented. The RfC is derived from the point of departure (POD) (in terms of human equivalent exposure) for the critical effect by consistent application of uncertainty factors, which are to account for recognized uncertainties in the extrapolations from the experimental data conditions to an estimate appropriate to the assumed human scenario.[2]

In considering the extrapolation of the ample margin of safety objective described for linear cancer risk to the management of risk for nonlinear effects under CAA section 112(c)(9) (*i.e.*, in decisions to delist a subcategory from any further regulatory action), we consider exposures relative to the RfC or comparable values for all of the emitted HAP, with specific attention to those affecting a similar physiological target organ or system.

Comment: One commenter stated that the uncertainty factors used in deriving the wood products HAP health benchmarks are particularly large. The unit risk factors for acetaldehyde and formaldehyde were calculated using the linear multi-stage model, which assumes a linear relationship between cancer incidence and exposure to the pollutant at low doses. According to the commenter, the available data on acetaldehyde and formaldehyde strongly suggest that this assumption is incorrect and overly conservative.

The commenter pointed out that EPA's health assessment of acrolein is two to three times more conservative than CalEPA's, even though both are intended to protect sensitive individuals from any adverse effects following a lifetime of exposure. The commenter stated that EPA has developed an extremely conservative RfC for acrolein. The commenter argued that adopting a HI of 0.2 would add another five-fold safety factor to this already extremely conservative RfC. The commenter noted that acrolein is the HAP of greatest importance in determining risk from PCWP facilities.

Response: The dose-response values used to determine the criteria for defining the low-risk subcategory are drawn from IRIS, as well as from certain alternative sources. The IRIS process contains internal and external peer review steps and represents EPA consensus values. When adequate toxicity information is not available in IRIS, 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. In the case of acrolein, specifically mentioned by the commenter, consultation of other sources was not necessary because the acrolein assessment was completed within the past 9 months and represents current scientific knowledge. In those cases (*e.g.*, formaldehyde), where the IRIS assessment substantially lags the current scientific knowledge, we consider alternative credible and readily available assessments. As pointed out elsewhere in this section, the RfC values or comparable values have been derived with the incorporation of uncertainty factors. The uncertainty factors are to account for recognized uncertainties in the extrapolations from the experimental data conditions pertaining to the chemical's particular toxicological data set to an estimate appropriate to the assumed human scenario.[3] The size variation of the uncertainty factors across RfC values reflects the size variation of the uncertainties associated with that extrapolation.

Comment: One commenter stated that the combination of conservative air dispersion modeling techniques and a conservative human health benchmark ensure that, where a source meets the requirements for a risk-based compliance option, human health will be protected with an ample margin of safety. The commenter pointed out that, for most individuals in the general population, actual exposures likely are one or more orders of magnitude below the maximum exposures predicted by the tiered modeling approach. The commenter noted that EPA's tiered modeling methodology is designed to identify the highest annual property line or off-site concentrations that might occur around each facility (as opposed to actual population exposure). The tiered approach models exposures of a maximally exposed individual (MEI) and incorporates a number of conservative assumptions. According to the commenter, actual average concentrations are likely to be much lower. The commenter argued that, even if the modeled concentrations were reflective of continuous average concentrations, it is highly unlikely that any individual would actually be exposed to such concentrations for a lifetime. The commenter noted that the Presidential/Congressional Commission on Risk Assessment and Risk Management concluded that the conservatism inherent in use of the MEI was often so unrealistic that its use impaired the scientific credibility of health risk assessment.

Response: We discussed a tiered analytical approach in the preamble to the proposed rule, beginning with relatively simple lookup tables and followed by increasingly more site-specific but more resource intensive tiers of analysis, with each tier being more refined. In today's final rule, we are setting forth two options, as specified in Appendix B to subpart DDDD. In the first option, affected sources can qualify for inclusion in the delisted subcategory by using site-specific emissions test data and look-up tables that were developed using health-protective input parameters. As a second option, affected sources may choose to use a more refined site-specific risk assessment. A more refined analysis requires more effort, but produces results that are less likely to overestimate risk.

Comment: One commenter noted that the regulatory requirements in the proposed rule focused on six HAP that are emitted from PCWP facilities: acrolein, acetaldehyde, formaldehyde, methanol, phenol, and propionaldehyde. Those HAP represent 96 percent of the emissions from PCWP affected sources. The commenter believes that any risk-based compliance mechanisms may reasonably be limited to consideration of the risks from these six HAP. The commenter noted that EPA's preliminary risk analysis conducted prior to proposal narrowed the list of HAP emitted from PCWP affected sources to include the following: acrolein, acetaldehyde, formaldehyde, methanol, phenol, benzene, methylene chloride, and manganese. The commenter referred to the results of their sensitivity analysis, which was conducted based on the data used in EPA's pre-proposal risk analysis. The analysis evaluated the impact of increasing or decreasing facility emissions by 30 percent, using different health benchmarks than those identified in EPA's analysis, and conducting the risk assessment with the six HAP targeted in the proposed rule versus the additional HAP identified by EPA. The commenter's sensitivity analysis showed that formaldehyde and acetaldehyde made up the bulk of the cancer risk, while benzene and methylene chloride had little or no influence on cancer risk, depending on the scenario considered. Under all scenarios, acrolein contributed the most

[2] 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. (EPA 1994)

[3] Ibid.

non-cancer risk. The remainder of the non-cancer risk was divided between acetaldehyde, formaldehyde and manganese, with manganese contributing between 5.6 and 12.2 percent of the non-cancer risk, depending on the scenario. Under all scenarios, methanol, benzene, methylene chloride and phenol did not contribute at all to the non-cancer risk from wood products affected sources (with one exception, where the phenol risk contribution was 0.1 percent). Based on these results, the commenter stated that there appeared to be little reason to include evaluation of methylene chloride or benzene in the risk-based compliance option. However, the commenter stated that it may be reasonable to take an extremely conservative approach and include evaluation of manganese in the risk-based compliance mechanisms.

Response: We agree that it is appropriate to limit the number of HAP that must be included in PCWP affected source low-risk demonstrations to only those HAP that may possibly result in meaningful contributions to the affected source risk. However, we disagree that limiting the HAP included in the low-risk demonstration to the six HAP defined as total HAP in subpart DDDD of 40 CFR part 63 (acrolein, acetaldehyde, formaldehyde, methanol, phenol, and propionaldehyde) is appropriate. 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). As discussed earlier in this preamble, 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 risk 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. To ensure protection of public health, all HAP must be considered when determining which affected sources are low risk. Simply importing the surrogate pollutants that are reasonably used for MACT purposes into the risk assessment context is not appropriate, as surrogacy for MACT is based on factors and considerations relating to technological control capabilities and not on how surrogate pollutants might indicate how non-surrogates affect risks to human health and the environment. For example, just because in many cases particulate matter is a useful surrogate for measuring the control efficiency of devices used to capture non-mercury HAP metals, that fact is unrelated to what risks the HAP metals may present individually or collectively, as HAP metals apart from the risks they pose as being particulates.

The commenter is correct in that our preliminary risk analysis conducted prior to proposal 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 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 low-risk demonstrations. 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 low-risk demonstration 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.

Background, Multipathway, and Ecological Exposures

Comment: Two commenters argued that multipathway exposures should not be considered for PCWP affected sources. One commenter stated that, because the HAP emitted from the PCWP source category are not bioaccumulative, it is unnecessary to consider multipathway exposures. The other commenter stated that there is no policy basis for considering multipathway exposures because U.S. Government surveys and regulatory actions demonstrate that non-inhalation exposure to the six HAP emitted by wood products affected sources is insignificant. The commenter provided rationale for the conclusion that dietary and drinking water exposures to the six HAP are not significant. Because the six HAP primarily emitted from the PCWP source category (acetaldehyde, acrolein, and formaldehyde, methanol, phenol, and propionaldehyde) do not exhibit bioaccumulative characteristics, the commenter considered it unnecessary to consider multipathway exposures.

Three commenters argued that multipathway exposures should be considered for PCWP facilities. One commenter stated that, when persistent biological toxicant or metal emissions are significant, ingestion and other pathways should be considered in the risk screening. Another commenter stated that the concentration-based applicability threshold approach in the proposed PCWP rule does not address non-inhalation exposures or adverse effects on the environment. The third commenter stated that CAA section 112(d)(4) requires EPA to consider all possible ways that a pollutant could affect human health or the environment because it refers to pollutants "for which a health threshold has been established," *i.e.*, pollutants that have no adverse health or environmental effects. (See 5 Legislative History at 8511.) According to the commenter, EPA has recognized repeatedly in the past that many of the pollutants emitted by the source category are re-deposited from the atmosphere and then contaminate soil and water for long periods of time. The commenter added that these pollutants bioaccumulate in wildlife and food sources, poisoning people and animals alike. The commenter concluded that, to evaluate whether a pollutant is a threshold pollutant and what its health threshold and ample margin of safety must be, EPA must consider all the potential health and environmental effects of

deposition, persistence and bioaccumulation of that pollutant. The commenter argued that EPA would contravene section 112(d)(4) by considering only health effects caused by inhalation.

Response: This rule is relying not on CAA section 112(d)(4), but on section 112(c)(9), which states that potential ecological effects and multimedia human exposures need to be considered. We have conducted an ecological assessment and a multipathway exposure assessment on those HAP emitted from PCWP affected sources (including HAP not among the six mentioned by one commenter) that we have identified as having the potential for persisting and bioaccumulating in the environment. From this analysis we determined that adverse ecological effects and/or multimedia health effects are unlikely from PCWP affected sources. Therefore, PCWP affected sources attempting to demonstrate their low-risk status will not be required to include an ecological assessment or a multimedia assessment.

Comment: Several commenters stated that there is no legal or policy basis for EPA to consider background or multipathway (non-inhalation) exposures. The commenters claimed that CAA section 112(d) requires that MACT standards be based only on emissions from the MACT-regulated portion of the facility; it does not give EPA the authority to consider existing background levels. One commenter asserted that CAA section 112 can be distinguished from other statutory provisions, both in the CAA and in other environmental legislation, where EPA has clearly been given authority to consider background sources.

Another commenter argued that the CAA's legislative history does not support a requirement to consider other exposures. The commenter also claimed that the statutory provisions on which EPA would rely to implement the risk-based mechanisms (*i.e.*, CAA section 112(d)(4), CAA section 112(c)(9)(B), or EPA's *de minimis* authority) exclusively focus on the emissions from the source in making regulatory decisions. According to the commenter, EPA has existing regulatory programs (*e.g.*, for mobile and area sources (Urban Air Toxics Strategy)) in place to address HAP emissions from other sources.

The commenter argued that over-control of PCWP affected sources is unjustified because PCWP affected sources account for very small proportions of HAP emissions nationwide-less than 1.75 percent of acetaldehyde, 1.7 percent of acrolein, and 1 percent of formaldehyde emissions, according to their industry-sponsored risk assessment. Given these results, the commenter concluded that PCWP facilities cannot reasonably be considered to contribute meaningfully to background concentrations.

The commenter stated that delisting criteria and the so-called trigger component of the residual risk provision focus exclusively on emissions and whether the risk posed by any source in the category, by itself, exceeds one in a million cancer.

Two commenters opposed the use of available data on background concentrations and facility-specific measurement of background concentrations to determine the extent of exposures from other sources, arguing that the CAA and sound public policy warrant a focus exclusively on the emissions from the source category at hand when evaluating the applicability of a risk-based compliance option. Because a HI of 1.0 (or higher) is amply protective of public health and is warranted under EPA's statutory mandate, the commenters stated that consideration of background concentration is not appropriate.

Response: For the purposes of this rulemaking, we are not considering background HAP emissions as part of the CAA section 112(c)(9) delisting of the low-risk PCWP subcategory. As we indicated in the Residual Risk Report to Congress, however, the Agency intends to consider facility-wide HAP emissions in future CAA section 112(f) residual risk actions.

Regarding multipathway exposures, the industry's wood products MACT risk assessment does not address HAP emitted from PCWP affected sources that have the potential to bioaccumulate and persist in the environment (*e.g.*, lead, cadmium, and mercury). We conducted an exposure assessment for these HAP to determine exposure from ingestion as well as inhalation. The maximum multipathway risks were considerably lower than the predicted maximum inhalation risks from the PCWP source category. Therefore, PCWP affected sources are not required to conduct site-specific multipathway risk assessments as part of their low risk demonstrations. The look-up tables included in appendix B to subpart DDDD were developed using conservative input parameters to ensure that affected sources qualifying for the low-risk subcategory based on the look-up tables would not pose a risk via multipathway exposures.

As discussed elsewhere in this preamble, for today's final PCWP rule, we consider that an HI limit of 1.0 provides an ample margin of safety for protecting public health under CAA section 112(c)(9) for this delisting of low-risk PCWP affected sources. The RfCs that are used to calculate the HI are developed to protect sensitive subgroups and to account for scientific uncertainties, ensuring that the use of an HI limit of 1.0 provides an ample margin of safety. We conclude that an HI limit of 1.0 is appropriate for the section 112(c)(9) demonstrations for the PCWP source category that are described in today's action. In future risk-based actions for this and other source categories (*e.g.*, residual risk rulemakings under CAA section 112(f)) we may identify factors on a case-by-case basis that would lead us to conclude that HI limits other than 1.0 would be more appropriate for those other actions.

The look-up tables included in appendix B to subpart DDDD of 40 CFR part 63 were developed based on an HI of 1.0. For site-specific chronic inhalation risk assessments, affected sources are required to ensure that their TOSHI (or, alternately, a site-specific set of hazard indices based on mechanistic data or dose-response data for their HAP mixture) are less than or equal to a value of 1.0. These assessments focus on respiratory effects and CNS effects, because based on our analysis noncancer impacts were dominated primarily by impacts on these systems. Other target organs or systems were found to be negligibly impacted.

Comment: One commenter stated that EPA had provided inadequate discussion of how environmental risks would be evaluated. The commenter added that the CAA requires EPA consider the environment as well as public health, and that, at a minimum, a facility would be required to conduct an assessment based on EPA's 1998 Guidelines for Ecosystem Assessment. The commenter referred EPA to appendix A of "Generic Assessment for Endpoints for Ecological Risk Assessment" for a detailed discussion on the legal basis from "such statutes as the CAA * * * that require EPA to consider and protect organism-level attributes or various taxa including fish, birds, and plants and more generally, animals, wildlife, aquatic life, and living things."

Another commenter cited an analysis they commissioned that showed it to be highly unlikely that emissions from PCWP facilities would pose a hazard to ecological receptors at levels that are protective of human health. Thus, concern over ecological receptors would not provide a valid basis for reducing the HI below 1.0.

Response: An ecological assessment is required under sections 112(d)(4), (c)(9), and (f)(2) of the CAA regarding the presence or absence of "adverse environmental effects" as that term is defined in CAA section 112(a)(7). Therefore, delisting under section 112(c)(9) requires consideration of ecological effects. The look-up tables developed for today's final PCWP rule are intended to accommodate enough conservatism that any affected source qualifying for inclusion in the delisted subcategory using them will qualify based on all endpoints, including ecological endpoints. Based on our analysis of ecological effects (in the supporting information for the final rule), we feel it is unlikely that PCWP affected sources would pose any significant ecological risks to any actual ecosystem or ecosystems nearby. We also conclude, given the low impacts from the hypothetical worst-case scenario investigated, that it is unlikely that any potentially-exposed threatened or endangered species would be adversely affected by HAP emissions from these affected sources. Therefore, PCWP affected sources are not required to conduct site-specific ecological risk assessments as part of their low-risk demonstration.

Assuming the assessment referenced by the first commenter included only the six HAP listed in subpart DDDD of 40 CFR part 63, we disagree that these six HAP should be the sole focus of an ecological assessment. It is not clear from the comment whether the commenter is suggesting that we might consider lowering the human health HI values to below 1.0 in order to reflect ecological concerns or whether they are suggesting that an ecological HI value should not be reduced below 1.0. In the former case, that is not done. Human health and ecological assessments are independent assessments with their own risk management criteria.

Hazard Index

Comment: Two commenters stated that hazard quotients (HQ) for chemical mixes should not be summed to determine the HI unless the primary effects are on the same organ by the same mechanism; otherwise the risk would be overestimated. One commenter stated that CAA section 112(d)(4) refers to threshold pollutants, with each health threshold augmented by an ample margin of safety. These ample margin of safety values are already incorporated into RfC values. The risk criteria applied are confined to the effects upon which the RfC is based, which reflect the most sensitive target organ. According to the commenter, a decision to add risk posed by chemicals that affect the same target organ but have unknown mechanisms of action represents an unnecessarily conservative assumption that would tend to inflate the final risk estimate.

The commenters also noted that, according to the National Research Council and the Presidential/Congressional Commission on Risk Assessment and Risk Management, additivity at low doses is more likely to overestimate than to underestimate total risk. As stated in the Commission's 1997 Final Report: "When the individual components of a chemical mixture exhibit different kinds of toxicity or have different biological mechanisms of toxicity, they do not interact—they act independently at low doses. In that case, the dose-response relationships for each chemical should be considered independently * * * [By contrast] studies in which similar chemicals with similar mechanisms and target were administered simultaneously indicate that antagonism is the usual outcome * * *" (Falk and Kotin 1964, Schmal *et al.* 1977)

Response: Our recommended approach for assessing risks from exposure to a mixture of pollutants is to utilize a dose-response assessment developed for that mixture.[4,5] There are few mixtures (*e.g.*, coke oven emissions), however, for which such assessments are available. When mixture-specific dose-response assessments are not available, a component-by-component approach is recommended. The method for component data depends on a judgment of toxicologic similarity among components. The specific term toxicologic similarity represents a general knowledge about the action of a chemical or a mixture and can be expressed in broad terms such as at the target organ level in the body. In our guidance, assumptions about toxicologic similarity are made in order to choose among risk assessment methods. In general, we assume a similar mode of action across mixtures or mixture components and, in some cases, this requirement may be relaxed to require that these chemicals act only on the same target organ.[6]

The primary method for component-based risk assessment of toxicologically similar chemicals is the HI, which is derived from dose addition. In our guidance, dose addition is interpreted as simple similar action, where the component chemicals act as if they are dilutions or concentrations of each other differing only in relative toxicity. Dose additivity may not hold for all toxic effects. Furthermore, the relative toxic potency between chemicals may differ from different types of toxicity or toxicity by different routes. To reflect these differences, the HI is then usually developed for each exposure route of interest, and for a single specific toxic effect of toxicity to a single target organ. A mixture may then be assessed by several HI, each representing one route and one toxic effect or target organ.[7]

To assess the cumulative risk or hazard associated with nonlinear effects of HAP in our analysis of PCWP affected sources, HAP hazard quotients pertaining to the same target organs or systems are summed to generate TOSHI. While it may be preferable to focus on the addition of HAP HQ that involve similar or complementary mechanisms or mode of action, that level of information is not generally available for all of the HAP on which we are focusing. Pending the availability of such data for the HAP components of the mixture being assessed, the default method employed under CAA section 112(c)(9) is to aggregate HAP HQ by target organ to generate a TOSHI.

Comment: Two commenters supported a HI of 1.0 (or greater) as an appropriate benchmark for comparing exposures attributable to affected source emissions, which should fully provide for the statutory mandate of an ample margin of safety. The commenters referred to the 1997 Final Report of the Presidential/Congressional Commission on Risk Assessment and Risk Management in Regulatory Decision-Making as support for their position. Specifically, the Commission supported a noncancer HI of 10.0, stating that there are few HAP with RfC values within a factor of 10 of their no observable adverse effects level (NOAEL). Because RfC values are typically one-thousandth of a NOAEL, a noncancer HI of 10.0 in those cases would still leave a margin of exposure of 100. The Commission recommended that EPA should, on the basis of screening assessments of source categories, do further risk assessment and analysis of categories where the noncancer HI exceeds 10.0. Where more detailed risk assessments yield noncancer hazard indices less than 1.0,

[4] U.S. Environmental Protection Agency. 1986. Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum, Washington, DC. EPA/630/R–98/002; available at *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=20533.* (EPA 1986).

[5] U.S. Environmental Protection Agency. 2000. Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Office of Research and Development. EPA/630/R–00/002 (EPA 2000).

[6] Ibid.

[7] Ibid.

the Commission recommended that no further action be required. The commenters agreed that sources should not be required to go below that level (*e.g.*, to an arbitrary level such as 0.2), arguing that EPA has neither a legal mandate nor a rational basis for limiting the HI to less than 1.0.

One of the commenters stated that the comparison of RfC or similarly-derived health benchmarks to modeled maximum annual average concentrations is extremely health-protective and meets the ample margin of safety requirement of the statute. Given this high degree of conservatism, the commenter stated that neither the CAA nor sound policy requires that background and multipathway exposures be incorporated into an evaluation of the degree of risk posed by affected sources. Under these circumstances, the commenter argued, the mere possibility of exposure from multiple sources, or multiple HAP from a single source, does not justify a uniform adjustment to all RfC values or similarly-derived health benchmarks for all affected sources. Similarly, the commenter believed that EPA should not mandate modeling risks from the entire facility, but rather only from the portions of the facility that are within the source category.

Two other commenters objected to a noncancer HI of 1.0 (or greater). The first commenter stated that, while the HI is useful in evaluating site-specific impacts, choosing a generic HI (some multiple of 1.0) for application to a wide range of sites is inappropriate. The commenter added that selection of an arbitrary multiple of 1.0 is not science, does not conform with CAA section 112(d)(4), and does not protect public health. The commenter stated that the selection of a HI of 0.2 as a rough screening tool seemed reasonable, although it was unsupported by any analysis. The commenter added that if a default HI is used, then EPA should include a provision that would disallow its use to exclude a facility from MACT if better background information is available suggesting the default HI does not protect public health. However, the commenter believed that the CAA does not support an interpretation that includes the use of such a default to allow exemptions for individual sources. The commenter believed that the expansion of the interpretation to include non-threshold pollutants is in direct conflict with section 112(d)(4).

The second commenter evaluated the four potential options that EPA proposed to ensure that a risk analysis under CAA section 112(d)(4) considered the total ambient air concentrations of all the HAP to which the public is exposed. Option 1, which requires that the HI for all pollutants be no greater than 1.0, does not consider additional sources or background and is unacceptable, according to the commenter. Option 3, which uses existing data such as NATA to determine background and requires that the HI be no greater than 1.0, is also unacceptable, according to the commenter. The commenter pointed out that EPA has clearly stated at public meetings that the NATA is not to be used to make regulatory decisions. (As the first commenter noted, NATA information includes warnings that the information is useful for large-scale planning purposes and not for local area assessment.) The commenter added that NATA relies on data submitted to EPA voluntarily and has been reported to consistently underestimate measured concentrations. Until EPA requires that HAP inventories be submitted as proposed in the Consolidated Emissions Reporting Rule (CERR), and the NATA conducts refined modeling around stationary sources, the commenter argued that NATA should not be considered for estimating background concentrations. Option 4, which allows individual affected sources to monitor the HAP backgrounds for use in their own analysis, requires oversight and evaluation by the States to ensure proper site selections and analytical methods and should not be considered, according to the commenter. The commenter believed Option 2, which requires that the HI be no greater than 0.2, would be the only viable option at this time using a conservative risk screening analysis. However, the commenter did not endorse using any of the proposed threshold limit applicability methods to exempt process sources from NESHAP requirements.

Two other commenters raised additional objections to EPA's proposed methodologies for determining the contribution of other sources to the overall hazard. The first commenter stated that EPA had not discussed the need to assess cumulative risks, aggregate exposures, and health impacts associated with exposure to chemical mixtures emitted from affected sources within the source categories. The commenter referred EPA to the extensive progress that has been made in more completely addressing risks from exposure to air pollution and integrated decisionmaking in such areas as children's risk issues, cumulative exposure, and chemical mixtures. The commenter requested that the recent advancements be incorporated into the risk assessment methods and overall cost estimates associated with risk-based exemptions in the proposed rules.

The second commenter stated that EPA's proposed alternative methodologies for determining the contribution of other sources to cumulative risk are untenable and deeply flawed. According to the commenter, the first and second approaches (HI of 1.0 and HI of 0.2) would allow exemptions based on blanket assumptions about exposure, but EPA provided no basis for making any assumption. The commenter noted that the third option suggests relying on existing estimates of background levels of certain HAP, but argued that these information sources (*e.g.*, NATA, ATSDR) are neither designed nor adequately precise to be used as the basis of regulatory applicability determinations. According to the commenter, EPA has cautioned that NATA emission estimates "cannot be used to identify exposures and risks for specific individuals, or even to identify exposures and risks in small geographic regions such as a specific census tract." (U.S. EPA, Limitations in the 1996 National-Scale Air Toxics Assessment) The commenter pointed out that NATA does not estimate exposure to a number of HAP, (*e.g.*, hydrogen fluoride (HF), HCl), and the ATSDR profiles offer generalized assessments, but are not specific enough to establish as baseline for a given facility.

Response: For today's final PCWP rule, we are considering an HI limit of 1.0 to provide an ample margin of safety for protecting public health under CAA section 112(c)(9). However, we do not feel that increasing the HI limit above 1.0 is justified by currently available science. Safety factors are included in the dose-response values used to calculate the HI to account for scientific uncertainties, and their inclusion helps ensure that using a HI limit of 1.0 provides an ample margin of safety. The TOSHI approach for site-specific risk assessment in today's final PCWP rule assumes additivity in mixtures of chemicals that target the same organ system. For their site-specific risk assessments, affected sources are encouraged to determine TOSHI for respiratory and CNS effects to simplify analysis. More detailed analysis of mixture additivity, incorporating mechanistic data and uncertainty and including dose-response data for specific mixtures, where available, may also be included in site-specific analyses using scientifically-accepted, peer-reviewed methodologies. Based on our analysis, noncancer impacts were dominated primarily by impacts on

these systems and other target organ systems were found to be negligibly impacted. We are not using background concentrations from NATA in today's final PCWP rule. Several commenters presumed the use of CAA section 112(d)(4) for the PCWP rule as proposed. However, we are using CAA section 112(c)(9) and not section 112(d)(4). Discussion of our authority to consider background and multipathway exposures is provided elsewhere in this section.

Tiered Approach

Comment: Several commenters supported EPA's proposed tiered modeling approach, which begins with simple look-up tables and progresses to more refined facility-specific risk assessments. One commenter noted that the State of Wisconsin uses a tiered approach similar to the approach proposed by EPA, and in general, this approach has worked well. The approach first allows sources to demonstrate compliance if their potential emissions, stack height, and exhaust direction are within the ranges provided in conservative look-up tables. The second tier allows facilities to provide site-specific modeling to demonstrate compliance with ambient air standards at the property line. Another commenter added that EPA should be flexible in accepting evolving improvements in exposure assessment and risk modeling, and should take into account the inherent strengths and weaknesses of the types of modeling used. A third commenter noted that most sources would use the tiered modeling approach but believed that facilities should be allowed to use any EPA-approved modeling technique to demonstrate that their emissions are below the applicable health benchmark. The commenter also recommended that, for the final PCWP rule, EPA adopt the model regulatory text that they provided for the risk-based framework.

One commenter opposed EPA's proposed tiered modeling approach, stating that if EPA decided to pursue a generic risk screening approach under section 112(d)(4), it would need to be conservative. According to the commenter, the use of a (non-tiered) conservative approach would represent the least cost to the regulated community and would be the least time-consuming for States reviewing the facility's application.

Response: We acknowledge the model regulatory text submitted by one of the commenters. However, as discussed elsewhere, we developed our own regulatory text to specify how affected sources must demonstrate that they are part of the low-risk subcategory through low-risk demonstrations. Also, we will be reviewing the low-risk demonstrations submitted by PCWP affected sources to remove the burden of reviewing risk assessments from States.

We will review all risk assessments performed in support of a demonstration of eligibility for the low-risk subcategory with regard to a variety of aspects, including the consistency of the methodology and modeling techniques with those currently accepted by the scientific community and EPA. However, we will consider assessments that use risk methodology and modeling techniques in addition to or in lieu of those described in EPA's "Air Toxics Risk Assessment Reference Library," as appropriate, provided they have undergone scientific peer review pertinent to their use in the submitted assessment.

Comment: One commenter stated that, for EPA to conduct an up-front risk analysis, the procedure would need to be conducted using the most conservative stack parameters, with a hypothetical facility fence line to satisfy the many impact scenarios that could occur.

Response: We conducted a rough risk assessment to estimate the number of PCWP affected sources that might qualify for the delisted low-risk subcategory. The data used in our rough risk assessment were a combination of facility-specific data (*e.g.*, process unit throughput) and industry average data (*e.g.*, industry average stack parameters, average emission factors for estimating emissions). Facilities do not qualify for the low-risk subcategory based on our rough risk assessment, with the exception of eight affected sources who were determined to pose very low risk based on our analysis (*i.e.*, with TOSHI less than 0.1, and a cancer risk of less than 0.1 in 1 million). However, affected sources can qualify for inclusion in the delisted subcategory by using site-specific emissions test data and the look-up tables or by conducting a low-risk demonstration, as described in appendix B to subpart DDDD of 40 CFR part 63 and in other analytical tools such as the "Air Toxics Risk Assessment Reference Library," (which may be appropriate for specific sources). Look-up tables were developed using the health-protective air dispersion model SCREEN3. Stack height and fenceline distance vary in the tables, so affected sources will choose the most appropriate combination of these parameters. Invariant facility parameters built into the look-up tables are either average values or biased towards health-protective values, based on available data. Thus, we believe the look-up tables are appropriately health-protective to accommodate the many impact scenarios that could occur.

Risk Assessment Guidance

Comment: Several commenters stated that EPA neglected to follow its own guidelines and science policies in its proposal for risk-based exemptions. One commenter argued that EPA had proposed a disorganized and cursory approach to implement risk-based exemptions that fell far below the quality of risk analysis typically required by EPA across its other programs. According to the commenter, the proposal did not adhere to EPA's established guidelines for characterizing human health and ecological risks, did not incorporate risk assessment guidelines for conducting multi-pathway risk assessments, and did not reference EPA guidelines for cumulative risk assessment that specifically require consideration of non-inhalation pathways. The commenter noted that EPA's March 1995 Risk Characterization Policy set goals of transparency, clarity, consistency, and reasonableness which apply to risk assessment practices across EPA. The commenter argued that the inconsistencies between EPA's proposal to provide risk-based exemptions in the MACT standard process and its risk assessment guidelines would undermine many regulatory programs throughout EPA.

The commenter stated that the risk-based scheme was based on a fundamental misunderstanding of the use of public health and ecological risk assessments in the regulatory process. The commenter added that the Federal risk assessment guidelines require EPA to conduct risk assessments consistently across all Federal environmental programs. According to the commenter, the approaches outlined by industry's white papers neglected to include risk characterization, which provides needed and appropriate information to decision makers. The approaches also did not incorporate the critical recommendation of the Commission of Risk Assessment and Risk Management to establish a framework for stakeholder-based risk management decision making. The commenter stated that these omissions in the proposal would prevent regulatory agencies from demonstrating to the public that public health and the environment are adequately protected.

Several commenters stated that EPA also needed to be consistent with residual risk guidelines currently under development. One commenter stated that the tools needed to identify sources

eligible for the risk-based exemption would be the same tools necessary for a CAA section 112(f) residual risk assessment, which the commenter understood were not yet ready for general use. Another commenter noted that the cancer risk guidelines are currently undergoing public review.

A third commenter stated they had serious reservations about EPA's apparent attempt to conduct an ad-hoc risk analysis for specific source categories by seeking comments on the specific elements to be included in the risk analysis. The commenter did not believe these rulemakings were an adequate forum to develop this risk analysis process. The commenter indicated that any risk analysis conducted by the EPA must adhere to the risk assessment principles outlined in the Residual Risk Report to Congress.

One commenter argued that the proposal is consistent with EPA risk assessment guidelines and policies and believed that others' technical objections were without merit. The commenter added that the contemplated risk-based applicability criteria were not in conflict with the classification of carcinogens and noncarcinogens.

Response: We discussed a tiered analytical approach in the preamble to the proposed rule, beginning with relatively simple lookup tables and followed by increasingly more site-specific but more resource intensive tiers of analysis, with each tier being more refined. In today's final rule, we are adopting a somewhat different approach for meeting the requirements of CAA section 112(c)(9), as discussed elsewhere in this preamble. The basis for this approach stems from the general air toxics assessment approach presented in the Residual Risk Report to Congress, which was developed with full consideration of EPA risk assessment policy, guidance, and methodology.

Section 112(c)(9) of the CAA requires us to determine whether the public and the environment are protected. Any analyses we did to establish the feasibility of the risk-based approach or to develop health-protective look-up tables included consideration of human health as well as ecological criteria. The supporting information to the final rule details the assessment we conducted to determine the feasibility of delisting a low-risk subcategory and the look-up tables we developed to be used by affected sources in their demonstrations, thereby providing a public demonstration of the method employed to ensure protection of the public health and environment in decisions associated with this rule. Additionally, protection against the potential for exposures via non-inhalation pathways (*e.g.*, ingestion) for persistent, bioaccumulative HAP is also inherent in the values in the look-up tables. As discussed previously, and in the supporting information for the final rule, we conducted a screening assessment of multipathway and ecological effects for the PCWP source category. We concluded that multipathway risks are considerably lower than predicted maximum inhalation risks and that it is unlikely that PCWP affected sources would pose any significant risk to nearby ecosystems. Therefore, affected sources are not required to conduct site-specific multipathway and ecological risk assessments as part of their low-risk demonstrations.

We agree that the tools needed to identify sources eligible for the delisted low-risk subcategory of PCWP facilities are the same tools necessary for a CAA section 112(f) residual risk assessment. And, as stated in the Residual Risk Report to Congress, we intend to rely on the general methodology and process illustrated by the framework presented in that report in our risk assessment activities throughout the air toxics program. Affected sources must demonstrate eligibility for the delisted low-risk subcategory using either a look-up table analysis (based on the look-up tables included in appendix B to subpart DDDD of this part) or using the suggested site-specific methodology described together with the criteria in appendix B to subpart DDDD of this part. The "Air Toxics Risk Assessment Library," developed specifically for EPA's Residual Risk program, is provided as an example of one document that could be used for these facility-specific risk assessments. This document has been peer-reviewed and was developed according to the principles, tools and methods outlined in the Residual Risk Report to Congress. However, it may not be appropriate for all sources, and for that reason sources and EPA may consider alternative analytical tools for these risk assessments.

The comment that the new cancer guidelines are still under review is correct but, as stated in the November 29, 2001 **Federal Register** notice (66 FR 59593), these 1999 draft guidelines are to be considered the interim guidance.[8]

[8] U.S. EPA. 1999. Guidelines for Carcinogen Risk Assessment. NCEA–F–0644. Risk Assessment Forum, Washington, DC.

4. Implementation

State and Local Resources

Comment: Several commenters contended that the proposal would place a very intensive resource demand on State and local agencies (*e.g.*, permitting authorities) to review sources' risk assessments. State and local agencies may not have expertise in risk assessment methodology or the resources needed to verify information submitted with each risk assessment. The commenters argued that, if EPA intends to have the affected industries conduct the analysis, then EPA must consider the cost incurred by States, which may lack the necessary expertise to evaluate and review these analyses.

One commenter pointed out that the proposal only considered cost for the regulated source category, and not for regulatory agencies. According to the commenter, EPA did not consider the cost and resources associated with the following: (1) The public process required in reviewing and approving the proposed approaches and, if approved, making substantial changes to existing regulations; (2) the development of methods and guidance for human health and ecological risk assessments of affected sources; (3) the review by already budgetarily constrained State agencies of the assessments and assurance of adequate public participation in the process; and (4) the collection and verification of source-specific data needed for conducting risk assessments (*e.g.*, emissions data and stack parameters). The commenter added that the proposal did not address the critical need for qualified risk assessors to evaluate the scientific and technical basis for exempting affected sources from regulation on a case-by-case basis. The commenter estimated that if one additional full-time employee (FTE) were required per State to review risk-based exemptions, then the cost would be an additional $7.5 million annually.

Another commenter pointed out that the ongoing assurance that low-risk affected sources remain low risk would also increase the burden for the State and local agencies. The commenter also stated that diverting State and local resources to focus on presumably insignificant sources would detract from efforts associated with significant sources.

A third commenter stated that, since States generally do not have the right staff or resources to hire additional staff to review lengthy and complex risk analyses, they may refuse delegation of the PCWP rule, which would shift the burden to EPA in a time of tight

budgets. According to the commenter, large expenditures are not justified when only a small number of facilities may end up qualifying for an exemption.

By contrast, several commenters stated that a risk-based program approaches could be structured and implemented in a manner that would not impose a substantial cost or resource burden on States. One commenter stated that assuring compliance with risk-based applicability criteria would be straightforward and would not entail an added resource burden. Another commenter suggested that EPA work closely with States and industry to implement the risk-based approach in a non-burdensome manner. Two commenters stated that the risk-based approaches, like other MACT standards, would simply be incorporated into each State's existing title V program. Because the title V framework already exists, the addition of a risk-based MACT standard would not require States to overhaul existing permitting programs. One commenter stated that the risk-based approach would not increase the number of sources regulated by each State. The commenter believed that the final MACT rule itself should set forth the applicability criteria, including the threshold levels of exposure, that sources must meet to qualify for a risk-based determination. Each source would have the burden of demonstrating that its exposures are below this limit, and, therefore, the States would not be required to develop their own risk assessment guidance or to conduct source-specific risk assessments. One commenter stated that the risk assessment guidance to be issued by EPA within the next several months would streamline the risk-based approach and further reduce any burden on the States. Three commenters supported having States charge reasonable increased fees (as a component of annual operating permit fees or other fees) to cover any significant additional workload demands associated with reviewing more-detailed tier 2/3 modeling.

Response: We acknowledge that review of the eligibility demonstrations for the delisted low-risk subcategory will require resources for verification of information and may require expertise in risk assessment methodology that is not yet available in some States. We also acknowledge that States may choose to reject delegation of the final PCWP rule. To alleviate these concerns and to ensure consistency in the applicability determinations for the delisted low-risk subcategory from State-to-State, we will review and approve/disapprove the low-risk subcategory eligibility demonstrations submitted by PCWP facilities. As mentioned previously in this preamble, we encourage facilities to submit their assessments for review early to facilitate a timely review process.

We have considered the above comments in developing the criteria defining the delisted low-risk subcategory of PCWP affected sources, and we feel that the approach that is included in today's final PCWP rule provides clear, flexible requirements and enforceable compliance parameters. Today's final PCWP rule provides two ways that an affected source may demonstrate that it is part of the delisted low-risk subcategory of PCWP affected sources. First, look-up tables, which are included in appendix B to subpart DDDD of this part, allow affected sources to determine, using a limited number of site-specific input parameters, whether emissions from their sources might cause an HI limit to be exceeded. Finally, a site-specific modeling approach can be used by those affected sources that cannot demonstrate that they are part of the delisted low-risk subcategory using the look-up tables. With respect to guidance for performing low-risk demonstrations, one possible available set of procedures for performing risk assessments is discussed in EPA's "Air Toxics Risk Assessment Reference Library," and may be used, where appropriate.

Only a portion of the 223 PCWP major sources will submit eligibility demonstrations for low-risk subcategory. Of this portion of major sources, we feel that most will find themselves in the low-risk subcategory based on screening analyses (*e.g.*, look-up table). However, it is likely that some facilities will submit more detailed risk modeling results. We are experienced in reviewing emission test results and site-specific risk assessments and will allocate resources for completion of these tasks. We will review and approve/disapprove low-risk subcategory eligibility demonstrations based on look-up table analyses and low-risk demonstrations. Following review of each low-risk subcategory eligibility demonstration for a facility, we will issue a letter of approval/disapproval to the facility and will send a carbon copy to the facility's title V permitting authority to be used to develop source-specific permit terms and conditions that will ensure that the source remains eligible for the low risk subcategory. The letter of notification regarding approval/disapproval of an affected source's low risk demonstration will also be sent to any other interested stakeholders. The criteria for low-risk subcategory delisting are clearly spelled out in today's final PCWP rule, along with criteria needed to ensure that affected sources in the low-risk subcategory remain low risk. Because these requirements are clearly spelled out in today's final PCWP rule and because any standards or requirements created under CAA section 112 are considered applicable requirements under 40 CFR part 70, the terms and conditions demonstrating eligibility for membership in the delisted low-risk subcategory would be incorporated into title V permits, pursuant to State's existing permitting programs.

With respect to the burden associated with ongoing assurance that affected sources remain low risk, 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 rendered an affected source low risk will be reflected in terms and conditions to be incorporated into the title V permit. We have developed continuous compliance requirements for affected sources that initially qualify as low risk, and the affected sources will be responsible for demonstrating that they continue to be low risk if changes are made to the affected sources' operations that would affect the risk that the affected sources pose to human health and the environment. We will review and approve/disapprove revised low-risk demonstrations.

With respect to our consideration of the public process required in reviewing/approving the proposed approaches and making substantial changes to existing regulations, our inclusion of a risk-based compliance option in today's final PCWP rule applies only to the PCWP rule and does not directly impact other regulations. Furthermore, the PCWP proposal provided the public with the opportunity to comment on the consideration of risk in the final PCWP rule.

Regarding the assurance of adequate public participation in the process of reviewing the risk analyses, the risk-based compliance options are part of a rule that was subject to public comment. The supporting information to the final rule details the assessment we conducted to determine the feasibility of delisting a low-risk subcategory and the look-up tables we developed to be used by affected sources in their demonstrations, thereby providing a public demonstration of the method employed to ensure protection of the public health and environment in

decisions associated with the final rule. We will be responsible for reviewing the low-risk demonstrations, but, similar to facilities requesting applicability determinations regarding promulgated standards, individual low-risk demonstrations will not be subject to public review and comment. We will, however, periodically publish updating notices in the **Federal Register** identifying any additional members of the low risk PCWP subcategory (or deletions therefrom), again, similarly to how we update notices regarding applicability determinations. These actions will represent final agency actions for purposes of judicial review under CAA section 307(b)(1). However, the parameters that rendered an a affected souce part of the low-risk subcategory will be incorporated into a title V permit and subject to the public review process through title V.

Comment: One commenter stated that if EPA intends to have the affected industries conduct the analysis, then EPA must consider the additional cost incurred by smaller sources to do the analysis.

Response: As mentioned previously, there are two ways that a PCWP facility may demonstrate eligibility for the delisted low-risk subcategory: (1) Look-up tables, and (2) a site-specific modeling approach that can be used by affected sources that cannot demonstrate eligibility for the delisted low-risk subcategory using the look-up tables. The look-up tables included in appendix B to subpart DDDD of this part allow affected sources to determine, using a limited number of site-specific input parameters, whether they are eligible for the low-risk subcategory. Attempting to demonstrate eligibility for the delisted low-risk subcategory is completely voluntary. Affected sources that are not eligible for the delisted low-risk subcategory based on look-up tables are not required to pursue a site-specific analysis (which can be increasingly complex and expensive as it becomes more refined). Each facility must weigh the costs of making a low-risk demonstration with the costs of MACT compliance. We feel that in general the costs associated with demonstrating eligibility for the low-risk subcategory will be lower than the costs associated with complying with MACT for many facilities, particularly smaller facilities and other facilities that have not already otherwise installed pollution controls. The majority of the cost associated with demonstrating eligibility for the delisted low-risk subcategory will be emissions testing costs. Smaller facilities have fewer process units to be tested, and, because of their lower production rates relative to larger facilities, they will also likely have lower emissions. Thus, smaller PCWP affected sources may be more likely than their larger counterparts to fall into the delisted low-risk subcategory. Successfully demonstrating eligibility for the low-risk provisions will result in cost-savings for smaller facilities because these facilities will not have to expend the costs (*e.g.*, the costs of installing operating, and maintaining emission controls) for MACT compliance.

The cost and economic analyses developed as part of the MACT rulemaking were based on the costs to install controls and comply with the MACT requirements. The costs associated with voluntarily conducting risk analyses were not estimated. Therefore, our estimate of costs associated with today's final PCWP rule are conservative, because the control costs are significantly higher than the costs of conducting emissions tests and risk analyses.

Title V

Comment: Two commenters opposed implementing the risk-based approaches through the States' existing title V programs. One commenter stated that risk-based exemptions are such an implausible interpretation of the CAA that States do not even have the authority to grant them under their title V permit programs. The commenter was not aware of any approach to ensure that emissions remain below specified levels. According to the commenter, MACT standard applicability is the gate-keeper for being subject to a title V operating permit. Once a source is exempt from a MACT standard, it would be exempt from the monitoring, reporting and recordkeeping requirements needed to demonstrate compliance.

The other commenter stated that implementing the CAA section 112(d)(4) exemption interpretation through title V would be unlawful and unworkable. The commenter stated that Congress knew how to authorize States to establish case-by-case emission standards and implement them using post-rulemaking title V permits because it did so in CAA section 112(j). However, it did not do so in section 112(d)(4). The commenter argued that EPA lacks the authority to delegate section 112(d)(4) to the States and may not implement any section 112(d)(4) applicability cutoff through a post-rulemaking mechanism such as a title V permit. With the exception of carefully delineated compliance monitoring, reporting, and certification provisions in the statute, title V permits may not create applicable requirements or exemptions from applicable requirements. The commenter added that, even if this approach is legal, it is still unworkable because of the resource challenges faced by States and the widespread delays in issuing title V permits. The commenter noted that State permit engineers and officials that prepare and issue title V permits generally are not experts in risk assessment or air dispersion modeling. According to the commenter, States and the public would be confronted with more self-serving facility arguments and data than could be adequately scrutinized, which could cause important health and risk determinations to be rubber stamped or cause the permit process to grind to a halt. The commenter added that most State title V permit programs are already behind the statute's permit issuance deadlines, and implementation of EPA's risk-based approach would exacerbate this unlawful situation further.

Several commenters supported implementing the risk-based approaches in the PCWP rule as proposed through the States' existing title V programs. One commenter suggested that States which qualify and choose to do so should be delegated the authority to implement the risk-based alternatives. The commenter added that this would allow States to coordinate between the MACT alternatives and State air toxics requirements.

A second commenter stated that implementing the CAA section 112(d)(4) risk-based approach though title V would be lawful and workable. According to the commenter, no facility-specific post-rulemaking mechanisms nor expansion of the scope of title V permit process would be necessary, just the incorporation of the NESHAP's risk-based compliance option, which would contain the criteria for showing what the source would have to meet to qualify for the risk-based approach. The commenter stated that the objections from other commenters to the risk-based criteria were invalid, arguing that their objections were in tension with the conclusions of a CAAAC Workgroup on State/Local/Tribal air toxics issues and that their comments provided no basis for concluding that States lack the legal authority to implement the risk-based approach.

A third commenter noted that title V permits could provide enforceable limitations, appropriate recordkeeping requirements, and periodic review upon renewal. The commenter added that, since the PCWP rule would apply only to major sources, title V permits already are required and would not be an added

burden; title V could also be used to implement applicability cutoffs. However, the workload involved with the options requiring modeling, ambient monitoring, or other means to establish background concentrations would be a hindrance to any implementation mechanism. The commenter stated that, with respect to potential risk-based provisions, monitoring is more useful for demonstrating non-compliance than compliance because the regulation would apply to potential emissions under any weather conditions, whereas monitoring reflects current weather and emission conditions.

A fourth commenter suggested changes to the § 63.2240 of the proposed rule that would incorporate permitting procedures similar to those under 40 CFR part 70, which would allow facilities that pose little risk in their respective airsheds to apply for a risk determination to be incorporated into their title V permits. Each source applying to be permitted as a subcategorized toxic emitter with an acceptable risk determination would be required to perform detailed risk analyses for review by the public at large, local citizens, State agencies, and Federal authorities. This permitting exercise would allow managers of the airshed to develop custom-fit compliance plans that address source-specific risks and would allow the most flexibility for forest producers to reduce their identified risks.

Response: As discussed previously, we have determined that a CAA section 112(d)(4) risk-based exemption would not be appropriate for the PCWP source category. Instead, using our discretion in establishing subcategories of sources based on size, type, class, or other appropriate criteria under CAA sections 112(d)(1) and (c)(1), we have established a low-risk subcategory of PCWP facilities, and delisted that subcategory under CAA section 112(c)(9)(B). The requirements for qualifying for and remaining in the delisted low-risk subcategory are clearly spelled out in appendix B to subpart DDDD of this part, and any standards or requirements created under CAA section 112 are considered applicable requirements under 40 CFR part 70. Unless a PCWP source meets these conditions, it will remain subject to the PCWP MACT rules. Therefore, the parameters used to demonstrate that facilities are part of the delisted low-risk subcategory would be incorporated into title V permits as federally enforceable permit terms, and States would not have to overhaul existing permitting programs. We note that our rules implementing title V of the CAA specifically provide for situations such as this. For example, in its provisions governing what types of permit revisions may proceed through the abbreviated "minor permit modification" process, our rules state that such procedures may not be used "to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject." 40 CFR 70.7(e)(2)(i)(A)(4); 40 CFR 71.7(e)(1)(i)(A)(4). We feel that permit terms reflecting a low risk PCWP source's eligibility clearly represent such terms, and are, therefore, allowed under title V. Also, such terms would be required to be added or revised through the more formal "significant modification" procedures of 40 CFR 70.7(e)(4) and 40 CFR 71.7(e)(3).

Facilities that qualify as part of the delisted low-risk subcategory will initially demonstrate that they are low-risk using either the look-up tables or site-specific monitoring. They will demonstrate that risk does not increase by documenting that parameters that impact the risk analysis do not change in a way that increases risk. Facilities will not be required to perform detailed risk analyses for public review, although the public will have an opportunity to comment on draft permit terms and conditions that reflect low risk demonstrations, and to judicially challenge final EPA approvals of eligibility demonstrations under CAA section 307(b)(1).

We acknowledge the resource challenges faced by States, and, therefore, we will retain the authority to review and approve/disapprove the low-risk subcategory eligibility demonstrations submitted by PCWP facilities.

With regard to the title V permit programs being behind the statute's permit issuance deadlines, the incorporation of the NESHAP requirements is a necessary step that will require some resources. Inclusion of the low-risk subcategory delisting should be a straightforward part of the process and should not cause significant delay.

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 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 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 the final rule is a "significant regulatory action" because the annual costs of complying with the final rule are expected to exceed $100 million. As such, this action was submitted to OMB for EO 12866 review. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSEES** section of this preamble).

We did not estimate health and welfare benefits associated with changes in emissions of HAP, CO, VOC, PM, NO_x and SO_2 for the final rule.

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.* (ICR 1984.02) 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 the 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.

Today's final rule will require maintenance inspections of the control devices but will not require any

notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to assure compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the rule) is estimated to be 4,692 labor hours per year, at a total annual cost of $250,528. This estimate includes notifications that facilities are subject to the rule; notifications of performance tests; notifications of compliance status, including the results of performance tests and other initial compliance demonstrations that do not include performance tests; SSM reports; semiannual compliance reports; and recordkeeping. In addition to the requirements of 40 CFR part 63, subpart A, facilities that wish to implement emissions averaging provisions must submit an EAP. Facilities may also submit a request for a routine control device maintenance exemption to justify the need for routine maintenance on the control device and to show how the facilities plan to minimize emissions to the greatest extent possible during the maintenance. The average number of respondents during the 3-year period after the effective date of the rule is 220, and the average number of responses estimated to be submitted is 197. The resulting estimated burden per response is 24 hours. Total capital/startup costs associated with the testing, monitoring, reporting, and recordkeeping requirements over the 3-year period of the ICR are estimated to be $122,040, with operation and maintenance costs of $5,178.

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. The OMB control numbers for the information collection requirements in the final rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Analysis

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

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business ranging from 500 to 750 employees depending on the businesses NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact 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. We have determined that, based on SBA size definitions for the affected industries and reported sales and employment data, 17 of the 52 companies, or 32 percent, owning affected facilities are small businesses. Although small businesses represent 32 percent of the companies within the source category, they are expected to incur 8 percent of the total industry compliance costs of $142 million. There are three small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are seven small firms with cost-to-sales ratios between 1 and 3 percent.

We performed an economic impact analysis to estimate the changes in product price and production quantities for the firms affected by this rule. The analysis shows that of the 32 facilities owned by affected small firms, one small firm would be expected to shut down rather than incur the cost of compliance with the rule. Although any facility closure is cause for concern, it should be noted that the baseline economic condition of the facilities predicted to close affects the closure estimate provided by the economic model. Facilities which are already experiencing adverse economic conditions for reasons unconnected to this rule are more vulnerable to the impact of any new costs than those that are not.

The analysis indicates that the final rule should not generate a significant economic impact on a substantial number of small entities for the PCWP manufacturing source category for the following reasons. First, of the ten small firms that have compliance costs greater than 1 percent of sales, three small firms have compliance costs of greater than 3 percent of sales. Second, the results of the economic impact analysis show that one facility owned by a small firm out of the 32 facilities owned by affected small firms may close due to the implementation of the final rule. The facility that may close rather than incur the cost of compliance appears to have low profitability levels currently. It also should be noted that the estimate of compliance costs for this facility is likely to be an overestimate due to the lack of facility-specific data available to assign a precise control cost in this case.

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rule on small entities. First, we considered subcategorization based on production and throughput level to determine whether smaller process units would have a different MACT floor than larger process units. Our data show that subcategorization based on size would not result in a less stringent level of control for the smaller process units. Second, we chose to set the control requirements at the MACT floor control level and not at a control level more stringent. Thus, the control level specified in the final PCWP rule is the least stringent allowed by the CAA. Third, the final rule contains multiple compliance options to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. The compliance options include emissions averaging and PBCO which allow inherently low-emitting process units to comply without installing add-on control devices and facilities to use innovative technology and P2 methods. Fourth, the final rule includes multiple test method options for measuring methanol, formaldehyde, and total HAP. Fifth, the final rule allows PCWP facilities to demonstrate eligibility for the delisted low-risk subcategory and thereby avoid MACT altogether. In addition, we worked with various trade associations during the development of the final rule.

As discussed in earlier sections of this preamble, we present the impacts of the

rule associated with allowing PCWP facilities to demonstrate eligibility for the delisted low-risk subcategory and thereby avoid MACT altogether. The number of small businesses impacted is reduced to seven from the original 17, and the total number of businesses impacted is reduced to 42, down from the original 52. Small businesses represent 17 percent of the companies within the source category, which is down from the 32 percent estimate for the final rule. These small businesses are expected to incur 4 percent of the total industry compliance costs of $74 million (the costs considering inclusion of the delisted low-risk subcategory). There are no small firms with compliance costs equal to or greater than 3 percent of their sales as compared to three for the final rule. In addition, there are four small firms with cost-to-sales ratios between 1 and 3 percent, which is down from seven for 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 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 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.

Since the final rule is estimated to impose costs to the private sector in excess of $100 million per year, it is considered a significant regulatory action. Therefore, we have prepared the following statement with respect to sections 202 through 205 of the UMRA.

1. Statutory Authority

This final rule establishes control requirements for existing and new PCWP sources pursuant to section 112 of the CAA. The CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This is commonly referred to as MACT. Section 112(d)(3) of the CAA further defines a minimum level of control that can be considered for MACT standards, commonly referred to as the MACT floor, which for new sources is the level of control achieved by the best controlled similar source, and for existing sources is the level of control achieved by the average of the best performing 12 percent of sources in the category (or the best-performing five sources for categories with fewer than 30 sources).

Control technologies and their performance are discussed in the background information document for this proposal (Docket numbers A–98–44 and OAR–2003–0048). We considered emission reductions, costs, environmental impacts, and energy impacts in selecting the MACT standards. The final standards achieve sizable reductions in HAP and other pollutant emissions.

2. Social Costs and Benefits

The regulatory analyses prepared for the final rule, including our assessment of costs and benefits, is detailed in the "Regulatory Impact Analysis for the Plywood and Composite Wood Products NESHAP" in Docket ID No. A–98–44. Based on estimated compliance costs associated with the final rule and the predicted change in prices and production in the affected industries, the estimated social costs of the final rule are $135.1 million (1999 dollars). The social costs of the final rule are the costs imposed upon society as a result of efforts toward compliance, and include the effects upon consumers of products made by the affected facilities.

It is estimated that 3 years after implementation of the final rule, HAP would be reduced by 9,900 Mg/yr (11,000 tons/yr) due to reductions in formaldehyde, acetaldehyde, acrolein, methanol and other HAP from PCWP sources. Formaldehyde and acetaldehyde have been classified as "probable human carcinogens." Acrolein, methanol and the other HAP are not considered carcinogenic, but produce several other toxic effects. The requirements of the final rule would also achieve reductions of 9,500 Mg/yr (10,000 tons/yr) of CO, approximately 11,000 Mg/yr (12,000 tons/yr) of PM10, and approximately 25,000 Mg/yr (27,000 tons/yr) of VOC (approximated as THC). Exposure to CO can effect the cardiovascular system and the CNS. The PM emissions can result in fatalities and many respiratory problems (such as asthma or bronchitis). These estimates will be reduced to the extent facilities demonstrate eligibility to be included in the delisted low-risk subcategory. These estimated reductions occur from existing sources in operation 3 years after implementation of the requirements of the final rule and are expected to continue throughout the life of the sources. Human health effects associated with exposure to CO include cardiovascular system and CNS effects, which are directly related to reduced oxygen content of blood and which can result in modification of visual perception, hearing, motor and sensorimotor performance, vigilance, and cognitive ability. The VOC emissions reductions may lead to some reduction in ozone concentrations in areas in which the affected sources are located. There are both human health and welfare effects that result from exposure to ozone, and these effects are listed in Table 3 of this preamble.

As mentioned earlier in this preamble, we are unable to provide a comprehensive quantification and monetization of the HAP-related benefits of the final rule. Nevertheless, it is possible to derive rough estimates for one of the more important benefit categories, *i.e.*, the potential number of cancer cases avoided and cancer risk reduced as a result of the imposition of the MACT level of control on this source category. Our analysis suggests that imposition of the MACT level of control would reduce cancer cases by less than one case per year, on average, starting some years after implementation of the standards. We present these results in the RIA. This risk reduction estimate is uncertain and should be regarded as an extremely rough estimate and should be viewed in the context of the full spectrum of unquantified noncancer effects associated with the HAP reductions.

At the present time, we cannot provide a monetary estimate for the benefits associated with the reductions in CO. We also did not provide a monetary estimate for the benefits associated with the changes in ozone concentrations that result from the VOC emissions reductions since we are unable to do the necessary air quality modeling to estimate the ozone concentration changes. For PM_{10}, we did not provide a monetary estimate for the benefits associated with the reduction of these emissions, although these reductions are likely to have significant health benefits to populations living in the vicinity of affected sources.

There may be increases in NO_X emissions associated with today's final rule as a result of increased use of incineration-based controls. These NO_X emission increases by themselves could cause some increase in ozone and PM concentrations, which could lead to impacts on human health and welfare as listed in Table 3 of this preamble. The potential impacts associated with increases in ambient PM and ozone due to these emission increases are discussed in the RIA. In addition to potential NO_X increases at affected sources, today's final rule may also result in additional electricity use at affected sources due to application of controls. These potential increases in electricity use may increase emissions of SO_2 and NO_X from electricity generating utilities. As such, the final rule may result in additional health impacts from increased ambient PM and ozone from these increased utility emissions. However, it is possible that the Acid Rain trading program may serve to keep SO_2 emissions from increasing, and the NO_X SIP call may serve to mitigate increases of NO_X. We did not quantify or monetize these impacts.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to CO. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references.

3. Regulatory Alternatives Considered

The final standards reflect the MACT floor, the least stringent regulatory alternative required under the CAA. In addition, the final rule includes the least burdensome and most flexible monitoring, reporting, and recordkeeping requirements that we feel will assure compliance with the compliance options and rule requirements. Therefore, the standards reflect the least costly, most cost-effective, and least burdensome regulatory option that achieves the objectives of the final rule.

4. Effects on the National Economy

The economic impact analysis for the final rule estimates effects upon employment and foreign trade for the industries affected by the rule. The total reduction in employment for the affected industries is 0.3 percent of the current employment level (or 225 employees). This estimate includes the increase in employment among firms in these industries that do not incur any cost associated with the final rule. There is also minimal change in the foreign trade behavior for the firms in these industries since the level of imports of affected composite wood products only increases by less than 0.1 percent. There will be reductions in effects on the national economy associated with eligibility of sources for the delisted low-risk subcategory. The employment level will now be reduced by 126 employees, which is 99 fewer than the reduction estimated for the final rule. The increase in the level of imports is half as large as that for the final rule.

5. Consultation With Government Officials

Throughout the development of the final rule, we interacted with representatives of affected State and local officials to inform them of the progress of our rulemaking efforts. We also consulted with representatives from other entities affected by the final rule, such as the American Forest & Paper Association, National Council for Air and Stream Improvement, APA-The Engineered Wood Association, Composite Panel Association, American Hardboard Association, Hardwood Plywood and Veneer Association, and representatives from affected companies.

The number of small entities that are significantly affected by today's final PCWP standards is not expected to be substantial. The final rule contains no regulatory requirements that might significantly affect small governments because no PCWP facilities are owned by such governments. The full analysis of potential regulatory impacts on small organizations, small governments, and small businesses is included in the economic impact analysis in the docket and is listed at the beginning of today's action under **SUPPLEMENTARY INFORMATION.** Because the number of small entities that are likely to experience significant economic impacts as a result of today's final standards is not expected to be substantial, no plan to inform and advise small governments is required under 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." 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. 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 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 facilities are owned or operated by State governments, and the final rule requirements will not supercede State regulations that are more stringent. Thus, the requirements of Executive Order 13132 do not apply to the 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected plant sites are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to the final rule.

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 feel 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 Agency does not have reason to feel that the environmental health or safety risks associated with the emissions addressed by today's final rule present a disproportionate risk to children. This demonstration is based on the fact that the noncancer human health values we used in our analysis (*e.g.*, RfC) are determined to be protective of sensitive subpopulations, including children. Also, while the cancer human health values do not always expressly account for cancer effects in children, the cancer risks posed by PCWP facilities that meet the eligibility criteria for being included in the delisted low-risk subcategory will be sufficiently low so as not to be a concern for anyone in the population, including children.

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, Office of Management and Budget, 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." The final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination is as follows.

The final rule affects manufacturers in the softwood veneer and plywood (NAICS 321212), reconstituted wood products (NAICS 321219), and engineered wood products (NAICS 321213) industries. There is no crude oil, fuel, or coal production from these industries. Hence, there is no direct effect on such energy production related to implementation of this proposal. In fact, as previously mentioned in this preamble, there will be an increase in energy consumption, and hence an increase in energy production, resulting from installation of RTO and WESP likely needed for sources to meet the requirements of the final rule. This increase in energy consumption is equal to 718 GWh/yr for electricity and 45 million m^3/yr (1.6 billion ft^3/yr) for natural gas. These increases are equivalent to 0.012 percent of 1998 U.S. electricity production and 0.000001 percent of 1998 U.S. natural gas production.[9] It should be noted, however, that the reduction in demand for product output from these industries may lead to a negative indirect effect on such energy production, for the output reduction will lead to less energy use by these industries and thus some reduction in overall energy production.

For fuel production, the result of this indirect effect from reduced product output is a reduction of only about 1 barrel per day nationwide, or a 0.00001 percent reduction nationwide based on 1998 U.S. fuel production data.[10] For coal production, the resulting indirect effect from reduced product output is a reduction of only 2,000 tons per year nationwide, or only a 0.00001 percent reduction nationwide based on 1998 U.S. coal production data. For electricity production, the resulting indirect effect from reduced product output is a reduction of 42.8 GWh/yr, or only a 0.00013 percent reduction nationwide based on 1998 U.S. electricity production data. Given that the estimated price increase for product output from any of the affected industries is no more than 2.5 percent, there should be no price increase for any energy type by more than this amount. The cost of energy distribution should not be affected by the final rule at all since the rule does not affect energy distribution facilities. Finally, with changes in net exports being a minimal percentage of domestic output (0.01 percent) from the affected industries, there will be only a negligible change in international trade, and hence in dependence on foreign energy supplies. No other adverse outcomes are expected to occur with regards to energy supplies. Thus, the net effect of the final rule on energy

[9] U.S. Department of Energy, Energy Information Administration. Annual Energy Review, End-Use Energy Consumption for 1998. Located on the Internet at *http://www.eia.doe.gov/emeu/aer/enduse.html.*

[10] Ibid.

production is an increase in electricity output of 0.012 percent compared to 1998 output data, and a negligible change in output of other energy types. All of the results presented above account for the passthrough of costs to consumers, as well as the cost impact to producers. These results also account for how energy use is related to product output for the affected industries.[11] For more information on the estimated energy effects, please refer to the background memo[12] to these calculations and the economic impact analysis for the final rule. The background memo and economic impact analysis are available in the public docket.

The impacts from consideration of a low-risk subcategory are a reduction in all of the energy impacts listed above. For fuel production, the result of this indirect effect from reduced product output is a reduction of only about 0.6 barrel per day nationwide, or a 0.000007 percent reduction nationwide based on 1998 U.S. fuel production data.[13] This is a 0.4 barrel smaller reduction than that estimated for the final rule. For coal production, the resulting indirect effect from reduced product output is a reduction of only 950 tons per year nationwide, or only a 0.0000044 percent reduction nationwide based on 1998 U.S. coal production data. This is a smaller reduction than that estimated for the final rule by 1,050 tons per year. For electricity production, the resulting indirect effect from reduced product output is a reduction of 20.7 million kWh/yr, or only a 0.00006 percent reduction nationwide based on 1998 U.S. electricity production data. This is a smaller output reduction than that estimated for the final rule by 22.1 million kWh/yr. Given that the estimated price increase for product output from any of the affected industries is no more than 2.5 percent, there should be no price increase for any energy type by more than this amount. The cost of energy distribution should not be affected by the final rule at all since the rule does not affect energy distribution facilities. Finally, with changes in net exports being a minimal percentage of domestic output (0.006 percent, or practically the same as that for the final rule) from the affected industries, there will be only a negligible change in international trade, and hence in dependence on foreign energy supplies. No other adverse outcomes are expected to occur with regards to energy supplies. Thus, the net effect on energy production if facilities are eligible for the low-risk source category is an increase in electricity output of 0.008 percent compared to 1998 output data, and a negligible change in output of other energy types. This is a 0.004 percent smaller increase in electricity output compared to the impact of the final rule. All of the results presented above account for the passthrough of costs to consumers, as well as the cost impact to producers. These results also account for how energy use is related to product output for the affected industries.[14]

Therefore, we conclude that the final rule is not 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 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards 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 directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rulemaking involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 25A, and 29 in 40 CFR part 60, appendix A; 204 and 204A through F in 40 CFR part 51, appendix M; 308, 316, and 320 in 40 CFR part 63, appendix A; EPA Method 0011 in EPA publication no. SW 846 ("Test Methods for Evaluating Solid Waste, Physical/Chemical Methods") for formaldehyde; and two NCASI methods: NCASI Method CI/WP–98.01 (1998), "Chilled Impinger Method For Use At Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol," and NCASI Method IM/CAN/WP–99.02 (2003), "Impinger/Canister Source Sampling Method For Selected HAPs and Other Compounds at Wood Products Facilities."

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through 204F, 308, and 316. The search and review results have been documented and are placed in Docket numbers OAR–2003–0048 and A–98–44 for the final rule.

One voluntary consensus standard was identified as an acceptable alternative to EPA test methods for the purposes of the final rule. The voluntary consensus standard ASTM D6348–03, "Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy," is an acceptable alternative to EPA Method 320 provided that the 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. Also, the moisture determination in ASTM D6348–03 is an acceptable alternative to the measurement of moisture using EPA Method 4.

In addition to the voluntary consensus standards the EPA uses in the final rule, the search for emissions measurement procedures identified 13 other voluntary consensus standards. The EPA determined that 11 of those 13 voluntary consensus standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt those standards for that purpose. (See Dockets A–44–98 and OAR–2003–0048 for the reasons for the determination for the 11 methods.)

Table 4 to subpart DDDD of 40 CFR part 63 lists the EPA 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 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

[11] U.S. Department of Energy, Energy Information Administration. 1998 Manufacturing Energy Consumption Survey. Located on the Internet at *http://www.eia.doe.gov/emeu/mecs/mecs98/datatables/contents.html.*

[12] U.S. Environmental Protection Agency. "Energy Impact Analysis of the Proposed Plywood and Composite Wood Products NESHAP." July 30, 2001.

[13] Ibid.

[14] U.S. Department of Energy, Energy Information Administration. 1998 Manufacturing Energy Consumption Survey. Located on the Internet at *http://www.eia.doe.gov/emeu/mecs/mecs98/datatables/contents.html.*

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 a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective September 28, 2004.

List of Subjects

40 CFR Part 63

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

40 CFR Part 429

Environmental protection, Forests and forest products, Furniture industry, Waste treatment and disposal, Water pollution control.

Dated: February 26, 2004.

Michael O. Leavitt,

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 A—[Amended]

■ 2. Section 63.14 is amended by adding paragraph (b)(54) and revising paragraph (f) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(54) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, incorporation by reference (IBR) approved for Table 4 to Subpart DDDD of this part and Appendix B to subpart DDDD of this part as specified in the subpart.

* * * * *

(f) The following material is available from the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org.*

(1) NCASI Method DI/MEOH–94.02, Methanol in Process Liquids GC/FID (Gas Chromatography/Flame Ionization Detection), August 1998, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for § 63.457(c)(3)(ii) of subpart S of this part.

(2) NCASI Method CI/WP–98.01, Chilled Impinger Method For Use At Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol, 1998, Methods Manual, NCASI, Research Triangle Park, NC, IBR approved for Table 4 to Subpart DDDD of this part.

(3) NCASI Method IM/CAN/WP–99.02, Impinger/Canister Source Sampling Method For Selected HAPs and Other Compounds at Wood Products Facilities, January 2004, 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.

* * * * *

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

Subpart DDDD—National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

Sec.

What This Subpart Covers

63.2230 What is the purpose of this subpart?
63.2231 Does this subpart apply to me?
63.2232 What parts of my plant does this subpart cover?
63.2233 When do I have to comply with this subpart?

Compliance Options, Operating Requirements, and Work Practice Requirements

63.2240 What are the compliance options and operating requirements and how must I meet them?
63.2241 What are the work practice requirements and how must I meet them?

General Compliance Requirements

63.2250 What are the general requirements?
63.2251 What are the requirements for the routine control device maintenance exemption?

Initial Compliance Requirements

63.2260 How do I demonstrate initial compliance with the compliance options, operating requirements, and work practice requirements?
63.2261 By what date must I conduct performance tests or other initial compliance demonstrations?
63.2262 How do I conduct performance tests and establish operating requirements?
63.2263 Initial compliance demonstration for a dry rotary dryer.
63.2264 Initial compliance demonstration for a hardwood veneer dryer.
63.2265 Initial compliance demonstration for a softwood veneer dryer.
63.2266 Initial compliance demonstration for a veneer redryer.
63.2267 Initial compliance demonstration for a reconstituted wood product press or board cooler.
63.2268 Initial compliance demonstration for a wet control device.
63.2269 What are my monitoring installation, operation, and maintenance requirements?

Continuous Compliance Requirements

63.2270 How do I monitor and collect data to demonstrate continuous compliance?
63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

Notifications, Reports, and Records

63.2280 What notifications must I submit and when?
63.2281 What reports must I submit and when?
63.2282 What records must I keep?
63.2283 In what form and how long must I keep my records?

Other Requirements and Information

63.2290 What parts of the General Provisions apply to me?
63.2291 Who implements and enforces this subpart?
63.2292 What definitions apply to this subpart?

Tables to Subpart DDDD of Part 63

Table 1A to Subpart DDDD of Part 63—Production-Based Compliance Options
Table 1B to Subpart DDDD of Part 63—Add-On Control Systems Compliance Options
Table 2 to Subpart DDDD of Part 63—Operating Requirements
Table 3 to Subpart DDDD of Part 63—Work Practice Requirements
Table 4 to Subpart DDDD of Part 63—Requirements for Performance Tests
Table 5 to Subpart DDDD of Part 63—Performance Testing and Initial Compliance Demonstrations for the Compliance Options and Operating Requirements
Table 6 to Subpart DDDD of Part 63—Initial Compliance Demonstrations for Work Practice Requirements
Table 7 to Subpart DDDD of Part 63—Continuous Compliance With the Compliance Options and Operating Requirements
Table 8 to Subpart DDDD of Part 63—Continuous Compliance With the Work Practice Requirements
Table 9 to Subpart DDDD of Part 63—Requirements for Reports
Table 10 to Subpart DDDD of Part 63—Applicability of General Provisions to Subpart DDDD

Appendix

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
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

What This Subpart Covers

§ 63.2230 What is the purpose of this subpart?

This subpart establishes national compliance options, operating requirements, and work practice requirements for hazardous air pollutants (HAP) emitted from plywood and composite wood products (PCWP) manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the compliance options, operating requirements, and work practice requirements.

§ 63.2231 Does this subpart apply to me?

This subpart applies to you if you meet the criteria in paragraphs (a) and (b) of this section, except for facilities that the Environmental Protection Agency (EPA) determines are part of the low-risk subcategory of PCWP manufacturing facilities as specified in appendix B to this subpart.

(a) You own or operate a PCWP manufacturing facility. A PCWP manufacturing facility is 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 structural panel or engineered wood product. 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, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

(b) The PCWP manufacturing facility is located at a major source of HAP emissions. A major source of HAP emissions is any stationary source or group of stationary sources 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 (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.2232 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at a PCWP manufacturing facility.

(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, 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.

(c) An affected source is a new affected source if you commenced construction of the affected source after January 9, 2003, and you meet the applicability criteria at the time you commenced construction.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.2233 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 paragraph (a)(1) or (2) of this section, whichever is applicable.

(1) If the initial startup of your affected source is before September 28, 2004, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart no later than September 28, 2004.

(2) If the initial startup of your affected source is after September 28, 2004, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart upon initial startup of your affected source.

(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, 2007.

(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, 2007 or upon initial startup of your affected source as a major source, whichever is later.

(d) You must meet the notification requirements according to the schedule in § 63.2280 and according to 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the compliance options, operating requirements, and work practice requirements in this subpart.

Compliance Options, Operating Requirements, and Work Practice Requirements

§ 63.2240 What are the compliance options and operating requirements and how must I meet them?

You must meet the compliance options and operating requirements described in Tables 1A, 1B, and 2 to this subpart and in paragraph (c) of this section by using one or more of the compliance options listed in paragraphs (a), (b), and (c) of this section. The process units subject to the compliance options are listed in Tables 1A and 1B to this subpart and are defined in § 63.2292. You need only to meet one of the compliance options outlined in paragraphs (a) through (c) of this section for each process unit. You cannot combine compliance options in paragraph (a), (b), or (c) for a single process unit. (For example, you cannot use a production-based compliance option in paragraph (a) for one vent of a veneer dryer and an add-on control system compliance option in paragraph (b) for another vent on the same veneer dryer. You must use either the production-based compliance option or an add-on control system compliance option for the entire dryer.)

(a) *Production-based compliance options.* You must meet the production-based total HAP compliance options in Table 1A to this subpart and the applicable operating requirements in Table 2 to this subpart. You may not use an add-on control system or wet control

device to meet the production-based compliance options.

(b) *Compliance options for add-on control systems.* You must use an emissions control system and demonstrate that the resulting emissions meet the compliance options and operating requirements in Tables 1B and 2 to this subpart. If you own or operate a reconstituted wood product press at a new or existing affected source or a reconstituted wood product board cooler at a new affected source, and you choose to comply with one of the concentration-based compliance options for a control system outlet (presented as option numbers 2, 4, and 6 in Table 1B to this subpart), you must have a capture device that either meets the definition of wood products enclosure in § 63.2292 or achieves a capture efficiency of greater than or equal to 95 percent.

(c) *Emissions averaging compliance option (for existing sources only).* Using the procedures in paragraphs (c)(1) through (3) of this section, you must demonstrate that emissions included in the emissions average meet the compliance options and operating requirements. New sources may not use emissions averaging to comply with this subpart.

(1) *Calculation of required and actual mass removal.* Limit emissions of total HAP, as defined in § 63.2292, to include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde from your affected source to the standard specified by Equations 1, 2, and 3 of this section.

$$RMR = 0.90 \times \left(\sum_{i=1}^{n} UCEP_i \times OH_i \right) \quad \text{(Eq. 1)}$$

$$AMR = \left(\sum_{i=1}^{n} CD_i \times OCEP_i \times OH_i \right) \quad \text{(Eq. 2)}$$

$$AMR \geq RMR \quad \text{(Eq. 3)}$$

Where:

RMR = required mass removal of total HAP from all process units generating debits (*i.e.*, all process units that are subject to the compliance options in Tables 1A and 1B to this subpart and that are either uncontrolled or under-controlled), pounds per semiannual period;

AMR = actual mass removal of total HAP from all process units generating credits (*i.e.*, all process units that are controlled as part of the Emissions Averaging Plan including credits from debit-generating process units that are under-controlled), pounds per semiannual period;

$UCEP_i$ = mass of total HAP from an uncontrolled or under-controlled process unit (i) that generates debits, pounds per hour;

OH_i = number of hours a process unit (i) is operated during the semiannual period, hours per 6-month period;

CD_i = control system efficiency for the emission point (i) for total HAP, expressed as a fraction, and not to exceed 90 percent, unitless (Note: To calculate the control system efficiency of biological treatment units that do not meet the definition of biofilter in § 63.2292, you must use 40 CFR part 63, appendix C, Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.);

$OCEP_i$ = mass of total HAP from a process unit (i) that generates credits (including credits from debit-generating process units that are under-controlled), pounds per hour;

0.90 = required control system efficiency of 90 percent multiplied, unitless.

(2) *Requirements for debits and credits.* You must calculate debits and credits as specified in paragraphs (c)(2)(i) through (vi) of this section.

(i) You must limit process units in the emissions average to those process units located at the existing affected source as defined in § 63.2292.

(ii) You cannot use nonoperating process units to generate emissions averaging credits. You cannot use process units that are shut down to generate emissions averaging debits or credits.

(iii) You may not include in your emissions average process units controlled to comply with a State, Tribal, or Federal rule other than this subpart.

(iv) You must use actual measurements of total HAP emissions from process units to calculate your required mass removal (RMR) and actual mass removal (AMR). The total HAP measurements must be obtained according to § 63.2262(b) through (d), (g), and (h), using the methods specified in Table 4 to this subpart.

(v) Your initial demonstration that the credit-generating process units will be capable of generating enough credits to offset the debits from the debit-generating process units must be made under representative operating conditions. After the compliance date, you must use actual operating data for all debit and credit calculations.

(vi) Do not include emissions from the following time periods in your emissions averaging calculations:

(A) Emissions during periods of startup, shutdown, and malfunction as described in the startup, shutdown, and malfunction plan (SSMP).

(B) Emissions during periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities or during periods of control device maintenance covered in your routine control device maintenance exemption. No credits may be assigned to credit-generating process units, and maximum debits must be assigned to debit-generating process units during these periods.

(3) *Operating requirements.* You must meet the operating requirements in Table 2 to this subpart for each process unit or control device used in calculation of emissions averaging credits.

§ 63.2241 What are the work practice requirements and how must I meet them?

(a) You must meet each work practice requirement in Table 3 to this subpart that applies to you.

(b) As provided in § 63.6(g), we, the EPA, may choose to grant you permission to use an alternative to the work practice requirements in this section.

(c) If you have a dry rotary dryer, you may choose to designate your dry rotary dryer as a green rotary dryer and meet the more stringent compliance options and operating requirements in § 63.2240 for green rotary dryers instead of the work practices for dry rotary dryers. If you have a hardwood veneer dryer or veneer redryer, you may choose to designate your hardwood veneer dryer or veneer redryer as a softwood veneer dryer and meet the more stringent compliance options and operating requirements in § 63.2240 for softwood veneer dryer heated zones instead of the work practices for hardwood veneer dryers or veneer redryers.

General Compliance Requirements

§ 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 scheduled startup and shutdown periods, and during malfunctions. These startup and shutdown periods must not exceed the minimum amount of time necessary for these events.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written SSMP according to the provisions in § 63.6(e)(3).

(d) Shutoff of direct-fired burners resulting from partial and full production stoppages of direct-fired softwood veneer dryers or over-temperature events shall be deemed shutdowns and not malfunctions. Lighting or re-lighting any one or all gas burners in direct-fired softwood veneer dryers shall be deemed startups and not malfunctions.

§ 63.2251 What are the requirements for the routine control device maintenance exemption?

(a) You may request a routine control device maintenance exemption from the EPA Administrator for routine maintenance events such as control device bakeouts, washouts, media replacement, and replacement of corroded parts. Your request must justify the need for the routine maintenance on the control device and the time required to accomplish the maintenance activities, describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during process shutdowns, describe how you plan to make reasonable efforts to minimize emissions during the maintenance, and provide any other documentation required by the EPA Administrator.

(b) The routine control device maintenance exemption must not exceed the percentages of process unit operating uptime in paragraphs (b)(1) and (2) of this section.

(1) If the control device is used to control a green rotary dryer, tube dryer, rotary strand dryer, or pressurized refiner, then the routine control device maintenance exemption must not exceed 3 percent of annual operating uptime for each process unit controlled.

(2) If the control device is used to control a softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, conveyor strand dryer, or fiberboard mat dryer, then the routine control device maintenance exemption must not exceed 0.5 percent of annual operating uptime for each process unit controlled.

(3) If the control device is used to control a combination of equipment listed in both paragraphs (b)(1) and (2) of this section, such as a tube dryer and a reconstituted wood product press, then the routine control device maintenance exemption must not exceed 3 percent of annual operating uptime for each process unit controlled.

(c) The request for the routine control device maintenance exemption, if approved by the EPA Administrator, must be IBR in and attached to the affected source's title V permit.

(d) The compliance options and operating requirements do not apply during times when control device maintenance covered under your approved routine control device maintenance exemption is performed. You must minimize emissions to the greatest extent possible during these routine control device maintenance periods.

(e) To the extent practical, startup and shutdown of emission control systems must be scheduled during times when process equipment is also shut down.

Initial Compliance Requirements

§ 63.2260 How do I demonstrate initial compliance with the compliance options, operating requirements, and work practice requirements?

(a) To demonstrate initial compliance with the compliance options and operating requirements, you must conduct performance tests and establish each site-specific operating requirement in Table 2 to this subpart according to the requirements in § 63.2262 and Table 4 to this subpart. Combustion units that accept process exhausts into the flame zone are exempt from the initial performance testing and operating requirements for thermal oxidizers.

(b) You must demonstrate initial compliance with each compliance option, operating requirement, and work practice requirement that applies to you according to Tables 5 and 6 to this subpart and according to §§ 63.2260 through 63.2269 of this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.2280(d).

§ 63.2261 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct performance tests upon initial startup or no later than 180 calendar days after the compliance date that is specified for your source in § 63.2233 and according to § 63.7(a)(2), whichever is later.

(b) You must conduct initial compliance demonstrations that do not require performance tests upon initial startup or no later than 30 calendar days after the compliance date that is specified for your source in § 63.2233, whichever is later.

§ 63.2262 How do I conduct performance tests and establish operating requirements?

(a) You must conduct each performance test according to the requirements in § 63.7(e)(1), the requirements in paragraphs (b) through (o) of this section, and according to the methods specified in Table 4 to this subpart.

(b) *Periods when performance tests must be conducted.* (1) You must not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(2) You must test under representative operating conditions as defined in § 63.2292. You must describe representative operating conditions in your performance test report for the process and control systems and explain why they are representative.

(c) *Number of test runs.* 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 for: testing of a temporary total enclosure (TTE) conducted using Methods 204A through 204F of 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 this subpart, which requires a minimum of three separate runs of at least 20 minutes each.

(d) *Location of sampling sites.* (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 and prior to any releases to the atmosphere. For HAP-altering controls in sequence, such as a wet control device followed by a thermal oxidizer, sampling sites must be located at the functional inlet of the control sequence (*e.g.*, prior to the wet control device) and at the outlet of the control sequence (*e.g.*, thermal oxidizer

outlet) and prior to any releases to the atmosphere.

(2) Sampling sites for process units meeting compliance options without a control device must be located prior to any releases to the atmosphere. Facilities demonstrating compliance with a production-based compliance option for a process unit equipped with a wet control device must locate sampling sites prior to the wet control device.

(e) *Collection of monitoring data.* You must collect operating parameter monitoring system or continuous emissions monitoring system (CEMS) data at least every 15 minutes during the entire performance test and determine the parameter or concentration value for the operating requirement during the performance test using the methods specified in paragraphs (k) through (o) of this section.

(f) *Collection of production data.* To comply with any of the production-based compliance options, you must measure and record the process unit throughput during each performance test.

(g) *Nondetect data.* (1) Except as specified in paragraph (g)(2) of this section, all nondetect data (§ 63.2292) must be treated as one-half of the method detection limit when determining total HAP, formaldehyde, methanol, or total hydrocarbon (THC) emission rates.

(2) When showing compliance with the production-based compliance options in Table 1A to this subpart, you may treat emissions of an individual HAP as zero if all three of the performance test runs result in a nondetect measurement, and the method detection limit is less than or equal to 1 parts per million by volume, dry basis (ppmvd). Otherwise, nondetect data for individual HAP must be treated as one-half of the method detection limit.

(h) *Calculation of percent reduction across a control system.* When determining the control system efficiency for any control system included in your emissions averaging plan (not to exceed 90 percent) and when complying with any of the compliance options based on percent reduction across a control system in Table 1B to this subpart, as part of the performance test, you must calculate the percent reduction using Equation 1 of this section:

$$PR = CE \times \frac{ER_{in} - ER_{out}}{ER_{in}}(100) \qquad \text{(Eq. 1)}$$

Where:

PR = percent reduction, percent;

CE = capture efficiency, percent (determined for reconstituted wood product presses and board coolers as required in Table 4 to this subpart);

ER_{in} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde), THC, formaldehyde, or methanol in the inlet vent stream of the control device, pounds per hour;

ER_{out} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde), THC, formaldehyde, or methanol in the outlet vent stream of the control device, pounds per hour.

(i) *Calculation of mass per unit production.* To comply with any of the production-based compliance options in Table 1A to this subpart, you must calculate your mass per unit production emissions for each performance test run using Equation 2 of this section:

$$MP = \frac{ER_{HAP}}{P \times CE} \qquad \text{(Eq. 2)}$$

Where:

MP = mass per unit production, pounds per oven dried ton OR pounds per thousand square feet on a specified thickness basis (see paragraph (j) of this section if you need to convert from one thickness basis to another);

ER_{HAP} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde) in the stack, pounds per hour;

P = process unit production rate (throughput), oven dried tons per hour OR thousand square feet per hour on a specified thickness basis;

CE = capture efficiency, percent (determined for reconstituted wood product presses and board coolers as required in Table 4 to this subpart).

(j) *Thickness basis conversion.* Use Equation 3 of this section to convert from one thickness basis to another:

$$MSF_B = MSF_A \times \frac{A}{B} \qquad \text{(Eq. 3)}$$

Where:

MSF_A = thousand square feet on an A-inch basis;

MSF_B = thousand square feet on a B-inch basis;

A = old thickness you are converting from, inches;

B = new thickness you are converting to, inches.

(k) *Establishing thermal oxidizer operating requirements.* If you operate a thermal oxidizer, you must establish your thermal oxidizer operating parameters according to paragraphs (k)(1) through (3) of this section.

(1) During the performance test, you must continuously monitor the firebox temperature during each of the required 1-hour test runs. For regenerative thermal oxidizers, you may measure the temperature in multiple locations (*e.g.*, one location per burner) in the combustion chamber and calculate the average of the temperature measurements prior to reducing the temperature data to 15-minute averages for purposes of establishing your minimum firebox temperature. The minimum firebox temperature must then be established as the average of the three minimum 15-minute firebox temperatures monitored during the three test runs. Multiple three-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) You may establish a different minimum firebox temperature for your thermal oxidizer by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (k)(1) of this section that demonstrates compliance with the applicable compliance options of this subpart.

(3) If your thermal oxidizer is a combustion unit that accepts process exhaust into the flame zone, then you are exempt from the performance testing and monitoring requirements specified in paragraphs (k)(1) and (2) of this section. To demonstrate initial compliance, you must submit documentation with your Notification of Compliance Status showing that process exhausts controlled by the combustion unit enter into the flame zone.

(l) *Establishing catalytic oxidizer operating requirements.* If you operate a catalytic oxidizer, you must establish your catalytic oxidizer operating parameters according to paragraphs (l)(1) and (2) of this section.

(1) During the performance test, you must continuously monitor during the required 1-hour test runs either the temperature at the inlet to each catalyst bed or the temperature in the combustion chamber. For regenerative catalytic oxidizers, you must calculate the average of the temperature measurements from each catalyst bed inlet or within the combustion chamber prior to reducing the temperature data to 15-minute averages for purposes of

establishing your minimum catalytic oxidizer temperature. The minimum catalytic oxidizer temperature must then be established as the average of the three minimum 15-minute temperatures monitored during the three test runs. Multiple three-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) You may establish a different minimum catalytic oxidizer temperature by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraphs (l)(1) and (2) of this section that demonstrates compliance with the applicable compliance options of this subpart.

(m) *Establishing biofilter operating requirements.* If you operate a biofilter, you must establish your biofilter operating requirements according to paragraphs (m)(1) through (3) of this section.

(1) During the performance test, you must continuously monitor the biofilter bed temperature during each of the required 1-hour test runs. To monitor biofilter bed temperature, you may 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 averages for purposes of establishing biofilter bed temperature limits. The biofilter bed temperature range must be established as the minimum and maximum 15-minute biofilter bed temperatures monitored during the three test runs. You may base your biofilter bed temperature range on values recorded during previous performance tests provided that the data used to establish the temperature ranges have been obtained using the test methods required in this subpart. If you use data from previous performance tests, you must certify that the biofilter and associated process unit(s) have not been modified subsequent to the date of the performance tests. Replacement of the biofilter media with the same type of material is not considered a modification of the biofilter for purposes of this section.

(2) For a new biofilter installation, you will be allowed up to 180 days following the compliance date or 180 days following initial startup of the biofilter to complete the requirements in paragraph (m)(1) of this section.

(3) You may expand your biofilter bed temperature operating range by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (m)(1) of this section that demonstrates compliance with the applicable compliance options of this subpart.

(n) *Establishing operating requirements for process units meeting compliance options without a control device.* If you operate a process unit that meets a compliance option in Table 1A to this subpart, or is a process unit that generates debits in an emissions average without the use of a control device, you must establish your process unit operating parameters according to paragraphs (n)(1) through (2) of this section.

(1) During the performance test, you must identify and document the process unit controlling parameter(s) that affect total HAP emissions during the three-run performance test. The controlling parameters you identify must coincide with the representative operating conditions you describe according to § 63.2262(b)(2). For each parameter, you must specify appropriate monitoring methods, monitoring frequencies, and for continuously monitored parameters, averaging times not to exceed 24 hours. The operating limit for each controlling parameter must then be established as the minimum, maximum, range, or average (as appropriate depending on the parameter) recorded during the performance test. Multiple three-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) You may establish different controlling parameter limits for your process unit by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (n)(1) of this section that demonstrates compliance with the compliance options in Table 1A to this subpart or is used to establish emission averaging debits for an uncontrolled process unit.

(o) *Establishing operating requirements using THC CEMS.* If you choose to meet the operating requirements by monitoring THC concentration instead of monitoring control device or process operating parameters, you must establish your THC concentration operating requirement according to paragraphs (o)(1) through (2) of this section.

(1) During the performance test, you must continuously monitor THC concentration using your CEMS during each of the required 1-hour test runs. The maximum THC concentration must then be established as the average of the three maximum 15-minute THC concentrations monitored during the three test runs. Multiple three-run performance tests may be conducted to establish a range of THC concentration values under different operating conditions.

(2) You may establish a different maximum THC concentration by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (o)(1) of this section that demonstrates compliance with the compliance options in Tables 1A and 1B to this subpart.

§ 63.2263 Initial compliance demonstration for a dry rotary dryer.

If you operate a dry rotary dryer, you must demonstrate that your dryer processes furnish with an inlet moisture content of less than or equal to 30 percent (by weight, dry basis) and operates with a dryer inlet temperature of less than or equal to 600°F. You must designate and clearly identify each dry rotary dryer. You must record the inlet furnish moisture content (dry basis) and inlet dryer operating temperature according to § 63.2269(a), (b), and (c) and § 63.2270 for a minimum of 30 calendar days. You must submit the highest recorded 24-hour average inlet furnish moisture content and the highest recorded 24-hour average dryer inlet temperature with your Notification of Compliance Status. In addition, you must submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the dry rotary dryer will dry furnish with a maximum inlet moisture content less than or equal to 30 percent (by weight, dry basis) and will operate with a maximum inlet temperature of less than or equal to 600°F in the future.

§ 63.2264 Initial compliance demonstration for a hardwood veneer dryer.

If you operate a hardwood veneer dryer, you must record the annual volume percentage of softwood veneer species processed in the dryer as follows:

(a) Use Equation 1 of this section to calculate the annual volume percentage of softwood species dried:

$$SW_{\%} = \frac{SW}{T}(100) \qquad \text{(Eq. 1)}$$

Where:

$SW_{\%}$ = annual volume percent softwood species dried;

SW = softwood veneer dried during the previous 12 months, thousand square feet (3/8-inch basis);

T = total softwood and hardwood veneer dried during the previous 12 months, thousand square feet (3/8-inch basis).

(b) You must designate and clearly identify each hardwood veneer dryer. Submit with the Notification of Compliance Status the annual volume percentage of softwood species dried in the dryer based on your dryer production for the 12 months prior to the compliance date specified for your source in § 63.2233. If you did not dry any softwood species in the dryer during the 12 months prior to the compliance date, then you need only to submit a statement indicating that no softwood species were dried. In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the veneer dryer will be used to process less than 30 volume percent softwood species in the future.

§ 63.2265 Initial compliance demonstration for a softwood veneer dryer.

If you operate a softwood veneer dryer, you must develop a plan for review and approval for minimizing fugitive emissions from the veneer dryer heated zones, and you must submit the plan with your Notification of Compliance Status.

§ 63.2266 Initial compliance demonstration for a veneer redryer.

If you operate a veneer redryer, you must record the inlet moisture content of the veneer processed in the redryer according to § 63.2269(a) and (c) and § 63.2270 for a minimum of 30 calendar days. You must designate and clearly identify each veneer redryer. You must submit the highest recorded 24-hour average inlet veneer moisture content with your Notification of Compliance Status to show that your veneer redryer processes veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis). In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the veneer redryer will dry veneer with a moisture content less than 25 percent (by weight, dry basis) in the future.

§ 63.2267 Initial compliance demonstration for a reconstituted wood product press or board cooler.

If you operate a reconstituted wood product press at a new or existing affected source or a reconstituted wood product board cooler at a new affected source, then you must either use a wood products enclosure as defined in § 63.2292 or measure the capture efficiency of the capture device for the press or board cooler using Methods 204 and 204A through 204F of 40 CFR part 51, appendix M (as appropriate), or using the alternative tracer gas method contained in appendix A to this subpart. You must submit documentation that the wood products enclosure meets the press enclosure design criteria in § 63.2292 or the results of the capture efficiency verification with your Notification of Compliance Status.

§ 63.2268 Initial compliance demonstration for a wet control device.

If you use a wet control device as the sole means of reducing HAP emissions, you must develop and implement a plan for review and approval to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere such that the desired emissions reductions are obtained. You must submit the plan with your Notification of Compliance Status.

§ 63.2269 What are my monitoring installation, operation, and maintenance requirements?

(a) *General continuous parameter monitoring requirements.* You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to paragraphs (a)(1) through (3) of this section.

(1) The CPMS must be capable of completing a minimum of one cycle of operation (sampling, analyzing, and recording) for each successive 15-minute period.

(2) At all times, you must maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(3) Record the results of each inspection, calibration, and validation check.

(b) *Temperature monitoring.* For each temperature monitoring device, you must meet the requirements in paragraphs (a) and (b)(1) through (6) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) Use a temperature sensor with a minimum accuracy of 4°F or 0.75 percent of the temperature value, whichever is larger.

(3) If a chart recorder is used, it must have a sensitivity with minor divisions not more than 20°F.

(4) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30°F of the process temperature sensor's reading.

(5) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(6) At least quarterly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) *Wood moisture monitoring.* For each furnish or veneer moisture meter, you must meet the requirements in paragraphs (a)(1), (2), (4) and (5) and paragraphs (c)(1) through (4) of this section.

(1) For dry rotary dryers, use a continuous moisture monitor with a minimum accuracy of 1 percent (dry basis) moisture or better in the 25 to 35 percent (dry basis) moisture content range. For veneer redryers, use a continuous moisture monitor with a minimum accuracy of 3 percent (dry basis) moisture or better in the 15 to 25 percent (dry basis) moisture content range. Alternatively, you may use a continuous moisture monitor with a minimum accuracy of 5 percent (dry basis) moisture or better for dry rotary dryers used to dry furnish with less than 25 percent (dry basis) moisture or for veneer redryers used to redry veneer with less than 20 percent (dry basis) moisture.

(2) Locate the moisture monitor in a position that provides a representative measure of furnish or veneer moisture.

(3) Calibrate the moisture monitor based on the procedures specified by the moisture monitor manufacturer at least once per semiannual compliance period (or more frequently if recommended by the moisture monitor manufacturer).

(4) At least quarterly, inspect all components of the moisture monitor for integrity and all electrical connections for continuity.

(5) Use Equation 1 of this section to convert percent moisture measurements wet basis to a dry basis:

$$MC_{dry} = \frac{MC_{wet}/100}{1-(MC_{wet}/100)}(100) \qquad \text{(Eq. 1)}$$

Where:

MC_{dry} = percent moisture content of wood material (weight percent, dry basis);

MC_{wet} = percent moisture content of wood material (weight percent, wet basis).

(d) *Continuous emission monitoring system(s).* Each CEMS must be installed, operated, and maintained according to

paragraphs (d)(1) through (4) of this section.

(1) Each CEMS for monitoring THC concentration must be installed, operated, and maintained according to Performance Specification 8 of 40 CFR part 60, appendix B. You must also comply with Procedure 1 of 40 CFR part 60, appendix F.

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and according to Performance Specification 8 of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) The CEMS data must be reduced as specified in § 63.8(g)(2) and § 63.2270(d) and (e).

Continuous Compliance Requirements

§ 63.2270 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for, as appropriate, monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation at all times that the process unit is operating. For purposes of calculating data averages, you must not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities. You must use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities; data recorded during periods of startup, shutdown, and malfunction; or data recorded during periods of control device downtime covered in any approved routine control device maintenance exemption in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control system.

(d) Except as provided in paragraph (e) of this section, determine the 3-hour block average of all recorded readings, calculated after every 3 hours of operation as the average of the evenly spaced recorded readings in the previous 3 operating hours (excluding periods described in paragraphs (b) and (c) of this section).

(e) For dry rotary dryer and veneer redryer wood moisture monitoring, dry rotary dryer temperature monitoring, biofilter bed temperature monitoring, and biofilter outlet THC monitoring, determine the 24-hour block average of all recorded readings, calculated after every 24 hours of operation as the average of the evenly spaced recorded readings in the previous 24 operating hours (excluding periods described in paragraphs (b) and (c) of this section).

(f) To calculate the data averages for each 3-hour or 24-hour averaging period, you must have at least 75 percent of the required recorded readings for that period using only recorded readings that are based on valid data (*i.e.*, not from periods described in paragraphs (b) and (c) of this section).

§ 63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

(a) You must demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 that apply to you according to the methods specified in Tables 7 and 8 to this subpart.

(b) You must report each instance in which you did not meet each compliance option, operating requirement, and work practice requirement in Tables 7 and 8 to this subpart that applies to you. This includes periods of startup, shutdown, and malfunction and periods of control device maintenance specified in paragraphs (b)(1) through (3) of this section. These instances are deviations from the compliance options, operating requirements, and work practice requirements in this subpart. These deviations must be reported according to the requirements in § 63.2281.

(1) During periods of startup, shutdown, and malfunction, you must operate in accordance with the SSMP.

(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 the SSMP. The EPA 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).

(3) Deviations that occur during periods of control device maintenance covered by any approved routine control device maintenance exemption are not violations if you demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with the approved routine control device maintenance exemption.

Notifications, Reports, and Records

§ 63.2280 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9 (b) through (e), and (g) and (h) by the dates specified.

(b) You must submit an Initial Notification no later than 120 calendar days after September 28, 2004, or after initial startup, whichever is later, as specified in § 63.9(b)(2).

(c) If you are required to conduct a performance test, you must submit a written notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as specified in § 63.7(b)(1).

(d) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 4, 5, and 6 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Table 5 or 6 to this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 5 and 6 to this subpart that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(e) If you request a routine control device maintenance exemption

according to § 63.2251, you must submit your request for the exemption no later than 30 days before the compliance date.

(f) If you use the emissions averaging compliance option in § 63.2240(c), you must submit an Emissions Averaging Plan to the EPA Administrator for approval no later than 1 year before the compliance date or no later than 1 year before the date you would begin using an emissions average, whichever is later. The Emissions Averaging Plan must include the information in paragraphs (f)(1) through (6) of this section.

(1) Identification of all the process units to be included in the emissions average indicating which process units will be used to generate credits, and which process units that are subject to compliance options in Tables 1A and 1B to this subpart will be uncontrolled (used to generate debits) or under-controlled (used to generate debits and credits).

(2) Description of the control system used to generate emission credits for each process unit used to generate credits.

(3) Determination of the total HAP control efficiency for the control system used to generate emission credits for each credit-generating process unit.

(4) Calculation of the RMR and AMR, as calculated using Equations 1 through 3 of § 63.2240(c)(1).

(5) Documentation of total HAP measurements made according to § 63.2240(c)(2)(iv) and other relevant documentation to support calculation of the RMR and AMR.

(6) A summary of the operating parameters you will monitor and monitoring methods for each debit-generating and credit-generating process unit.

(g) You must notify the EPA Administrator within 30 days before you take any of the actions specified in paragraphs (g)(1) through (3) of this section.

(1) You modify or replace the control system for any process unit subject to the compliance options and operating requirements in this subpart.

(2) You shut down any process unit included in your Emissions Averaging Plan.

(3) You change a continuous monitoring parameter or the value or range of values of a continuous monitoring parameter for any process unit or control device.

§ 63.2281 What reports must I submit and when?

(a) You must submit each report in Table 9 to this subpart that applies to you.

(b) Unless the EPA Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2233 ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

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

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for the semiannual reporting period ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 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) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (8) of this section.

(1) Company name and address.

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

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) A description of control device maintenance performed while the control device was offline and one or more of the process units controlled by the control device was operating, including the information specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The date and time when the control device was shut down and restarted.

(ii) Identification of the process units that were operating and the number of hours that each process unit operated while the control device was offline.

(iii) A statement of whether or not the control device maintenance was included in your approved routine control device maintenance exemption developed pursuant to § 63.2251. If the control device maintenance was included in your approved routine control device maintenance exemption, then you must report the information in paragraphs (c)(5)(iii)(A) through (C) of this section.

(A) The total amount of time that each process unit controlled by the control device operated during the semiannual compliance period and during the previous semiannual compliance period.

(B) The amount of time that each process unit controlled by the control device operated while the control device was down for maintenance covered under the routine control device maintenance exemption during the semiannual compliance period and during the previous semiannual compliance period.

(C) Based on the information recorded under paragraphs (c)(5)(iii)(A) and (B) of this section for each process unit, compute the annual percent of process unit operating uptime during which the control device was offline for routine maintenance using Equation 1 of this section.

$$RM = \frac{DT_p + DT_c}{PU_p + PU_c} \qquad \text{(Eq. 1)}$$

Where:

RM = Annual percentage of process unit uptime during which control device is down for routine control device maintenance;

PU_p = Process unit uptime for the previous semiannual compliance period;

PU_c = Process unit uptime for the current semiannual compliance period;

DT_p = Control device downtime claimed under the routine control device maintenance exemption for the previous semiannual compliance period;

DT_c = Control device downtime claimed under the routine control device maintenance exemption for the

current semiannual compliance period.

(6) The results of any performance tests conducted during the semiannual reporting period.

(7) If there are no deviations from any applicable compliance option or operating requirement, and there are no deviations from the requirements for work practice requirements in Table 8 to this subpart, a statement that there were no deviations from the compliance options, operating requirements, or work practice requirements during the reporting period.

(8) If there were no periods during which the continuous monitoring system (CMS), including CEMS and CPMS, was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from a compliance option or operating requirement and for each deviation from the work practice requirements in Table 8 to this subpart that occurs at an affected source where you are not using a CMS to comply with the compliance options, operating requirements, or work practice requirements in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (6) of this section and in paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from a compliance option or operating requirement occurring at an affected source where you are using a CMS to comply with the compliance options and operating requirements in this subpart, you must include the information in paragraphs (c)(1) through (6) and paragraphs (e)(1) through (11) of this section. This includes periods of startup, shutdown, and malfunction and routine control device maintenance.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction; during a period of control device maintenance covered in your approved routine control device maintenance exemption; or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control system problems, control device maintenance, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) A brief description of the process units.

(9) A brief description of the CMS.

(10) The date of the latest CMS certification or audit.

(11) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) If you comply with the emissions averaging compliance option in § 63.2240(c), you must include in your semiannual compliance report calculations based on operating data from the semiannual reporting period that demonstrate that actual mass removal equals or exceeds the required mass removal.

(g) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 9 to this subpart along with, or as part of, the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any compliance option, operating requirement, or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

§ 63.2282 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Documentation of your approved routine control device maintenance exemption, if you request such an exemption under § 63.2251.

(4) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Tables 7 and 8 to this subpart to show continuous compliance with each compliance option, operating requirement, and work practice requirement that applies to you.

(c) For each CEMS, you must keep the following records.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (i.e., superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy testing for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(d) If you comply with the emissions averaging compliance option in § 63.2240(c), you must keep records of all information required to calculate emission debits and credits.

(e) If you operate a catalytic oxidizer, you must keep records of annual catalyst activity checks and subsequent corrective actions.

§ 63.2283 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 review as specified in § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each

occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.2290 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.2291 Who implements and enforces this subpart?

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

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

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

(1) Approval of alternatives to the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 as specified in § 63.6(g). For the purposes of delegation authority under 40 CFR part 63, subpart E, "compliance options" represent "emission limits"; "operating requirements" represent "operating limits"; and "work practice requirements" represent "work practice standards."

(2) Approval of major alternatives to test methods as specified in § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring as specified in § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting as specified in § 63.10(f) and as defined in § 63.90.

(5) Approval of PCWP sources demonstrations of eligibility for the low-risk subcategory developed according to appendix B of this subpart.

§ 63.2292 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in 40 CFR 63.2, the General Provisions, and in this section as follows:

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, 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.

Agricultural fiber means the fiber of an annual agricultural crop. Examples of agricultural fibers include, but are not limited to, wheat straw, rice straw, and bagasse.

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 exhaust stream to innocuous compounds such as carbon dioxide, water, and inorganic salts. Wastewater treatment systems such as aeration lagoons or activated sludge systems are not considered to be biofilters.

Capture device means a hood, enclosure, or other means of collecting emissions into a duct so that the emissions can be measured.

Capture efficiency means the fraction (expressed as a percentage) of the pollutants from an emission source that are collected by a capture device.

Catalytic oxidizer means a control system that combusts or oxidizes, in the presence of a catalyst, exhaust gas from a process unit. Catalytic oxidizers include regenerative catalytic oxidizers and thermal catalytic oxidizers.

Combustion unit means a dryer burner, process heater, or boiler used for combustion of organic HAP emissions.

Control device means any equipment that reduces the quantity of HAP emitted to the air. The device may destroy the HAP or secure the HAP for subsequent recovery. Control devices include, but are not limited to, thermal or catalytic oxidizers, combustion units that incinerate process exhausts, biofilters, and condensers.

Control system or add-on control system means the combination of capture and control devices used to reduce HAP emissions to the atmosphere.

Conveyor strand dryer means a conveyor dryer 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 *conveyor strand dryer* is a process unit.

Conveyor strand dryer zone means each portion of a conveyor strand dryer with a separate heat exchange system and exhaust vent(s). Conveyor strand dryers contain multiple zones (e.g., three zones), which may be divided into multiple sections.

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 compliance option, operating requirement, or work practice requirement;

(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 compliance option, operating requirement, or work practice requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart. A deviation is not always a violation. The determination of whether a deviation constitutes a violation of the standard is up to the discretion of the entity responsible for enforcement of the standards.

Dryer heated zones means the zones of a softwood veneer dryer or fiberboard mat dryer that are equipped with heating and hot air circulation units. The cooling zone(s) of the dryer through which ambient air is blown are not part of the dryer heated zones.

Dry forming means the process of making a mat of resinated fiber to be compressed into a reconstituted wood product such as particleboard, oriented strandboard, medium density fiberboard, or hardboard.

Dry rotary dryer means a rotary dryer that dries wood particles or fibers with a maximum inlet moisture content of less than or equal to 30 percent (by weight, dry basis) and operates with a maximum inlet temperature of less than or equal to 600°F. A dry rotary dryer is a process unit.

Fiber means the discrete elements of wood or similar cellulosic material, which are separated by mechanical means, as in refining, that can be formed into boards.

Fiberboard means a composite panel composed of cellulosic fibers (usually wood or agricultural material) made by wet forming and compacting a mat of fibers. Fiberboard density generally is less than 0.50 grams per cubic centimeter (31.5 pounds per cubic foot).

Fiberboard mat dryer means a dryer used to reduce the moisture of wet-formed wood fiber mats by operation at elevated temperature. A *fiberboard mat dryer* is a process unit.

Flame zone means the portion of the combustion chamber in a combustion unit that is occupied by the flame envelope.

Furnish means the fibers, particles, or strands used for making boards.

Glue-laminated beam means a structural wood beam made by bonding lumber together along its faces with resin.

Green rotary dryer means a rotary dryer that dries wood particles or fibers with an inlet moisture content of greater than 30 percent (by weight, dry basis) at any dryer inlet temperature or operates with an inlet temperature of greater than 600°F with any inlet moisture content. A *green rotary dryer* is a process unit.

Group 1 miscellaneous coating operations means application of edge seals, nail lines, logo (or other information) paint, shelving edge fillers, trademark/gradestamp inks, and wood putty patches to plywood and composite wood products (except kiln-dried lumber) on the same site where the plywood and composite wood products are manufactured. Group 1 miscellaneous coating operations also include application of synthetic patches to plywood at new affected sources.

Hardboard means a composite panel composed of inter-felted cellulosic fibers made by dry or wet forming and pressing of a resinated fiber mat. Hardboard generally has a density of 0.50 grams per cubic centimeter (31.5 pounds per cubic foot) or greater.

Hardboard oven means an oven used to heat treat or temper hardboard after hot pressing. Humidification chambers are not considered as part of hardboard ovens. A *hardboard oven* is a process unit.

Hardwood means the wood of a broad-leafed tree, either deciduous or evergreen. Examples of hardwoods include, but are not limited to, aspen, birch, poplar, and oak.

Hardwood veneer dryer means a dryer that removes excess moisture from veneer by conveying the veneer through a heated medium on rollers, belts, cables, or wire mesh. Hardwood veneer dryers are used to dry veneer with less than 30 percent softwood species on an annual volume basis. Veneer kilns that operate as batch units, veneer dryers heated by radio frequency or microwaves that are used to redry veneer, and veneer redryers (defined elsewhere in this section) that are heated by conventional means are not considered to be hardwood veneer dryers. A *hardwood veneer dryer* is a process unit.

Kiln-dried lumber means solid wood lumber that has been dried in a lumber kiln.

Laminated strand lumber (LSL) means a composite product formed into a billet made of thin wood strands cut from whole logs, resinated, and pressed together with the grain of each strand oriented parallel to the length of the finished product.

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 includes parallel strand lumber (PSL).

Lumber kiln means an enclosed dryer operated at elevated temperature to reduce the moisture content of lumber.

Medium density fiberboard (MDF) means a composite panel composed of cellulosic fibers (usually wood or agricultural fiber) made by dry forming and pressing of a resinated fiber mat.

Method detection limit means the minimum concentration of an analyte that can be determined with 99 percent confidence that the true value is greater than zero.

Miscellaneous coating operations means application of any of the following to plywood or composite wood products: edge seals, moisture sealants, anti-skid coatings, company logos, trademark or grade stamps, nail lines, synthetic patches, wood patches, wood putty, concrete forming oils, glues for veneer composing, and shelving edge fillers. Miscellaneous coating operations also include the application of primer to oriented strandboard siding that occurs at the same site as oriented strandboard manufacture and application of asphalt, clay slurry, or titanium dioxide coatings to fiberboard at the same site of fiberboard manufacture.

MSF means thousand square feet (92.9 square meters). Square footage of panels is usually measured on a thickness basis, such as 3/8-inch, to define the total volume of panels. Equation 6 of § 63.2262(j) shows how to convert from one thickness basis to another.

Nondetect data means, for the purposes of this subpart, any value that is below the method detection limit.

Non-HAP coating means a coating with HAP contents below 0.1 percent by mass for Occupational Safety and Health Administration-defined carcinogens as specified in 29 CFR 1910.1200(d)(4), and below 1.0 percent by mass for other HAP compounds.

1-hour period means a 60-minute period.

Oriented strandboard (OSB) means a composite panel produced from thin wood strands cut from whole logs, formed into resinated layers (with the grain of strands in one layer oriented perpendicular to the strands in adjacent layers), and pressed.

Oven-dried ton(s) (ODT) means tons of wood dried until all of the moisture in the wood is removed. One oven-dried ton equals 907 oven-dried kilograms.

Partial wood products enclosure means an enclosure that does not meet the design criteria for a wood products enclosure as defined in this subpart.

Particle means a discrete, small piece of cellulosic material (usually wood or agricultural fiber) produced mechanically and used as the aggregate for a particleboard.

Particleboard means 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.

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 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 structural panel or engineered wood product. 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, 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 of a wet-formed fiber mat before the mat enters a hot press. A *press predryer* is a process unit.

Pressurized refiner means a piece of equipment operated under pressure for preheating (usually by steaming) wood material and refining (rubbing or grinding) the wood material into fibers. Pressurized refiners are operated with continuous infeed and outfeed of wood material and maintain elevated internal pressures (*i.e.*, there is no pressure release) throughout the preheating and refining process. A *pressurized refiner* is a process unit.

Primary tube dryer means a single-stage tube dryer or the first stage of a multi-stage tube dryer. Tube dryer stages are separated by vents for removal of moist gases between stages (*e.g.*, a product cyclone at the end of a single-stage dryer or between the first and second stages of a multi-stage tube dryer). The first stage of a multi-stage tube dryer is used to remove the majority of the moisture from the wood furnish (compared to the moisture reduction in subsequent stages of the tube dryer). Blow-lines used to apply resin are considered part of the primary tube dryer. A *primary tube dryer* is a process unit.

Process unit means equipment classified according to its function such as a blender, dryer, press, former, or board cooler.

Reconstituted wood product board cooler means a piece of equipment designed to reduce the temperature of a board by means of forced air or convection within a controlled time period after the board exits the reconstituted wood product press unloader. Board coolers include wicket and star type coolers commonly found at medium density fiberboard and particleboard plants. Board coolers do not include cooling sections of dryers (*e.g.*, veneer dryers or fiberboard mat dryers) or coolers integrated into or following hardboard bake ovens or humidifiers. A *reconstituted wood product board cooler* is a process unit.

Reconstituted wood product press means a press, including (if applicable) the press unloader, that presses a resinated mat of wood fibers, particles, or strands between hot platens or hot rollers to compact and set the mat into a panel by simultaneous application of heat and pressure. Reconstituted wood product presses are used in the manufacture of hardboard, medium density fiberboard, particleboard, and oriented strandboard. Extruders are not considered to be reconstituted wood product presses. A *reconstituted wood product press* is a process unit.

Representative operating conditions means operation of a process unit during performance testing under the conditions that the process unit will typically be operating in the future, including use of a representative range of materials (*e.g.*, wood material of a typical species mix and moisture content or typical resin formulation) and representative operating temperature range.

Resin means the synthetic adhesive (including glue) or natural binder, including additives, used to bond wood or other cellulosic materials together to produce plywood and composite wood products.

Responsible official means responsible official as defined in 40 CFR 70.2 and 40 CFR 71.2.

Rotary strand dryer means a rotary dryer operated at elevated temperature 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.

Secondary tube dryer means the second stage and subsequent stages following the primary stage of a multi-stage tube dryer. Secondary tube dryers, also referred to as relay dryers, operate at lower temperatures than the primary tube dryer they follow. Secondary tube dryers are used to remove only a small amount of the furnish moisture compared to the furnish moisture reduction across the primary tube dryer. A *secondary tube dryer* is a process unit.

Softwood means the wood of a coniferous tree. Examples of softwoods include, but are not limited to, Southern yellow pine, Douglas fir, and White spruce.

Softwood veneer dryer means a dryer that removes excess moisture from veneer by conveying the veneer through a heated medium, generally on rollers, belts, cables, or wire mesh. Softwood veneer dryers are used to dry veneer with greater than or equal to 30 percent softwood species on an annual volume basis. Veneer kilns that operate as batch units, veneer dryers heated by radio frequency or microwaves that are used to redry veneer, and veneer redryers (defined elsewhere in this section) that are heated by conventional means are not considered to be softwood veneer dryers. A *softwood veneer dryer* is a process unit.

Startup means bringing equipment online and starting the production process.

Startup, initial means the first time equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startups (as defined in this section) following malfunction or shutdowns or following changes in product or between batch operations. Initial startup does not include startup of equipment that occurred when the source was an area source.

Startup, shutdown, and malfunction plan (SSMP) means a plan developed according to the provisions of § 63.6(e)(3).

Strand means a long (with respect to thickness and width), flat wood piece specially cut from a log for use in oriented strandboard, laminated strand lumber, or other wood strand-based product.

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source, as defined in Method 204 of 40 CFR part 51, appendix M.

Thermal oxidizer means a control system that combusts or oxidizes exhaust gas from a process unit. Thermal oxidizers include regenerative thermal oxidizers and combustion units.

Total hazardous air pollutant emissions means, for purposes of this subpart, the sum of the emissions of the following six compounds: acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde.

Tube dryer means a single-stage or multi-stage dryer operated at elevated temperature and used 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. A *tube dryer* is a process unit.

Veneer means thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

Veneer redryer means a dryer heated by conventional means, such as direct wood-fired, direct-gas-fired, or steam heated, that is used to redry veneer that has been previously dried. Because the veneer dried in a veneer redryer has been previously dried, the inlet moisture content of the veneer entering the redryer is less than 25 percent (by weight, dry basis). Batch units used to redry veneer (such as redry cookers) are

not considered to be veneer redryers. A *veneer redryer* is a process unit.

Wet control device means any equipment that uses water as a means of collecting an air pollutant. Wet control devices include scrubbers, wet electrostatic precipitators, and electrified filter beds. Wet control devices do not include biofilters or other equipment that destroys or degrades HAP.

Wet forming means the process of making a slurry of water, fiber, and additives into a mat of fibers to be compressed into a fiberboard or hardboard product.

Wood I-joists means a structural wood beam with an I-shaped cross section formed by bonding (with resin) wood or laminated veneer lumber flanges onto a web cut from a panel such as plywood or oriented strandboard.

Wood products enclosure means a permanently installed containment that was designed to meet the following physical design criteria:

(1) Any natural draft opening shall be at least four equivalent opening diameters from each HAP-emitting point, except for where board enters and exits the enclosure, unless otherwise specified by the EPA Administrator.

(2) The total area of all natural draft openings shall not exceed 5 percent of the surface area of the enclosure's four walls, floor, and ceiling.

(3) The average facial velocity of air through all natural draft openings shall be at least 3,600 meters per hour (200 feet per minute). The direction of airflow through all natural draft openings shall be into the enclosure.

(4) All access doors and windows whose areas are not included in item 2 of this definition and are not included in the calculation of facial velocity in item 3 of this definition shall be closed during routine operation of the process.

(5) The enclosure is designed and maintained to capture all emissions for discharge through a control device.

Work practice requirement means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

Tables to Subpart DDDD of Part 63

TABLE 1A TO SUBPART DDDD OF PART 63.—PRODUCTION-BASED COMPLIANCE OPTIONS

For the following process units . . .	You must meet the following production-based compliance option (total HAP[a] basis) . . .
(1) Fiberboard mat dryer heated zones (at new affected sources only)	0.022 lb/MSF ½".
(2) Green rotary dryers	0.058 lb/ODT.
(3) Hardboard ovens	0.022 lb/MSF ⅛".
(4) Press predryers (at new affected sources only)	0.037 lb/MSF ½".
(5) Pressurized refiners	0.039 lb/ODT.
(6) Primary tube dryers	0.26 lb/ODT.
(7) Reconstituted wood product board coolers (at new affected sources only)	0.014 lb/MSF ¾".
(8) Reconstituted wood product presses	0.30 lb/MSF ¾".
(9) Softwood veneer dryer heated zones	0.022 lb/MSF ⅜".
(10) Rotary strand dryers	0.18 lb/ODT.
(11) Secondary tube dryers	0.010 lb/ODT.

[a] Total HAP, as defined in § 63.2292, includes acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. lb/ODT = pounds per oven-dried ton; lb/MSF = pounds per thousand square feet with a specified thickness basis (inches). Section 63.2262(j) shows how to convert from one thickness basis to another.

Note: There is no production-based compliance option for conveyor strand dryers.

TABLE 1B TO SUBPART DDDD OF PART 63.—ADD-ON CONTROL SYSTEMS COMPLIANCE OPTIONS

For each of the following process units . . .	You must comply with one of the following six compliance options by using an emissions control system . . .
Fiberboard mat dryer heated zones (at new affected sources only); green rotary dryers; hardboard ovens; press predryers (at new affected sources only); pressurized refiners; primary tube dryers; secondary tube dryers; reconstituted wood product board coolers (at new affected sources only); reconstituted wood product presses; softwood veneer dryer heated zones; rotary strand dryers; conveyor strand dryer zone one (at existing affected sources); and conveyor strand dryer zones one and two (at new affected sources).	(1) Reduce emissions of total HAP, measured as THC (as carbon)[a], by 90 percent; or (2) Limit emissions of total HAP, measured as THC (as carbon)[a], to 20 ppmvd; or (3) Reduce methanol emissions by 90 percent; or (4) Limit methanol emissions to less than or equal to 1 ppmvd if uncontrolled methanol emissions entering the control device are greater than or equal to 10 ppmvd; or (5) Reduce formaldehyde emissions by 90 percent; or (6) Limit formaldehyde emissions to less than or equal to 1 ppmvd if uncontrolled formaldehyde emissions entering the control device are greater than or equal to 10 ppmvd.

[a] You may choose to subtract methane from THC as carbon measurements.

TABLE 2 TO SUBPART DDDD OF PART 63.—OPERATING REQUIREMENTS

If you operate a(n) . . .	You must . . .	Or you must . . .
(1) Thermal oxidizer	Maintain the 3-hour block average firebox temperature above the minimum temperature established during the performance test.	Maintain the 3-hour block average THC concentration[a] in the thermal oxidizer exhaust below the maximum concentration established during the performance test.

TABLE 2 TO SUBPART DDDD OF PART 63.—OPERATING REQUIREMENTS—Continued

If you operate a(n) . . .	You must . . .	Or you must . . .
(2) Catalytic oxidizer	Maintain the 3-hour block average catalytic oxidizer temperature above the minimum temperature established during the performance test; AND check the activity level of a representative sample of the catalyst at least every 12 months.	Maintain the 3-hour block average THC concentration[a] in the catalytic oxidizer exhaust below the maximum concentration established during the performance test.
(3) Biofilter	Maintain the 24-hour block biofilter bed temperature within the range established according to § 63.2262(m).	Maintain the 24-hour block average THC concentration[a] in the biofilter exhaust below the maximum concentration established during the performance test.
(4) Control device other than a thermal oxidizer, catalytic oxidizer, or biofilter.	Petition the EPA Administrator for site-specific operating parameter(s) to be established during the performance test and maintain the average operating parameter(s) within the range(s) established during the performance test.	Maintain the 3-hour block average THC concentration[a] in the control device exhaust below the maximum concentration established during the performance test.
(5) Process unit that meets a compliance option in Table 1A of this subpart, or a process unit that generates debits in an emissions average without the use of a control device.	Maintain on a daily basis the process unit controlling operating parameter(s) within the ranges established during the performance test according to § 63.2262(n).	Maintain the 3-hour block average THC concentration[a] in the process unit exhaust below the maximum concentration established during the performance test.

[a] You may choose to subtract methane from THC measurements.

TABLE 3 TO SUBPART DDDD OF PART 63.—WORK PRACTICE REQUIREMENTS

For the following process units at existing or new affected sources . . .	You must . . .
(1) Dry rotary dryers	Process furnish with a 24-hour block average inlet moisture content of less than or equal to 30 percent (by weight, dry basis); AND operate with a 24-hour block average inlet dryer temperature of less than or equal to 600°F.
(2) Hardwood veneer dryers	Process less than 30 volume percent softwood species on an annual basis.
(3) Softwood veneer dryers	Minimize fugitive emissions from the dryer doors through (proper maintenance procedures) and the green end of the dryers (through proper balancing of the heated zone exhausts).
(4) Veneer redryers	Process veneer that has been previously dried, such that the 24-hour block average inlet moisture content of the veneer is less than or equal to 25 percent (by weight, dry basis).
(5) Group 1 miscellaneous coating operations	Use non-HAP coatings as defined in § 63.2292.

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.
(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 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.

TABLE 4 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .
(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)).
(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)).
(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 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.
(11) Each process unit subject to a compliance option in Table 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).

TABLE 5 TO SUBPART DDDD OF PART 63.—PERFORMANCE TESTING AND INITIAL COMPLIANCE DEMONSTRATIONS FOR THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For each . . .	For the following compliance options and operating requirements . . .	You have demonstrated initial compliance if . . .
(1) Process unit listed in Table 1A to this subpart.	Meet the production-based compliance options listed in Table 1A to this subpart.	The average total HAP emissions measured using the methods in Table 4 to this subpart over the 3-hour performance test are no greater than the compliance option in Table 1A to this subpart; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions did not exceed the compliance option value.

TABLE 5 TO SUBPART DDDD OF PART 63.—PERFORMANCE TESTING AND INITIAL COMPLIANCE DEMONSTRATIONS FOR THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS—Continued

For each . . .	For the following compliance options and operating requirements . . .	You have demonstrated initial compliance if . . .
(2) Process unit listed in Table 1B to this subpart.	Reduce emissions of total HAP, measured as THC, by 90 percent.	Total HAP emissions, measured using the methods in Table 4 to this subpart over the 3-hour performance test, are reduced by at least 90 percent, as calculated using the procedures in §63.2262; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions were reduced by at least 90 percent.
(3) Process unit listed in Table 1B to this subpart.	Limit emissions of total HAP, measured as THC, to 20 ppmvd.	The average total HAP emissions, measured using the methods in Table 4 to this subpart over the 3-hour performance test, do not exceed 20 ppmvd; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions did not exceed 20 ppmvd.
(4) Process unit listed in Table 1B to this subpart.	Reduce methanol or formaldehyde emissions by 90 percent.	The methanol or formaldehyde emissions measured using the methods in Table 4 to this subpart over the 3-hour performance test, are reduced by at least 90 percent, as calculated using the procedures in §63.2262; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions were reduced by at least 90 percent.
(5) Process unit listed in Table 1B to this subpart.	Limit methanol or formaldehyde emissions to less than or equal to 1 ppmvd (if uncontrolled emissions are greater than or equal to 10 ppmvd).	The average methanol or formaldehyde emissions, measured using the methods in Table 4 to this subpart over the 3-hour performance test, do not exceed 1 ppmvd; AND you have a record of the operating requirement(s) listed in Table 2 to this subpart for the process unit over the performance test during which emissions did not exceed 1 ppmvd. If the process unit is a reconstituted wood product press or a reconstituted wood product board cooler, your capture device either meets the EPA Method 204 criteria for a PTE or achieves a capture efficiency of greater than or equal to 95 percent.
(6) Reconstituted wood product press at a new or existing affected source, or reconstituted wood product board cooler at a new affected source.	Compliance options in Tables 1A and 1B to this subpart or the emissions averaging compliance option in §63.2240(c).	You submit the results of capture efficiency verification using the methods in Table 4 to this subpart with your Notification of Compliance Status.
(7) Process unit listed in Table 1B to this subpart controlled by routing exhaust to a combustion unit.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in §63.2240(c).	You submit with your Notification of Compliance Status documentation showing that the process exhausts controlled enter into the flame zone of your combustion unit.
(8) Process unit listed in Table 1B to this subpart using a wet control device as the sole means of reducing HAP emissions.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in §63.2240(c).	You submit with your Notification of Compliance Status your plan to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere.

TABLE 6 TO SUBPART DDDD OF PART 63.—INITIAL COMPLIANCE DEMONSTRATIONS FOR WORK PRACTICE REQUIREMENTS

For each . . .	For the following work practice requirements . . .	You have demonstrated initial compliance if . . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600 °F.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a "dry rotary dryer" AND you have a record of the inlet moisture content and inlet dryer temperature (as required in § 63.2263).
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a "hardwood veneer dryer" AND you have a record of the percentage of softwoods processed in the dryer (as required in § 63.2264).
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	You meet the work practice requirement AND you submit with the Notification of Compliance Status a copy of your plan for minimizing fugitive emissions from the veneer dryer heated zones (as required in § 63.2265).
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer operates only as a redryer AND you have a record of the veneer inlet moisture content of the veneer processed in the redryer (as required in § 63.2266).
(5) Group 1 miscellaneous coating operations ..	Use non-HAP coatings as defined in § 63.2292.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that you are using non-HAP coatings AND you have a record showing that you are using non-HAP coatings.

TABLE 7 TO SUBPART DDDD OF PART 63.—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(1) Each process unit listed in Table 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on monitoring of operating parameters.	Collecting and recording the operating parameter monitoring system data listed in Table 2 to this subpart for the process unit according to § 63.2269(a) through (b) and § 63.2270; AND reducing the operating parameter monitoring system data to the specified averages in units of the applicable requirement according to calculations in § 63.2270; 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 § 63.2262.
(2) Each process unit listed in Tables 1A and 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Compliance options in Tables 1A and 1B to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 of this subpart based on THC CEMS data.	Collecting and recording the THC monitoring data listed in Table 2 to this subpart for the process unit according to § 63.2269(d); AND reducing the CEMS data to 3-hour block averages according to calculations in § 63.2269(d); AND maintaining the 3-hour block average THC concentration in the exhaust gases less than or equal to the THC concentration established according to § 63.2262.

TABLE 7 TO SUBPART DDDD OF PART 63.—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS—Continued

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(3) Each process unit using a biofilter	Compliance options in Tables 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Conducting a repeat performance test using the applicable method(s) specified in Table 4 to this subpart within 2 years following the previous performance test and within 180 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.
(4) Each process unit using a catalytic oxidizer	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Checking the activity level of a representative sample of the catalyst at least every 12 months and taking any necessary corrective action to ensure that the catalyst is performing within its design range.
(5) Each process unit listed in Table 1A to this subpart, or each process unit without a control device used in calculation of an emissions averaging debit under § 63.2240(c).	Compliance options in Table 1A to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on monitoring of process unit controlling operating parameters.	Collecting and recording on a daily basis process unit controlling operating parameter data; AND maintaining the operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to § 63.2262.
(6) Each Process unit listed in Table 1B to this subpart using a wet control device as the sole means of reducing HAP emissions.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Implementing your plan to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere.

TABLE 8 TO SUBPART DDDD OF PART 63.—CONTINUOUS COMPLIANCE WITH THE WORK PRACTICE REQUIREMENTS

For . . .	For the following work practice requirements . . .	You must demonstrate continuous compliance by . . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600 °F.	Maintaining the 24-hour block average inlet furnish moisture content at less than or equal to 30 percent (by weight, dry basis) AND maintaining the 24-hour block average inlet dryer temperature at less than or equal to 600 °F; AND keeping records of the inlet temperature of furnish moisture content and inlet dryer temperature.
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	Maintaining the volume percent softwood species processed below 30 percent AND keeping records of the volume percent softwood species processed.
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	Following (and documenting that you are following) your plan for minimizing fugitive emissions.
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	Maintaining the 24-hour block average inlet moisture content of the veneer processed at or below of less than or 25 percent AND keeping records of the inlet moisture content of the veneer processed.
(5) Group 1 miscellaneous coating operations	Use non-HAP coatings as defined in § 63.2292.	Continuing to use non-HAP coatings AND keeping records showing that you are using non-HAP coatings.

TABLE 9 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
(1) Compliance report	The information in § 63.2281(c) through (g)	Semiannually according to the requirements in § 63.2281(b).
(2) immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	(i) Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.

TABLE 9 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
	(ii) The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

TABLE 10 TO SUBPART DDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention, fragmentation.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (*e.g.*, 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and SSMP; content of SSMP.	Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)(1)–(9)	Opacity/Visible Emission (VE) Standards	Requirements for opacity and visible emission standards.	NA.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(i)(15)	[Reserved].		
§ 63.6(i)(16)	Compliance Extension	Compliance extension and Administrator's authority.	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If have to reschedule performance test, must notify Administrator as soon as practicable.	Yes.
§ 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.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	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.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 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.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard.	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance specifications in appendix B of part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	NA.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with and good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS	Must maintain and operate 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.

TABLE 10 TO SUBPART DDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.8(c)(1)(iii)	SSMP for CMS	Must develop and implement SSMP for CMS.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission of parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	COMS minimum procedures	NA.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high-level calibration check requirements; out-of-control periods.	Yes.
§ 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.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports.	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that can't be used in average; rounding of data.	Yes.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(2)	Initial Notifications	Submit notification 120 days after effective date; contents of notification.	Yes.
§ 63.9(b)(3)	[Reserved].		
§ 63.9(b)(4)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct; notification of commencement of construct/reconstruct; notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed best available control technology/lowest achievable emission rate.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify EPA Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	Notify EPA Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes.
§ 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/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change.	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records Related to Startup, Shutdown, and Malfunction.	Occurrence of each of operation (process equipment); occurrence of each malfunction of air pollution equipment; maintenance on air pollution control equipment; actions during startup, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi) and (x)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control	Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with compliance options and operating requirements; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15)	Records	Additional records for CMS	Yes.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	What to report and when	NA.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit; written copy of performance evaluation; 3 copies of COMS performance evaluation.	Yes.
§ 63.10(e)(3)	Reports	Excess emission reports	No.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data.	NA.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for EPA Administrator to waive.	Yes.
§ 63.11	Flares	Requirements for flares	NA.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are send.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

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

1.0 Scope and Application

This procedure has been developed specifically for the rule for the plywood and composite wood products (PCWP) industry and is used to determine the capture efficiency of a partial hot press enclosure in that industry. This procedure is applicable for the determination of capture efficiency for enclosures around hot presses and is an alternative to the construction of temporary total enclosures (TTE). Sulfur hexafluoride (SF_6) is used as a tracer gas (other tracer gases may be used if approved by the EPA Administrator). This gas is not indigenous to the ambient atmosphere and is nonreactive.

This procedure uses infrared spectrometry (IR) as the analytical technique. When the infrared spectrometer used is a Fourier-Transform Infrared spectrometer (FTIR), an alternate instrument calibration procedure may be used; the alternate calibration procedure is the calibration transfer standard (CTS) procedure of EPA Method 320 (appendix A to 40 CFR part 63). Other analytical techniques which are capable of equivalent Method Performance (Section 13.0) also may be used. Specifically, gas chromatography with electron capture detection (GC/ECD) is an applicable technique for analysis of SF_6.

2.0 Summary of Method

A constant mass flow rate of SF_6 tracer gas is released through manifolds at multiple locations within the enclosure to mimic the release of hazardous air pollutants during the press process. This test method requires a minimum of three SF_6 injection points (two at the press unloader and one at the press) and provides details about considerations for locating the injection points. A GC/ECD is used to measure the concentration of SF_6 at the inlet duct to the control device (outlet duct from enclosure). Simultaneously, EPA Method 2 (appendix A to 40 CFR part 60) is used to measure the flow rate at the inlet duct to the control device. The concentration and flow rate measurements are used to calculate the mass emission rate of SF_6 at the control device inlet. Through calculation of the mass of SF_6 released through the manifolds and the mass of SF_6 measured at the inlet to the control device, the capture efficiency of the enclosure is calculated.

In addition, optional samples of the ambient air may be taken at locations around the perimeter of the enclosure to quantify the ambient concentration of SF_6 and to identify those areas of the enclosure that may be performing less efficiently; these samples would be taken using disposable syringes and would be analyzed using a GC/ECD.

Finally, in addition to the requirements specified in this procedure, the data quality objectives (DQO) or lower confidence limit (LCL) criteria specified in appendix A to 40 CFR part 63, subpart KK, Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods, must also be satisfied. A minimum of three test runs are required for this procedure; however, additional test runs may be required based on the results of the DQO or LCL analysis.

3.0 Definitions

3.1 Capture efficiency (CE). The weight per unit time of SF_6 entering the control device divided by the weight per unit time of SF_6 released through manifolds at multiple locations within the enclosure.

3.2 Control device (CD). The equipment used to reduce, by destruction or removal, press exhaust air pollutants prior to discharge to the ambient air.

3.3 Control/destruction efficiency (DE). The volatile organic compound or HAP removal efficiency of the control device.

3.4 Data Quality Objective (DQO) Approach. A statistical procedure to determine the precision of the data from a test series and to qualify the data in the determination of capture efficiency for compliance purposes. If the results of the DQO analysis of the initial three test runs do not satisfy the DQO criterion, the LCL approach can be used or additional test runs must be conducted. If additional test runs are conducted, then the DQO or LCL analysis is conducted using the data from both the initial test runs and all additional test runs.

3.5 Lower Confidence Limit (LCL) Approach. An alternative statistical procedure that can be used to qualify data in the determination of capture efficiency for compliance purposes. If the results of the LCL approach produce a CE that is too low for demonstrating compliance, then additional test runs must be conducted until the LCL or DQO is met. As with the DQO, data from all valid test runs must be used in the calculation.

3.6 Minimum Measurement Level (MML). The minimum tracer gas concentration expected to be measured during the test series. This value is selected by the tester based on the capabilities of the IR spectrometer (or GC/ECD) and the other known or measured parameters of the hot press enclosure to be tested. The selected MML must be above the low-level calibration standard and preferably below the mid-level calibration standard.

3.7 Method 204. The U.S. EPA Method 204, "Criteria For and Verification of a Permanent or Temporary Total Enclosure" (40 CFR part 51, appendix M).

3.8 Method 205. The U.S. EPA Method 205, "Verification of Gas Dilution Systems for Field Instrument Calibrations" (40 CFR part 51, appendix M).

3.9 Method 320. The U.S. EPA Method 320, "Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy" (40 CFR part 63, appendix A).

3.10 Overall capture and control efficiency (CCE). The collection and control/destruction efficiency of both the PPE and CD combined. The CCE is calculated as the product of the CE and DE.

3.11 Partial press enclosure (PPE). The physical barrier that "partially" encloses the press equipment, captures a significant amount of the associated emissions, and transports those emissions to the CD.

3.12 Test series. A minimum of three test runs or, when more than three runs are conducted, all of the test runs conducted.

4.0 Interferences

There are no known interferences.

5.0 Safety

Sulfur hexafluoride is a colorless, odorless, nonflammable liquefied gas. It is stable and nonreactive and, because it is noncorrosive, most structural materials are compatible with it. The Occupational Safety and Health Administration Permissible Emission Limit-Time Weighted Average (PEL–TWA) and Threshold Limit Value-Time Weighted Average (TLV–TWA) concentrations are 1,000 parts per million. Sulfur hexafluoride is an asphyxiant. Exposure to an oxygen-deficient atmosphere (less than 19.5 percent oxygen) may cause dizziness, drowsiness, nausea, vomiting, excess salivation, diminished mental alertness, loss of consciousness, and death. Exposure to atmospheres containing less than 12 percent oxygen will bring about unconsciousness without warning and so quickly that the individuals cannot help themselves. Contact with liquid or cold vapor may cause frostbite. Avoid breathing sulfur hexafluoride gas. Self-contained breathing apparatus may be required by rescue workers. Sulfur hexafluoride is not listed as a carcinogen or a potential carcinogen.

6.0 Equipment and Supplies

This method requires equipment and supplies for: (a) the injection of tracer gas into the enclosure, (b) the measurement of the tracer gas concentration in the exhaust gas entering the control device, and (c) the measurement of the volumetric flow rate of the exhaust gas entering the control device. In addition, the requisite equipment needed for EPA Methods 1–4 in appendix A to 40 CFR part 60 will be required. Equipment and supplies for optional ambient air sampling are discussed in Section 8.6.

6.1 Tracer Gas Injection.

6.1.1 Manifolds. This method requires the use of tracer gas supply cylinder(s) along with the appropriate flow control elements. Figure 1 shows a schematic drawing of the injection system showing potential locations for the tracer gas manifolds. Figure 2 shows a schematic drawing of the recommended configuration of the injection manifold. Three tracer gas discharge manifolds are required at a minimum.

6.1.2 Flow Control Meter. Flow control and measurement meter for measuring the quantity of tracer gas injected. A mass flow, volumetric flow, or critical orifice control meter can be used for this method. The meter must be accurate to within ± 5 percent at the flow rate used. This means that the flow meter must be calibrated against a primary standard for flow measurement at the appropriate flow rate.

6.2 Measurement of Tracer Gas Concentration.

6.2.1 Sampling Probes. Use Pyrex or stainless steel sampling probes of sufficient length to reach the traverse points calculated according to EPA Method 1 (appendix A to 40 CFR part 60).

6.2.2 Sampling Line. Use a heated Teflon sampling line to transport the sample to the analytical instrument.

6.2.3 Sampling Pump. Use a sampling pump capable of extracting sufficient sample from the duct and transporting to the analytical instrument.

6.2.4 Sample Conditioning System. Use a particulate filter sufficient to protect the sampling pump and analytical instrument. At the discretion of the tester and depending on the equipment used and the moisture content of the exhaust gas, it may be necessary to further condition the sample by removing moisture using a condenser.

6.2.5 Analytical Instrument. Use one of the following analytical instruments.

6.2.5.1 Spectrometer. Use an infrared spectrometer designed to measuring SF_6 tracer gas and capable of meeting or exceeding the specifications of this procedure. An FTIR meeting the specifications of Method 320 in appendix A to 40 CFR part 63 may be used.

6.2.5.2 GC/ECD. Use a GC/ECD designed to measure SF_6 tracer gas and capable of meeting or exceeding the specifications of this procedure.

6.2.6 Recorder. At a minimum, use a recorder with linear strip chart. An automated data acquisition system (DAS) is recommended.

6.3 Exhaust Gas Flow Rate Measurement. Use equipment specified for EPA Methods 2, 3, and 4 in appendix A to 40 CFR part 60 for measuring flow rate of exhaust gas at the inlet to the control device.

7.0 Reagents and Standards

7.1 Tracer Gas. Use SF_6 as the tracer gas. The manufacturer of the SF_6 tracer gas should provide a recommended shelf life for the tracer gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. A gas mixture of SF_6 diluted with nitrogen should be used; based on experience and calculations, pure SF_6 gas is not necessary to conduct tracer gas testing. Select a concentration and flow rate that is appropriate for the analytical instrument's detection limit, the MML, and the exhaust gas flow rate from the enclosure (see section 8.1.1). You may use a tracer gas other than SF_6 with the prior approval of the EPA Administrator. If you use an approved tracer gas other than SF_6, all references to SF_6 in this protocol instead refer to the approved tracer gas.

7.2 Calibration Gases. The SF_6 calibration gases required will be dependent on the selected MML and the appropriate span selected for the test. Commercial cylinder gases certified by the manufacturer to be accurate to within 1 percent of the certified label value are preferable, although cylinder gases certified by the manufacturer to 2 percent accuracy are allowed. Additionally, the manufacturer of the SF_6 calibration gases should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. Another option allowed by this method is for the tester to obtain high concentration certified cylinder gases and then use a dilution system meeting the requirements of EPA Method 205, 40 CFR part 51, appendix M, to make multi-level calibration gas standards. Low-level, mid-level, and high-level calibration gases will be required. The MML must be above the low-level standard, the high-level standard must be no more than four times the low-level standard, and the mid-level standard must be approximately halfway between the high- and low-level standards. See section 12.1 for an example calculation of this procedure.

Note: If using an FTIR as the analytical instrument, the tester has the option of following the CTS procedures of Method 320 in appendix A to 40 CFR part 63; the calibration standards (and procedures) specified in Method 320 may be used in lieu of the calibration standards and procedures in this protocol.

7.2.1 Zero Gas. High purity nitrogen.

7.2.2 Low-Level Calibration Gas. An SF_6 calibration gas in nitrogen with a concentration equivalent to 20 to 30 percent of the applicable span value.

7.2.3 Mid-Level Calibration Gas. An SF_6 calibration gas in nitrogen with a concentration equivalent to 45 to 55 percent of the applicable span value.

7.2.4 High-Level Calibration Gas. An SF_6 calibration gas in nitrogen with a concentration equivalent to 80 to 90 percent of the applicable span value.

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Test Design.

8.1.1 Determination of Minimum Tracer Gas Flow Rate.

8.1.1.1 Determine (via design calculations or measurements) the approximate flow rate of the exhaust gas through the enclosure, actual cubic feet per minute (acfm).

8.1.1.2 Calculate the minimum tracer gas injection rate necessary to assure a detectable SF_6 concentration at the exhaust gas measurement point (see section 12.1 for calculation).

8.1.1.3 Select a flow meter for the injection system with an operating range appropriate for the injection rate selected.

8.1.2 Determination of the Approximate Time to Reach Equilibrium.

8.1.2.1 Determine the volume of the enclosure.

8.1.2.2 Calculate the air changes per minute of the enclosure by dividing the approximate exhaust flow rate (8.1.1.1 above) by the enclosed volume (8.1.2.1 above).

8.1.2.3 Calculate the time at which the tracer concentration in the enclosure will achieve approximate equilibrium. Divide 3 by the air changes per minute (8.1.2.2 above) to establish this time. This is the approximate length of time for the system to come to equilibrium. Concentration equilibrium occurs when the tracer concentration in the enclosure stops changing as a function of time for a constant tracer release rate. Because the press is continuously cycling, equilibrium may be exhibited by a repeating, but stable, cyclic pattern rather than a single constant concentration value. Assure sufficient tracer gas is available to allow the system to come to equilibrium, and to sample for a minimum of 20 minutes and repeat the procedure for a minimum of three test runs. Additional test runs may be required based on the results of the DQO and LCL analyses described in 40 CFR part 63, subpart KK, appendix A.

8.1.3 Location of Injection Points. This method requires a minimum of three tracer gas injection points. The injection points should be located within leak prone, volatile organic compound/hazardous air pollutant (VOC/HAP) producing areas around the press, or horizontally within 12 inches of the defined equipment. One potential configuration of the injection points is depicted in Figure 1. The effect of wind, exfiltration through the building envelope, and air flowing through open building doors should be considered when locating tracer gas injection points within the enclosure. The injection points should also be located at a vertical elevation equal to the VOC/HAP generating zones. The injection points should not be located beneath obstructions that would prevent a natural dispersion of the gas. Document the selected injection points in a drawing(s).

8.1.4 Location of Flow Measurement and Tracer Sampling. Accurate CD inlet gas flow rate measurements are critical to the success of this procedure. Select a measurement location meeting the criteria of EPA Method 1 (40 CFR part 60, appendix A), Sampling and Velocity Traverses for Stationary Sources. Also, when selecting the measurement location, consider whether stratification of the tracer gas is likely at the location (*e.g.*, do not select a location immediately after a point of air in-leakage to the duct).

8.2 Tracer Gas Release. Release the tracer gas at a calculated flow rate (see section 12.1 for calculation) through a minimum of three injection manifolds located as described above in 8.1.3. The tracer gas delivery lines must be routed into the enclosure and attached to the manifolds without violating the integrity of the enclosure.

8.3 Pretest Measurements.

8.3.1 Location of Sampling Point(s). If stratification is not suspected at the measurement location, select a single sample point located at the centroid of the CD inlet duct or at a point no closer to the CD inlet duct walls than 1 meter. If stratification is suspected, establish a "measurement line" that passes through the centroidal area and in the direction of any expected stratification. Locate three traverse points at 16.7, 50.0 and 83.3 percent of the measurement line and sample from each of these three points during each run, or follow the procedure in section 8.3.2 to verify whether stratification does or does not exist.

8.3.2 Stratification Verification. The presence or absence of stratification can be verified by using the following procedure. While the facility is operating normally, initiate tracer gas release into the enclosure. For rectangular ducts, locate at least nine sample points in the cross section such that the sample points are the centroids of similarly-shaped, equal area divisions of the cross section. Measure the tracer gas concentration at each point. Calculate the mean value for all sample points. For circular ducts, conduct a 12-point traverse (*i.e.*, six points on each of the two perpendicular

diameters) locating the sample points as described in 40 CFR part 60, appendix A, Method 1. Perform the measurements and calculations as described above. Determine if the mean pollutant concentration is more than 10 percent different from any single point. If so, the cross section is considered to be stratified, and the tester may not use a single sample point location, but must use the three traverse points at 16.7, 50.0, and 83.3 percent of the entire measurement line. Other traverse points may be selected, provided that they can be shown to the satisfaction of the Administrator to provide a representative sample over the stack or duct cross section.

8.4 CD Inlet Gas Flow Rate Measurements. The procedures of EPA Methods 1–4 (40 CFR part 60, appendix A) are used to determine the CD inlet gas flow rate. Molecular weight (Method 3) and moisture (Method 4) determinations are only required once for each test series. However, if the test series is not completed within 24 hours, then the molecular weight and moisture measurements should be repeated daily. As a minimum, velocity measurements are conducted according to the procedures of Methods 1 and 2 before and after each test run, as close to the start and end of the run as practicable. A velocity measurement between two runs satisfies both the criterion of "after" the run just completed and "before" the run to be initiated. Accurate exhaust gas flow rate measurements are critical to the success of this procedure. If significant temporal variations of flow rate are anticipated during the test run under normal process operating conditions, take appropriate steps to accurately measure the flow rate during the test. Examples of steps that might be taken include: (1) conducting additional velocity traverses during the test run; or (2) continuously monitoring a single point of average velocity during the run and using these data, in conjunction with the pre- and post-test traverses, to calculate an average velocity for the test run.

8.5 Tracer Gas Measurement Procedure.

8.5.1 Calibration Error Test. Immediately prior to the emission test (within 2 hours of the start of the test), introduce zero gas and high-level calibration gas at the calibration valve assembly. Zero and calibrate the analyzer according to the manufacturer's procedures using, respectively, nitrogen and the calibration gases. Calculate the predicted response for the low-level and mid-level gases based on a linear response line between the zero and high-level response. Then introduce the low-level and mid-level calibration gases successively to the measurement system. Record the analyzer responses for the low-level and mid-level calibration gases and determine the differences between the measurement system responses and the predicted responses using the equation in section 12.3. These differences must be less than 5 percent of the respective calibration gas value. If not, the measurement system must be replaced or repaired prior to testing. No adjustments to the measurement system shall be conducted after the calibration and before the drift determination (section 8.5.4). If adjustments are necessary before the completion of the test series, perform the drift checks prior to the required adjustments and repeat the calibration following the adjustments. If multiple electronic ranges are to be used, each additional range must be checked with a mid-level calibration gas to verify the multiplication factor.

Note: If using an FTIR for the analytical instrument, you may choose to follow the pretest preparation, evaluation, and calibration procedures of Method 320 (section 8.0) (40 CFR part 63, appendix A) in lieu of the above procedure.

8.5.2 Response Time Test. Conduct this test once prior to each test series. Introduce zero gas into the measurement system at the calibration valve assembly. When the system output has stabilized, switch quickly to the high-level calibration gas. Record the time from the concentration change to the measurement system response equivalent to 95 percent of the step change. Repeat the test three times and average the results.

8.5.3 SF_6 Measurement. Sampling of the enclosure exhaust gas at the inlet to the CD should begin at the onset of tracer gas release. If necessary, adjust the tracer gas injection rate such that the measured tracer gas concentration at the CD inlet is within the spectrometer's calibration range (*i.e.*, between the MML and the span value). Once the tracer gas concentration reaches equilibrium, the SF_6 concentration should be measured using the infrared spectrometer continuously for at least 20 minutes per run. Continuously record (*i.e.*, record at least once per minute) the concentration. Conduct at least three test runs. On the recording chart, in the data acquisition system, or in a log book, make a note of periods of process interruption or cyclic operation such as the cycles of the hot press operation. Table 1 to this appendix summarizes the physical measurements required for the enclosure testing.

Note: If a GC/ECD is used as the analytical instrument, a continuous record (at least once per minute) likely will not be possible; make a minimum of five injections during each test run. Also, the minimum test run duration criterion of 20 minutes applies.

8.5.4 Drift Determination. Immediately following the completion of the test run, reintroduce the zero and mid-level calibration gases, one at a time, to the measurement system at the calibration valve assembly. (Make no adjustments to the measurement system until both the zero and calibration drift checks are made.) Record the analyzer responses for the zero and mid-level calibration gases and determine the difference between the instrument responses for each gas prior to and after the emission test run using the equation in section 12.4. If the drift values exceed the specified limits (section 13), invalidate the test results preceding the check and repeat the test following corrections to the measurement system. Alternatively, recalibrate the test measurement system as in section 8.5.1 and report the results using both sets of calibration data (*i.e.*, data determined prior to the test period and data determined following the test period). Note: If using an FTIR for the analytical instrument, you may choose to follow the post-test calibration procedures of Method 320 in appendix A to 40 CFR part 63 (section 8.11.2) in lieu of the above procedures.

8.6 Ambient Air Sampling (Optional). Sampling the ambient air surrounding the enclosure is optional. However, taking these samples during the capture efficiency testing will identify those areas of the enclosure that may be performing less efficiently.

8.6.1 Location of Ambient Samples Outside the Enclosure (Optional). In selecting the sampling locations for collecting samples of the ambient air surrounding the enclosure, consider potential leak points, the direction of the release, and laminar flow characteristics in the area surrounding the enclosure. Samples should be collected from all sides of the enclosure, downstream in the prevailing room air flow, and in the operating personnel occupancy areas.

8.6.2 Collection of Ambient Samples (Optional). During the tracer gas release, collect ambient samples from the area surrounding the enclosure perimeter at predetermined location using disposable syringes or some other type of containers that are non-absorbent, inert, and that have low permeability (*i.e.*, polyvinyl fluoride film or polyester film sample bags or polyethylene, polypropylene, nylon or glass bottles). The use of disposable syringes allows samples to be injected directly into a gas chromatograph. Concentration measurements taken around the perimeter of the enclosure provide evidence of capture performance and will assist in the identification of those areas of the enclosure that are performing less efficiently.

8.6.3 Analysis and Storage of Ambient Samples (Optional). Analyze the ambient samples using an analytical instrument calibrated and operated according to the procedures in this appendix or ASTM E 260 and ASTM E 697. Samples may be analyzed immediately after a sample is taken, or they may be stored for future analysis. Experience has shown no degradation of concentration in polypropylene syringes when stored for several months as long as the needle or syringe is plugged. Polypropylene syringes should be discarded after one use to eliminate the possibility of cross contamination of samples.

9.0 Quality Control

9.1 Sampling, System Leak Check. A sampling system leak check should be conducted prior to and after each test run to ensure the integrity of the sampling system.

9.2 Zero and Calibration Drift Tests.

Section	Quality control measure	Effect
8.5.4	Zero and calibration drift tests	Ensures that bias introduced by drift in the measurement system output during the run is no greater than 3 percent of span.

10.0 Calibration and Standardization

10.1 Control Device Inlet Air Flow Rate Measurement Equipment. Follow the equipment calibration requirements specified in Methods 2, 3, and 4 (appendix A to 40 CFR part 60) for measuring the velocity, molecular weight, and moisture of the control device inlet air.

10.2 Tracer Gas Injection Rate. A dry gas volume flow meter, mass flow meter, or orifice can be used to measure the tracer gas injection flow rate. The selected flow measurement device must have an accuracy of greater than ± 5 percent at the field operating range. Prior to the test, verify the calibration of the selected flow measurement device using either a wet test meter, spirometer, or liquid displacement meter as the calibration device. Select a minimum of two flow rates to bracket the expected field operating range of the flow meter. Conduct three calibration runs at each of the two selected flow rates. For each run, note the exact quantity of gas as determined by the calibration standard and the gas volume indicated by the flow meter. For each flow rate, calculate the average percent difference of the indicated flow compared to the calibration standard.

10.3 Spectrometer. Follow the calibration requirements specified by the equipment manufacturer for infrared spectrometer measurements and conduct the pretest calibration error test specified in section 8.5.1. Note: if using an FTIR analytical instrument see Method 320, section 10 (appendix A to 40 CFR part 63).

10.5 Gas Chromatograph. Follow the pre-test calibration requirements specified in section 8.5.1.

10.4 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.

11.0 Analytical Procedures

The sample collection and analysis are concurrent for this method (see section 8.0).

12.0 Calculations and Data Analysis

12.1 Estimate MML and Span. The MML is the minimum measurement level. The selection of this level is at the discretion of the tester. However, the MML must be higher than the low-level calibration standard, and the tester must be able to measure at this level with a precision of ≤10 percent. As an example, select the MML as 10 times the instrument's published detection limit. The detection limit of one instrument is 0.01 parts per million by volume (ppmv). Therefore, the MML would be 0.10 ppmv. Select the low-level calibration standard as 0.08 ppmv. The high-level standard would be four times the low-level standard or 0.32 ppmv. A reasonable mid-level standard would then be 0.20 ppmv (halfway between the low-level standard and the high-level standard). Finally, the span value would be approximately 0.40 ppmv (the high-level value is 80 percent of the span). In this example, the following MML, calibration standards, and span values would apply:

MML = 0.10 ppmv
Low-level standard = 0.08 ppmv
Mid-level standard = 0.20 ppmv
High-level standard = 0.32 ppmv
Span value = 0.40 ppmv

12.2 Estimate Tracer Gas Injection Rate for the Given Span. To estimate the minimum and maximum tracer gas injection rate, assume a worst case capture efficiency of 80 percent, and calculate the tracer gas flow rate based on known or measured parameters. To estimate the minimum tracer gas injection rate, assume that the MML concentration (10 times the IR detection limit in this example) is desired at the measurement location. The following equation can be used to estimate the minimum tracer gas injection rate:

$$((Q_{T\text{-}MIN} \times 0.8)/Q_E) \times (C_T + 100) \times 10^6 = MML$$

$$Q_{T\text{-}MIN} = 1.25 \times MML \times (Q_E/C_T) \times 10^{-4}$$

Where:

$Q_{T\text{-}MIN}$ = minimum volumetric flow rate of tracer gas injected, standard cubic feet per minute (scfm);
Q_E = volumetric flow rate of exhaust gas, scfm;
C_T = Tracer gas (SF_6) concentration in gas blend, percent by volume;
MML = minimum measured level, ppmv = 10 × IR_{DL} (for this example);
IR_{DL} = IR detection limit, ppmv.

Standard conditions: 20°C, 760 millimeters of mercury (mm Hg).

To estimate the maximum tracer gas injection rate, assume that the span value is desired at the measurement location. The following equation can be used to estimate the maximum tracer gas injection rate:

$$((Q_{T\text{-}MAX} \times 0.8)/Q_E) \times (C_T + 100) \times 10^6 = \text{span value}$$

$$Q_{T\text{-}MAX} = 1.25 \times \text{span value} \times (Q_E/C_T) \times 10^{-4}$$

Where:

$Q_{T\text{-}MAX}$ = maximum volumetric flow rate of tracer gas injected, scfm;
Span value = instrument span value, ppmv.

The following example illustrates this calculation procedure:

Find the range of volumetric flow rate of tracer gas to be injected when the following parameters are known:

Q_E = 60,000 scfm (typical exhaust gas flow rate from an enclosure);
C_T = 2 percent SF_6 in nitrogen;
IR_{DL} = 0.01 ppmv (per manufacturer's specifications);
MML = 10 × IR_{DL} = 0.10 ppmv;
Span value = 0.40 ppmv;
Q_T = ?

Minimum tracer gas volumetric flow rate:

$$Q_{T\text{-}MIN} = 1.25 \times MML \times (Q_E/C_T) \times 10^{-4}$$

$$Q_{T\text{-}MIN} = 1.25 \times 0.10 \times (60{,}000/2) \times 10^{-4} = 0.375 \text{ scfm}$$

Maximum tracer gas volumetric flow rate:

$$Q_{T\text{-}MAX} = 1.25 \times \text{span value} \times (Q_E/C_T) \times 10^{-4}$$

$$Q_{T\text{-}MAX} = 1.25 \times 0.40 \times (60{,}000/2) \times 10^{-4} = 1.5 \text{ scfm}$$

In this example, the estimated total volumetric flow rate of the two percent SF_6 tracer gas injected through the manifolds in the enclosure lies between 0.375 and 1.5 scfm.

12.3 Calibration Error. Calculate the calibration error for the low-level and mid-level calibration gases using the following equation:

$$Err = |C_{std} - C_{meas}| \div C_{std} \times 100$$

Where:

Err = calibration error, percent;
C_{std} = low-level or mid-level calibration gas value, ppmv;
C_{meas} = measured response to low-level or mid-level concentration gas, ppmv.

12.4 Calibration Drift. Calculate the calibration drift for the zero and low-level calibration gases using the following equation:

$$D = |C_{initial} - C_{final}| \div C_{span} \times 100$$

Where:

D = calibration drift, percent;
$C_{initial}$ = low-level or mid-level calibration gas value measured before test run, ppmv;
C_{final} = low-level or mid-level calibration gas value measured after test run, ppmv;
C_{span} = span value, ppmv.

12.5 Calculate Capture Efficiency. The equation to calculate enclosure capture efficiency is provided below:

$$CE = (SF_{6\text{-}CD} \div SF_{6\text{-}INJ}) \times 100$$

Where:

CE = capture efficiency;
$SF_{6\text{-}CD}$ = mass of SF_6 measured at the inlet to the CD;
$SF_{6\text{-}INJ}$= mass of SF_6 injected from the tracer source into the enclosure.

Calculate the CE for each of the initial three test runs. Then follow the procedures outlined in section 12.6 to calculate the overall capture efficiency.

12.6 Calculate Overall Capture Efficiency. After calculating the capture efficiency for each of the initial three test runs, follow the procedures in 40 CFR part 63, subpart KK, appendix A, to determine if the results of the testing can be used in determining compliance with the requirements of the rule. There are two methods that can be used: the DQO and LCL methods. The DQO method is described in section 3 of 40 CFR part 63, subpart KK, appendix A, and provides a measure of the precision of the capture efficiency testing conducted. Section 3 of 40 CFR part 63, subpart KK, appendix A, provides an example calculation using results from a facility. If the DQO criteria are met using the first set of three test runs, then

the facility can use the average capture efficiency of these test results to determine the capture efficiency of the enclosure. If the DQO criteria are not met, then the facility can conduct another set of three runs and run the DQO analysis again using the results from the six runs *OR* the facility can elect to use the LCL approach.

The LCL method is described in section 4 of 40 CFR part 63, subpart KK, appendix A, and provides sources that may be performing much better than their regulatory requirement, a screening option by which they can demonstrate compliance. The LCL approach compares the 80 percent lower confidence limit for the mean measured CE value to the applicable regulatory requirement. If the LCL capture efficiency is higher than the applicable limit, then the facility is in initial compliance and would use the LCL capture efficiency as the capture efficiency to determine compliance. If the LCL capture efficiency is lower than the applicable limit, then the facility must perform additional test runs and re-run the DQO or LCL analysis.

13.0 Method Performance

13.1 Measurement System Performance Specifications.

13.1.1 Zero Drift. Less than ± 3 percent of the span value.

13.1.2 Calibration Drift. Less than ± 3 percent of the span value.

13.1.3 Calibration Error. Less than ± 5 percent of the calibration gas value.

13.2 Flow Measurement Specifications. The mass flow, volumetric flow, or critical orifice control meter used should have an accuracy of greater than ± 5 percent at the flow rate used.

13.3 Calibration and Tracer Gas Specifications. The manufacturer of the calibration and tracer gases should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 References

1. 40 CFR part 60, appendix A, EPA Method 1—Sample and velocity traverses for stationary sources.

2. 40 CFR part 60, appendix A, EPA Method 2—Determination of stack gas velocity and volumetric flow rate.

3. 40 CFR part 60, appendix A, EPA Method 3—Gas analysis for the determination of dry molecular weight.

4. 40 CFR part 60, appendix A, EPA Method 4—Determination of moisture content in stack gases.

5. SEMI F15–93 Test Method for Enclosures Using Sulfur Hexafluoride Tracer Gas and Gas Chromotography.

6. Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Directors, Revised Capture Efficiency Guidance for Control of Volatile Organic Compound Emissions, February 7, 1995. (That memorandum contains an attached technical document from Candace Sorrell, Emission Monitoring and Analysis Division, "Guidelines for Determining Capture Efficiency," January 9, 1994).

7. Technical Systems Audit of Testing at Plant "C," EPA–454/R–00–26, May 2000.

8. Material Safety Data Sheet for SF_6 Air Products and Chemicals, Inc. Website: www3.airproducts.com. October 2001.

17.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 1 TO APPENDIX A TO SUBPART DDDD OF 40 CFR PART 63.—SUMMARY OF CRITICAL PHYSICAL MEASUREMENTS FOR ENCLOSURE TESTING

Measurement	Measurement instrumentation	Measurement frequency	Measurement site
Tracer gas injection rate	Mass flow meter, volumetric flow meter or critical orifice.	Continuous	Injection manifolds (cylinder gas).
Tracer gas concentration at control device inlet.	Infrared Spectrometer or GC/ECD	Continuous (at least one reading per minute) for a minimum of 20 minutes.	Inlet duct to the control device (outlet duct of enclosure).
Volumetric air flow rate	EPA Methods 1, 2, 3, 4 (40 CFR part 60, appendix A). • Velocity sensor (Manometer/ Pitot tube). • Thermocouple • Midget Impinger sampler • Orsat or Fyrite	Each test run for velocity (minimum); Daily for moisture and molecular weight.	Inlet duct to the control device (outlet duct of enclosure).

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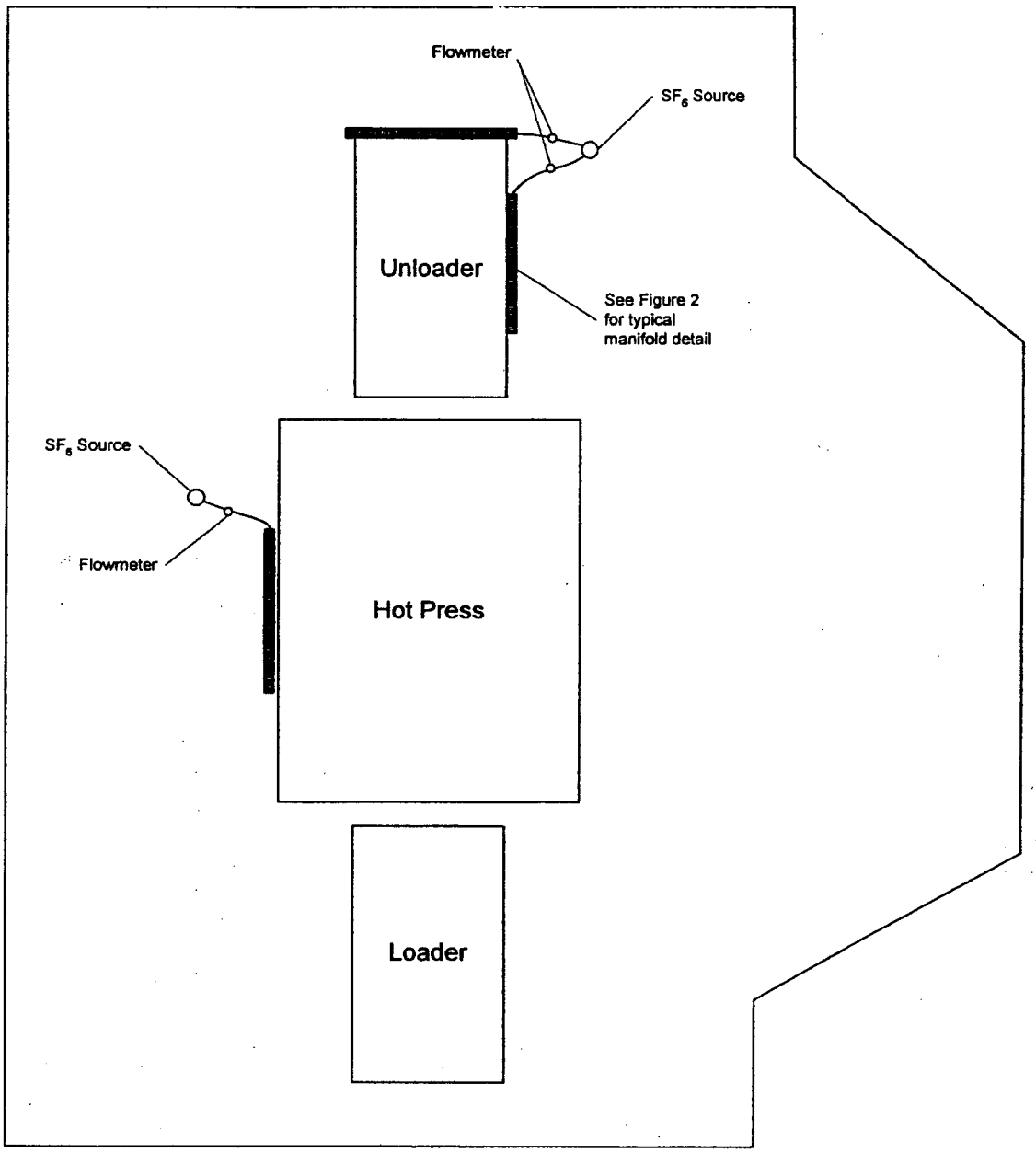
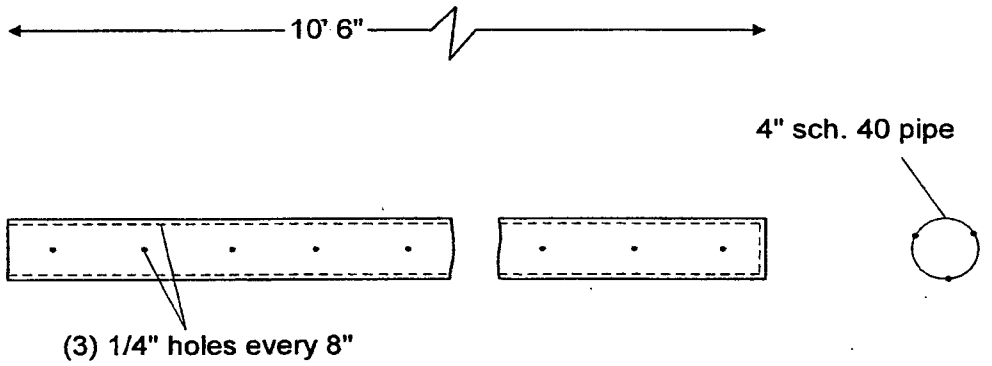


Figure 1. Plan view schematic of hot press and enclosure showing SF_6 manifold locations.



Elevation

Figure 2. Schematic detail for manifold system for SF_6 injection.

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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 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 conduct HAP emissions tests according to the requirements in paragraphs (b) through (h) of this section and the methods specified in Table 2 to this appendix for every process unit within the affected source that emits one or more of the HAP listed in Table 1 to this appendix. You must test the process units at your affected source to 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 the NCASI Method IM/CAN/WP–99.02 (incorporated by reference (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).

(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.

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 (measured according to section 5 of this appendix), calculate your total toxicity-weighted carcinogen and noncarcinogen emission rates for each of your process units using Equations 1 and 2 of this appendix, respectively.

$$TWCER = \sum\left(ER_i \times URE_i\right) \qquad \text{(Eq. 1)}$$

TWCER = Toxicity-weighted carcinogenic emission rate for each process unit (1b/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 (μg/m³)$^{-1}$

$$TWNER = \sum\left(ER_i / RfC_i\right) \qquad \text{(Eq. 2)}$$

TWNER = Toxicity-weighted noncarcinogenic emission rate for each process unit (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)

(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 process units. Identify the appropriate maximum allowable toxicity-weighted carcinogen emission rate from Table 3 to this appendix for your affected source using the average 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 lookup table, then use the next lowest table value. (Note: If your average 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 process units. Identify the appropriate maximum allowable toxicity-weighted noncarcinogen emission rate from Table 4 to this appendix for your affected source using the average 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 lookup table, then use the next lowest table value. (Note: If your average 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 *www.epa.gov/ttn/atw.*

(b) At a minimum, you 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 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 test methods specified in Table 2 to this appendix, including a description of the process parameters identified as being worst case.

(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, annual 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 (5) of this section.

(1) Identification of the stack heights for each emission point included in the calculation of average 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 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 via e-mail to *REAG@EPA.GOV* or via 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) If you have an existing affected source, you must complete and submit for approval your low-risk demonstration no later than July 31, 2006.

(b) 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 no later than July 31, 2006. 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 no later than 12 months after you become a major source or after initial startup of your affected source as a major source, whichever is later.

(c) If you have a new or reconstructed affected source you must conduct the emission tests specified in section 5 of this appendix upon initial startup and use the results of these emissions tests to complete and submit your low-risk demonstration within 180 days following your initial startup date. If your new or reconstructed affected source starts up before September 28, 2004, for EPA to find that you are included in the low-risk subcategory, your low-risk demonstration must show that you were eligible to meet the criteria in section 11 of this appendix no later than September 28, 2004. If your new or reconstructed source starts up after September 28, 2004, for EPA to find that you are included in the low-risk subcategory, your low-risk demonstration must show that you were eligible to meet the criteria in section 11 of this appendix upon initial startup of your affected source. Affected sources that are not part of the low-risk subcategory by October 1, 2007, must comply with the requirements of 40 CFR part 63, subpart DDDD. Affected sources may not request compliance extensions from the permitting authority if they fail to demonstrate they are part of the low-risk subcategory or to request additional time to install controls to become part of the low-risk subcategory.

11. How Does My Affected Source Become Part of the Low-Risk Subcategory of PCWP Facilities?

To be included in the low-risk subcategory, EPA must find that you meet the criteria in paragraphs (a) and (b) 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, annual emission rate, type of control devices, process parameters reflecting the emissions rates used for your low-risk demonstration) must be incorporated 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 annual 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 website *(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 website *(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 three 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:

Direct-fired process unit means a process unit that is heated by the passing of combustion exhaust directly through the process unit such that the process material is contacted by the combustion exhaust.

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.

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).

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.

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.

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 (&μg/m^3) in air.

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 2 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—EMISSION TEST METHODS

For . . .	You must . . .	Using . . .
(1) Each process unit	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	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	Conduct gas molecular weight analysis	Method 3, 3A, or 3B in appendix A to 40 CFR part 60.
(4) Each process unit	Measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60.
(5) Each process unit	Measure emissions of the following HAP: acetaldehyde, acrolein,[1] formaldehyde, and 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 ASTM D6348–03 (IBR, see 40 CFR 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.
(6) Each process unit	Measure emissions of benzene[1]	Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 (IBR, see 40 CFR 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 press that processes board containing MDI resin.	Measure emissions of MDI	Method 320 in appendix A to 40 CFR part 63; OR Conditional Test Method (CTM) 031 which is posted on http://www.epa.gov/ttn/emc/ctm.html
(8) Each direct-fired process unit	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.
(9) 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.
(10) Each reconstituted wood product press or reconstituted wood product board cooler.	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.
(11) Each process unit with a HAP control device.	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).

[1] If EPA approves that your process unit will not emit detectable amounts of benzene or acrolein, that unit may be excluded from the benzene and/or acrolein (as applicable) testing requirement in this table.

TABLE 3 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—MAXIMUM ALLOWABLE TOXICITY-WEIGHTED CARCINOGEN EMISSION RATE (LB/HR)/(μG/M^3)

Stack height (m)	Distance to Nearest Residence (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
Emission rates in table expressed as equivalents normalized to theoretical HAP with URE = 1(μg/m^3)$^{-1}$

TABLE 4 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—MAXIMUM ALLOWABLE TOXICITY-WEIGHTED NONCARCINOGEN EMISSION RATE ((LB/HR)/μG/M^3))

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	2.38E+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.
Emission rates in table expressed in lbs/hr as equivalents normalized to theoretical HAP with RfC = 1.0 μg/m^3.

PART 429—[AMENDED]

■ 1. The authority citation for part 429 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(a), (b), and (c) and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1911, 1314(b), (c), (e), and (g), 1316(b) and (c), 1917(b) and (c), and 1961; 86 Stat. 815, Pub. L. 92–500; 91 Stat. 1567, Pub L. 95–217.

■ 2. Section 429.11 is amended by revising paragraph (c) to read as follows:

§ 429.11 General definitions.

* * * * *

(c) The term "process wastewater" specifically excludes non-contact cooling water, material storage yard runoff (either raw material or processed wood storage), boiler blowdown, and wastewater from washout of thermal oxidizers or catalytic oxidizers, wastewater from biofilters, or wastewater from wet electrostatic precipitators used upstream of thermal oxidizers or catalytic oxidizers installed by facilities covered by subparts B, C, D or M to comply with the national emissions standards for hazardous air pollutants (NESHAP) for plywood and composite wood products (PCWP) facilities (40 CFR part 63, subpart DDDD). For the dry process hardboard, veneer, finishing, particleboard, and sawmills and planing mills subcategories, fire control water is excluded from the definition.

* * * * *

[FR Doc. 04–6298 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Theodore Matuskowitz drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA'Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: July 26, 2004.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board, Fish and Wildlife Service.

Dated: July 22, 2004.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 04–17753 Filed 8–3–04; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0014; FRL–7797–6]

RIN 2060–AM29

National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: On May 29, 2003 (68 FR 32172), EPA issued national emission standards for hazardous air pollutants for printing, coating, and dyeing of fabrics and other textiles (Fabric NESHAP) under section 112 of the Clean Air Act (CAA). This action amends the standards to clarify the applicability of the Fabric NESHAP to coating, slashing, dyeing, or finishing operations at synthetic fiber manufacturing facilities where the fibers are the final product of the facility. The printing, coating, and dyeing of fabrics and other textiles source category does not include any synthetic fiber manufacturing operations, and we did not intend to impose any requirements on such operations in the final Fabric NESHAP. We are making the amendment by direct final rule, without prior proposal, because we view the revision as noncontroversial and anticipate no adverse comments.

DATES: The direct final rule is effective on October 4, 2004 without further notice, unless EPA receives relevant adverse written comment by September 3, 2004 or if a public hearing is requested by August 16, 2004. If EPA receives such comments, it 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. The EPA will then proceed to take final action on the parallel proposed rule appearing in the Proposed Rule section of this **Federal Register**.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2003–0014 (formerly Docket No. A–97–51), 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: *http://www.epa.gov/edocket* and *almodovar.paul@epa.gov*
- Fax: (202) 566–1741 and (919) 541–5689.
- Mail: U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket Number OAR–2003–0014, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (Please include a total of 2 copies.)
- Hand Delivery: In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID Number OAR–2003–0014, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. (Please include a total of 2 copies.)

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

Instructions: Direct your comments to Docket ID No. OAR–2003–0014. 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 other wise 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). For additional instructions on submitting comments, go to Unit I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

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 HQ EPA Docket Center, Docket ID Number OAR–2003–0014, EPA West, Room B102, 1301 Constitution Avenue, 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 Docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodóvar, Coatings and Consumer Products Group (C539–03), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–0283; facsimile number (919) 541–5689; electronic mail (e-mail) address: *almodovar.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The source category definition includes sources that engage in the coating, printing, slashing, dyeing, or finishing of any fabric or other textile. In general, such sources are covered under the North American Industrial Classification System (NAICS) codes listed below. However, sources classified under other NAICS codes may be subject to the final standards if they meet the applicability criteria. Not all sources classified under the NAICS codes in the following table are subject to the final rule because some of the classifications cover products outside the scope of the Fabric NESHAP.

Categories and entities potentially regulated by this action include:

Category	NAICS code	Examples of regulated entities
Industry	31321	Broadwoven fabric mills.
	31322	Narrow fabric mills and Schiffli machine embroidery.
	313241	Weft knit fabric mills.
	313311	Broadwoven fabric finishing mills.
	313312	Textile and fabric finishing (except broadwoven fabric) mills.
	313320	Fabric coating mills.
	314110	Carpet and rug mills.
	326220	Rubber and plastics hoses and belting and manufacturing.
	339991	Gasket, packing, and sealing device manufacturing.
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 regulated by this action. To determine whether your operation is regulated by this action, you should examine the applicability criteria of the final rule (§ 63.4281). 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.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, *regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in 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 cleimed 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.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow direction—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Docket Copying Costs.* A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the direct final rule 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 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.

Comments. We are publishing the direct final rule without prior proposal because we view the amendment as noncontroversial and do not anticipate adverse comments. We consider the changes to be noncontroversial because the only effect is to clarify that the Fabric NESHAP does not apply to coating, slashing, dyeing, or finishing operations at synthetic fiber manufacturing facilities where the fibers are the final product of the facility. As discussed in detail below, this was our intent when publishing the original final rule. 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 and significant adverse comments are received.

If we receive any relevant adverse comments on the proposed amendment, 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 amendment 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. 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 is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by October 4, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the direct 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 direct final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background
II. Technical Amendment to the Fabric NESHAP
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 May 29, 2003 (68 FR 32172), EPA issued the Fabric NESHAP under section 112 of the CAA. In response to public comments from the American Fiber Manufacturers Association and two other commenters on the proposed Fabric NESHAP (67 FR 46028, July 11, 2002), we attempted to make clear in the final rule that coating, slashing, dyeing, and finishing operations that are part of a synthetic fiber manufacturing process at a facility where the fibers are the final product are not subject to the requirements of the Fabric NESHAP. We intended for this exclusion to be unambiguous. However, the inclusion of language referencing the affected sources of 40 CFR part 63, subparts JJJ (NESHAP: Group IV Polymers and Resins) and F (NESHAP: Synthetic Organic Chemical Manufacturing Industry), in § 63.4281(d)(3) created an ambiguity in this regard. The printing, coating and dyeing of fabrics and other textiles source category does not include any synthetic fiber manufacturing operations, and we did not intend to impose any requirements on such operations in the Fabric NESHAP. Hazardous air pollutant emissions from finishing steps such as coating, slashing, dyeing, and finishing operations in the synthetic fiber manufacturing process were addressed during the development of 40 CFR part 63, subparts JJJ and F and, therefore, were intentionally not included in the Fabric NESHAP.

II. Technical Amendment to the Fabric NESHAP

The direct final rule amendment corrects § 63.4281(d)(3) by removing the reference to the affected sources of 40 CFR part 63, subparts JJJ and F, in order to make it clear that the requirements of the final Fabric NESHAP do not apply to coating, slashing, dyeing, or finishing operations at synthetic fiber manufacturing facilities where the fibers are the final product of the facility.

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 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

The action does not impose any new information collection burden. Today's action consists primarily of clarifications to the final rule that impose no new information collection requirements on industry or EPA. For that reason, we have not revised the ICR for the existing rule. However, OMB has previously approved the information collection requirements contained in the existing (68 FR 32172, May 29, 2003) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq and has assigned OMB control number 2060–0522, EPA information collection request (ICR) number 2071.02. A copy of the OMB approved ICR may be obtained from Susan Auby, Collection Strategies Division (2822T), U.S. EPA, 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*.

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.

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 by NAICS code ranging from 500 to 1,000 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.

After considering the economic impacts of today's direct final rule on small entities, EPA has concluded that this action will not have a significant impact on a substantial number of small entities. The direct final rule amendment will not impose any new requirements on 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 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 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 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, nor does the rule significantly or uniquely impact small governments, because it contains 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.

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 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 direct final rule will change only the applicability section of the final rule with respect to synthetic fiber manufacturing facilities and does 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 direct final rule amendment.

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

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 does not have tribal implications as specified in Executive Order 13175. It will change only the applicability section of the final rule with respect to synthetic fiber manufacturing facilities. The direct final rule would 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 direct 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, 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 is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

The direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

The technical correction of the direct final rule does not involve technical standards. The EPA's compliance with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note)) has been addressed in the preamble of the

underlying final rule (68 FR 32172, May 29, 2003).

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 United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule 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, and Reporting and recordkeeping requirements.

Dated: July 29, 2004.

Michael O. Leavitt,

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 OOOO—[Amended]

■ 2. Section 63.4281 is amended by revising paragraph (d)(3) to read as follows:

§ 63.4281 Am I subject to this subpart?

* * * * *

(d) * * *

(3) Coating, slashing, dyeing, or finishing operations at a synthetic fiber manufacturing facility where the fibers are the final product of the facility.

* * * * *

[FR Doc. 04–17778 Filed 8–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0086; FRL–7352–1]

Propiconazole; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, sweet, kernel plus cob with husks removed; peanut; peanut, hay; pineapple; and pineapple, fodder. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerances will expire on November 30, 2008.

DATES: This regulation is effective August 4, 2004. Objections and requests for hearings must be received on or before October 4, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0086. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South 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.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background and Statutory Findings

In the **Federal Register** of February 27, 2004 (69 FR 9315) (FRL–7346–7), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 8F3654 and 8F3674) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. This notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 19, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ 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 Y—Minnesota

■ 2. Section 52.1220 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(65) The Minnesota Pollution Control Agency submitted a revision to Minnesota's State Implementation Plan for sulfur dioxide on December 19, 2002. This revision consists of a Title V permit for the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota. The Permit contains non-expiring Title I SIP conditions.

(i) Incorporation by reference.

(A) Title I conditions contained in the November 25, 2002, Title V permit (permit number 00300020–001) issued to the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota.

[FR Doc. 04–18766 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0196; FRL–7783–7]

RIN 2060–AK73

National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; stay.

SUMMARY: The EPA is staying the effectiveness of two subcategories of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for stationary combustion turbines: Lean premix gas-fired turbines and diffusion flame gas-fired turbines. Pending the outcome of EPA's proposal to delete these subcategories from the source category list (68 FR 18338, April 7, 2004), EPA is staying the effectiveness of the emissions and operating limitations in the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. This action is necessary to avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted.

DATES: The final rule is effective on August 18, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0196. 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 (Air Docket), EPA/DC, EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 10460. 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. Kelly Rimer, Office of Air Quality Planning and Standards, Emission Standards Division, C404–01, Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541–2962; fax number: 919–541–0840; e-mail address: *rimer.kelly@epa.gov.*

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

Category	SIC	NAICS	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the regulation.	4911	2211	Electric power generation, transmission, or distribution.
	4922	486210	Natural gas transmission.
	1311	211111	
		.....	Crude petroleum and natural gas production.
	1321	211112	Natural gas liquids producers.
	4931	221	
			Electric and other services combined.

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 affected by this action, you should examine the applicability criteria in § 63.6085 of the final rule and the subcategory definitions in § 63.6090. 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.

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.

I. Summary of Final Rule

EPA is issuing a final rule to stay the effectiveness of the emission standards for new sources in two subcategories of the NESHAP for stationary combustion turbines. The effect of this stay is to suspend the obligation of sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories to comply with the emissions limitations and operating limitations set forth in 40 CFR part 63, subpart YYYY. EPA is codifying this stay by amending the text of 40 CFR 63.6095 as set forth below.

Under this stay, new sources in the in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories, sources constructed or reconstructed after January 14, 2003, are temporarily relieved of the obligation to apply pollution controls and to comply with associated operating, monitoring, and reporting requirements. However, such sources must continue to submit Initial Notifications pursuant to 40 CFR 63.6145.

The final stay shall take effect immediately upon publication in the **Federal Register**, but only during the pendency of a separate rulemaking to delist the subcategories. It is not our intention by staying the effectiveness of the standards to change the definition of new sources within these subcategories or to alter the status of any individual source. If the subcategories are not ultimately delisted, the stay will be lifted, and all sources in the subcategories constructed or reconstructed after January 14, 2003 will then be subject to the final standards. The sources will then be given the same time to make the requisite demonstration of compliance they would have had if there had been no stay.

II. Background

The final MACT standards for stationary combustion turbines were published on March 5, 2004 (69 FR 10512). These standards, codified at 40 CFR part 63, subpart YYYY, define the subcategories for the Stationary Combustion Turbines source category.

On April 7, 2004, EPA proposed a rule to amend the list of categories of sources that was developed pursuant to Clean Air Act (CAA) section 112(c)(1)(69 FR 18327). EPA proposed to delete four subcategories from the Stationary Combustion Turbines source category. The subcategories proposed for delisting, as defined in 40 CFR 63.6175, are: (1) Lean premix gas-fired stationary combustion turbines (also referred to herein as "lean premix gas-fired turbines"), (2) diffusion flame gas-fired stationary combustion turbines (also referred to herein as "diffusion flame gas-fired turbines"), (3) emergency stationary combustion turbines, and 4) stationary combustion turbines located on the North Slope of Alaska.

The proposed rule to amend the source category list was issued in part to respond to a petition submitted by the Gas Turbine Association (GTA) and in part upon the Administrator's own motion. Petitions to remove a source category from the source category list are permitted under section 112(c)(9) of the CAA. The proposed rule to delete the four subcategories is based on an initial determination by EPA that the subcategories satisfy the substantive criteria for deletion set forth in section 112(c)(9)(B). The proposed rule to delete the subcategories contains a detailed description of the technical basis for the initial determination.

At the same time that EPA proposed to delist the four combustion turbines subcategories, we also proposed a companion action to stay the effectiveness of the standards in the lean premix gas-fired and diffusion flame-subcategories (69 FR 18338, April 7, 2004).

III. Basis for Stay

Although EPA proposed to delete from the source category list four subcategories established by the final MACT standards for stationary combustion turbines, CAA section 112(d)(10) provides that the standards as promulgated for the four subcategories take effect upon publication of the standards. Without a stay, all turbines in the lean premix gas-fired turbine and the diffusion flame gas-fired turbine subcategories which were constructed or reconstructed after January 14, 2003, would have been required to comply immediately with the emission standards for new sources. This would have caused some sources in the two subcategories to make immediate expenditures on installation and testing of emission controls, even though such controls will not be required if we issue a final rule to delete these subcategories.

In view of our initial determination that the statutory criteria for delisting have been met for all sources in the four subcategories, we consider it inappropriate and contrary to statutory intent to mandate such expenditures until a final determination has been made whether or not these subcategories should be delisted. Such expenditures would be wasteful and unwarranted if we take final action to delist these subcategories. Moreover, if we take final action to delist the subcategories, sources constructed or reconstructed while the rulemaking to delist is pending would bear a regulatory burden not placed on identical sources constructed or reconstructed thereafter. Accordingly, we are issuing this stay to the effectiveness of the emission standards for new sources for the lean premix gas-fired turbine and diffusion flame gas-fired turbine subcategories during the pendency of the rulemaking to delete these subcategories.

We are mindful that there would be no need to stay the effectiveness of the standards for new sources in the two subcategories if a rulemaking to delist the affected sources had been completed before promulgation of the final MACT standards for combustion turbines. However, we note that the GTA petition was not submitted until quite late in the regulatory process. Moreover, we generally do not make a definite determination concerning the characteristics of subcategories until promulgation of final MACT standards. In these circumstances, we do not believe it would be fair to make certain affected sources bear the burden of a delay in our determination that a subcategory meets the statutory criteria for delisting.

The final stay is consistent with the precedents we have established in similar circumstances in the past. In 1991, we issued a final rule staying the effective date of the National Emission

Standards for Radionuclear Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H (40 CFR part 61, subparts H and I) for commercial nuclear power reactors during the pendency of another rulemaking to rescind the standards for those facilities (56 FR 37158, August 5, 1991). The rescission was authorized by section 112(d)(9) of the CAA (the "Simpson amendment"), which provides that we may decline to regulate Nuclear Regulatory Commission (NRC) licensees under CAA section 112 if the Administrator determines that the regulatory program established by the NRC for a category or subcategory provides an ample margin of safety to protect the public health. We had made an initial determination that the NRC program for commercial nuclear power reactors met this test, and we reasoned that "it would frustrate the evident purpose of Section 112(d)(9) if EPA were to permit Subpart I to take effect for this subcategory during the pendency of the rulemaking on rescission" (56 FR 37159). That action was not challenged.

In 1995, we acted to provide another type of interim relief during a delisting rulemaking. We suspended the listing of caprolactam during a rulemaking to delete caprolactam from the list of hazardous air pollutants established by CAA section 112(b)(1) for purposes of determining the applicability of title V permitting requirements (60 FR 081, September 18, 1995). We based that action on our determination that "retention, during the rulemaking to delist caprolactam, of permit application requirements which will no longer exist after the delisting process has been completed would result in unnecessary private and public expenditures on preparation, submission, and processing of such applications, and would yield no environmental benefits" (60 FR 084–85). That interim relief action also was not challenged.

IV. Summary of Comments and EPA Responses

The EPA received six comments on the proposed stay and all commenters supported the proposed EPA action; we received no comments opposing the stay.

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 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.

Pursuant to the terms of Executive Order 12866, it has been determined that the final action constitutes a "significant regulatory action" because it may raise novel policy issues and is therefore subject to OMB review. 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 an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The final action stays the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories until a conclusion is reached regarding deletion of these subcategories. Therefore, this rule eliminates the need for information collection for regulatory compliance purposes 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)

The 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 today's final rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this final action, can include manufacturing (NAICS 3999–03) and air transportation (NAICS 4522–98 and 4512–98) operations that employ less 1,000 people and engineering services operations (NAICS 8711–98) that earn less than $20 million annually; (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 rule on small entities, EPA has concluded that this final 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 of the final 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 stays the effectiveness of the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. This will suspend the requirements to apply pollution controls and associated

operating, monitoring, and reporting requirements. These requirements will be permanently lifted if EPA ultimately removes the four source categories from the Stationary Combustion Turbines source category, and temporarily lifted if EPA does not ultimately delist the subcategories. 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 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 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.

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. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The final rule relieves a regulatory requirement.

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." The term "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 final regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the final regulation.

Today's action stays the effectiveness of the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. 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, the requirements of section 6 of Executive Order 13132 do 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. The final action stays the effectiveness of the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. 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, 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 is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because this action is not based on health or safety risks. Thus, Executive Order 13045 does not apply to the final rule.

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

Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant energy actions." The final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

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 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. The 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 August 18, 2004.

List of Subjects in 40 CFR Part 63

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

Dated: July 1, 2004.

Michael O. Leavitt,

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 YYYY—National Emissions Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

■ 2. Section 63.6095 is amended by revising paragraph (a) and by adding paragraph (d) to read as follows:

§ 63.6095 When do I have to comply with this subpart?

(a) *Affected sources.* (1) If you start up a new or reconstructed stationary combustion turbine which is a lean premix oil-fired stationary combustion turbine or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart on or before March 5, 2004, you must comply with the emissions limitations and operating limitations in this subpart no later than March 5, 2004.

(2) If you start up a new or reconstructed stationary combustion turbine which is a lean premix oil-fired stationary combustion turbine or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart after March 5, 2004, you must comply with the emissions limitations and operating limitations in this subpart upon startup of your affected source.

* * * * *

(d) *Stay of standards for gas-fired subcategories.*

If you start up a new or reconstructed stationary combustion turbine that is a lean premix gas-fired stationary combustion turbine or diffusion flame gas-fired stationary combustion turbine as defined by this subpart, you must comply with the Initial Notification requirements set forth in § 63.6145 but need not comply with any other requirement of this subpart until EPA takes final action to require compliance and publishes a document in the **Federal Register.**

[FR Doc. 04–15529 Filed 8–17–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–15712]

Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; delay of compliance date.

SUMMARY: NHTSA published a final rule in July 2003 that amended the Federal motor vehicle safety standard on glazing materials. The agency received several petitions for reconsideration of the rule. At present, the rule is to take effect on September 1, 2004. To allow for more time to respond to the petitions, this document delays the compliance date of the final rule.

DATES: This final rule becomes effective August 18, 2004. The compliance date of the final rule published on July 25, 2003 (68 FR 43964) and amended on September 26, 2003 (68 FR 55544) and on January 5, 2004 (69 FR 279) is delayed until September 1, 2006. Any petitions for reconsideration of today's final rule must be received by NHTSA not later than October 4, 2004.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mr. John Lee, Office of Crashworthiness Standards, at (202) 366–2264, facsimile (202) 366–4329 or Mr. Patrick Boyd, Office of Crash Avoidance Standards, at (202) 366–6346, facsimile (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992, facsimile (202) 366–3820.

You may send mail to any of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Petitions for Reconsideration
III. Today's Final Rule; Delay of Compliance Date
IV. Regulatory Analyses and Notices

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 205 *Glazing Materials* specifies performance requirements for glazing installed in motor vehicles. It also specifies the

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Route 82 Bridge, mile 16.8, across the Connecticut River at East Haddam, Connecticut. This deviation from the regulations allows the bridge to open every two hours on the odd hour, from August 17, 2004, through October 15, 2004. The bridge shall open on signal at all times for commercial vessels after at least a two-hour advance notice is given. This deviation is necessary in order to facilitate necessary repairs at the bridge.

DATES: This deviation is effective from August 17, 2004, through October 15, 2004.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Route 82 Bridge, at mile 16.8, across the Connecticut River has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.205(c).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate maintenance repairs at the bridge.

This deviation to the operating regulations allows the Route 82 Bridge to open every two hours on the odd hour, from August 17, 2004, through October 15, 2004. The bridge shall open on signal at all times for commercial vessels after at least a two-hour advance notice is given.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 24, 2004.

David P. Pekoske,

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

[FR Doc. 04–19959 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0006, FRL–7808–4]

RIN 2060–AK32

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On April 12, 2001, the EPA issued national emission standards for hazardous air pollutants for solvent extraction for vegetable oil production (Vegetable Oil Production NESHAP) under section 112 of the Clean Air Act (CAA). This action will amend the compliance requirements for vegetable oil production processes that exclusively use a qualifying low-hazardous air pollutants (HAP) extraction solvent. The amendments are being made to require only the necessary recordkeeping and reporting requirements for facilities using the low-HAP extraction solvent compliance option. We are making the amendments by direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

DATES: The direct final rule is effective on November 1, 2004 without further notice, unless EPA receives adverse written comment by October 1, 2004 or if a public hearing is requested by September 13, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0006. 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 and Radiation Docket is (202) 566–1742. See the Proposed Rules section in this **Federal Register** for the proposed rule which contains more information.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, U.S. EPA, Waste and Chemical Processes Group (C439–03), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3078, facsimile number (919) 541–3207, electronic mail address: *nizich.greg@epa.gov.* Questions regarding the applicability of this action to a particular entity should be directed to the appropriate EPA Regional Office representative.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* If your facility produces vegetable oil from corn germ, cottonseed, flax, peanuts, rapeseed (for example, canola), safflower, soybeans, or sunflower, it may be a "regulated entity." Categories and entities potentially regulated by this action include:

Category	SIC code	NAICS	Examples of regulated entities
Industry	2074	311223	Cottonseed oil mills.
	2075	311222	Soybean oil mills.
	2076	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	2079	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	2048	311119	Prepared feeds and feed ingredients for animals and fowls, excluding dogs and cats.
	2041	311211	Flour and other grain mill product mills.
	2046	311221	Wet corn milling.
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 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 GGGG. 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.

Comments. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. We consider the changes to be noncontroversial because the only effect is to eliminate recordkeeping and reporting that is unnecessary for determining compliance for facilities using a low-HAP extraction solvent in the production process. Compliance with the rule is assured merely by properly documenting use of the low-HAP extraction solvent. In the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to make the amendments to the Vegetable Oil Production NESHAP set forth in the direct final rule in the event that timely and significant adverse comments are received.

If we receive any relevant 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 today's 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. Any parties interested in commenting must do so at this time.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct 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 November 1, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the direct 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 direct final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading this preamble to the direct final rule.

I. Background
II. Technical Amendment to the Solvent Extraction for Vegetable Oil Production NESHAP
  A. How are compliance requirements being revised for low-HAP extraction solvent 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 April 12, 2001, the **Federal Register** published EPA's National Emission Standards for Hazardous Air Pollutants for Solvent Extraction for Vegetable Oil Production (Vegetable Oil Production NESHAP), 40 CFR part 63, subpart GGGG (66 FR 19006). The NESHAP contains regulatory provisions for documenting certain parameters in the vegetable oil production process: oilseed use and solvent use, HAP content of the solvent, and determining compliance based on a ratio of actual versus allowable HAP loss for the applicable types of oilseeds. Today's direct final rule amendments eliminate the recordkeeping and reporting requirements that are unnecessary for determining compliance at vegetable oil production facilities that exclusively use a qualifying low-HAP extraction solvent.

II. Technical Amendment to the Vegetable Oil Production NESHAP

The Vegetable Oil Production NESHAP require that certain parameters be documented and that actual versus allowable HAP use be compared to determine compliance. Today's direct final amendment specifies, only for facilities that use a low-HAP extraction solvent, the recordkeeping and reporting requirements necessary to assure compliance with the NESHAP.

A. How Are Compliance Requirements Being Revised for Low-HAP Extraction Solvent Operations?

When we promulgated the Vegetable Oil Production NESHAP, the rule required compliance to be demonstrated by calculating a compliance ratio that was a comparison of the actual versus allowable amount of HAP loss from the production process. Determination of the compliance ratio required the facility owner or operator to document, on a monthly basis, the following parameters in the solvent extraction process: the quantity of each type of oilseed used, the quantity of solvent loss, and the volume fraction of each HAP exceeding 1 percent in the extraction solvent used. By inputting this information into the equations in the rule, the compliance ratio, and thus compliance, is determined. If the facility's compliance ratio is one or less, the facility is in compliance. During the approximately 3 year period since the NESHAP were promulgated, a solvent has been developed where none of the HAP constituents are present in an amount greater than 1 percent by volume. We refer to this solvent as "low-HAP extraction solvent." The extraction solvent available until recently, and the one the equations in the NESHAP are based on, was comprised of, on average, 64 percent HAP, primarily n-hexane. When facilities using a low-HAP extraction solvent determine their compliance ratio in accordance with the equations in the NESHAP, the result will always be zero. This is true because the volume fraction of each HAP comprising more than 1 percent in the extraction solvent used is zero. Since a facility with a compliance ratio below one is in compliance, any facility with a compliance ratio of zero will always be in compliance with the NESHAP. Neither quantity and/or type of oilseed processed, nor the amount of solvent loss, has any bearing on the compliance determination. Therefore, it is no longer necessary to measure these production-related parameters to determine compliance. The direct final

amendment adds language to 40 CFR 63.2840 specifying that, for facilities using the low-HAP extraction solvent in their processes, we are requiring only the necessary recordkeeping and reporting requirements to assure that the solvent used meets the low-HAP criteria.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the 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 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 subpart GGGG were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control No. 2060–0433. Today's action does not impose any new information collection requirements on industry or EPA. For that reason, we have not revised the ICR for the Vegetable Oil Production NESHAP.

C. 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 Procedures 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. The EPA has determined that the amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's technical amendments on small entities, small entities are defined as: (1) A small business that has fewer than 750 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.

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

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 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 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 of 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 potential 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, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the rule significantly or uniquely impact small governments, because it contains 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" 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 amendments do not have federalism implications. The amendments only clarify a compliance option and eliminate unnecessary recordkeeping and reporting requirements for that option. This change does not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. The technical amendments 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. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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

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 would 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 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 do not establish an environmental standard intended to mitigate 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 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 13211.

I. National Technology Transfer and Advancement Act

Because today's action contains no new test methods, sampling procedures or other technical standards, there is no need to consider the availability of 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 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**. The direct final rule 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: August 25, 2004.

Michael O. Leavitt,

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 GGGG—[Amended]

■ 2. Section 63.2840 is amended by adding introductory text and adding paragraphs (e) and (f) to read as follows:

§ 63.2840 What emission requirements must I meet?

For each facility meeting the applicability criteria in § 63.2832, you must comply with either the requirements specified in paragraphs (a) through (d), or the requirements in paragraph (e) of this section.

(a)(1) * * *

(e) *Low-HAP solvent option.* For all vegetable oil production processes subject to this subpart, you must exclusively use solvent where the volume fraction of each HAP comprises 1 percent or less by volume of the solvent (low-HAP solvent) in each delivery, and you must meet the requirements in paragraphs (e)(1) through (5) of this section. Your vegetable oil production process is not subject to the requirements in §§ 63.2850 through 63.2870 unless specifically referenced in paragraphs (e)(1) through (5) of this section.

(1) You shall determine the HAP content of your solvent in accordance with the specifications in § 63.2854(b)(1).

(2) You shall maintain documentation of the HAP content determination for each delivery of the solvent at the facility at all times.

(3) You must submit an initial notification for existing sources in accordance with § 63.2860(a).

(4) You must submit an initial notification for new and reconstructed sources in accordance with § 63.2860(b).

(5) You must submit an annual compliance certification in accordance with § 63.2861(a). The certification should only include the information required under § 63.2861(a)(1) and (2), and a certification indicating whether the source complied with all of the requirements in paragraph (e) of this section.

(f) You may change compliance options for your source if you submit a notice to the Administrator at least 60 days prior to changing compliance options. If your source changes from the low-HAP solvent option to the compliance ratio determination option, you must determine the compliance ratio for the most recent 12 operating months beginning with the first month after changing compliance options.

* * * * *

[FR Doc. 04–19919 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP–2003–0169; FRL–7352–3]

RIN 2070–AC93

Pesticide Worker Protection Standard; Glove Liners, and Chemical-Resistant Glove Requirements for Agricultural Pilots

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the 1992 Pesticide Worker Protection Standard to permit optional use of separable glove liners beneath chemical-resistant gloves. This amendment also makes optional the provision that agricultural pilots



Federal Register

Friday,
September 3, 2004

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0084; FRL–7808–2]

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 September 24, 2002, and on December 30, 2002, we published final amendments to the standards based on two separate settlement agreements. These amendments further clarify regulatory text, correct errors, and improve understanding of the rule requirements as promulgated. We are making the amendments by direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

DATES: This direct final rule is effective on November 2, 2004 without further notice, unless EPA receives adverse written comment by October 4, 2004 or if a public hearing is requested by September 13, 2004. If EPA receives such comments, it 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: EPA has established a docket for this action under Docket ID No. OAR–2002–0084. 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 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: Mr. Joseph Wood, P.E., U.S. EPA, Minerals and Inorganic Chemicals Group (C–504–05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* This action does not affect the applicability of the existing rule as amended on December 30, 2002 (67 FR 79808). Categories and entities potentially regulated by this action include:

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 § 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 copy of today's correcting 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 proposed rules 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.

Comments. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. We consider the changes to be noncontroversial because we are correcting errors in equations to ensure that the proper units are used; correcting typographical and printing errors; making minor changes for clarification and consistency within the rule; and eliminating an erroneous reference to a reporting requirement. 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 and significant adverse comments are received.

If we receive any relevant 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. 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 is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 2, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the direct 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 direct final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading this preamble to this direct final rule.

I. Background
II. Amendments to the NESHAP
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 March 23, 2000 (63 FR 15690), we promulgated the NESHAP for secondary aluminum production (40 CFR part 63, subpart RRR). Those standards were established under the authority of section 112(d) of the CAA to reduce emissions of hazardous air pollutants (HAP) from major and area sources.

After promulgation of the NESHAP for secondary aluminum production, two petitions for judicial review of the standards were filed in the D.C. Circuit Court of Appeals. The first of these petitions was filed by the American Foundrymen's Society, the North American Die Casting Association, and the Non-Ferrous Founders' Society (*American Foundrymen's Society et al.* v. *U.S. EPA,* Civ. No 00–1208 (D.C. Cir.)). A second petition for judicial review was filed by the Aluminum Association (*The Aluminum Association* v. *U.S. EPA,* No. 00–1211 (D.C. Cir.)). There was no significant overlap in the issues presented by the two petitions, and the cases have never been consolidated. However, we did thereafter enter into separate settlement discussions with the petitioners in each case.

The Foundrymen's case presented issues concerning the applicability of 40 CFR part 63, subpart RRR, to aluminum die casters and aluminum foundries which were considered during the initial rulemaking development. Because aluminum die casters and foundries sometimes conduct the same type of operations as other secondary aluminum producers, we originally intended to apply the standards to those facilities, but only in those instances where they conduct such operations. However, representatives of the affected facilities argued that they should not be considered to be secondary aluminum producers and should be wholly exempt from the secondary aluminum production NESHAP. During the rulemaking development, we decided to permit die casters and foundries to melt contaminated internal scrap without being considered to be secondary aluminum producers, but their representatives insisted that too many facilities would still be subject to the NESHAP. At promulgation of the standards, in response to a request by the die casters and foundries, we announced we would withdraw the standards as applied to die casters and foundries and develop separate maximum achievable control technology (MACT) standards for those facilities.

After the Foundrymen's case was filed, we negotiated an initial settlement agreement in that case which established a process to effectuate our commitment to develop new MACT standards. In that initial settlement, EPA agreed that it would stay the current standards for those facilities, collect comprehensive data to support alternate standards, and promulgate alternate standards. We then published a proposal to stay the standards for those facilities (65 FR 55491, September 14, 2000) and an advance notice of proposed rulemaking (ANPR) announcing new standards for aluminum die casters and foundries (65 FR 55489, September 14, 2000).

During the subsequent process of preparing for information collection, the petitioners concluded that the existing standards were not as sweeping in applicability as they had feared, and the parties then agreed to explore an alternate approach to settlement based on clarifications of the existing standards. We subsequently reached agreement with the Foundrymen's petitioners on a new settlement which entirely supplanted the initial settlement. Accordingly, we published a notice withdrawing the proposed stay of the existing standards for aluminum die casters and foundries and announcing that we would take no further action on new standards for those facilities (67 FR 41138, June 14, 2002).

In the new settlement, we agreed to propose some changes in the applicability provisions of the existing standards concerning aluminum die casters and foundries. The changes included permitting customer returns without paints or solid coatings to be treated like internal scrap, and permitting facilities operated by the same company at different locations to be aggregated for purposes of determining what is internal scrap. The revisions of the applicability criteria were proposed on June 14, 2002 (67 FR 41125) and adopted on December 30, 2002 (67 FR 79808).

In the new Foundrymen's settlement, we also agreed to defer the compliance date for new sources constructed or reconstructed at existing aluminum die casters, foundries, and extruders until the compliance date for existing sources so that the rulemaking on general applicability issues could be completed first. We took final action concerning that element of the new Foundrymen's settlement in a final rule published on September 24, 2002 (67 FR 59787).

In entirely separate discussions, we also agreed on a settlement of the Aluminum Association case. That settlement required that we propose a number of substantive clarifications and revisions of the standards, which were also adopted in the final rule on December 30, 2002 (67 FR 79808). The Aluminum Association settlement also required that we clarify and simplify the compliance dates for the standards and defer certain early compliance obligations which might otherwise come due during the rulemaking process. We took final action concerning those compliance issues in the final rule published on September 24, 2002 (67 FR 59787).

II. Amendments to the NESHAP

Today's direct final amendments revise the secondary aluminum production NESHAP (40 CFR part 63, subpart RRR) as follows:

- In § 63.1503, we are deleting the definition of "Internal runaround" and replacing it with the definition of "Runaround scrap."
- In § 63.1506, we are including units for emissions of dioxin/furans (D/F) to clarify that the requirements for measurement of feed/charge weight apply to facilities subject to emission limits for D/F, as well as emission limits for other pollutants. The proper units for measurement of D/F emissions for the standards are micrograms per megagram (μg/Mg) or grains per ton (gr/ton). We are also amending the operating requirement for dross-only furnaces in § 63.1506(i)(3) to be consistent with the definition for this type of furnace in § 63.1503. The revised requirement states that the owner or

operator must operate each furnace using dross and salt flux as the sole feedstock.

- In Equation 4 of § 63.1510, we are amending the definition of "T_i" (the total amount of feed or aluminum produced for the emission unit for the 24-hour period) in paragraph (t)(4) to state the proper units. Because "ER_i" (the measured emission rate for the unit) can be either pounds per ton (lb/ton) or µg/Mg, the definition of "T_i" should be in units of tons or Mg instead of only tons.
- In § 63.1512, we are amending paragraph (g) to state that the testing for dross-only furnaces is to be performed while the unit processes only dross and salt flux. This change will make the testing requirement consistent with the definition of "dross-only furnace."
- In § 63.1513, we are amending Equation 7 to apply only to particulate matter (PM) and hydrogen chloride (HCl) emissions and adding a separate equation (7A) for computing D/F emissions in the appropriate measurement units for the standards (µg/Mg or gr/ton). This change will avoid confusion that may result from the differences in measurement units for D/F and PM or HCl.
- In § 63.1516, we are amending the requirements for the semiannual excess emissions/summary report such that the owner or operator must submit semiannual reports according to the requirements in § 63.10(e)(3), but the reports are due within 60 days after the end of each 6-month period instead of within 30 days after the calendar half as required by § 63.10(e)(3)(v). When no deviations of parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period. We are also amending the certification requirements for dross-only furnaces in § 63.1516(b)(2)(ii) to state that only dross and salt flux were used as the charge material during the reporting period. This change will make the certification statement consistent with the definition of "dross-only furnace."
- In table 2 to subpart RRR, we are correcting a typographical error and revising the measurement units cited for the flux injection rate. The revised units for the flux injection rate are kilograms per megagram (kg/Mg) or (lb/ton) rather than pound per hour (lb/hr).

The direct final amendments correct a typographical error in table 3 to subpart RRR, revise the table of contents to correct typographical and printing errors, and also revise appendix A to subpart RRR (General Provisions Applicability to Subpart RRR) to add a note in the comment column.

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 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 direct 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

The OMB has previously approved the information collection requirements in the existing rule (subpart RRR) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2060–0433. The direct final amendments have no impact on the existing information collection burden estimates. Consequently, the ICR has not been revised.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in conjunction with the direct final amendments. The EPA has also determined that the amendments will not have a significant economic impact on a substantial number of small entities and do not pose any requirements or costs on any firm, large or small. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final amendments on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 500 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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final amendments on small entities, the EPA has concluded that this action will not have a significant economic impact on a substantial number of 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.

This action contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments. The EPA has determined that the direct final amendments do not contain 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 in any 1 year. No costs are attributable to the amendments. In addition, the 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 requirements of the UMRA do not apply to the direct final 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" 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 section 6 of 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 the EPA consults with State and local officials early in the process of developing the proposed regulation.

The direct final amendments do not have federalism implications. They do 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, the requirements of section 6 of the Executive Order do not apply to the direct final 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." "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 Indian tribes."

The direct final amendments do not have tribal implications. They do 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 plants subject to the existing rule or to the direct final amendments. Thus, Executive Order 13175 does not apply to the direct final amendments.

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.

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 direct final amendments are not subject to Executive Order 13045 because the existing rule 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

The direct 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 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 (such as material 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 an agency does not use available and applicable voluntary consensus standards.

The EPA's response to the NTTAA requirements are discussed in the preamble to the final rule (65 FR 15690, March 23, 2000). The direct final amendments do not change the required methods 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 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 correcting amendments in the **Federal Register**. The direct final amendments are 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, Reporting and recordkeeping requirements.

Dated: August 25, 2004.

Michael O. Leavitt,

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]

§ 63.1503 [Amended]

■ 2. Section 63.1503 is amended by removing the definition for the term, "Internal runaround."

■ 3. Section 63.1506 is amended by revising paragraphs (d) and (i)(3) to read as follows:

§ 63.1506 Operating requirements.

* * * * *

(d) *Feed/charge weight.* The owner or operator of each affected source or emission unit subject to an emission limit in kg/Mg (lb/ton) or μg/Mg (gr/ton) of feed/charge must:

* * * * *

(i) * * *

(3) Operate each furnace using dross and salt flux as the sole feedstock.

* * * * *

■ 4. Section 63.1510 is amended by revising the definition of "T_i" for Equation 4 in paragraph (t)(4) to read as follows:

§ 63.1510 Monitoring requirements.

* * * * *

(t) * * *

(4) * * *

Where:

* * * * *

T_i = The total amount of feed, or aluminum produced, for emission unit i for the 24-hour period (tons or Mg);

* * * * *

■ 5. Section 63.1512 is amended by revising paragraph (g) to read as follows:

§ 63.1512 Performance test/compliance demonstration requirements and procedures.

* * * * *

(g) *Dross-only furnace.* The owner or operator must conduct a performance test to measure emissions of PM from each dross-only furnace at the outlet of each control device while the unit processes only dross and salt flux as the sole feedstock.

* * * * *

■ 6. Section 63.1513 is amended by revising paragraph (b) to read as follows:

§ 63.1513 Equations for determining compliance.

* * * * *

(b) *PM, HCl and D/F emission limits.* (1) Use Equation 7 of this section to determine compliance with an emission limit for PM or HCl:

$$E = \frac{C \times Q \times K_1}{P} \qquad \text{(Eq. 7)}$$

Where:

E = Emission rate of PM or HCl, kg/Mg (lb/ton) of feed;

C = Concentration of PM or HCl, g/dscm (gr/dscf);

Q = Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);

K_1 = Conversion factor, 1 kg/1,000 g (1 lb/7,000 gr); and

P = Production rate, Mg/hr (ton/hr).

(2) Use Equation 7A of this section to determine compliance with an emission limit for D/F:

$$E = \frac{C \times Q}{P} \qquad \text{(Eq. 7A)}$$

Where:

E = Emission rate of D/F, μg/Mg (gr/ton) of feed;

C = Concentration of D/F, μg/dscm (gr/dscf);

Q = Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr); and

P = Production rate, Mg/hr (ton/hr).

* * * * *

■ 7. Section 63.1516 is amended by revising the introductory text of paragraph (b) and paragraph (b)(2)(ii) to read as follows:

§ 63.1516 Reports.

* * * * *

(b) *Excess emissions/summary report.* The owner or operator must submit semiannual reports according to the requirements in § 63.10(e)(3). Except, the owner or operator must submit the semiannual reports within 60 days after the end of each 6-month period instead of within 30 days after the calendar half as specified in § 63.10(e)(3)(v). When no deviations of parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period.

* * * * *

(2) * * *

(ii) For each dross-only furnace: "Only dross and salt flux were used as the charge materials in any dross-only furnace during this reporting period."

* * * * *

■ 8. Table 2 to Subpart RRR of Part 63 is amended by revising the following "Group 1 furnace" entries to read as follows:

TABLE 2 TO SUBPART RRR OF PART 63.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Operating requirements
*	*	*
Group 1 furnace with lime-injected fabric filter (including those that are part of a secondary of aluminum processing unit)..	Bag leak detector or	Initiate corrective action within 1-hr of alarm; operate such that alarm does not sound more than 5% of operating time in 6-month period; complete corrective action in accordance with the OM&M plan.[b]
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more; complete corrective action in accordance with the OM&M plan.[b]
	Fabric filter inlet temperature	Maintain average fabric filter inlet temperature for each 3-hour period at or below average temperature during the performance test +14°C (+25° F).
	Reactive flux injection rate	Maintain reactive flux injection rate (kg/Mg) (lb/ton) at or below rate used during the performance test for each furnace cycle.

TABLE 2 TO SUBPART RRR OF PART 63.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements
	Lime injection rate	Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; maintain feeder setting at level established at performance test for continuous injection systems.
	Maintain molten aluminum level	Operate sidewell furnaces such that the level of molten metal is above the top of the passage between sidewell and hearth during reactive flux injection, unless the hearth is also controlled.
	Fluxing in sidewell furnace hearth	Add reactive flux only to the sidewell of the furnace unless the hearth is also controlled.
Group 1 furnace without add-on controls (including those that are part of a secondary aluminum processing unit).	Reactive flux injection rate	Maintain reactive flux injection rate (kg/Mg) (lb/ton) at or below rate used during the performance test for each operating cycle or time period used in the performance test.
	Site-specific monitoring plan[c]	Operate furnace within the range of charge materials, contaminant levels, and parameter values established in the site-specific monitoring plan.
	Feed material (melting/holding furnace)	Use only clean charge.
* * * * * * *		

[a] * * *

[b] OM&M plan—Operation, maintenance, and monitoring plan.

[c] Site-specific monitoring plan. Owner/operators of group 1 furnaces without control devices must include a section in their OM&M plan that documents work practice and pollution prevention measures, including procedures for scrap inspection, by which compliance is achieved with emission limits and process or feed parameter-based operating requirements. This plan and the testing to demonstrate adequacy of the monitoring plan must be developed in coordination with and approved by the permitting authority.

■ 9. Table 3 to Subpart RRR of Part 63 is amended by revising the "Scrap dryer" entry to read as follows:

TABLE 3.—TO SUBPART RRR OF PART 63.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Monitoring requirements.
* * * * * * *		
Scrap dryer/delacquering kiln/decoating kiln with afterburner and lime-injected fabric filter.	Afterburner operating temperature.	Continuous measurement device to meet specifications in §63.1510(g)(1); record temperature for each 15-minute block; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the OM&M plan.
	Bag leak detector or	Install and operate in accordance with "Fabric Filter Bag Leak Detection Guidance[c]; record voltage output from bag leak detector.
	COM	Design and Install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
	Lime injection rate	For continuous injection systems, inspect each feed hooper or silo every 8 hours to verify that lime is free flowing; record results of each inspection. If blockage occurs, inspect every 4 hours for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period, record feeder setting daily.
	Fabric filter inlet temperature.	Continous measurement device to meet specifications in §63.1510(h)(2); record temperatures in 15-minute block averages; determine and record 3-hr block averages.
* * * * * * *		

[a] * * *

[b] OM&M plan—Operation, maintenance, and monitoring plan.

[c] Site-specific monitoring plan. Owner/operators of group 1 furnaces without control devices must include a section in their OM&M plan that documents work practice and pollution prevention measures, including procedures for scrap inspection, by which compliance is achieved with emission limits and process or feed parameter-based operating requirements. This plan and the testing to demonstrate adequacy of the monitoring plan must be developed in coordination with and approved by the permitting authority.

■ 10. Appendix A to Subpart RRR of Part 63 is amended by revising the entry for § 63.10(e)(3) to read as follows:

Appendix A to Subpart RRR—General Provisions Applicability to Subpart RRR

Citation	Requirement	Applies to RRR	Comment
* * * * * * *			
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	Yes	Reporting deadline given in § 63.1516.
* * * * * * *			

[FR Doc. 04–20128 Filed 9–2–04; 8:45 am]
BILLING CODE 6560–50–P



Federal Register

Monday,
September 13, 2004

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; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0058; FRL–7633–9]

RIN 2060–AG69

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters. The EPA has identified industrial, commercial, and institutional boilers and process heaters as major sources of hazardous air pollutants (HAP) emissions. The final rule will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emissions standards reflecting the application of the maximum achievable control technology (MACT). The final rule is expected to reduce HAP emissions by 50,600 to 58,000 tons per year (tpy).

The HAP emitted by facilities in the boiler and process heater source category include arsenic, cadmium, chromium, hydrogen chloride (HCl), hydrogen fluoride, lead, manganese, mercury, nickel, and various organic HAP. 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. These adverse health effects associated with the exposure to these specific HAP are further described in this preamble. In general, these findings only have been shown with concentrations higher than those typically in the ambient air.

The final rule contains numerous compliance provisions including health-based compliance alternatives for the hydrogen chloride and total selected metals emission limits.

DATES: The final rule is effective November 12, 2004. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of November 12, 2004.

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 Avenue, NW., Washington, DC.

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, electronic mail address *eddinger.jim@epa.gov.*

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 using a boiler or process heater as defined in the final rule.	211	13	Extractors of crude petroleum and natural gas.
	321	24	Manufacturers of lumber and wood products.
	322	26	Pulp and paper mills.
	325	28	Chemical manufacturers.
	324	29	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	30	Manufacturers of rubber and miscellaneous plastic products.
	331	33	Steel works, blast furnaces.
	332	34	Electroplating, plating, polishing, anodizing, and coloring.
	336	37	Manufacturers of motor vehicle parts and accessories.
	221	49	Electric, gas, and sanitary services.
	622	80	Health services.
	611	82	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 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 § 63.7485 of the final 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.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0058 and Docket ID No. A–96–47. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. 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 Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, 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 Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202)

566–1742. A reasonable fee may be charged for copying docket materials.

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/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets 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. Once in the system, select "search," then key in the appropriate docket identification number.

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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 12, 2004. Only those objections to the final rule 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 may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Background Information Document. The EPA proposed the NESHAP for industrial, commercial, and institutional boilers and process heaters on January 13, 2003 (68 FR 1660) and received 218 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," containing EPA's responses to each public comment is available in Docket No. OAR–2002–0058.

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

I. Background Information
A. What is the statutory authority for the final rule?
B. What criteria are used in the development of NESHAP?
C. How was the final rule developed?
D. What is the relationship between the final rule and other combustion rules?
E. What are the health effects of pollutants emitted from industrial, commercial, and institutional boilers and process heaters?
II. Summary of the Final Rule
A. What source categories and subcategories are affected by the final rule?
B. What is the affected source?
C. What pollutants are emitted and controlled?
D. Does the final rule apply to me?
E. What are the emission limitations and work practice standards?
F. What are the testing and initial compliance requirements?
G. What are the continuous compliance requirements?
H. What are the notification, recordkeeping and reporting requirements?
I. What are the health-based compliance alternatives, and how do I demonstrate eligibility?
III. What are the significant changes since proposal?
A. Definition of Affected Source
B. Sources Not Covered by the NESHAP
C. Emission Limits
D. Definitions Added or Revised
E. Requirements for Sources in Subcategories Without Emission Limits or Work Practice Requirements
F. Carbon Monoxide Work Practice Emission Levels and Requirements
G. Fuel Analysis Option
H. Emissions Averaging
I. Opacity Limit
J. Operating Limit Determination
K. Revision of Compliance Dates
IV. What are the responses to significant comments?
A. Applicability
B. Format
C. Compliance Schedule
D. Subcategorization
E. MACT Floor
F. Beyond the MACT Floor
G. Work Practice Requirements
H. Compliance
I. Emissions Averaging
J. Risk-based Approach
V. Impacts of the Final Rule
A. What are the air impacts?
B. What are the water and solid waste impacts?
C. What are the energy impacts?
D. What are the control costs?
E. What are the economic impacts?
F. What are the social costs and benefits of the final rule?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act 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 Information

A. What Is the Statutory Authority for the Final Rule?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. 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 tpy of any one HAP or 25 tpy of any combination of HAP.

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

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

The minimum control level allowed for NESHAP (the minimum level of stringency for MACT) is the "MACT floor," as defined under section 112(d)(3) of the CAA. The MACT floor for existing sources is the emission limitation achieved by the average of the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the average of the best-performing five sources for categories or subcategories with fewer than 30 sources. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source.

C. How Was the Final Rule Developed?

We proposed standards for industrial, commercial, and institutional boilers and process heaters on January 13, 2003 (68 FR 1660). Public comments were solicited at the time of proposal. The public comment period lasted from January 13, 2003, to March 14, 2003.

We received a total of 218 public comment letters on the proposed rule. Comments were submitted by industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies and their representatives, and environmental groups. Today's final rule reflects our consideration of all of the comments and additional information received. Major public comments on the proposed rules, along with our responses to those comments, are summarized in this preamble.

D. What Is the Relationship Between the Final Rule and Other Combustion Rules?

The final rule regulates source categories covering industrial boilers, institutional and commercial boilers, and process heaters. These source categories potentially include combustion units that are already regulated by other MACT standards. Therefore, we are excluding from the final rule any combustion units that are already or will be subject to regulation under another MACT standard under 40 CFR part 63.

Combustion units that are regulated by other standards and are therefore excluded from the final rule include solid waste incineration units covered by section 129 of the CAA; boilers or process heaters required to have a permit under section 3005 of the Solid Waste Disposal Act or covered by the hazardous waste combustor NESHAP in 40 CFR part 63, subpart EEE [1]; and recovery boilers or furnaces covered by 40 CFR part 63, subpart MM.

With regards to solid waste incineration units covered by section 129 of the CAA, EPA solicited on February 17, 2004 (69 FR 7390) public comments on the definition of "commercial and industrial solid waste incineration unit" for the purpose of determining which combustion sources to regulate under section 129 and which to regulate under section 112 (*e.g.*, boilers and process heaters). As stated above, combustion units covered under section 129 are not subject to the final rule.

Electric utility steam generating units are not subject to the final rule. An electric utility steam generating unit is a fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A fossil fuel-fired unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale is considered an electric utility steam generating unit. Non-fossil fuel-fired utility boilers and electric utility steam generating units less than 25 megawatts are covered by the final rule.

In 1986, EPA codified the NSPS for industrial boilers (40 CFR part 60, subparts Db and Dc) and revised portions of them in 1999. The NSPS regulates emissions of particulate matter (PM), sulfur dioxide, and nitrogen oxides from boilers constructed after June 19, 1984. Sources subject to the NSPS are also subject to the final rule because the final rule regulates sources of hazardous air pollutants while the NSPS does not. However, in developing the final rule for industrial, commercial, and institutional boilers and process heaters, EPA minimized the monitoring requirements, testing requirements, and recordkeeping requirements to avoid duplicating requirements.

Because of the broad applicability of the final rule due to the definition of a process heater, certain process heaters could appear to fit the applicability of another existing MACT rule. We have, therefore, included in the list of combustion units not subject to the final rule refining kettles subject to the secondary lead MACT rule (40 CFR part 63, subpart X); ethylene cracking furnaces covered by 40 CFR part 63, subpart YY; and blast furnace stoves described in the EPA document entitled "National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Plants—Background Information for Proposed Standards" (EPA–453/R–01–005).

E. What Are the Health Effects of Pollutants Emitted From Industrial, Commercial, and Institutional Boilers and Process Heaters?

The final rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. As noted above, emissions data collected during development of the proposed rule show that HCl emissions represent the predominant HAP emitted by industrial boilers. Industrial boilers emit lesser amounts of hydrogen fluoride, chlorine, metals (arsenic, cadmium, chromium, mercury, manganese, nickel, and lead), and organic HAP emissions. Although numerous organic HAP may be emitted from industrial boilers and process heaters, only a few account for essentially all the mass of organic HAP emissions. These organic HAP are: Formaldehyde, benzene, and acetaldehyde.

Exposure to high levels of these HAP is associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the kidneys), and acute health disorders (*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the kidney and central nervous system). We have classified three of the HAP as human carcinogens and five as probable human carcinogens. Our screening assessment for respiratory HAP and for central nervous system (CNS) HAP, using health protective assumptions, indicates that manganese and chlorine are the only boiler-related HAP that are reasonably expected to approach health based criteria concentrations at receptor locations at or beyond facility boundaries. Emissions of all other HAP modeled on an individual basis appears to be insignificant relative to the concentration that would produce the health effects that they represent. The maximal hazard index (HI) for summation of the HAP modeled in the screening assessment for respiratory effects, including chlorine, was less than 3. The maximal HI for summation of the HAP modeled in the screening assessment for CNS effects, including manganese, was less than 3. Therefore, effects noted below for HAP at high concentrations are not expected to occur prior or after regulation as a result of emissions from these facilities, and are provided to illustrate the nature of the contaminant's effects at high dose. A screening assessment was also conducted for acute effects, and no exceedances were seen. Therefore, potential acute effects are not discussed below. However, to the extent the adverse effects do occur, the final rule will reduce emissions and subsequent exposures.

Acetaldehyde

Acetaldehyde is ubiquitous in the environment and may be formed in the body from the breakdown of ethanol (ethyl alcohol). In humans, symptoms of chronic (long-term) exposure to acetaldehyde resemble those of alcoholism. Long-term inhalation exposure studies in animals reported effects on the nasal epithelium and mucous membranes, and increased kidney weight. The EPA has classified acetaldehyde as a probable human carcinogen (Group B2) based on animal studies that have shown nasal tumors in rats and laryngeal tumors in hamsters.

[1] Please note that boilers that burn small quantities of hazardous waste under the exemptions provided by 40 CFR 266.108 are subject to today's final rule.

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 for women working at or living near metal smelters and an increased risk of reproductive effects. Inorganic arsenic exposure in humans by the inhalation route has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. The EPA has classified inorganic arsenic as a Group A, human carcinogen.

Benzene

Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. The EPA has classified benzene as a Group A, known human carcinogen.

Beryllium

Chronic (long-term) 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 (long-term) 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 at high doses in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. The EPA has classified cadmium as a Group B1, probable carcinogen.

Chlorine

Chlorine is a commonly used household cleaner and disinfectant. Chlorine is an irritant to the eyes, the upper respiratory tract, and lungs. Chronic (long-term) 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.

Chromium

Chromium may be emitted by industrial boilers 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, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic high dose exposure in occupational settings 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 a carcinogen, resulting in an increased risk of lung cancer. The 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. The EPA has not classified chromium III with respect to carcinogenicity.

Formaldehyde

Exposure to formaldehyde irritates the eyes, nose, and throat. Reproductive effects, such as menstrual disorders and pregnancy problems, have been reported in female workers exposed to high levels of formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. The EPA considers formaldehyde a probable human carcinogen (Group B2).

Hydrogen chloride

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes at high concentration. Chronic (long-term) occupational exposure to high levels of hydrochloric acid has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to lower 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 high levels of 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. The EPA has not classified hydrochloric acid for carcinogenicity.

Hydrogen fluoride

Chronic (long-term) exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. The EPA has not classified hydrogen fluoride for carcinogenicity.

Lead

Lead can cause a variety of effects at low dose levels. Chronic (long-term) exposure to high levels of lead in humans results in effects on the blood, central nervous system (CNS), 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 high-dose lead exposure by the oral route. The 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 (long-term) 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 exposure to high levels of manganese by inhalation in humans results primarily in CNS 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 high-dose inhalation exposures. The 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 major sources may release elemental or inorganic mercury; environmental methyl mercury is typically formed by biological processes after mercury has precipitated from the air.

Chronic (long-term) exposure to elemental mercury in humans also affects the CNS, 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 effects. 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 tumors in experimental animals. The 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 (long-term) skin contact with nickel. Respiratory effects have also been reported in humans from inhalation exposure to nickel. No information is available regarding the reproductive or 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 Group A, human carcinogens and nickel carbonyl as a Group B2, probable human carcinogen.

Selenium

Selenium is a naturally occurring substance that is toxic at high concentrations but is also a nutritionally essential element. Studies of humans chronically (long-term) 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.

II. Summary of the Final Rule

A. What Source Categories and Subcategories Are Affected by the Final Rule?

The final rule affects industrial boilers, institutional and commercial boilers, and process heaters. In the final rule, process heater means an enclosed device using controlled flame, that is not a boiler, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, or solid) or to heat a transfer material for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not directly come into contact with process materials. Process heaters do not include units used for comfort heat or space heat, food preparation for on-site consumption, or autoclaves. Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Waste heat boilers are excluded from the definition of boiler. A waste heat boiler (or heat recovery steam generator) means a device, without controlled flame combustion, that recovers normally unused energy and converts it to usable heat. Waste heat boilers incorporating duct or supplemental burners that are designed to supply 50 percent or more of the total rated heat input capacity of the waste heat boiler are considered boilers and not waste heat boilers. Emissions from a combustion unit with a waste heat boiler are regulated by the applicable standards for the particular type of combustion unit. For example, emissions from a commercial or industrial solid waste incineration unit, or other incineration unit with a waste heat boiler are regulated by standards established under section 129 of the CAA.

Hot water heaters also are not regulated under the final rule. A hot water heater is a closed vessel, with a capacity of no more than 120 U.S. gallons, in which water is heated by combustion of gaseous or liquid fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 pounds per square inch gauge and water temperatures not exceeding 210 degree Fahrenheit (99 degrees Celsius).

Temporary boilers also are not regulated under the final rule. A temporary boiler is any gaseous or liquid fuel-fired boiler that is designed, and is capable of, being carried or moved from one location to another, and remains at any one location for less than 180 consecutive days. Additionally, any new temporary boiler that replaces an existing temporary boiler and is intended to perform the same or similar function will be included in the determination of the consecutive 180-day time period.

Boilers or process heaters that are used specifically for research and development are not regulated under the final rule. However, units that only provide steam to a process at a research and development facility are still subject to the final rule.

B. What Is the Affected Source?

In the final rule, the affected source is defined as follows: (1) The collection of all existing industrial, commercial, or institutional boilers and process heaters within a subcategory located at a major source; or (2) each new or reconstructed industrial, commercial or institutional

boiler and process heater located at a major source.

The affected source does not include combustion units that are subject to another standard under 40 CFR part 63, or covered by other standards listed in this preamble.

C. What Pollutants Are Emitted and Controlled?

Boilers and process heaters can emit a wide variety of HAP, depending on the material burned. Because of the large number of HAP potentially present in emissions and the disparity in the quantity and quality of the emissions information available, we use several surrogates to control multiple HAP in the final rule. This will reduce the burden of implementation and compliance on both regulators and the regulated community.

We grouped the HAP into four common categories: mercury, non-mercury metallic HAP, inorganic HAP, and organic HAP. In general, the pollutants within each group have similar characteristics and can be controlled with the same techniques.

Next, we identified compounds that could be used as surrogates for all the compounds in each pollutant category. For the non-mercury metallic HAP, we chose to use PM as a surrogate. Most, if not all, non-mercury metallic HAP emitted from combustion sources will appear on the flue gas fly-ash. Therefore, the same control techniques that would be used to control the fly-ash PM will control non-mercury metallic HAP. Particulate matter was also chosen instead of specific metallic HAP because all fuels do not emit the same type and amount of metallic HAP but most generally emit PM. The use of PM as a surrogate will also eliminate the cost of performance testing to comply with numerous standards for individual metals.

However, we are sensitive to the fact that some sources burn fuels containing very little metals, but would have sufficient PM emissions to require control under the PM provisions of the proposed rule. In such cases, PM would not be an appropriate surrogate for metallic HAP. Therefore, in the final rule, an alternative metals emission limit is included. A source may choose to comply with the alternative metals emissions limit instead of the PM limit to meet the final rule.

For inorganic HAP, we chose to use HCl as a surrogate. The emissions test information available indicate that the primary inorganic HAP emitted from boilers and process heaters are acid gases, with HCl present in the largest amounts. Other inorganic compounds emitted are found in much smaller quantities. Also, control technologies that would reduce HCl would also control other inorganic compounds that are acid gases. Thus, the best controls for HCl would also be the best controls for other inorganic HAP that are acid gases. Therefore, HCl is a good surrogate for inorganic HAP because controlling HCl will result in a corresponding control of other inorganic HAP emissions.

For organic HAP, we chose to use carbon monoxide (CO) as a surrogate to represent the variety of organic compounds, including dioxins, emitted from the various fuels burned in boilers and process heaters. Because CO is a good indicator of incomplete combustion, there is a direct correlation between CO emissions and the formation of organic HAP emissions. Monitoring equipment for CO is readily available, which is not the case for organic HAP. Also, it is significantly easier and less expensive to measure and monitor CO emissions than to measure and monitor emissions of each individual organic HAP. Therefore, using CO as a surrogate for organic HAP is a reasonable approach because minimizing CO emissions will result in minimizing organic HAP emissions.

D. Does the Final Rule Apply to Me?

The final rule applies to you if you own or operate a boiler or process heater located at a major source meeting the requirements in the final rule.

E. What Are the Emission Limitations and Work Practice Standards?

You must meet the emission limits and work practice standards for the subcategories in Table 1 of this preamble for each of the pollutants listed. Emission limits and work practice standards were developed for new and existing sources; and for large, small, and limited use solid, liquid, and gas fuel-fired units. Large units are those watertube boilers and process heaters with heat input capacities greater than 10 million British thermal units per hour (MMBtu/hr). Small units are any firetube boilers or any boiler and process heater with heat input capacities less than or equal to 10 MMBtu/hr. Limited use units are those large units with capacity utilizations less than or equal to 10 percent as required in a federally enforceable permit.

If your new or existing boiler or process heater is permitted to burn a solid fuel (either as a primary fuel or a backup fuel), or any combination of solid fuel with liquid or gaseous fuel, the unit is in one of the solid subcategories. If your new or existing boiler or process heater burns a liquid fuel, or a liquid fuel in combination with a gaseous fuel, the unit is in one of the liquid subcategories, except if the unit burns liquid only during periods of gas curtailment. If your new or existing boiler or process heater burns a gaseous fuel not combined with any liquid or solid fuels, or burns liquid fuel only during periods of gas curtailment or gas supply emergencies, the unit is in the gaseous subcategory.

TABLE 1—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR BOILERS AND PROCESS HEATERS

[(Pounds per million British thermal units (lb/MMBtu)]

Source	Subcategory	Particulate Matter (PM)	or	Total Selected Metals	Hydrogen Chloride (HCl)	Mercury (Hg)	Carbon Monoxide (CO) (ppm)
New or reconstructed Boiler or Process Heater.	Solid Fuel, Large Unit.	0.025	or	0.0003	0.02	0.000003	400 (@7% oxygen).
	Solid Fuel, Small Unit.	0.025	or	0.0003	0.02	0.000003	
	Solid Fuel, Limited Use.	0.025	or	0.0003	0.02	0.000003	400 (@7% oxygen).
	Liquid Fuel, Large Unit.	0.03	.....	.....	0.0005	.....	400 (@3% oxygen).

TABLE 1—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR BOILERS AND PROCESS HEATERS—Continued

[(Pounds per million British thermal units (lb/MMBtu)]

Source	Subcategory	Particulate Matter (PM)	or	Total Selected Metals	Hydrogen Chloride (HCl)	Mercury (Hg)	Carbon Monoxide (CO) (ppm)
	Liquid Fuel, Small Unit.	0.03	.....	.....	0.0009	.....	
	Liquid Fuel, Limited Use.	0.03	.....	.....	0.0009	.....	400 (@3% oxygen).
	Gaseous Fuel, Large Unit.		.....	.....	.....	.....	400 (@3% oxygen).
	Gaseous Fuel, Small Unit.		.....	.....	.....	.....	
	Gaseous Fuel Limited Use.		.....	.....	.....	.....	400 (@3% oxygen).
Existing Boiler or Process Heater.	Solid Fuel, Large Unit.	0.07	or	0.001	0.09	0.000009	
	Solid Fuel, Small Unit.		.....	.....	.....	.....	
	Solid Fuel, Limited Use.	0.21	or	0.004	.....	.....	
	Liquid Fuel, Large Unit.		.....	.....	.....	.....	
	Liquid Fuel, Small Unit.		.....	.....	.....	.....	
	Liquid Fuel, Limited Use.		.....	.....	.....	.....	
	Gaseous Fuel		.....	.....	.....	.....	

For solid fuel-fired boilers or process heaters, sources may choose one of two emission limit options: (1) Existing and new affected units may choose to limit PM emissions to the level listed in Table 1 of this preamble, or (2) existing and new affected units may choose to limit total selected metals emissions to the level listed in Table 1 of this preamble. Sources meeting the emission limits must also meet operating limits.

We have provided several compliance alternatives in the final rule. Sources may choose to demonstrate compliance based on the fuel pollutant content. Sources are also allowed to demonstrate compliance for existing large solid fuel units using emissions averaging.

F. What Are the Testing and Initial Compliance Requirements?

As the owner or operator of a new or existing boiler or process heater, you must conduct performance tests (*i.e.* stack testing) or an initial fuel analysis to demonstrate compliance with any applicable emission limits. The applicable emission limits and, therefore, the required performance tests and fuel analysis are different depending on the subcategory classification of the unit. Existing units in the small solid fuel subcategory and existing units in any of the liquid or gaseous fuel subcategories do not have applicable emission limits and, therefore, are not required to conduct stack tests or fuel analyses. Other units are required to conduct the following compliance tests or fuel analyses where applicable:

(1) Conduct initial and annual stack tests to determine compliance with the PM emission limits using EPA Method 5 or Method 17 in appendix A to part 60 of this chapter.

(2) Affected sources in the solid fuel subcategories may choose to comply with an alternative total selected metals emission limit instead of PM. Sources would conduct initial and annual stack tests to determine compliance with the total selected metals emission limit using EPA Method 29 in appendix A to part 60 of this chapter.

(3) Conduct initial and annual stack tests to determine compliance with the mercury emission limits using EPA Method 29 in appendix A to part 60 of this chapter or the ASTM D6784–02.

(4) Conduct initial and annual stack tests to determine compliance with the HCl emission limits using EPA Method 26 in appendix A to part 60 of this chapter (for boilers without wet scrubbers) or EPA Method 26A in appendix A to part 60 of this chapter (for boilers with wet scrubbers).

(5) For new boilers and process heaters in any of the limited use subcategories and new boilers and process heaters in any of the large subcategories with heat input capacities greater than 10 MMBtu/hr but less than 100 MMBtu/hr, conduct initial and annual stack tests to determine compliance with the CO work practice limit using EPA Method 10, 10A, or 10B in appendix A to part 60 of this chapter.

(6) Use EPA Method 19 in appendix A to part 60 of this chapter to convert measured concentration values to pounds per million British thermal units (MMBtu) values.

(7) For new units in any of the liquid fuel subcategories that do not burn residual oil, instead of conducting an initial and annual compliance test you may submit a signed statement in the Notification of Compliance Status report that indicates that you only burn liquid fossil fuels other than residual oil.

(8) For affected sources that choose to meet the emission limits based on fuel analysis, conduct the fuel analysis using method ASTM D5865–01ae1 or ASTM E711–87 to determine heat content; ASTM D3684–01 (for coal), SW–846–7471A (for solid samples) or SW–846–7470A (for liquid samples) to determine mercury levels; SW–846–6010B or ASTM D3683–94 (for coal) or ASTM E885–88 (for biomass) to determine total selected metals concentration; SW–846–9250 or ASTM E776–87 (for biomass) to determine chlorine concentration; and ASTM D3173 or ASTM E871 to determine moisture content.

As part of the initial compliance demonstration, you must monitor specified operating parameters during the initial performance tests that demonstrate compliance with the PM (or metals), mercury, and HCl emission limits. You must calculate the average parameter values measured during each

test run over the 3-run performance test. The minimum or maximum of the three average values (depending on the parameter measured) for each applicable parameter establishes the site-specific operating limit. The applicable operating parameters for which operating limits must be established are based on the emissions limits applicable to your unit as well as the types of add-on controls on the unit. A summary of the operating limits that must be established for the various types of controls are as follows:

(1) For boilers and process heaters without wet scrubbers that must comply with the mercury emission limit and either a PM emission limit or a total selected metals emission limit, you must meet an opacity limit of 20 percent for existing sources (based on 6-minute averages), except for one 6-minute period per hour of not more than 27 percent, or 10 percent for new sources (based on 1-hour block averages). Or, if the unit is controlled with a fabric filter, instead of meeting an opacity operating limit, you may elect to operate the fabric filter using a bag leak detection system such that corrective actions are initiated within 1 hour of a bag leak detection system alarm and you operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month reporting period.

(2) For boilers and process heaters without wet or dry scrubbers that must comply with an HCl emission limit, you must determine the average chloride content level in the input fuel(s) during the HCl performance test. This is your maximum chloride input operating limit.

(3) For boilers and process heaters with wet scrubbers that must comply with a mercury, PM (or total selected metals) and/or an HCl emission limit, you must measure pressure drop and liquid flow rate of the scrubber during the performance test and calculate the average value for each test run. The minimum test run average establishes your site-specific pressure drop and liquid flow rate operating levels. If different average parameter levels are measured during the mercury, PM (or metals) and HCl tests, the highest of the minimum test run average values establishes your site-specific operating limit. If you are complying with an HCl emission limit, you must measure pH during the performance test for HCl and determine the average for each test run and the minimum value for the performance test. This establishes your minimum pH operating limit.

(4) For boilers and process heaters with dry scrubbers that must comply with an HCl emission limit, you must measure the sorbent injection rate during the performance test for mercury and HCl and calculate the average for each test run. The minimum test run average during the performance test establishes your site-specific minimum sorbent injection rate operating limit.

(5) For boilers and process heaters with fabric filters in combination with wet scrubbers that must comply with a mercury emission limit, PM (or total selected metals) emission limit and/or an HCl emission limit, you must measure the pH, pressure drop, and liquid flowrate of the wet scrubber during the performance test and calculate the average value for each test run. The minimum test run average establishes your site-specific pH, pressure drop, and liquid flowrate operating limits for the wet scrubber. Furthermore, the fabric filter must be operated such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

(6) For boilers and process heaters with electrostatic precipitators (ESP) in combination with wet scrubbers that must comply with a mercury, PM (or total selected metals) and/or an HCl emission limit, you must measure the pH, pressure drop, and liquid flow rate of the wet scrubber during the HCl performance test, and you must measure the voltage and secondary current of the ESP collection plates or total power input during the mercury and PM (or metals) performance test. Calculate the average value of these parameters for each test run. The minimum test run averages establish your site-specific minimum pH, pressure drop, and liquid flowrate operating limit for the wet scrubber and the minimum voltage and current operating limits for the ESP.

(7) For boilers and process heaters that choose to comply with the alternative total selected metals emission limit instead of PM, you must determine the total selected metals content of the inlet fuels that were burned during the total selected metals performance test. This value is your maximum fuel inlet metals content operating limit.

(8) For boilers and process heaters that burn a mixture of multiple fuels, you must determine the mercury content of the inlet fuels that were burned during the mercury performance test. This value is your maximum fuel inlet mercury operating limit. Units burning only a single fuel type (not including start-up fuels) do not need to determine, by fuel analysis, the fuel inlet operating limit when conducting performance tests.

(9) For new boilers and process heaters in any of the large subcategories and with heat input capacities greater or equal to 100 MMBtu/hr, you must monitor CO to demonstrate that average CO emissions, on a 30-day rolling average, are at or below an exhaust concentration of 400 parts per million (ppm) by volume on a dry basis corrected to 3 percent oxygen for units in the liquid subcategories and corrected to 7 percent for units in the solid subcategories. For new boilers and process heaters in any of the limited use subcategories or with heat input capacities less than 100 MMBtu/hr, you must conduct initial test of CO emissions to demonstrate compliance with the CO work practice limit.

The final rule also provides you another compliance alternative. You may demonstrate compliance by emissions averaging for existing large solid fuel boilers in States that choose to allow emissions averaging in their operating permit program.

G. What Are the Continuous Compliance Requirements?

To demonstrate continuous compliance with the emission limitations, you must monitor and comply with the applicable site-specific operating limits established during the performance tests or fuel analysis. Upon detecting an excursion or exceedance, you must restore operation of the unit to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance. Such actions may include initial inspections and evaluation, recording that operations returned to normal without operator action, or any necessary follow-up actions to return operation to below the work practice standard.

(1) For boilers and process heaters without wet scrubbers that must comply with a mercury emission limit and either a PM emission limit or a total selected metals emission limit, you must continuously monitor opacity and maintain the opacity at or below the maximum opacity operating limit for new and existing sources. Or, if the unit is controlled with a fabric filter, instead of continuous monitoring opacity, the fabric filter may be continuously operated such that the bag leak detection system alarm does not sound

more than 5 percent of the operating time during any 6-month period.

(2) For boilers and process heaters without wet or dry scrubbers that must comply with an HCl emission limit, you must maintain monthly records of fuel use that demonstrate that you have burned no new fuel types or new mixtures such that you have maintained the fuel HCl content level at or below your site-specific maximum HCl input operating limit. If you plan to burn a new fuel type or a new mixture than what was burned during the initial performance test, then you must re-calculate the maximum HCl input anticipated from the new fuels based on supplier data or your own fuel analysis. If the results of re-calculating the HCl input exceeds the average HCl content level established during the initial test, then you must conduct a new performance test to demonstrate continuous compliance with the HCl emission limit.

(3) For boilers and process heaters with wet scrubbers that must comply with a mercury, PM (or total selected metals) and/or an HCl emission limit, you must monitor pressure drop and liquid flow rate of the scrubber and maintain the 3-hour block averages at or above the operating limits established during the performance test. You must monitor the pH of the scrubber and maintain the 3-hour block average at or above the operating limit established during the performance test to demonstrate continuous compliance with the HCl emission limits.

(4) For boilers and process heaters with dry scrubbers that must comply with a PM (or total selected metals) or mercury emission limit, and/or an HCl emission limit, you must continuously monitor the sorbent injection rate and maintain it at or above the operating limits established during the HCl performance test.

(5) For boilers and process heaters with fabric filters in combination with wet scrubbers, you must monitor the pH, pressure drop, and liquid flow rate of the wet scrubber and maintain the levels at or above the operating limits established during the HCl performance test. You must also maintain the operation of the fabric filter such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

(6) For boilers and process heaters with ESP in combination with wet scrubbers that must comply with a mercury, PM and/or an HCl emission limit, you must monitor the pH, pressure drop, and liquid flow rate of the wet scrubber and maintain the 3-hour block averages at or above the operating limits established during the HCl performance test. Also, you must monitor the voltage and secondary current of the ESP collection plates or total power input and maintain the 3-hour block averages at or above the operating limits established during the mercury or PM (or metals) performance test.

(7) For boilers and process heaters that choose to comply with the alternative total selected metals limit instead of PM emission limit, you must maintain monthly fuel records that demonstrate that you burned no new fuel type or new mixtures such that the total selected metals content of the inlet fuel was maintained at or below your maximum fuel inlet metals content operating limit set during the metals performance test. If you plan to burn a new fuel type or new mixture, then you must re-calculate the maximum metals input anticipated from the new fuels based on supplier data or own fuel analysis. If the results of re-calculating the metals input exceeds the average metals content level established during the initial test, then you must conduct a new performance test to demonstrate continuous compliance with the alternate selected metals emission limit.

(8) For boilers and process heaters that must comply with the mercury emission limit, you must maintain monthly fuel records that demonstrate that you burned no new fuel type or new mixture such that the total selected mercury content of the inlet fuel was maintained at or below your maximum fuel inlet metals content operating limit set during the mercury performance test. If you plan to burn a new fuel type or new mixture than what was burned during the initial performance test, then you must re-calculate the maximum mercury input anticipated from the new fuels based on supplier data or own fuel analysis. If the results of re-calculating the mercury input exceeds the average mercury content level established during the initial test, then you must conduct a new performance test to demonstrate continuous compliance with the mercury emission limit.

(9) For boilers and process heaters that choose to comply with any emission limit based on fuel analysis, you must maintain monthly fuel records to demonstrate that the content of fuel is maintained below the appropriate applicable emission limit.

(10) For new boilers and process heaters in any of the large subcategories with heat input capacities greater or equal to 100 MMBtu/hr, you must continuously monitor CO and maintain the 30-day rolling average CO emissions at or below 400 ppm by volume on a dry basis (corrected to 3 percent oxygen for units in the liquid or gaseous subcategories, and 7 percent for units in the solid fuel subcategories) to demonstrate compliance with the work practice standards at all times except during startup, shutdown, and malfunction and when the unit is operating less than 50 percent of the rated capacity.

If a control device other than the ones specified in this section is used to comply with the final rule, you must establish site-specific operating limits and establish appropriate continuous monitoring requirements, as approved by the EPA Administrator.

If you choose to comply using emissions averaging, you must demonstrate on a monthly basis that mercury, metals, PM, and HCl emission limits can be met over a 12-month period.

H. What Are the Notification, Recordkeeping and Reporting Requirements?

If your boiler or process heater is in the existing large gaseous fuel subcategory, or existing limited use gaseous fuel subcategory, or existing large liquid fuel subcategory, or existing limited use liquid fuel subcategory, or a new small liquid fuel unit that only burn gaseous fuels or distillate oil, you only have to submit the initial notification report. If your boiler or process heater is in the existing small gaseous, liquid, or solid fuel subcategories or new small gaseous fuel subcategory, you are not required to keep any records or submit any reports.

If your boiler or process heater is in any other subcategory, then you must keep the following records:

(1) All reports and notifications submitted to comply with the final rule.

(2) Continuous monitoring data as required in the final rule.

(3) Each instance in which you did not meet each emission limit work practice and operating limit, including periods of startup, shutdown, and malfunction (*i.e.*, deviations from the final rule).

(4) Monthly hours of operation by each source that is in a limited use subcategory.

(5) Monthly fuel use by each boilers and process heaters subject to an emission limit including a description of the type(s) of fuel(s) burned, amount of each fuel type burned, and units of measure.

(6) Calculations and supporting information of chloride fuel input, as required in the final rule.

(7) Calculations and supporting information of total selected metals and mercury fuel input, as required in the final rule, if applicable.

(8) A copy of the results of all performance tests, fuel analysis, opacity observations, performance evaluations, or other compliance demonstrations conducted to demonstrate initial or continuous compliance with the final rule.

(9) A copy of any federally enforceable permit that limits the annual capacity factor of the source to less than or equal to 10 percent.

(10) A copy of your site-specific startup, shutdown, and malfunction plan.

(11) A copy of your site-specific monitoring plan developed for the final rule, if applicable.

(12) A copy of your site-specific fuel analysis plan developed for the final rule, if applicable.

(13) A copy of the emissions averaging plan, if applicable.

You must submit the following reports and notifications:

(1) Notifications required by the General Provisions.

(2) Initial Notification no later than 120 calendar days after you become subject to the final rule.

(3) Notification of Intent to conduct performance tests and/or compliance demonstration at least 30 calendar days before the performance test and/or compliance demonstration is scheduled.

(4) Notification of Compliance Status 60 calendar days following completion of the performance test and/or compliance demonstration.

(5) Notification of intent to demonstrate compliance by emissions averaging.

(6) Notification of intent to demonstrate eligibility for either health-based compliance alternative.

(7) Compliance reports semi-annually.

I. What Are the Health-Based Compliance Alternatives, and How Do I Demonstrate Eligibility?

HCl Compliance Alternative

As an alternative to the requirement for each large solid fuel-fired boiler to demonstrate compliance with the HCl emission limit in the final rule, you may demonstrate compliance with a health-based HCl equivalent allowable emission limit.

The procedures for demonstrating eligibility for the HCl compliance alternative (as outlined in appendix A of the final rule) are:

(1) You must include in your demonstration every emission point covered under the final rule.

(2) You must conduct HCl and chlorine emissions tests for every emission point covered under the final rule.

(3) You must determine the total maximum hourly mass HCl-equivalent emission rate for your affected source by summing the maximum hourly emission rates of HCl and chlorine for each of the affected units at your facility covered under the final rule.

(4) Use the look-up table in the appendix A of the final rule to determine if your facility is in compliance with the health-based HCl-equivalent emission limit.

(5) Select the maximum allowable HCl-equivalent emission rate from the look-up table in appendix A of the final rule for your affected source using the average stack height of your emission units covered under the final rule as your stack height and the minimum distance between any affected emission point and the property boundary as your property boundary.

(6) Your facility is in compliance if your maximum HCl-equivalent emission rate does not exceed the value specified in the look-up table in appendix A of the final rule.

(7) As an alternative to using the look-up table, you may conduct a site-specific compliance demonstration (as outlined in appendix A of the final rule) which demonstrates that the subpart DDDDD units at your facility are not expected to cause an individual chronic inhalation exposure from HCl and chlorine which can exceed a Hazard Index (HI) value of 1.0.

Total Selected Metals Compliance Alternative

In lieu of complying with the emission standard for total selected metals (TSM) in the final rule based on the sum of emissions for the eight selected metals, you may demonstrate eligibility for complying with the TSM standard based on excluding manganese emissions from the summation of TSM emissions for the affected source unit(s).

The procedures for demonstrating eligibility for the TSM compliance alternative (as outlined in appendix A of the final rule) are:

(1) You must include in your demonstration every emission point covered under the final rule that emits manganese.

(2) You must conduct manganese emissions tests for every emission point covered under the final rule that emits manganese.

(3) You must determine the total maximum hourly manganese emission rate from your affected source by summing the maximum hourly manganese emission rates for each of the affected units at your facility covered under the final rule.

(4) Use the look-up table in appendix A of the final rule to determine if your facility is eligible for complying with the alternative TSM limit based on the sum of emissions for seven metals (excluding manganese) for the affected source units.

(5) Select the maximum allowable manganese emission rate from the look-up table in appendix A of the final rule for your affected source using the average stack height of your emission units covered under the final rule as your stack height and the minimum distance between any of those emission points and the property boundary as your property boundary.

(6) Your facility is eligible if your maximum manganese emission rate does not exceed the value specified in the look-up table in appendix A of the final rule.

(7) As an alternative to using look-up table to determine if your facility is eligible for the TSM compliance alternative, you may conduct a site-specific compliance demonstration (as outlined in appendix A of the final rule) which demonstrates that the subpart DDDDD units at your facility are not expected to cause an individual chronic inhalation exposure from manganese which can exceed a Hazard Quotient (HQ) value of 1.0.

If you elect to demonstrate eligibility for either of the health-based compliance alternatives, you must submit certified documentation supporting compliance with the procedures at least 1 year before the compliance date.

You must submit supporting documentation including documentation of all maximum capacities, existing control devices used to reduce emissions, stack parameters, and property boundary distances to each affected source of HCl-equivalent and/or manganese emissions.

You must keep records of the information used in developing the eligibility demonstration for your affected source.

To be eligible for either health-based compliance alternative, the parameters that defined your affected source as eligible for the health-based compliance alternatives (including, but not limited to, fuel type, type of control devices, process parameters reflecting the emission rates used for your eligibility demonstration) must be incorporated as Federally enforceable limits into your title V permit. If you do not meet these criteria, then your affected source is subject to the applicable emission

limits, operating limits, and work practice standards in the final rule.

If you intend to change key parameters (including distance of stack to the property boundary) that may result in lower allowable health-based emission limits, you must recalculate the limits under the provisions of this section, and submit documentation supporting the revised limits prior to initiating the change to the key parameter.

If you intend to install a new solid fuel-fired boiler or process heater or change any existing emissions controls that may result in increasing HCl-equivalent and/or manganese emissions, you must recalculate the total maximum hourly HCl-equivalent and/or manganese emission rate from your affected source, and submit certified documentation supporting continued eligibility under the revised information prior to initiating the new installation or change to the emissions controls.

III. What Are the Significant Changes Since Proposal?

A. Definition of Affected Source

The definition of affected source in § 63.7490 has been revised to be: (1) The collection of all existing industrial, commercial, or institutional boilers or process heaters within a subcategory located at a major source; and/or (2) each new or reconstructed industrial, commercial, or institutional boiler or process heater located at a major source.

B. Sources Not Covered by the NESHAP

The applicability section of the final rule (§ 63.7490(c)) has been written to clarify that the following are not subject to the final rule: Blast furnace stoves, any boiler or process heater specifically listed as an affected source in another MACT standard, temporary boilers, and blast furnace gas fuel-fired boilers and process heaters.

C. Emission Limits

The emission limit for mercury in the existing large solid fuel subcategories has been written as 0.000009 lb/MMBtu (from 0.000007 lb/MMBtu at proposal).

D. Definitions Added or Revised

The EPA has written the definitions of large, limited use, and small gaseous subcategories to include gaseous fuel-fired boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies.

The final rule also includes a definition of fuel type which is used in the fuel analysis compliance options. Fuel type means each category of fuels that share a common name of 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, and residual oil. Individual fuel types received from different suppliers are not considered new fuel types except for construction/demolition material.

Construction/demolition material means waste building material that result from the construction or demolition operations on houses and commercial and industrial buildings.

Unadulterated wood, component of biomass, means wood or wood products that have not been painted, pigment-stained, or pressure treated with compounds such as chromate copper arsenate, pentachlorophenol, and creosote. Plywood, particle board, oriented strand board, and other types of wood products bound by glues and resins are included in this definition.

We have included a definition for temporary boiler to mean any gaseous or liquid fuel-fired boiler that is designed, and is capable of, being carried or moved from one location to another. A temporary boiler that remains at a location for more than 180 consecutive days is no longer considered to be a temporary boiler. Any temporary boiler that replaces a temporary boiler at a location and is intended to perform the same or similar function will be included in calculating the consecutive time period.

The final rule also contains a definition written for waste heat boiler that identifies waste heat boilers incorporating duct or supplemental burners that are designed to supply 50 percent or more of the total rated heat input capacity of the waste heat boiler as not being waste heat boilers, but are considered boilers and subject to the final rule.

E. Requirements for Sources in Subcategories Without Emission Limits or Work Practice Requirements

In the final rule, we have clarified that sources in the existing large and limited use gaseous fuel subcategories, existing large and limited use liquid fuel subcategories, and new small liquid fuel subcategory that burn only distillate oil are only subject to the initial notification requirements in § 63.9(b) of subpart A of this part and are not required to submit as startup, shutdown, and malfunction (SSM) plan as part of their initial notification. We have written the final rule to state that sources in the existing small gaseous fuel, liquid fuel, and solid fuel subcategories and in the new small gaseous fuel subcategory are not subject to any requirements in the final rule or of subpart A of this part.

F. Carbon Monoxide Work Practice Emission Levels and Requirements

The final rule provides revisions to the CO work practice emission levels. For new sources in the solid fuel subcategory, the work practice standard has been written to be corrected to 7 percent oxygen rather than 3 percent. Units in the gaseous and liquid fuel subcategories still have to correct to 3 percent oxygen.

The final rule also allows sources with heat input capacities greater than 10 MMBtu/hr but less than 100 MMBtu/hr to conduct initial and annual compliance tests to demonstrate compliance with the CO limit. Sources greater than 100 MMBtu/hr must still demonstrate compliance using CO continuous emission monitors (CEMS).

The final rule also does not allow you to calculate data average using data recorded during periods where your boiler or process heater is operating at less than 50 percent of its rated capacity, monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities. You must use all data collected during all other periods in assessing compliance.

G. Fuel Analysis Option

We have clarified the fuel analysis options in the final rule. You are not required to conduct performance tests for hydrogen chloride, mercury, or total selected metals if you demonstrate compliance with the hydrogen chloride, mercury, or total selected metals limits based on the fuel pollutant content. Your operating limit is then the emission limit of the applicable pollutant. You are not required to conduct emission tests.

If you demonstrate compliance with the HCl, mercury, or TSM limit by performance tests, then your operating limits are the operating limits of the control device (if used) and the fuel pollutant content of the fuel type/mixture burned. Units burning multiple fuel types are required to determine by fuel analysis, the fuel pollutant content of the fuel/mixture burned during the performance test.

The final rule specifies the testing and initial and continuous compliance requirements to be used when complying with the fuel analysis options. Fuel analysis tests for total chloride, gross calorific value, mercury, metal analysis, sample collection, and sample preparation are included in the final rule.

We have written the requirement to remove the need for conducting additional tests if you receive fuel from a new supplier. You are required to conduct another performance test, if you demonstrated compliance through performance testing, only when you burn a new fuel type or mixture and the results of recalculating the fuel pollutant content are higher than the level established during the initial performance test.

H. Emissions Averaging

We have included a compliance alternative in the final rule to allow emissions averaging between existing large solid fuel boilers. Compliance must be demonstrated on a 12-month rolling average basis, determined at the end of every month. If you elect to comply with the emissions averaging compliance alternative, you must use equations provided in the final rule to demonstrate that particulate matter or TSM, HCl, or mercury from all applicable units do not exceed the emission limits specified in the final rule. If you use this option, you must also develop and submit an implementation plan no later than 6 months before the date that the facility intends to demonstrate compliance.

I. Opacity Limit

At proposal, we required sources meeting the PM and mercury limits to determine site-specific opacity operating limits based on levels during the initial performance test. To demonstrate continuous compliance with the opacity limit, the opacity operating limits have been established to be 20 percent (based on 6-minute averages) except for one 6-minute period per hour of not more than 27 percent for existing sources and 10 percent (based on 1-hour block averages) for new sources.

J. Operating Limit Determination

The final rule defines maximum and minimum operating parameters that must be met. For sources complying with the alternative opacity requirement of establishing opacity limits during the initial performance test, the maximum opacity operating limit is 110 percent of the highest test-run average opacity measured according to the final rule during the most recent performance test demonstrating compliance with the applicable emission limit. For sources meeting the standards using scrubbers or ESP, the minimum pressure drop, scrubber effluent pH, scrubber flow rate, sorbent flow rate, voltage or amperage means 90 percent of the lowest test run average pressure drop, scrubber effluent pH, scrubber flow rate, sorbent flow rate, voltage or amperage measured according to the most recent performance test demonstrating compliance with the applicable emission limits.

The final rule clarifies that operation above the established maximum or below the established minimum operating parameters constitute a deviation of established operating parameters.

K. Revision of Compliance Dates

In § 63.7510, we have also written the date by which you have to complete a compliance demonstration to be 180 days after the compliance date instead of at the compliance date.

IV. What Are the Responses to Significant Comments?

We received 218 public comment letters on the proposed rule. Complete summaries of all the comments and responses are found in the Response-to-Comments document (see **SUPPLEMENTARY INFORMATION** section).

A. Applicability

Comment: Many commenters requested that EPA exempt units that are not subject to emission limits or work practice requirements from monitoring, recordkeeping, and reporting requirements.

Response: Sources in subcategories that do not have any emission limitations and work practices are not required to keep records or reports other than the initial notification. This is appropriate because no reports other than the initial notification would apply to these units. The SSM plan is not necessary nor required for these units because § 63.6(e)(3) of subpart A of this part requires an affected source to develop an SSM plan for control equipment used to comply with the relevant standard. The proposed rule was not intended to require monitoring, recordkeeping, and reporting (including startup, shutdown, and malfunction plans), other than the initial notification for sources not subject to an emission limit. We have clarified this decision in the final rule. We have also determined that existing small units and new small gaseous fuel units, which are not subject to emission limits or work practices in this standard, and which are also not subject to such requirements in any other Federal regulation, should also not have to provide an initial notification. These small sources are generally gas-fired and since they have minimal emissions, they are usually considered as insignificant emission units by State permitting agencies.

Comment: Several commenters requested that EPA specifically exclude portable/transportable units from the final rule. The commenters stated that facilities periodically use these units to supply or supplement other site steam supplies when there is a mechanical problem that takes a unit out of service or during planned outages. The commenters added that because they are used on a limited basis, portable units are not fully integrated with site control systems and most portable/transportable units are owned by a rental company and may not be operated by the facility owner/operator.

Response: We agree with the commenters that temporary/portable units are used only on a limited basis and are not integrated into a facility's control system. These units are gas or oil fired units. Units in the existing gaseous or liquid subcategories are not subject to emission limits or work practice standards. Consequently, we have decided that temporary/portable units are not subject to the final rule. We have added a definition for temporary boiler to mean any gaseous or liquid fuel-fired boiler that is designed, and is capable of, being carried or moved from one location to another. A temporary boiler that remains at a location for more than 180 consecutive days is no longer considered to be a temporary boiler. Any temporary boiler that replaces a temporary boiler at a location and is intended to perform the same or similar function will be included in calculating the consecutive time period. We chose the 180-day time frame because that is the length of time a new source has after startup to conduct the initial performance test.

Comment: Several commenters requested EPA provide a lower size cut-off for the small unit subcategory. Several commenters argued that the benefits from requiring smaller units to install controls would be minimal given the overall monitoring, recordkeeping, and reporting burden. Several commenters also requested lower size cutoffs to make the final rule similar to others established by EPA (*e.g.*, NSPS Nitrogen Oxide (NO_X) SIP Call). Several commenters noted several recent court decisions in which the court has decided that a *de minimis* exemption is appropriate since the regulation of small sources would yield a gain of trivial or no value yet would impose significant regulatory burden. A wide range of lower size cutoffs were suggested. However, one commenter said that EPA should not develop *de minimis* exemptions. The commenter noted that *de minimis* exemptions do not spare EPA's resources for use on other

purposes and are not justified by reductions in industry burden or inconvenience. The commenter noted that EPA did not establish any administrative record justifying the *de minimis* exemption.

Response: We have reviewed the commenters arguments and all the data provided in the comment letters. There is no justification for developing a lower size cut-off or *de minimis* level. We would also note the designation of large and small subcategories was not based solely on size of the unit. Large and small subcategories were developed because small units less than 10 MMBtu/hr heat input typically use a combustor design that is not common in larger units. Large boilers generally use the watertube combustor design. The design of the boiler or process heater will influence the completeness of the combustion process which will influence the formation of organic HAP emissions. Additionally, the vast majority of small units use natural gas as fuel. The EPA chose to develop large and small subcategories to account for these differences and their affect on the type of emissions. The cut-off between the large and small subcategories of 10 MMBtu/hr was based on typical sizes for fire tube units, and also when considering cut-offs in State and Federal rules. Lastly, we would like to note that the final rule does not impose any requirements for existing units in any of the small subcategories.

Comment: Many commenters asked EPA to clarify which sources are not covered by the final rule.

Response: We have included an extensive list of sources that are not subject to the final rule. The final rule clarifies that boilers and process heaters that are included as part of the affected source in any other NESHAP are not subject to the NESHAP for industrial boilers and process heaters. However, we do not exclude boilers and process heaters that are used as control devices unless they are specifically considered part of any other NESHAP's definition of affected source. Incinerators, thermal oxidizers, and flares do not generally fall under the definition of a boiler or process heater and would not be subject to the final rule. The final rule excludes waste heat boilers and waste heat boilers with supplemental firing, as long as the supplemental firing does not provide more than 50 percent of the waste heat boiler's heat input. If your waste heat boiler does receive 50 percent of its total heat input from supplemental firing, it would be subject to the NESHAP for industrial boilers unless it is subject to any other NESHAP. We specifically exclude comfort heaters from the final rule. However, this exclusion does not include boilers used to make steam or heated water for comfort heat. If your boiler meets the definition of a hot water heater, then it would not be subject to the final rule. However, if the temperature, pressure, or capacity specifications of your boiler exceed the criteria specified for hot water heaters, then your boiler would be subject to the final rule. We recognize the unique properties of blast furnace gas having high CO concentrations and none to almost no organic compounds. Consequently, we agree that for these sources CO is not a surrogate for organic HAP emissions since CO is the primary component of blast furnace gas and virtually no organic HAP are generated in its combustion. As a result, we exclude from the final rule units that receive 90 percent or more of their total heat input from blast furnace gas. In addition, research and development (R&D) operations are not subject to the final rule. However, units that only provide steam to a process or for heating at a research and development facility are still subject to the final rule. This should address the commenters' concern over overlapping applicability.

Comment: Several commenters suggested that EPA revise the proposed definition of affected source to be consistent with the definition of affected source in the General Provisions. The definition in the rule as proposed is much more narrow than that in the General Provisions, even though the General Provisions states that each standard will redefine affected source based on published justification as to why the definition would result in significant administration, practical or implementation problems. The commenters argued that EPA failed to provide justification for the proposed definition of affected source, which is narrower than the definition of affected source in the General Provisions.

Response: We agree with the commenters and in the final rule have incorporated the broader definition of affected source from the revised General Provisions. The General Provisions define the affected source as "the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory * * *" Therefore, the definition of existing affected source in the final rule is the collection of existing industrial, commercial, or institutional boilers and process heaters within a subcategory located at a major source of HAP emissions.

B. Format

Comment: Several commenters opposed using one or more surrogates for the HAP regulated. Some commenters stated that EPA must set emission standards for each HAP emitted by this category. One commenter explained that the use of surrogates is acceptable if: (1) The surrogates reflect the actual emissions of the represented pollutants, (2) the emission limit set for the surrogate is consistent with the emission limit calculated for the represented pollutants, and (3) the surrogates have substantially the same properties as the represented pollutants and is controlled by the same mechanism. Based on these criteria, the commenter argued that EPA's selection of surrogates is inadequate. One commenter specifically contended that CO is not an adequate surrogate for dioxin because dioxin emissions are affected by the temperature of the emissions, how quickly the temperature is lowered, and the levels of chlorine in the materials that are being combusted and control devices. Other commenters supported the use of surrogates to represent the HAP list.

Response: As discussed in the proposal preamble, the use of surrogates for the HAP regulated is appropriate. Because of the large number of HAP potentially present, the disparity in the quality and quantity of the emissions information available, particularly for different fuel types, we chose to group HAP into four categories: Mercury, non-mercury metallic HAP, inorganic HAP, and organic HAP. In general, the pollutants within each group have similar characteristics and can be controlled with the same techniques. We then chose compounds that could be used as surrogates for all the compounds in each pollutant category. We have used surrogates in previous NESHAP as a technique to reduce the performance testing costs, and thus the use of surrogates is appropriate in the final rule.

For inorganic HAP, we chose to use HCl as a surrogate. The emissions test information available to us indicated that the primary inorganic HAP emitted from boilers and process heaters is HCl. Much smaller amounts of hydrogen fluoride and chlorine are emitted. Control technologies that would reduce HCl would also control other inorganic HAP. Additionally, we had limited emissions information for other inorganic HAP. By focusing on HCl, we have achieved control of the largest emitted and most widely emitted HAP,

and control of HCl would also constitute control of other inorganic HAP.

For non-mercury metallic HAP, we chose to use PM as a surrogate. Most, if not all, non-mercury metallic HAP emitted from combustion sources will appear on the flue gas fly-ash. Therefore, the same control technology that would be used to control fly-ash PM will control non-mercury metallic HAP. A review of data in the emission database for PM control devices having both inlet and outlet emissions results shows control efficiencies for each non-mercury metallic HAP similar to PM. Particulate matter was also chosen instead of a specific metallic HAP because all fuels do not emit the same type and amount of metallic HAP, but most generally emit PM that includes some amount and combination of metallic HAP. We maintain that particulate matter reflects the emissions of non-mercury metallic HAP as these compounds usually comprise a percentage of the emitted particulate matter. Since the NESHAP program is technology-based, the technologies that have been developed and implemented to control particulate matter, also control non-mercury metallic HAP. Furthermore, since non-mercury metallic HAP is a component of particulate matter, we can use particulate matter as a surrogate for the purposes of the final rule.

While we did use PM as a surrogate for non-mercury metallic HAP, we also provided an alternative total selected metals emission limit based on the sum of the emissions of the eight most common and largest emitted metallic HAP compounds from boilers and process heaters. Again, a total selected metals number was used instead of limits for each individual metallic HAP because sufficient information was not available for each metallic HAP for every fuel type. However, a total metals number could be calculated for every fuel type.

We realize that mercury emissions can exist in different forms depending on combustion conditions and concentrations of other compounds. That is why we have mercury as a separate pollutant category in the final rule and do not provide for a surrogate.

For organic HAP, we chose to use CO as a surrogate to represent the variety of organic compounds emitted from the various fuels burned. Both organic HAP and CO emissions are the result of incomplete combustion of the fuel. Because CO is a good indicator of incomplete combustion, there is a direct correlation between CO emissions and minimizing organic HAP emissions. The extent to which CO and HAP emissions are related can also depend on site-specific operating conditions for each boiler or process heater. This site-specific nature may result in various degrees of correlation between CO and organic HAP emissions, but it is proven that reductions in CO emissions result in a reduction of organic HAP emissions. The control methods for both CO and organic HAP are the same, *i.e.*, complete combustion. This result would not have been different if MACT floor analyses were conducted for specific organic HAP or for a surrogate compound such as CO. For boilers and process heaters, we have determined that CO is a reasonable indicator of incomplete combustion. Also, we did not set emission limits for each specific organic HAP because we lacked sufficient information for many of the organic HAP for all the fuels combusted. We acknowledge that there are many factors that affect the formation of dioxin, but we also recognize that dioxin can be formed in both the combustion unit and downstream in the associated PM control device. Minimizing organic HAP emissions can limit the formation of dioxin in the combustion unit. We reviewed all the good combustion practice (GCP) information available in the boiler population database and determined that no floor level of control exists, except for limiting CO emissions, such that GCP could be incorporated into the standard. One control technique, controlling inlet temperature to the PM control device, that has demonstrated controlling downstream formation of dioxins in other source categories (*e.g.*, municipal waste combustors) was analyzed for industrial boilers. In all cases, no increase in dioxins emissions were indicated across the PM control device even at high inlet temperatures. However, we requested comment on controls that would achieve reductions of organic HAP, including any additional data that might be available. The EPA did not receive any additional supporting information or data. Additionally, more stringent options beyond the floor level of control were evaluated, but were determined to be too costly and emissions reductions associated with the options could not be evaluated because no information was available that indicated a relationship between the GCP and emission reduction of organics (including dioxin).

C. Compliance Schedule

Comment: Many commenters requested that EPA provide an additional year to comply with the final rule. Commenters explained that the time lines associated with permitting, capital appropriation, project bid, and construction activities are significant and that the 3-year deadline would not provide adequate time for the estimated 3,730 existing units at affected sources to be retrofitted as necessary to meet the new MACT standards. The commenters added that sources subject to the final rule would also be competing with sources that are subject to other combustion rules for the same vendors.

Response: The EPA disagrees with the commenters that the 3-year compliance deadline is too short considering the number of sources that will be competing for the resources and materials from engineering consultants, equipment vendors, construction contractors, financial institutions, and other critical suppliers. The EPA recognizes the possibility that these same consultants, vendors, etc., may also be used to comply with the utility MACT standard. However, we know that many sources will not need to install controls. As a result, since not everyone will need more than 3 years to actually install controls, the final rule does not allow an extra year for existing sources to comply with the final rule. Section 112(i)(3)(B) of the CAA allows EPA or the permit authority, on a case-by-case basis, to grant an extension permitting an existing source up to 1 additional year to comply with standards if such additional period is necessary for the installation of controls. This provision is sufficient for those sources where the 3-year deadline would not provide adequate time to retrofit as necessary to comply with the requirements of the standard. We anticipate that a number of units will seek and be granted the 1-year extension since construction of needed control devices could be constrained by the potential impacts on delays in obtaining funding and potential labor and equipment shortages.

D. Subcategorization

Comment: Two commenters said that EPA does not have the authority to develop subcategories for the purpose of reducing compliance costs or weakening the standard. The commenters also noted that costs should not be considered in subcategorizing and establishing the MACT floor. One commenter explained that EPA has failed to present a persuasive rationale for the establishment of new or different subcategories, such as a wood-fired unit subcategory and noted that EPA cannot subcategorize based on fuel type, cost, level of emissions reductions, control technology applicability or effectiveness, achievability of emissions reductions, or health risks. The

commenter argued that EPA cannot subcategorize to reduce cost because that would change CAA section 112 standards into a cost-benefit program and that is not legally defensible. The commenter noted that the DC Circuit court recently held that, when confronted with the cost argument, costs are not relevant when determining MACT floors.

Response: If the commenters are referring to the request for comment regarding further subcategorizations than what was proposed, the EPA agrees that there is no justification for any further subcategories. The final rule maintains the subcategories presented in the proposed rule. If the commenters are referring to subcategories presented in the proposed rule, section 112(d)(1) of the CAA states "the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory" in establishing emission standards. Thus, we have discretion in determining appropriate subcategories based on classes, types, and sizes of sources. We used this discretion in developing subcategories for the industrial, commercial, and institutional boilers and process heaters source category. Through subcategorization, we are able to define subsets of similar emission sources within a source category if differences in emissions characteristics, processes, air pollution control device (APCD) viability, or opportunities for pollution prevention exist within the source category. We first subcategorized boilers and process heaters based on the physical state of the fuel (solid, liquid, or gaseous), which will affect the type of pollutants emitted and controls applicable, and the design and operation of the boiler, which influences the formation of organic HAP emissions. We then further subcategorized boilers and process heaters based on size. Our distinctions are based on technological differences in the equipment. For example, small units are package units typically having capacities less than 10 million Btu per hour heat input and use a combustor design which is not common in large units. A review of the information gathered on boilers also shows that a number of units operate as backup, emergency, or peaking units that operate infrequently. The boiler database indicates that these infrequently operated units typically operate 10 percent of the year or less. These limited use boilers, when called upon to operate, must respond without failure and without lengthy periods of startup. Since their use and operation are different compared to typical industrial, commercial, and institutional boilers, we decided that such limited use units should have their own subcategory.

Neither the subcategories or MACT floor analysis was conducted considering costs, either in the proposed rule or in the final rule.

Comment: Many commenters requested EPA to develop a separate subcategory for small municipal electric utilities. Reasons for creating a subcategory for small electrical utility steam generating units included: (1) EPA has authority to establish such a subcategory of sources to be regulated under CAA section 112 and is meant to address control costs and feasibility, (2) past EPA practice supports subcategorization in this instance, (3) differences between municipal utility boilers and non-utility boilers justify subcategorization, and (4) EPA cannot properly account for cost and energy concerns mandated in the MACT standard setting process without subcategorization for municipal utility boilers. The commenters added that the unique physical attributes of municipally-owned utilities, as well as their significant and direct impact on municipal tax base, support a separate subcategorization.

Response: The EPA sees no technical or legal justification for creating a separate subcategory for municipal utilities. Boilers at municipal utilities fire the same type of fuels, have the same type of combustor designs, and can use the same type of controls as other units in the large subcategory. Consequently, the subcategories that are in the final rule are the same as at proposal. We would also like to clarify that subcategories were developed based on combustor design and not on industrial sector. Also, had we gone beyond-the-floor, we would have considered cost in the final determination. Since we did not go beyond-the-floor level of control, cost did not play a role in the analysis.

Comment: Many commenters requested EPA add a subcategory for medium sized boilers and process heaters.

Response: The EPA does not see justification for creating a separate subcategory for medium sized units. The designation of large and small subcategories was not based

Response: The EPA does not see justification for creating a separate subcategory for medium sized units. The designation of large and small subcategories was not based solely on size of the unit. Large and small subcategories were developed because small units less than 10 MMBtu/hr heat input typically use a combustor design that is not common in larger units. Large boilers generally use the watertube combustor design. The design of the boiler or process heater will influence the completeness of the combustion process which will influence the formation of organic HAP emissions. The EPA developed large and small subcategories to account for these differences and their affect on the type of emissions. The proposed size break between the large and small subcategories of 10 MMBtu/hr was based on typical sizes for firetube and cast iron units and considering cut-offs in State and Federal permitting requirements and rules. The EPA does not view medium sized boilers as being different than larger boilers. Combustor designs, applicable air pollution control devices, fuels used, and operation are similar for large and medium. While actual pollution controls used and monitoring equipment may be different, the CAA does not allow EPA to subcategorize on these parameters.

Section 112(d)(1) of the CAA allows EPA to distinguish among classes, types, and size in establishing MACT standards. As indicated above, at proposal, the size break selected between large and small units of 10 MMBtu/hr was based on typical sizes for fire tube units and also considering cut-offs in State and Federal permitting requirements and emission rules. Based on comments, we have examined information in the docket regarding the population and characteristics of industrial, commercial, and institutional boilers. It is correct that boilers below 10 MMBtu/hr are generally not required to be permitted and are either firetube or cast iron boilers. Based on review of the thousands of responses received on an information collection request (ICR) conducted during the rulemaking process, it is obvious and appropriate that the distinction between small and large units needs to include size. It is apparent from the ICR responses that facilities know the size of their units but do not generally know the exact type of the units. Many responses indicated that the boiler was both firetube and watertube. Many more responses did not list the boiler type at all. Therefore, the inclusion of size in the definition of small and large subcategories is appropriate.

Based on review of the 1979 EPA document on boiler population and the ICR survey database, the appropriate size break between small and large type units is 10 MMBtu/hr. In the EPA document, 99 percent of the boilers listed as being below 10 MMbtu/hr are either firetube or cast iron. Since these trends are from a 25 year old report, we

analyzed our ICR survey database which confirmed these findings.

E. MACT Floor

Comment: Several commenters supported EPA's finding that the MACT floor level for existing gas and liquid fuel-fired units is no emissions reductions. Other commenters contended that EPA has legal authority to set the MACT floor as "no emissions control" for particular HAP categories. A commenter noted that EPA has a clear statutory obligation to set emission standards for each listed HAP. One commenter specifically challenged EPA's determination that "no control" is the MACT floor for organic pollutants. The commenter noted that the U.S. Court of Appeals for the DC Circuit had squarely held, in the National Lime case, that EPA was not allowed to make a "no control" determination for a pollutant emitted by a listed category of sources.

Response: First, the MACT floor methodology we use is consistent with DC Circuit's holding in the National Lime case. The DC Circuit held that by focusing only on technology EPA ignored the directive in CAA section 112(d)(2) to consider pollution-reducing measures including process changes and substitution of materials.

The EPA has ample legal authority to set the MACT floor at "no emissions reductions." This is because the statute requires EPA to set standards that are duplicable by others. In the National Lime case, the court threw out EPA's determination of a no control floor because it was based only on a control technology approach. The court stated that EPA must look at what the best performers achieve, regardless of how they achieve it. Therefore, our determination that the MACT floor for certain subcategories or HAP is "no emissions reductions" is lawful because we determined that the best-performing sources were not achieving emissions reductions through the use of an emission control system and there were no other appropriate methods by which boilers and process heaters could reduce HAP emissions. Furthermore, setting emissions standards on the basis of actual emissions data alone where facilities have no way of controlling their HAP emissions would contravene the plain statutory language as well as Congressional intent that affected sources not be forced to shut down.

The EPA agrees with the commenter that all factors which might control HAP emissions must be considered in making a floor determination for each subcategory. However, EPA disagrees that it must express the floor as a quantitative emission level in those instances where the source on which the floor determination is based has not adopted or implemented any measure that would reduce emissions.

A detailed discussion of the MACT floor methodology is presented in the memorandum "MACT Floor Analysis for New and Existing Sources in the Industrial, Commercial, and Institutional Boilers and Process Heaters Source Categories" in the docket. In summary, we considered several approaches to identifying MACT floor for existing industrial, commercial, and institutional boilers and process heaters. Based on recent court decisions, in most cases the most acceptable approach for determining the MACT floor is likely to involve primarily the consideration of available emissions test data. However, after review of the available HAP emission test data, we determined that it was inappropriate to use this MACT floor approach to establish emission limits for boilers and process heaters. The main problem with using only the HAP emissions data is that, based on the test data alone, uncontrolled units (or units with low efficiency add-on controls) were frequently identified as being among the best performing 12 percent of sources in a subcategory, while many units with high efficiency controls were not. However, these uncontrolled or poorly controlled units are not truly among the best controlled units in the category. Rather, the emissions from these units are relatively low because of particular characteristics of the fuel that they burn, that can not reasonably be replicated by other units in the category or subcategory. A review of fuel analyses indicate that the concentration of HAP (metals, HCl, mercury) vary greatly, not only between fuel types, but also within each fuel type. Therefore, a unit without any add-on controls, but burning a fuel containing lower amounts of HAP, can have emission levels that are lower than the emissions from a unit with the best available add-on controls. If only the available HAP emissions data are used, the resulting MACT floor levels would, in most cases, be unachievable for many, if not most, existing units, even those that employ the most effective available emission control technology. Another problem with using only emissions data is that there is very limited or no HAP emissions information available to the Agency for the subcategories. This is consistent with the fact that units in these source categories have not historically been required to test for HAP emissions.

We also considered using HAP emission limits contained in State regulations and permits as a surrogate for actual emission data in order to identify the emissions levels from the best performing units in the category for purposes of establishing MACT standards. However, we found no State regulations or State permits which specifically limit HAP emissions from these sources.

Consequently, we concluded that the most appropriate approach for determining MACT floors for boilers and process heaters is to look at the control options used by the units within each subcategory in order to identify the best performing units. Information was available regarding the emission control options employed by the population of boilers identified by the EPA. We considered several possible control techniques (*i.e.*, factors that influence emissions), including fuel substitution, process changes and work practices, and add-on control technologies.

We first considered whether fuel switching would be an appropriate control option for sources in each subcategory. We considered the feasibility of both fuel switching to other fuels used in the subcategory and to fuels from other subcategories. This consideration included determining whether switching fuels would achieve lower HAP emissions. A second consideration was whether fuel switching could be technically achieved by boilers and process heaters in the subcategory considering the existing design of boilers and process heaters. We also considered the availability of various types of fuel. After considering these factors, we determined that fuel switching was not an appropriate control technology for purposes of determining the MACT floor level of control for any subcategory. This decision was based on the overall effect of fuel switching on HAP emissions, technical and design considerations, and concerns about fuel availability.

We also concluded that process changes or work practices were not appropriate criteria for identifying the MACT floor level of control for units in the boilers and process heaters category. The HAP emissions from boilers and process heaters are either fuel dependent (*i.e.*, mercury, metals, and inorganic HAP) or combustion related (*i.e.*, organic HAP). Fuel dependent HAP are typically controlled by removing them from the flue gas after combustion. Therefore, they are not affected by the operation of the boiler or process heater. Consequently, process changes would be ineffective in reducing these fuel-related HAP emissions.

On the other hand, organic HAP can be formed from incomplete combustion

of the fuel. Good combustion practice (GCP), in terms of boilers and process heaters, could be defined as the system design and work practices expected to minimize organic HAP emissions. While few sources in EPA's database specifically reported using good combustion practices, the data that we have suggests that boilers and process heaters within each subcategory might use any of a wide variety of different work practices, depending on the characteristics of the individual unit. The lack of information, and lack of a uniform approach to assuring combustion efficiency, is not surprising given the extreme diversity of boilers and process heaters, and given the fact that no applicable Federal standards, and most applicable State standards, do not include work practice requirements for boilers and process heaters. Even those States that do have such requirements do not require the same work practices. For example, CO emissions are generally a good indicator of incomplete combustion, and, therefore, low CO emissions might reflect good combustion practices. (As discussed in the proposal, CO is considered a surrogate for organic HAP emissions.) Therefore, we considered whether existing CO emission limits might be used to establish good combustion practice standards for boilers and process heaters. We reviewed State regulations applicable to boilers and process heaters, and then for each subcategory we matched the applicability of State CO emission limits with information on the locations and characteristics of the boilers and process heaters in the population database. Ultimately, we found that very few units (less than 6 percent) in any subcategory were subject to CO emission limits. We concluded that this information did not allow EPA to identify a level of performance that was representative of good combustion across the various units in any subcategory. Therefore, we did not establish a CO emission limit, as a surrogate for organic HAP emissions, as a part of the MACT floor for existing units. However, we have considered the appropriateness of such requirements in the context of evaluation possible beyond-the-floor options.

In general, boilers and process heaters are designed for good combustion. Facilities have an economic incentive to ensure that fuel is not wasted, and the combustion device operates properly and is appropriately maintained. In fact, existing boilers and process heaters are used typically as high efficiency control devices to control (reduce) emission streams containing organic HAP compounds from various process operations. Therefore, EPA's inability to establish a combustion practice requirement as part of the MACT floor for existing sources in this category should not reduce the incentive for owners and operators to run their boilers and process heaters at top efficiency.

As a result of the evaluation of the feasibility of establishing emission limits based on control techniques such as fuel switching and good combustion practices, we concluded that add-on control technology should be the primary factor for purposes of identifying the best controlled units within each subcategory of boilers and process heaters. We identified the types of air pollution control techniques currently used. We ranked those controls according to their effectiveness in removing the different HAP categories of pollutants; including metallic HAP and PM, inorganic HAP such as acid gases, mercury, and organic HAP. We then listed all the boilers and process heaters in the population database in order of decreasing control device effectiveness within each subcategory for each pollutant type. Then we identified the top 12 percent of units within each category based on this ranking, and determined what kind of emission control technology, or combination of technologies, the units in the top 12 percent employed. Finally, we looked at the emissions test data from boilers and process heaters that used the same control technology, or technologies, as the units in the top 12 percent to estimate the average emissions limitation achieved by these units.

This approach reasonably ensures that the emission limit selected as the MACT floor adequately represents the average level of control actually achieved by units in the top 12 percent. The analysis of the measured emissions from units representative of the top 12 percent is reasonably designed to provide a meaningful estimate of the average performance, or central tendency, of the best controlled 12 percent of units in a given subcategory. For existing subcategories where less than 12 percent of units in the subcategory use any type of control technology, we looked to see if we could estimate the central tendency of the best controlled units by looking at the unit occupying the median point in the top 12 percent (the unit at the 94th percentile). If the median unit of the top 12 percent is using some control technology, we might use the measured emission performance of that individual unit as the basis for estimating an appropriate average level of control of the top 12 percent. For subcategories where less than 6 percent of the units in a HAP grouping used controls or limited emissions, the median unit for that HAP grouping reflects no emissions reductions. Therefore, in these circumstances, EPA has appropriately established the MACT floor emission levels for these sources as no emission reduction.

Comment: Many commenters opposed EPA using emissions data from units in the large subcategory to develop emission limits for units in the small or limited use subcategories. Some commenters stated that it was not appropriate to assume that emissions rates achievable by large units are achievable by small units, even the best controlled units. Other commenters argued that the use of large unit data in MACT determinations for other subcategories would defeat the purpose of the subcategorization and violate the requirements of CAA section 112 because the use of this data does not represent sources in the relevant category or subcategory.

Response: The EPA disagrees with the commenters and maintains that it has conducted the MACT floor analysis appropriately. Section 112(d) of the CAA requires us to establish emission limits for new sources based on the performance of the best-controlled similar source. The CAA does not specify that the similar source must be within the same source category or subcategory. To the contrary, our interpretation of section 112(d) is that we are obligated to consider similar sources from other source categories or subcategories in determining the best-controlled similar source for establishing MACT for new sources.

For new limited use and small units, we concluded that the best-controlled similar sources are found in the large subcategory. First, EPA determined the control technology used by the best controlled sources in the subcategory. For example, only units in the population database less than 10 MMBtu/hr (and not in the limited use subcategory) were used to determine the MACT floor control technology for units in the small subcategories. Second, EPA used information in the emissions test database to establish the emission level associated with the MACT floor control technology. The emissions test database did not contain test data for limited use or small boilers and process heaters. Section 112(d) of the CAA requires EPA to use information from similar sources to set the MACT floor. Such sources may not be in the same subcategory. Although the units in the small and

limited use subcategories are different enough to warrant their own subcategory (*i.e.*, different purposes and operation), emissions of the specific types of HAP for which limits are being proposed are expected to be related more to the type of fuel burned and the type of control used, than to unit operation. Consequently, EPA determined that emissions information from large fuel-fired units could be used to establish MACT floor levels for the small and limited use subcategories because the fuels and controls are similar. The proposal preamble requested additional information from commenters to refine/revise the approach if necessary. No commenters provided emissions information for limited use or small subcategory boilers or process heaters.

Comment: Several commenters requested that EPA account for variability in fuel composition as MACT floors are established and to provide adequate allowances for inherent fuel supply variability. Some commenters argued that there is no flexibility in the rule to account for this variability and noted that coal composition can vary by location and also within an individual seam.

Response: As described in the memorandum "Revised MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heater National Emission Standards for Hazardous Air Pollutants Based on Public Comments" in the docket, the calculation of numerical emission limits was a two-step analysis. The first step involved calculating a numerical average of the appropriate subset of emission test data. The second step involved generating and applying an appropriate variability factor to account for unavoidable variations in emissions due to uncontrollable variations in fuel characteristics and ordinary operational variability. Accounting for variability is appropriate in order to generate a more accurate estimation of the actual, long term, performance of a source (*e.g.*, the source occupying the median point in the top 12 percent). An emission test provides a momentary snapshot, not an estimation of continuous performance. In order to translate the former into the latter, we must account for that ordinary and unavoidable variability that the source is likely to experience over time. This gives us a more reasonable estimate of the actual level of emissions control that the unit is achieving. The EPA contends that by considering the variability of emissions information, we have indirectly incorporated variability in fuel, operating conditions, and sampling and analytical conditions because these parameters vary from emission tests conducted from one unit to another, and even within each test set of three measurements at a single unit. The most elementary measure of variation is range. Range is defined as the difference between the largest and smallest values. This is the variability methodology used in the proposed rule. That is, for each unit with multiple emissions tests conducted over time, the variability was calculated by dividing the highest three-run test result by the lowest three-run test result. The overall variability was calculated by averaging all the individual unit variability factors. This overall variability factor was multiplied by the overall average emission level to derive a MACT floor limit representative of the average emission limitation achieved by the top 12 percent of units. This approach adequately accounts for inherent fuel supply variability. Based on comments, EPA did conduct a more robust statistical analysis (t-test) of the mercury emissions data used in the MACT floor analysis to identify the 97.5th percent confidence limit. This analysis provided similar results to the variability analysis conducted in the proposed rule. Consequently, EPA decided not to change its variability methodology. A detailed discussion of the statistical analysis conducted is provided in the memorandum "Statistical Analysis of Mercury Test Data Variability in Response to Public Comments on Determination of the MACT Floor for Mercury Emissions" in the docket.

Comment: Several commenters supported EPA's finding that the MACT floor level of control for existing gaseous and liquid fuel units is no control. Other commenters noted that EPA has a clear statutory obligation to set emission standards for each listed HAP (the commenter cited legal briefs). One commenter specifically challenged EPA's determination of the MACT floor for organic pollutants. The commenter explained that EPA should rank the units for which emissions data is available according to the best performing units, not based on the add-on control level of 6 percent of the total population. The commenter noted that the U.S. Court of Appeals for the DC Circuit had squarely held, in the National Lime case, that EPA was not allowed to make a "no control" determination for a pollutant emitted by a listed category of sources.

Response: The EPA agrees that all factors which might control HAP emissions must be considered in making a floor determination for each subcategory. However, EPA disagrees that it must express the floor as a quantitative emission level in those instances where the sources on which the floor determination is based has not adopted or implemented any measure that would reduce emissions. For several subcategories and certain HAP, EPA has not identified any adjustments or other operational modifications that would materially reduce emissions by these units, and EPA had determined that no add-on controls are presently in use. In these circumstances, EPA has established appropriately the MACT floors for these sources as no emission reduction.

Comment: One commenter pointed out that the variability factor used to make the calculated MACT floor less stringent is not allowed by section 112 of the CAA. The commenter mentioned that the variability factors are not consistent, as one factor considers the fuel variability and the other factor considers the test data variability.

Response: Section 112(d)(2) of the CAA requires that emissions standards promulgated shall require the maximum degree of reductions in emissions that the EPA Administrator, taking into consideration the costs of achieving such emission reduction, determines is achievable for new and existing sources in the subcategory to which such emission standards applies. Accounting for variability is appropriate in order to generate a more accurate estimation of the actual, long term, performance of a source (*e.g.*, the source occupying the median point in the top 12 percent). An emission test provides a momentary snapshot, not an estimation of continuous performance. In order to translate the former into the latter, we must account for that ordinary and unavoidable variability that the source is like to experience over time. This give us a more reasonable estimate of the actual level of emissions control that the unit is achieving. As such, due to variations in fuel burned, and ordinary operational variability any emission limit set from a point source measurement alone may not be indicative of normal emissions or operations of the unit. Attempting to base a standard (either a floor standard, or a beyond-the-floor standard) solely on point measurements would lead to unachievable standards for all sources. Limits set by EPA must be achieved at all times, and it is important that the MACT floor limit adequately account for the normal and unavoidable variability in the process and in the operation of the control device.

Variability was assessed two ways. For existing subcategories, variability in emissions information was used to develop variability factors for all

subcategories where emissions information was available. Variability in fuel content was used only in situations regarding determining the achievable MACT floor level for new sources from the emission test result on the best controlled similar source. This approach is appropriate since the main uncertainty associated with the emission test result from the best controlled similar source is fuel variability. Corresponding fuel analysis results were not available for the emissions test results from the best controlled similar source. Whereas, the average emission level of the best 12 percent of the units has, besides fuel variability, the uncertainty associated with operational and design variability of the various control devices installed on units that represent the best 12 percent of the units. For example, available fuel analysis information shows that mercury content of coal varies by a factor of 12.54. Dividing the highest mercury emission test result by the lowest mercury test results from coal-fired units included in units that represent the best 12 percent results in a variability factor of 20. Therefore, we concluded that fuel availability was inherently considered in the MACT floor analysis approach used for existing subcategories.

Comment: Many commenters requested that EPA revise the MACT floor methodology for mercury emission limits. The commenters contended that the variability factor was calculated inappropriately. Other commenters stated that EPA should account for variability in fuel composition in the MACT floor analysis. Other commenters expressed concern that the floor level of control was based on fabric filters, which has not been proven at all sources to reduce mercury.

Response: As discussed in the proposal preamble, the MACT floor analysis for mercury was based on a two step process. First the percentage of units with control technologies that could achieve mercury emissions reductions was determined using the boiler population databases. If the control technology analysis indicated that at least 12 percent of sources in the subcategory used a control device that could achieve mercury emissions reductions, then the control technology present at the median (6th percentile) was identified as the MACT floor control technology. The MACT floor level of control for mercury was identified as a fabric filter. The control effectiveness of fabric filters was based on emissions information for utility boilers that indicated that mercury emissions reductions were being achieved with this technology. In this case, we could use control efficiency information from another similar source category to supplement the information available in this source category because of the similarity in fuel burned, combustor type, and control methodology and operation. We maintain that fabric filters are still the appropriate level of control for the MACT floor.

Second, the emission limit associated with the MACT floor control technology was calculated using emissions information for units in the subcategory, whenever possible. For most of the subcategories developed, emissions information was adequate. Only for the emission limit for new source liquids and the variability factor for new source solids was fuel pollutant content incorporated into the MACT floor analyses. The mercury fuel content of coal from the utility industry was used in developing the variability factors for new solid fired units. This was done because mercury emissions are dependent on the quantity of mercury in the fuel burned. Coal available to utilities and industrial boilers and process heaters is expected to be similar, and coal is the solid fuel that is routinely used in such units that has generally the greatest degree of HAP variability. We maintain that the utility database used at proposal to develop the variability factor for new sources was adequate in establishing the MACT floor emission limit.

The EPA recognizes that the mercury emissions database for industrial boilers is limited. However, EPA is directed by the CAA to develop standards for sources using whatever data is available. Prior to proposal and during the Industrial Combustion Coordinated Rulemaking (ICCR) process, EPA conducted a thorough search for HAP emission test reports. This search was supported by industry, trade groups, and States. For criteria pollutants, such as PM, substantial emission information was available and gathered. For mercury and other HAP, this was not the case. Industrial boilers have not generally been required to test for HAP emissions. In the proposed rule, EPA requested commenters to provide additional emissions information. However, only one source provided any additional mercury emissions data. This information (test results from three additional coal-fired industrial boilers) was used to revise the mercury emission limit for existing sources. We also reviewed the mercury emission database used to develop the MACT floor emission limit for existing sources. After review, we determined that a revision to the variability factor was appropriate. The additional data and the revised variability factor was used to re-calculate the mercury emission limit to be 0.000009 lb/MMBtu (from 0.000007 lb/MMBtu at proposal). A detailed discussion of the revised MACT floor analysis conducted is provided in the memorandum "Revised MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants Based on Public Comments" in the docket.

Variability of the emissions data were incorporated into the final emission limits. The EPA contends that by considering the variability of emissions information, we have indirectly incorporated variability in fuel, operating conditions, and sampling and analytical conditions because these parameters vary from emission tests conducted from one unit to another, and even within one unit. The EPA does not consider it appropriate or feasible to incorporate variability from a multitude of parameters because such information is not available and cannot be correlated to the emissions information in the emissions test database. For the final rule, EPA did conduct a statistical analysis of the data to identify the 97.5th percent confidence interval. This analysis provided similar results to the variability analysis conducted in the proposed rule. Consequently, EPA decided not to change its variability methodology. A detailed discussion of the statistical analysis conducted is provided in the memorandum "Statistical Analysis of Mercury Test Data Variability in Response to Public Comments on Determination of the MACT Floor for Mercury Emissions" in the docket.

Comment: Several commenters contended that the California standards which the CO requirements are based on do not require CO CEMS, but require initial compliance testing and periodic subsequent performance testing.

Response: The commenters are correct that the California CO regulations do not require CO CEMS. The regulations do provide sources with the option of conducting annual testing or installing CO CEMS to demonstrate compliance with the CO emission limit. Because the regulations that were the basis of the MACT floor do not provide specifics on which boilers should conduct annual testing and which should use CO CEMS, we reviewed the cost information provided by the commenters to make this determination. In considering the additional cost information and reviewing the cost information used in the proposed rule, the EPA decided that

changes to the CO compliance requirements were warranted. The final rule requires that new units with heat input capacities less than 100 MMBtu/hr conduct initial and annual performance tests for CO emissions. New units with heat input capacities greater or equal to 100 MMBtu/hr are still required to install, operate, and maintain a CO CEMS.

Regardless of whether the California regulations do or do not require CO CEMS, we would have reviewed the need for continuous monitoring and operating limits in order to ensure the most accurate indication of proper operation of the control system. The purpose of all of the minimum operating parameter limits in the standard is to ensure continuous compliance by ensuring that the air pollution control equipment is operating as they were during the latest performance test demonstrating compliance with the emission limits. The operating parameters are established as "minimum" to provide enforceable boundaries in their operation. Operating outside the bounds of the minimum parameters may lead to increased air emissions.

The EPA would also like to clarify that operation above the CO limit constitutes a deviation of the work practice standard. However, the determination of what deviations constitute violations of the standard is up to the discretion of the entity responsible for enforcement of the standards.

F. Beyond the MACT Floor

Comment: Many commenters contended that carbon injection should have been required as a beyond-the-floor option. Other commenters supported EPA's decision to not require any controls beyond-the-floor.

Response: For the final rule, EPA maintains that options beyond the MACT floor are not appropriate for the standard. The EPA is required by the CAA to set the standard at a minimum on the best controlled 12 percent of sources (for existing units) or best controlled similar source (for new units). The CAA also requires EPA to consider costs and non-air quality impacts and energy requirements when considering more stringent requirements than the MACT floor. As documented in the memorandum "Methodology for Estimating Costs and Emissions Impacts for Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" in the docket, EPA did consider the cost and emission impacts of a variety of regulatory options more stringent than the MACT floor for each subcategory. The EPA recognizes that for some subcategories, more stringent controls than the MACT floor can be applied and achieve additional emissions reductions. However, EPA also determined that the cost impacts of such controls were very high. Considering both the costs and emissions reductions, EPA determined that it would be infeasible to require any options more stringent than the floor level.

For the final rule, EPA maintains that carbon injection should not be required as an above the floor technology. As discussed in the proposal preamble, we identified one existing industrial boiler that was using carbon injection. The emissions data that we obtained from the boiler indicated that this carbon injection unit was not achieving mercury emissions reductions. This result led us to conclude that it was not the new source floor level of control. However, there may have been other reasons for the ineffectiveness of this system (*e.g.*, low inlet mercury levels, insufficient carbon injection rate, ESP instead of fabric filter for PM control). Therefore, we considered carbon injection as a beyond-the-floor option, but decided that while this control technique has been used in other source categories, there is no demonstrated evidence that it would work for industrial boilers and process heaters because the type of mercury emitted and properties of the emission streams are sufficiently different for boilers and process heaters and other source categories.

G. Work Practice Requirements

Comment: Many commenters requested EPA consider exceedences of the CO limit to be a trigger for corrective action rather than a violation.

Response: In the final rule, we have clarified that an exceedence of the CO limit constitutes a deviation of the work practice standard. An observed exceedence of a monitoring parameter is not an automatic violation. You are required to report any deviation from an applicable emission limitation (including operating limit). We will review the information in your report along with other available information to determine if the deviation constitutes a violation. The determination of what emission or operating limit deviation constitutes violations of the standard is up to the discretion of the entity responsible for enforcement of the standard.

H. Compliance

Comment: Many commenters requested that EPA simplify and write the fuel monitoring requirements to not require retesting of fuel for changes in fuel supplier.

Response: We agree that the fuel monitoring requirements in the proposal needed to be clarified and explained further. Therefore, we have clarified the fuel analysis options in the final rule. If you elect to demonstrate compliance with the HCl, mercury, or total selected metals limit by using fuel which has a statistically lower pollutant content than the emission limit, then your operating limit is the emission limit of the applicable pollutant. Under this option, you are not required to conduct performance tests (*i.e.* stack tests).

If you demonstrate compliance with the HCl, mercury, or total selected metals limit by using fuel with a statistically higher pollutant content than the applicable emission limit, but performance tests demonstrate that you can meet the emission limits, then your operating limits are the operating limits of the control device (if used) and the fuel pollutant content of the fuel type/mixture burned.

The final rule specifies the testing methodology and procedures and the initial and continuous compliance requirements to be used when complying with the fuel analysis options. Fuel analysis tests for total chloride, gross calorific value, mercury, metal analysis, sample collection, and sample preparation are included in the final rule.

If you elect to comply based on fuel analysis, you are required to statistically analyze, using the z-test, the data to determine the 90th percentile confidence level. It is the 90th percentile confidence level that is required to be used to determine compliance with the applicable emission limit. The statistical approach is required to assist in ensuring continuous compliance by statistically accounting for the inherent variability in the fuel type.

You are required to recalculate the fuel pollutant content only if you burn a new fuel type or fuel mixture. You are required to conduct another performance test if you demonstrate compliance through performance testing, you burn a new fuel type or mixture, and the results of recalculating the fuel pollutant content are higher than the level established during the initial performance test.

Comment: Many commenters requested EPA consider exceedences of

parametric limits to be a trigger for corrective action rather than a violation.

Response: In the final rule, we have clarified that an exceedence of the parametric limits constitute a deviation of the operating limits. An observed exceedence of a monitoring parameter is not an automatic violation. You are required to report any deviation from an applicable emission limitation (including operating limit). We will review the information in your report along with other available information to determine if the deviation constitutes a violation. The determination of what emission or operating limit deviation constitutes violations of the standard is up to the discretion of the entity responsible for enforcement of the standard.

Comment: Many commenters requested EPA revise the opacity requirements. Commenters objected to the provision in the proposed NESHAP that would establish an opacity "operating limit" based on the initial performance test. Some commenters contended that EPA has provided no data or references demonstrating a relationship between opacity and particulate, total metals, or mercury emissions. Other commenters argued that the proposed opacity limit approach for dry control devices is unworkable due to the inherent inability of continuous opacity monitors (COMS) to accurately measure opacity at levels less than 10 percent. Some commenters argued that the performance and opacity achieved during the initial test may not be representative of the unit's performance. Other commenters explained that equipment condition, fuel and operating variations, and other uncontrollable parameters may result in varying emissions and emissions control equipment efficiencies over time. Commenters suggested requiring the NSPS limits for opacity rather than setting opacity based on the initial compliance test.

Response: We have reviewed the information provided by the commenters, and agree that the opacity operating limit requirements in the proposed rule are not appropriate for this source category. Because of the variability in fuels burned, the combination of fuels burned, and the typical operation of boilers and process heaters, we have decided that an opacity limit set based on the initial performance test may not be representative of the units typical performance.

We have revised the opacity operating limit provision by requiring existing units to maintain opacity to less than or equal to 20 percent (based on 6-minute averages) except for one 6-minute period per hour of not more than 27 percent. This is the opacity limit contained in the current NSPS for industrial boilers, which has a similar PM emission limit as the final rule. Therefore, it was determined that it was appropriate to include a similar opacity level as the control device operating limit for existing units. New sources can maintain their opacity operating limit to less than or equal to 10 percent (based on 1-hour block averages). This level appears to be the lowest opacity level currently applicable to industrial boilers in State regulations.

Comment: Several commenters objected to the requirement to conduct performance testing at worst case conditions. The commenters found this requirement to be unrealistic because stack testing must be scheduled well in advance and worst-case conditions depend on fuel, load, and many other variables, making it impossible to assure that the testing will occur during worst-case conditions. Two commenters contended there can be no guarantee that mineral properties for a fuel source at the time of the baseline test can be guaranteed beyond the content identified during purchase contract negotiations with a fuel supplier. Two commenters suggested that EPA define what worst case conditions are because sources do not have the experience to determine worst-case representative process conditions.

Response: We agree that more direction and clarification is needed regarding testing at worst case conditions. We have modified fuel sampling requirements and performance testing fuel use requirements to simplify compliance. During performance testing, sources are required to burn the type of fuel or mixture of fuel types that have the highest concentration of regulated HAP. This, in combination with revised fuel sampling requirements (*e.g.*, based on fuel type and not on supplier, etc.), will simplify the determination of the fuel blend during the performance test. Sources are also required to conduct performance tests under representative full load operating conditions.

Comment: Several commenters objected to the requirement for annual performance tests because they felt that it is overly burdensome given the ongoing compliance demonstrations required by the NESHAP. Several commenters suggested that initial performance testing should be required with subsequent performance testing occurring every 3 to 5 years. Some commenters stated that 5-year test intervals are consistent with title V permits and have been allowed in other MACT standards (*e.g.* Hazardous Waste Combustors).

Response: We have worked to minimize the testing and monitoring requirements of the final rule while retaining the ability to ensure compliance with the emission limits and work practice requirements. We are providing an option for sources to conduct performance testing once every 3 years if they conduct successful performance testing for 3 consecutive years. We are also allowing sources to demonstrate compliance with the HCl, mercury, and total selected metals emission limits through fuel testing if they do not need emission control devices to achieve the standard.

I. Emissions Averaging

In the proposal preamble, we solicited comments on an emissions averaging or bubbling compliance alternative, as part of the EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced, and whether EPA should include emissions averaging in the final rule. Emissions averaging can provide sources the flexibility to comply in the least costly manner while still maintaining regulation that is workable and enforceable. We requested comment on an averaging approach for determining compliance with the non-mercury metallic HAP, HCl, mercury, and/or PM standards for existing sources. We indicated that averaging would allow owners and operators to submit non-mercury metals, mercury, HCl, and/or PM emissions limits to the EPA Administrator for approval for each existing boiler in the averaging group such that if these emission limits are met, the total emissions from all existing boilers in the averaging group are less than or equal to emission limits (for non-mercury metals, mercury, HCl, or PM) applicable to units in the particular subcategory. We indicated also that averaging would not be applicable to new sources and could only be used between boilers and process heaters in the same subcategory. Also, owners or operators of existing sources subject to the Industrial Boiler New Source Performance Standards NSPS (40 CFR part 60, subparts Db and Dc) would be required to continue to meet the PM emission standard of that NSPS regardless of whether or not they are averaging.

Emissions averaging has been incorporated into the final rule as an alternative means of complying with the final rule. Emissions averaging allows an individual affected unit emitting

above the allowable emission limit required by the final rule to comply with that emission limit by averaging its emissions with other affected units at the same facility emitting below the allowable emission limit required by the final rule.

Comment: Many commenters supported including averaging in the final rule. Commenters cited numerous reasons, including cost effectiveness, energy efficiency, greater flexibility in compliance, and greater environmental benefit. Commenters also cited 40 CFR part 63, subpart MM, Pulping Chemical Recovery Combustion MACT as a precedent for including emissions averaging in MACT standards. Two commenters disagreed with allowing emissions averaging, stating that it would complicate compliance determinations, does not fit within the CAA mandate, and is inconsistent with the purpose of CAA section 112. Many of those commenters who supported emissions averaging recommended additional flexibility, such as including new units, and bubbling across subcategories.

Response: The final rule includes an emissions averaging compliance alternative because emissions averaging represents an equivalent, more flexible, and less costly alternative to controlling certain emission points to MACT levels. We have concluded that a limited form of averaging could be implemented and not lessen the stringency of the standard. We agree with the commenters that some type of emissions averaging would provide flexibility in compliance, cost and energy savings to owners and operators. We also recognize that we must ensure that any emissions averaging option can be implemented and enforced, will be clear to sources, and most importantly, will achieve no less emissions reductions than unit by unit implementation of the MACT requirements.

The final rule is not the first NESHAP to include provisions permitting emission averaging. In general, EPA has concluded that it is permissible to establish within a NESHAP a unified compliance regimen that permits averaging across affected units subject to the standard under certain conditions. Averaging across affected units is permitted only if it can be demonstrated that the total quantity of any particular HAP that may be emitted by that portion of a contiguous major source that is subject to the NESHAP will not be greater under the averaging mechanism than it would be if each individual affected unit complied separately with the applicable standard. Under this rigorous test, the practical outcome of averaging is equivalent in every respect to compliance by the discrete units, and the statutory policy embodied in the MACT floor provisions is, therefore, fully effectuated.

The EPA has generally imposed certain limits on the scope and nature of emissions averaging programs. These limits 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 final rule fully satisfies each of these criteria. Accordingly, EPA has concluded that the averaging of emissions across affected units permitted by the final rule is consistent with the CAA. In addition, EPA notes that the provision in the final rule that requires each facility that intends to utilize emission averaging to submit an emission averaging plan provides additional assurance that the necessary criteria will be followed. In this emission averaging plan, the facility must include the identification of (1) all units in the averaging group, (2) the control technology installed, (3) the process parameter that will be monitored, (4) the specific control technology or pollution prevention measure to be used, (5) the test plan for the measurement of particulate matter (or selected total metals), hydrogen chloride, or mercury emissions, and (6) the operating parameters to be monitored for each control device. Upon receipt, the regulatory authority will not approve an emission averaging plan containing averaging between emissions of different types of pollutants or between sources in different subcategories.

The final rule excludes new affected sources from the emissions averaging provision. New sources have historically been held to a stricter standard than existing sources because it is most cost effective to integrate state-of-the-art controls into equipment design and to install the technology during construction of new sources. One reason we allow emissions averaging is to give existing sources flexibility to achieve compliance at diverse points with varying degrees of add-on control already in place in the most cost-effective and technically reasonable fashion. This concern does not apply to new sources which can be designed and constructed with compliance in mind.

Only existing large solid fuel units, as defined in the final rule, can be included in the emissions averaging compliance alternative. Of the nine subcategories established for existing sources, existing large solid fuel units is the only subcategory for which multiple HAP emissions limits apply. For the existing small solid fuel subcategory and the six existing gaseous and liquid fuel subcategories, no HAP emissions limits are included in the final rule and, thus, it would not be appropriate to allow these units to average emissions. As for the existing limited use solid fuel subcategory, since these units, as defined in the final rule, operated on a limited basis (capacity factor of less than 10 percent) and are subject only to a less stringent PM emissions limit (as a surrogate for non-mercury metals), it would be inappropriate to allow these units to average emissions.

With concern about the equivalency of emissions reductions from averaging and non-averaging in mind, the EPA Administrator is also imposing under the emission averaging provision caps on the current emissions from each of the sources in the averaging group. The emissions for each unit in the averaging group would be capped at the emission level being achieved on the effective date of the final rule. These caps would ensure that emissions do not increase above the emission levels that sources currently are designed, operated, and maintained to achieve. In the absence of performance tests, in documenting these caps, these sources will documented the type, design, and operating specification of control devices installed on the effective date of the final rule to ensure that existing controls are not removed or lessen. By including this provision in the final rule, the EPA Administrator has taken yet another step to assist in ensuring that emission averaging results in environmental benefits equivalent or better over what would have happened without emission averaging.

The inclusion of emissions averaging into rules and the decision on how to design an emission averaging approach for a particular source category must be evaluated for each source category.

J. Risk-based Approach

Comment: Multiple commenters supported EPA's incorporation of risk-based concepts into the MACT Program. One commenter stated that providing risk-based applicability criteria for sources whose HAP emissions do not pose a significant risk is appropriate. Several commenters stated that there is clear legal authority in the CAA to construct NESHAP based on risk, and such an approach is very appropriate in the case of the Industrial Boiler MACT. The commenter also noted that the regulatory framework exists within their

State to implement such an approach. Several commenters added that risk-based alternatives will function as indirect emission limits that must be maintained by the facilities to assure that the criteria are met, and, thus, such alternatives for low-risk facilities are supportable by EPA's authority under section 112(d)(4) and 112(c)(9) of the CAA and EPA's inherent *de minimis* authority. Another commenter asserted that there are ways to structure the rule to focus on facilities that pose significant risks and avoid imposition of high costs on facilities that pose little risk. An appropriate approach would be to allow individual facilities to conduct a risk assessment to show that they pose insignificant risks to the public. However, one commenter stated that it is not appropriate for State and local programs to determine which facilities should be exempted from MACT. Several commenters supported a risk-based compliance alternative for HCl.

Response: The EPA has determined that it can establish applicable health-based emission standards for HCl and manganese for affected sources in this category pursuant to its authority under section 112(d)(4) of the CAA. As a result, EPA has included such standards in the final rule as alternative compliance requirements. Under this approach, affected sources can choose to comply with either the MACT-based emission limits or the health-based emission limits. Sources which choose to comply with the health-based emission limit(s) will remain subject to those limits, but will need to comply with testing, monitoring and reporting requirements commensurate with the compliance option they have chosen. Such health-based standards are consistent with both the commenters' support for an approach that minimizes the impact on low-risk facilities and EPA's statutory mandate under section 112.

Section 112(d)(4) of the CAA authorizes EPA to consider established health thresholds, with an ample margin of safety, when promulgating emission standards under section 112. Hydrogen chloride and Mn are two pollutants for which health thresholds have been established. Issues concerning our legal authority to establish health-based emission standards under section 112(d)(4) are discussed in detail below.

We are not using CAA section 112(c)(9) for the final rule, and there is no delisting of categories or subcategories, as would be consistent with section 112(c)(9).

The criteria defining how affected sources demonstrate that they meet the threshold emissions levels for the health-based compliance alternative(s) is included in appendix A to the final rule. The criteria in appendix A to the final rule were developed for and apply only to the Boiler and process heater source category and are not applicable to other source categories. The final rule provides two ways that an affected source may demonstrate compliance with the health-based emission limits. The first option is through the use of lookup tables which allow facilities to determine, using a limited number of site-specific input parameters, whether emissions from boilers and process heaters might cause a hazard index (HI) limit for non-carcinogens to be exceeded. The second option is a modeling approach which allows those facilities that do not match the site-specific input parameters on which the lookup tables are based to demonstrate compliance with the health-based emission limits by modeling using site-specific information.

The affected source will have to demonstrate that it meets the criteria established by today's final rule and then assume Federally enforceable limitations, as described in appendix A of the final rule, that ensure their specified HAP emissions do not subsequently increase to exceed levels reflected in their demonstrations.

Comment: Multiple commenters are opposed to the risk-based exemptions. Some noted that the proposal to include risk-based exemptions is critically flawed and opposes adoption of the risk-based exemptions.

One commenter stated that the inclusion of case-by-case risk-based exemptions into the first phase of the MACT program will negate the legislative mandate and jeopardize the effectiveness of the national air toxics program to adequately protect public health and the environment and to establish a level playing field. The commenter was very concerned that EPA referenced a fundamentally flawed interpretation of CAA section 112(d)(4) written by an industry (AF&PA) subject to regulation. Of particular concern was AF&PA's unprecedented proposal to include "*de minimis* exemptions" and "cost" in the MACT standard process.

One commenter stated that the use of risk-based concepts to evade MACT applicability is contrary to the intent of the CAA and is based on a flawed interpretation of section 112(d)(4) of the CAA. The commenter added that the CAA requires a technology-based floor level of control and does not provide exclusions for risk or secondary impacts from applying the MACT floor.

One commenter stated that in separate rulemakings and lawsuits, EPA has adopted legal positions and policies that refute and contradict the very risk-based and cost-based approaches contained in the proposals. In these other arenas, the commenter contended that EPA has properly rejected risk assessment to alter the establishment of MACT standards. The EPA also has properly rejected cost in determining MACT floors and in denying a basis for avoiding the MACT floor.

Several commenters stated that the preamble discussion of the risk-based approaches is not sufficient to allow for complete public comment and, therefore, it would not be appropriate for EPA to go directly to a final rule (without reproposal) with any of the approaches outlined in the proposal.

Response: We are not identifying and deleting a subcategory of sources in this source category pursuant to the authority of CAA section 112(c)(9). Legal issues associated with the health-based provisions are addressed below and in the comment/response memorandum.

As discussed above, we are, however, including in the final rule alternative health-based emission standards for HCl and TSM based on our authority under CAA section 112(d)(4). Section 112(d)(4) authorizes EPA to consider health thresholds, with an ample margin of safety, in establishing emission standards. The analysis necessary to do this can generally be characterized as a risk analysis. Thus, we disagree with the commenter that we must wait for implementation of CAA section 112(f) before utilizing risk analysis.

Comment: Many commenters stated that the proposal to include risk-based exemptions is contrary to the 1990 CAA Amendments (CAAA) which calls for MACT standards based on technology rather than risk as a first step. They added that congress incorporated the residual risk program under CAA section 112(f) to follow the MACT standards (not to replace them). The commenters added that the need for the technology-based approach has been recently reinforced by the results of the National Air Toxics Assessment (NATA), which indicates that exposure to air toxics is very high throughout the country in urban and remote areas. Several commenters added that risk-based approaches will be used separately to augment and improve technology-based standards that do not adequately provide protection to the public. One commenter added that they have been unable to substantiate the basis for EPA's support of the regulatory relief sought by industry through risk-based exemptions and that, in fact, the use of risk assessment at this stage of the

MACT program is directly opposed to title III of the CAA.

Response: We disagree that inclusion of health-based compliance alternatives, in the form of emission standards based on the authority of section 112(d)(4) of the CAA, in the final rule is contrary to the 1990 CAAA. The final rule is a technology-based standard developed using the procedures dictated by section 112 of the CAA. The only difference between the final rule and other MACT is that we used our discretion under section 112(d)(4) to base appropriate parts of the final rule on established health thresholds, with an ample margin of safety. The final rule is particularly well-suited for a health-based compliance alternative, established pursuant to the criteria set forth in section 112(d)(4). In addition to the fact that there are established health thresholds for HCl and manganese, EPA has determined that many of the facilities in this source category do not emit these pollutants in amounts that pose a significant risk to the surrounding population. Those sources that can demonstrate that the emissions of acid gases and manganese meet the threshold emission levels will be in compliance with the MACT. The criteria are based on health-protective estimates of risk and the threshold emission levels will provide ample protection of human health and the environment.

Inclusion of health-based compliance alternatives in the final rule does not alter the MACT program. Rather, it merely represents EPA availing itself, in appropriate circumstances, of the authority Congress granted it in section 112(d)(4) of the CAA. We recognize that such provisions are only appropriate for certain HAP, and our decision-making process required source category-specific input from stakeholders.

Although the NATA modeling study may show measurable concentrations of toxic air pollution across the country, these data do not suggest that EPA should not establish health-based emission standards pursuant to its authority under CAA section 112(d)(4) when it determines that it is appropriate to do so. The alternative health-based emission standards included in the final rule will ensure that affected sources which choose to comply with those standards do not emit HCl and/or manganese at levels that are harmful to public health.

Comment: Many commenters stated that the proposal to allow risk-based exemptions would divert back to the time-consuming NESHAP development process that existed prior to the CAAA of 1990. The commenters asserted that under this process, which began with a risk assessment step, only eight NESHAP were promulgated during a 20-year period. The commenters continued that if the proposed approaches are inserted into upcoming standards, the commenters fear the MACT program (which is already far behind schedule) would be further delayed. One commenter supported EPA efforts to determine alternative MACT setting methodologies but strongly recommended that these be pursued separately from the final rule. The commenter contended that this will provide for timely issuance of final RICE and Boiler/Process Heater MACT rules relative to the settlement deadline. Two commenters stated that delays could be exacerbated by litigation following legal challenges to the rules, and such delays would trigger the MACT hammer, which would unnecessarily burden the State and local agencies and the industries. The commenters concluded that further delay is unacceptable. The commenters did not want to be in a position of implementing the CAA section 112(j) program and urged EPA to not delay the issuance of any MACT standard. The commenters noted that according to a recently proposed EPA rule regarding section 112(j), the regulated community and State and local agencies would have to proceed with part 2 permit applications, followed by case-by-case MACT, if EPA misses the newly agreed-upon MACT deadlines by as little as 2 months. This would be time consuming, costly, and burdensome for both regulators and the regulated community.

Response: We disagree that allowing health-based compliance alternatives in the final rule will alter the MACT program or affect the schedule for promulgation of the remaining MACT standards. We do not anticipate any further delays in completing the remaining MACT standards. The setting of alternative health-based emission standards in the final rule affects only the final rule.

The approach taken in the final rule is particularly well-suited to acid gases and manganese, which are the only pollutants included in the health-based compliance alternatives. For many facilities, these pollutants are currently emitted in amounts that do not expose anyone in surrounding population to concentrations above the established health thresholds. As a result, emissions of HCl and/or manganese at these facilities do not pose a significant risk to the surrounding population. Only those Boiler facilities that demonstrate that their emissions are below the health-based emission standard(s), are eligible for the compliance alternatives.

Including health-based compliance alternatives for boiler sources does not mean that EPA will automatically provide such alternatives for other industries. 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. The Boilers NESHAP is being promulgated by the February 2004 court-ordered deadline.

Comment: Many commenters stated that the risk-based proposal removes the level-playing field that would result from the proper implementation of technology-based MACT standards. The commenters added that establishing a baseline level of control is essential to prevent industry from moving to areas of the country that have the least stringent air toxics programs, which was one of the primary goals of developing a uniform national air toxics program under section 112 of the 1990 CAA amendments. The risk-based approaches would jeopardize future reductions of HAP in a uniform and consistent manner across the nation.

Response: Providing health-based compliance alternatives for sources that can meet them in the final rule 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 boilers across the nation in the large solid fuel-fired subcategories. The final rule establishes a two baseline levels of emission reduction for HCl and manganese, one based on a traditional MACT analysis and the other based on EPA's evaluation of the health threat posed by emissions of these two pollutants. All Boiler facilities must meet one of these baseline levels, and all facilities with boilers in the applicable subcategories have the same opportunity to demonstrate that they can meet the alternative health-based emission standards. The criteria for qualifying to comply with the alternative health-based emission standards are not dependent on local air toxics programs. Therefore, concerns regarding facilities moving to areas of the country with less-stringent air toxics programs should be alleviated.

Comment: Multiple commenters stated that section 112(d)(4) of the CAA provides EPA with authority to exclude sources that emit threshold pollutants from regulation. The commenters indicated that section 112(d)(4) allows for discretion in developing MACT standards for HAP with health

thresholds. The commenters added that the use of section 112(d)(4) authority also is supported by CAA's legislative history, which emphasizes that Congress included section 112(d)(4) in the CAA to prevent unnecessary regulation of source categories.

One commenter pointed out that Congress does not differentiate between technology-based "emission standards" set under CAA section 112(d)(3) versus "health threshold" based "emission standards" set under CAA section 112(d)(4). Instead, the statute explicitly treats emission standards promulgated under section 112(d)(3) and 112(d)(4) as equivalent by not distinguishing between those emission standards under the residual risk provisions of CAA section 112(f). One commenter added that EPA is permitted to establish alternative standards as long as it ensures that ambient concentrations are less than the health thresholds plus a margin of safety and the emissions do not cause adverse environmental effects. Multiple commenters pointed out that EPA has exercised such authority and cited the NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills. In addition, the commenters added that in that NESHAP, EPA identified circumstances in which they would decline to exercise 112(d)(4) authority-where significant or widespread environmental harm would occur as a result of emissions from the category and the estimated health thresholds are subject to substantial scientific uncertainty. The commenters concluded that EPA determined that these considerations were not relevant to emissions from the pulp and paper source category, and the commenters stated that the same is true for their source categories and that the same treatment is warranted for many facilities within the source categories. The commenters noted that facilities that cannot meet the risk criteria would remain subject to the MACT requirements.

One commenter added that the risk-based approaches are squarely in line with the plain meaning of section CAA 112(d)(4). The commenters cited the Senate report (Sen Rep. No. 228, 101st Congress, 1st Sess 175–6 (1990)) showed that Congress contemplated that sources within the same category or subcategory would be subject to varied regulatory requirements, depending on the risk they pose to public health. The commenters added that nothing in the statutory definition of "emission standard" suggests that the term is limited to a requirement for the installation of control technology. The commenters added that the risk-based compliance alternatives would meet this requirement because they would apply to an entire source category or subcategory. The EPA could create a subcategory for low-risk sources and tailor an emission standard to this subcategory, or apply to all sources in the category a NESHAP containing multiple compliance options, one or more being risk-based.

Multiple commenters stated that the plain meaning of CAA section 112(d)(4) does not allow EPA to make MACT standards for individual sources. Two commenters noted that section 112(d)(4) states that "with respect to pollutants for which a health threshold has been established, the EPA Administrator may consider such threshold level, with ample margin of safety, when establishing emission standards under this subsection."

Several commenters contended that EPA has misinterpreted the provision in CAA section 112(d)(4) in that section 112(d)(4) does not state that EPA can use applicability thresholds "in lieu of" the CAA section 112(d)(3) MACT floor requirements. The commenter interpreted section 112(d)(4) to state that health based thresholds can be considered when establishing the degree of the MACT floor requirements, but it should not be used to supplant the requirements established pursuant to section 112(d)(3).

Many commenters stated that the legislative history of CAA section 112(d)(4) clearly rejects EPA's proposed facility-by-facility MACT exemptions. The commenters noted that Congress considered and rejected the applicability cutoffs upon which EPA now solicits comment. The commenters noted that the House version of the 1990 Amendments allowed States to issue permits that exempted a source from compliance with MACT rules if the source presented sufficient evidence to demonstrate negligible risk, and the Senate version of the 1990 Amendments contained no such provision. In conference, Congress considered both the House and Senate versions and rejected the House bill's exemption for specific facilities in favor of the Senate bill's language.

Response: The EPA has properly exercised the authority granted to it pursuant to CAA section 112(d)(4) of the CAA in establishing health-based emission standards for HCl and manganese which are applicable to the large solid fuel-fired subcategory. Section 112(d)(4) authorizes it to by-pass the mandate in section 112(d)(3) in appropriate circumstances. Those circumstances are present in the large solid fuel-fired Boiler subcategories.

Section 112(d)(4) of the CAA provides EPA with authority, at its discretion, to develop health-based emission standards for HAP "for which a health threshold has been established," provided that the standard reflects the health threshold "with an ample margin of safety." (The full text of the section 112(d)(4): "[with respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, within an ample margin of safety, when establishing emission standards under this subsection.")

Both the plain language of CAA section 112(d)(4) and the legislative history cited above indicate that EPA has the discretion under section 112(d)(4) to develop health-based standards for some source categories emitting threshold pollutants, and that those standards may be less stringent than the corresponding "floor"-based MACT standard would be. The EPA's use of such standards is not limited to situations where every source in the category or subcategory can comply with them. As is the case 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 emission standards under CAA section 112(d)(4), EPA seeks to assure that those standards 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 that section 112(d)(4) is appropriate for establishing emission standards for HCl and manganese applicable to the large solid fuel-fired subcategories, and, therefore, we have established such standards as an alternate compliance requirement for affected sources in those subcategories. Affected sources in the large solid fuel-fired subcategories which believe that

they can demonstrate compliance with one or both of the health-based emission standards may choose to comply with those standards in lieu of the otherwise applicable MACT-based standard.

For purposes of the final rule, we are not considering background HAP emissions in developing the section CAA 112(d)(4) compliance alternatives. As we indicated in the Residual Risk Report to Congress, however, the Agency intends to consider facility-wide HAP emissions in future CAA section 112(f) residual risk actions.

Comment: Many commenters contended that the proposal will place a very intensive resource demand on State and local agencies to review source's risk assessments, and State/local agencies may not have expertise in risk assessment methodology or the resources needed to verify information (*e.g.*, emissions data and stack parameters) submitted with each risk assessment.

Other commenters stated that a risk-based program can be structured and implemented in a manner that does not adversely impact limited State resources. One commenter asserted that EPA should work closely with States and industry to implement the risk-based approach in a non-burdensome manner. Another commenter stated that the risk-based approaches, like other MACT standards, would simply be incorporated into each State's existing title V program. The commenter concluded that because the title V framework already exists, the addition of a risk-based MACT standard would not require States to overhaul existing permitting programs. Another commenter contended that the final MACT rule itself should set forth the applicability criteria—including the threshold levels of exposure—that sources must meet to qualify for a risk-based determination. Each source would have the burden of demonstrating that its exposures are below this limit and, therefore, the States would not be required to develop their own risk assessment guidance or to conduct source-specific risk assessments.

Response: The health-based emission limits for HCl and TSM which EPA has adopted in the final rule should not impose significant resource burdens on States. Further, 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 alternative health-based emission standard. First, look-up tables, which are included as Tables 2 (HCl) and 3 (manganese) in appendix A of the final rule, allow facilities to determine, using a limited number of site-specific input parameters, whether emissions from their sources might cause a hazard index limit (hazard quotient in the case of manganese) to be exceeded. If a facility cannot demonstrate eligibility using a look-up table, a modeling approach can be followed. Appendix A to the final rule presents the criteria for performing this modeling.

Regarding commenters' concerns with looking for a threshold level for carcinogens, the compliance alternatives only apply to HCl and manganese, which are not currently expected to be carcinogens. Also, the concern expressed by a commenter about exempting a facility based on limited emission data if EPA established a subcategory listing low-risk sources is not relevant here, because we have not used CAA section 112(c)(9) authority to establish a low-risk subcategory for the Industrial/Commercial/Institutional Boilers and Process Heaters source category. With respect to guidance for performing site-specific modeling, all of the procedures for performing such modeling are available in peer-reviewed scientific literature and, therefore, no additional guidance needs to be developed.

Only a portion of the major facilities in the large solid fuel-fired boilers and process heaters subcategory will submit eligibility demonstrations for the compliance alternatives. Of this portion of major sources, most will be able to demonstrate eligibility based on simple analyses (*e.g.*, using the look-up tables provided in appendix A of the final rule). However, it is likely that some facilities will require more detailed modeling. The criteria for demonstrating eligibility for the compliance alternatives are clearly spelled out in the final rule. Because these requirements are clearly spelled out 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 which 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 emission standards will be required to certify compliance with those standards on an annual basis. Additionally, before changing key parameters that may impact an affected source's ability to continue to meet one or both of the health-based emission standards, the affected source is required to evaluate its ability to continue to comply with the health-based emission standard(s) and submit documentation to the permitting authority supporting continued eligibility for the compliance alternative.

The promulgation of specific alternative health-based emission limits and a uniform methodology for demonstrating compliance with those alternatives alleviates any concern regarding the public process required in reviewing/approving the proposed approaches and making substantial changes to existing regulations. It also addresses concerns regarding the costs and resources associated with assuring adequate public participation in the process of reviewing site-specific risk analyses.

To ensure that affected sources which choose to comply with the alternative health-based emission standards continue to comply with those standards after the initial compliance demonstration, specified assessment parameters (*e.g.*, HCl and/or manganese emission rate, boiler heat output, etc.) must be included in their title V permit as enforceable requirements. Draft permits and permit applications must be made available to the public from the State or local agency responsible for issuing the permit, or in the case where EPA is issuing the permit, from the EPA regional office. Members of the public may request that the State or local agency include them on their public notice mailing list, thus providing the public the opportunity to review the appropriateness of these requirements. Every proposed title V permit has a 30-day public comment period and a 45-day EPA review period. If EPA does not object to the permit, any member of the public may petition EPA to object to the permit within 60 days of the end of the EPA review period.

Comment: A commenter contended that exempting HCl emissions from control is inappropriate, particularly since EPA proposed HCl as a surrogate measure for all the inorganic HAP

emitted by this source category. Hence, an exemption that excluded HCl emission points from control requirements would also exclude emissions of all the other inorganic HAP that would likely include hydrogen cyanide and hydrogen fluoride.

Response: Facilities attempting to utilize the health-based compliance alternative for HCl will not be required to evaluate emissions of other inorganic HAP except for chlorine. We conducted an assessment of boiler emissions and determined that, of the acid gas HAP controlled by scrubbing technology, chlorine is responsible for the great majority of risk and HCl is responsible for the next largest portion of the total risk. The contributions of other HAP, including hydrogen fluoride, to the total risk were negligible. Therefore, facilities attempting to demonstrate eligibility for the health-based compliance alternative for HCl, either by conducting a lookup table analysis or by conducting a site-specific compliance demonstration, must include emission rates of chlorine and HCl from their boilers. We do not expect hydrogen cyanide emissions from boilers covered under the final rule.

Comment: Commenters stated that the proposal does not address ecological risk that may result from uncontrolled HAP emissions, especially in those areas with sensitive habitats but few people nearby to be exposed and that EPA provided inadequate discussion of how environmental risks will be evaluated.

Response: To identify HAP with potential to cause multimedia and/or environmental effects, the EPA has identified HAP with significant potential to persist in the environment and to bioaccumulate. This list does not include HCl or manganese which are the only HAP with health-based compliance alternatives in the final rule. Additionally, a screening level analysis conducted by the EPA indicates that acute impacts of these HAP from industrial boiler facilities are highly unlikely. For these reasons we do not believe that emissions of HCl or manganese from industrial boiler facilities will pose a significant risk to the environment and facilities attempting to comply with the health-based alternatives for these HAP are not required to perform an ecological assessment.

V. Impacts of the Final Rule

A. What Are the Air Impacts?

Nationwide emissions of selected HAP (*i.e.*, HCl, hydrogen fluoride, lead, and nickel) will be reduced by 58,500 tpy for existing units and 73 tpy for new units. Depending on the number of facilities demonstrating eligibility for the health-based compliance alternatives, the total HAP reduction for existing units could be 50,600 tpy. Emissions of HCl will be reduced by 42,000 tpy for existing units and 72 tpy for new units. Depending on the number of facilities demonstrating eligibility for the health-based compliance alternatives, the total HCl emissions reduction for existing units could be 36,400 tpy. Emissions of mercury will be reduced by 1.9 tpy for existing units and 0.006 tpy for new units. Emissions of PM will be reduced by 565,000 tpy for existing units and 480 tpy for new units. Depending on the number of facilities demonstrating eligibility for the health-based compliance alternatives, the total PM emissions reduction for existing units could be 547,000 tpy. Emissions of total selected nonmercury metals (*i.e.*, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium) will be reduced by 1,100 tpy for existing units and will be reduced by 1.4 tpy for new units. Depending on the number of facilities demonstrating eligibility for the health-based compliance alternatives, the total nonmercury metals emissions reduction for existing units could be 950 tpy. In addition, emissions of sulfur dioxide (SO_2) are established to be reduced by 113,000 tpy for existing sources and 110 tpy for new sources. Depending on the number of facilities demonstrating eligibility for the health-based compliance alternatives, the total SO_2 emissions reduction for existing units could be 49,000 tpy.

As noted above, use of the health-based compliance alternatives by eligible facilities will affect reductions in HAP, PM (and total non-mercury metals that are generally controlled along with PM), and SO_2. Nevertheless, our analysis indicates that the difference in emissions of HCl and manganese with and without the compliance alternatives will not affect health risks because the compliance alternative is available only to those facilities that demonstrate that their emissions pose little risks. Emissions of PM and SO_2 will still be reduced by the implementation of other provisions of the Clean Air Act, such as attainment of the health-based National Ambient Air Quality Standards, which include mechanisms to control such emissions.

A discussion of the methodology used to estimate emissions and emissions reductions is presented in "Estimation of Baseline Emissions and Emissions Reductions for Industrial, Commercial, and Institutional Boilers and Process Heaters" in the docket. To estimate the potential impacts of the health-based compliance alternatives, we performed a preliminary "rough" assessment of the large solid fuel subcategory to determine the extent to which facilities might become eligible for the health-based compliance alternatives. Based on the results of this rough assessment, 448 coal-fired boilers could potentially be eligible for the HCl compliance alternative and 386 biomass-fired boilers could be potentially eligible for the TSM compliance alternative.

B. What Are the Water and Solid Waste Impacts?

The EPA estimates the additional water usage that would result from the MACT floor level of control to be 110 million gallons per year for existing sources and 0.6 million gallons per year for new sources. In addition to the increased water usage, an additional 3.7 million gallons per year of wastewater will be produced for existing sources and 0.6 million gallons per year for new sources. The costs of treating the additional wastewater are $18,000 for existing sources and $2,300 for new sources, in advance of any facility demonstrating eligibility for the health-based compliance alternatives. These costs are accounted for in the control costs estimates.

The EPA estimates the additional solid waste that would result from the MACT floor level of control to be 102,000 tpy for existing sources and 1 tpy for new sources. The estimated costs of handling the additional solid waste generated are $1.5 million for existing sources and $17,000 for new sources, in advance of any facility demonstrating eligibility for the health-based compliance alternatives. These costs are also accounted for in the control costs estimates.

A discussion of the methodology used to estimate impacts is presented in "Estimation of Impacts for Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP" in the docket.

C. What Are the Energy Impacts?

The EPA expects an increase of approximately 1,130 million kilowatt hours (kWh) in national annual energy usage as a result of the final rule, in advance of any facility demonstrating eligibility for the health-based compliance alternatives. Of this amount, 1,120 million kWh is estimated from existing sources and 13 million kWh is estimated from new sources. The increase results from the electricity required to operate control devices

installed to meet the final rule, such as wet scrubbers and fabric filters.

D. What Are the Control Costs?

To estimate the national cost impacts of the final rule for existing sources, EPA developed several model boilers and process heaters and determined the cost of control equipment for these model boilers. The EPA assigned a model boiler or heater to each existing unit in the database based on the fuel, size, design, and current controls. The analysis considered all air pollution control equipment currently in operation at existing boilers and process heaters. Model costs were then assigned to all existing units that could not otherwise meet the proposed emission limits. The resulting total national cost impact of the final rule is $1,790 million in capital expenditures and $860 million per year in total annual costs. Depending on the number of facilities demonstrating eligibility for the health-based compliance alternatives, these costs could be $1,440 million in capital expenditures and $690 million per year in total annual costs. The total capital and annual costs include costs for testing, monitoring, and recordkeeping and reporting. Costs include testing and monitoring costs, but not recordkeeping and reporting costs.

Using Department of Energy projections on fuel expenditures, EPA estimated the number of additional boilers that could be potentially constructed. The resulting total national cost impact of the final rule in the 5th year is $58 million in capital expenditures and $18.6 million per year in total annual costs, in advance of any facility demonstrating eligibility for the health-based provisions. Costs are mainly for testing and monitoring.

A discussion of the methodology used to estimate cost impacts is presented in "Methodology for Estimating Control Cost for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" in the docket.

E. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increase for output in the 40 affected industries would be no more than 0.04 percent as a result of the final rule for industrial boilers and process heaters. The expected change in production of affected output is a reduction of only 0.03 percent or less in the same industries. In addition, impacts to affected energy markets show that prices of petroleum, natural gas, electricity and coal should increase by no more than 0.05 percent as a result of implementation of the final rule, and output of these types of energy should decrease by no more than 0.01 percent. These impacts are generated in advance of any facility demonstrating eligibility for the health-based compliance alternatives. Depending on the number of affected facilities demonstrating eligibility for the health-based compliance alternatives, these impacts on product prices could fall to a 0.03 percent increase, and a decrease in output of the energy types mentioned previously of less than 0.01 percent. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the final rule, such as lumber and wood products, chemical manufacturers, petroleum refining, and furniture manufacturing.

F. What Are the Social Costs and Benefits of the Final Rule?

Our assessment of costs and benefits of the final rule is detailed in the "Regulatory Impact Analysis for the Final Industrial, Commercial, and Institutional Boilers and Process Heaters MACT." The Regulatory Impact Analysis (RIA) is located in the Docket.

It is estimated that 3 years after implementation of the final rule, HAP will be reduced by 58,500 tpy (53,200 megagrams per year (Mg/yr)) due to reductions in arsenic, beryllium, HCl, and several other HAP from existing affected emission sources. Of these reductions, 42,000 tpy (38,200 Mg/yr) are of HCl. In addition to these reductions, there are 73 tpy (66 Mg/yr) of HAP reductions expected from new sources. Of these reductions, virtually all of them are of HCl. The health effects associated with these HAP are discussed earlier in this preamble. While it is beneficial to society to reduce these HAP, we are unable to quantify and provide a monetized estimate of the benefits at this time.

Despite our inability to quantify and provide monetized benefit estimates from HAP reductions, it is possible to derive rough estimates for one of the more important benefit categories, *i.e.*, the potential number of cancer cases avoided and cancer risk reduced as a result of the imposition of the MACT level of control on this source category. Our analysis suggests that imposition of the MACT level of control would reduce cancer cases at worst case baseline assumptions by possibly tens of cases per year, on average, starting some years after implementation of the final rule. This risk reduction estimate is uncertain, is likely to overestimate benefits, and should be regarded as an extremely rough estimate. Furthermore, the estimate should be viewed in the context of the full spectrum of unquantified noncancer effects associated with the HAP reductions. Noncancer effects associated with the HAP are presented earlier in this preamble.

The control technologies used to reduce the level of HAP emitted from affected sources are also expected to reduce emissions of PM (PM_{10}, $PM_{2.5}$), and sulfur dioxide (SO_2). It is estimated that PM_{10} emissions reductions total approximately 562,000 tpy (510,000 Mg/yr), $PM_{2.5}$ emissions reductions total approximately 159,000 tpy (145,000 Mg/yr), and SO_2 emissions reductions total approximately 113,000 tpy (102,670 Mg/yr). These estimated reductions occur from existing sources in operation 3 years after the implementation of the requirements of the final rule and are expected to continue throughout the life of the sources.

In general, exposure to high concentrations of PM may aggravate existing respiratory and cardiovascular disease including asthma, bronchitis and emphysema, especially in children and the elderly. SO_2 is also a contributor to acid deposition, or acid rain, which causes acidification of lakes and streams and can damage trees, crops, historic buildings and statues. Exposure to $PM_{2.5}$ can lead to decreased lung function, and alterations in lung tissue and structure and in respiratory tract defense mechanisms which may then lead to, increased respiratory symptoms and disease, or in more severe cases, premature death or increased hospital admissions and emergency room visits. Children, the elderly, and people with cardiopulmonary disease, such as asthma, are most at risk from these health effects. Fine PM can also form a haze that reduces the visibility of scenic areas, can cause acidification of water bodies, and have other impacts on soil, plants, and materials. As SO_2 emissions transform into PM, they can lead to the same health and welfare effects listed above.

For PM_{10} and $PM_{2.5}$ (including SO_2 contributions to ambient concentrations of $PM_{2.5}$), we provide a monetary estimate for the benefits associated with the reduction in emissions associated with the final rule. To do so, we conducted an air quality assessment to determine the change in ambient concentrations of PM_{10} and $PM_{2.5}$ that result from reductions of PM and SO_2 at existing affected facilities. Unfortunately, our data are not able to define the exact location of the reductions for every affected boiler and process heater. Because of this

limitation, the benefits assessment is conducted in two phases. First, an air quality analysis was conducted for emissions reductions from those emissions sources that have an known link to a specific control device, which represents approximately 50 percent of the total emissions reductions mentioned above. Using this subset of information, we determined the air quality change nationwide. The results of the air quality assessment served as input to a model that estimates the total monetary value of benefits of the health effects listed above. Total benefits associated with this portion of the analysis (in phase one) are $8.2 billion in the year 2005 (presented in 1999 dollars).

In the second phase of our analysis, for those emissions reductions from affected sources that do not have a known link to a specific control device, the results of the air quality analysis in phase one serve as a reasonable approximation of air quality changes to transfer to the remaining emissions reductions of the final rule. Because there is not a reasonable way to apportion the total benefits of the combined impact of the PM and SO_2 reductions from the air quality and benefit analyses completed above, we performed two additional air quality analyses. One analysis was performed to evaluate the impact on air quality of the PM reductions alone (holding SO_2 unchanged), and one to evaluate the impact on air quality from the SO_2 reductions alone (holding PM unchanged). With independent PM and SO_2 air quality assessments, we can determine the total benefit associated with each component of total pollutant reductions. The total benefit associated with the PM and SO_2 reductions with unspecified location (in phase two) are $7.9 billion.

The benefit estimates derived from the air quality modeling in the first phase of our analysis uses an analytical structure and sequence similar to that used in the benefits analyses for the proposed Nonroad Diesel rule and proposed Integrated Air Quality Rule (IAQR) and in the "section 812 studies" analysis of the total benefits and costs of the Clean Air Act. We used many of the same models and assumptions used in the Nonroad Diesel and IAQR analyses as well as other Regulatory Impact Analyses (RIAs) prepared by the Office of Air and Radiation. By adopting the major design elements, models, and assumptions developed for the section 812 studies and other RIAs, we have largely relied on methods which have already received extensive review by the independent Science Advisory Board (SAB), the National Academies of Sciences, by the public, and by other federal agencies.

The benefits transfer method used in the second phase of the analysis is similar to that used to estimate benefits at the proposal of the rule, and in the proposed Reciprocating Internal Combustion Engines NESHAP. A similar method has also been used in recent benefits analyses for the proposed Nonroad Large Spark-Ignition Engines and Recreational Engines standards (67 FR 68241, November 8, 2002).

The sum of benefits from the two phases of analysis provide an estimate of the total benefits of the rule. Total benefits of the final rule are approximately $16.3 billion (1999$). This economic benefit is associated with approximately 2,270 avoided premature mortalities, 5,100 avoided cases of chronic bronchitis, thousands of avoided hospital and emergency room visits for respiratory and cardiovascular diseases, tens of thousands of avoided days with respiratory symptoms, and millions of avoided work loss and restricted activity days. This estimate is generated in advance of any facility demonstrating eligibility for the health-based compliance alternatives.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited, to some extent, by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes that can be quantified. While these general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references, the key uncertainties which have a bearing on the results of the benefit-cost analysis of today's action are the following:

1. The exclusion of potentially significant benefit categories (*e.g.*, health and ecological benefits of reduction in hazardous air pollutants emissions);

2. Errors in measurement and projection for variables such as population growth;

3. Uncertainties in the estimation of future year emissions inventories and air quality;

4. Uncertainties associated with the extrapolation of air quality monitoring data to some unmonitored areas required to better capture the effects of the standards on the affected population;

5. Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations; and

6. Uncertainties associated with the benefit transfer approach.

7. Uncertainties in the size of the effect estimates linking air pollution and health endpoints.

8. Uncertainties about relative toxicity of different components within the complex mixture.

Despite these uncertainties, we believe the benefit-cost analysis provides a reasonable indication of the expected economic benefits of the final rule under a given set of assumptions.

Based on estimated compliance costs (control + administrative costs associated with Paperwork Reduction Act requirements associated with the rule and predicted changes in the price and output of electricity), the estimated annualized social costs of the Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP are $863 million (1999$). Depending on the number of affected facilities demonstrating eligibility for the health-based compliance alternatives, these annualized social costs could fall to $746 million. Social costs are different from compliance costs in that social costs take into account the interactions between affected producers and the consumers of affected products in response to the imposition of the compliance costs.

As explained above, we estimate $16.3 billion in benefits from the final rule, compared to $863 million in costs. It is important to put the results of this analysis in the proper context. The large benefit estimate is not attributable to reducing human and environmental exposure to the HAPs that are reduced by this rule. It arises from ancillary reductions in PM and SO_2 that result from controls aimed at complying with the NESHAP. Although consideration of ancillary benefits is reasonable, we note that these benefits are not uniquely attributable to the regulation. The Agency believes nonetheless that the key rationale for controlling arsenic, beryllium, HCl, and the other HAPs associated with this rule is to reduce public and environmental exposure to these HAPs, thereby reducing risk to public health and wildlife. Although the available science does not support quantification of these benefits at this time, the Agency believes the qualitative

benefits are large enough to justify substantial investment in these emission reductions.

It should be recognized, however, that this analysis does not account for many of the potential benefits that may result from these actions. Thus, our estimate of total benefits also includes a "B" to represent those additional health and environmental benefits which could not be expressed in quantitative incidence and/or economic value terms. The net benefits would be greater if all the benefits of the other pollutant reductions could be quantified. Notable omissions to the net benefits include all benefits of HAP reductions, including reduced cancer incidences, toxic morbidity effects, and cardiovascular and CNS effects, and all welfare effects from reduction of ambient PM and SO_2. A full appreciation of the overall economic consequences of the industrial boiler and process heater standards requires consideration of all benefits and costs expected to result from the final rule, not just those benefits and costs that could be expressed here in dollar terms. A full listing of the benefit categories that could not be quantified or monetized in our base estimate are provided in Table 2 of this preamble.

TABLE 2.—UNQUANTIFIED BENEFIT CATEGORIES

	Unquantified benefit categories associated with HAP eductions	Unquantified benefit categories associated with PM eductions
Health Categories	—Airway responsiveness —Pulmonary inflammation —Susceptibility to respiratory infection —Acute inflammation and respiratory cell damage —Chronic respiratory damage/Premature aging of lungs —Emergency room visits for asthma	—Changes in pulmonary function. —Morphological changes. Altered host defense mechanisms. —Other chronic respiratory disease. —Emergency room visits for asthma. —Emergency visits for non-asthma respiratory and cardiovascular causes. —Lower and upper respiratory systems. —Acute bronchitis. —Shortness of breath.
Welfare Categories	—Ecosystem and vegetation effects —Damage to urban ornamentals (e.g., grass, flowers, shrubs, and trees in urban areas). —Commercial field crops —Fruit and vegetable crops —Yields of tree seedlings, commercial and non-commercial forests. —Damage to ecosystems —Materials damage	—School absence rates. —Materials damage. —Damage to ecosystems (e.g., acid sulfate deposition). —Nitrates in drinking water. —Visibility in recreational and residential areas.

Using the results of the benefit analysis, we can use benefit-cost comparison (or net benefits) as another tool to evaluate the reallocation of society's resources needed to address the pollution externality created by the operation of industrial boilers and process heaters. The additional costs of internalizing the pollution produced at major sources of emissions from industrial boilers and process heaters are compared to the improvement in society's well-being from a cleaner and healthier environment. Comparing benefits of the final rule to the costs imposed by alternative ways to control emissions optimally identifies a strategy that results in the highest net benefit to society. In the final rule, we include only one option, the minimal level of control mandated by the CAA, or the MACT floor. Other alternatives that lead to higher levels of control (or beyond-the-floor alternatives) lead to higher estimates of benefits net of costs, but also lead to additional economic impacts, including more substantial impacts to small entities. For more details, please refer to the RIA for the final rule.

Based on estimated compliance costs associated with the final rule and the predicted change in prices and production in the affected industries, the estimated annualized social costs of the final rule are $863 million (1999 dollars). This estimate of social cost is generated in advance of any facility demonstrating eligibility for the health-based compliance alternatives. Depending on the number of affected facilities demonstrating eligibility for the health-based compliance alternatives, these annualized social costs could fall to $746 million. Social costs are different from compliance costs in that social costs take into account the interactions of consumers and producers of affected products in response to the imposition of the compliance costs. Therefore, the Agency's estimate of monetized benefits net of costs is $15.4 billion + B (1999 dollars) in 2005.

VI. 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 a regulatory action is "significant" and, therefore, subject to review by the 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, the EPA has determined that the final rule is a "significant regulatory action" because it has an annual effect on the economy of over $100 million. As such, the final rule was submitted to OMB for review.

B. Paperwork Reduction Act

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

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

The final rule requires maintenance inspections of the control devices, but does not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be $91 million. This includes 1.2 million labor hours per year at a total labor cost of $67 million per year, and total non-labor capital costs of $24 million per year. This estimate includes a one-time performance test, semiannual excess emission reports, maintenance inspections, notifications, and recordkeeping. The total burden for the Federal government (averaged over the first 3 years after the effective date of the final rule) is estimated to be 346,000 hours per year at a total labor cost of $14 million per year. Table 3 of this preamble shows the average annualized burden for monitoring, reporting, and recordkeeping for each subcategory.

TABLE 3.—SUMMARY OF THE AVERAGE REPORTING AND RECORDKEEPING COSTS

Subcategory	Total labor costs ($)	Total capital costs ($)	Total costs ($)
Large Solid Fuel Units	56,253,000	12,488,000	68,741,000
Limited Use Solid Fuel Units	2,565,000	2,267,000	4,832,000
Small Solid Fuel Units	627,000	111,000	738,000
Large Liquid Fuel Units	498,000	491,000	989,000
Limited Use Liquid Fuel Units	214,000	264,000	478,000
Small Liquid Fuel Units	442,000	0	442,000
Large Gaseous Fuel Units	3,673,000	6,615,000	10,288,000
Limited Use Gaseous Fuel Units	663,000	1,209,000	1,872,000
Small Gaseous Fuel Units	2,413,000	0	2,413,000

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

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

The EPA requested comments 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.

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. We have also determined that the final rule will not have a significant impact on a substantial number of small entities.

For purposes of assessing the impacts of the final rule on small entities, small entity is defined as:

(1) A small business according to Small Business Administration size standards by the North American Industry Classification System (NAICS) category of the owning entity. The range of small business size standards for the 40 affected industries ranges from 500 to 1,000 employees, except for petroleum refining and electric utilities. In these latter two industries, the size standard is 1,500 employees and a mass throughput of 75,000 barrels/day or less, and 4 million kilowatt-hours of production or less, respectively;

(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.

After considering the economic impact of the final rule on small entities, we have determined that the final rule will not have a significant economic impact on a substantial number of small entities. Based on SBA size definitions for the affected industries and reported sales and employment data, EPA identified 185 of the 576 entities, or 32 percent, owning affected facilities as small entities. Although small entities represent 32 percent of the entities within the source category, they are expected to incur only 4 percent of the total compliance costs of $862.7 million (1998 dollars). There are only ten small entities with compliance costs equal to or greater than 3 percent of their sales. In addition, there are only 24 small entities with cost-to-sales ratios between 1 and 3 percent.

An economic impact analysis was performed to estimate the changes in product price and production quantities for the final rule. As mentioned in the summary of economic impacts earlier in this preamble, the estimated changes in prices and output for affected entities is no more than 0.05 percent. For more information, consult the docket for the final rule.

It should be noted that these small entity impacts are in advance of any facility demonstrating eligibility for the health-based compliance alternatives. Depending on the number of affected facilities demonstrating eligibility for the health-based compliance alternatives, the estimated small entity impacts could fall to eight small entities with compliance costs equal to or greater than 3 percent of their sales, and 14 small entities with compliance costs between 1 and 3 percent of their sales.

The final rule will not have a significant economic impact on a substantial number of small entities as a result of several decisions EPA made regarding the development of the rule, which resulted in limiting the impact of the rule on small entities. First, as mentioned earlier in this preamble, EPA identified small units (heat input of 10 MMBtu/hr or less) and limited use boilers (operate less than 10 percent of the time) as separate subcategories different from large units. Many small and limited use units are located at small entities. As also discussed earlier, the results of the MACT floor analysis for these subcategories of existing sources was that no MACT floor could be identified except for the limited use solid fuel subcategory, which is less stringent than the MACT floor for large units. Furthermore, the results of the beyond-the-floor analysis for these subcategories indicated that the costs would be too high to consider them feasible options. Consequently, the final rule contains no emission limitations for any of the existing small and limited use subcategories except the existing limited use solid fuel subcategory. In addition, the alternative metals emission limit resulted in minimizing the impacts on small entities since some of the potential entities burning a fuel containing very little metals are 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, 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 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 EPA Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. 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 promulgation with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We determined that the final rule contains 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. Accordingly, we have prepared a written statement (titled "Unfunded Mandates Reform Act Analysis for the Industrial Boilers and Process Heaters NESHAP)" under section 202 of the UMRA, which is summarized below.

Statutory Authority

As discussed in this preamble, the statutory authority for the final rulemaking is section 112 of the CAA. Title III of the CAA Amendments was enacted to reduce nationwide air toxic emissions. Section 112(b) of the CAA lists the 188 chemicals, compounds, or groups of chemicals deemed by Congress to be HAP. These toxic air pollutants are to be regulated by NESHAP.

Section 112(d) of the CAA directs us to develop NESHAP, which require existing and new major sources to control emissions of HAP using MACT based standards. The final rule applies to all industrial, commercial, and institutional boilers and process heaters located at major sources of HAP emissions.

In compliance with section 205(a) of the UMRA, we identified and considered a reasonable number of regulatory alternatives. Additional information on the costs and environmental impacts of these regulatory alternatives is presented in the docket.

The regulatory alternative upon which the final rule is based represents the MACT floor for industrial boilers and process heaters and, as a result, it is the least costly and least burdensome alternative.

Social Costs and Benefits

The regulatory impact analysis prepared for the final rule including the EPA's assessment of costs and benefits, is detailed in the "Regulatory Impact Analysis for the Industrial Boilers and Process Heaters MACT" in the docket. Based on estimated compliance costs associated with the final rule and the predicted change in prices and production in the affected industries, the estimated social costs of the final rule are $863 million (1999 dollars). Depending on the number of affected facilities demonstrating eligibility for the health-based compliance alternatives, these annualized social costs could fall to $746 million.

It is estimated that 5 years after implementation of the final rule, HAP will be reduced by 58,500 tpy due to reductions in arsenic, beryllium, dioxin, hydrochloric acid, and several other HAP from industrial boilers and process heaters. Studies have determined a relationship between exposure to these HAP and the onset of cancer, however, there are some questions remaining on how cancers that may result from exposure to these HAP can be quantified in terms of dollars. Therefore, the EPA is unable to provide a monetized estimate of the benefits of the HAP reduced by the final rule at this time. However, there are significant reductions in PM and in SO_2 that occur. Reductions of 560,000 tons of PM with a diameter of less than or equal to 10 micrometers (PM_{10}), 159,000 tons of PM with a diameter of less than or equal to 2.5 micrometers ($PM_{2.5}$), and 112,000 tons of SO_2 are expected to occur. These reductions occur from existing sources in operation 5 years after the implementation of the regulation and are expected to continue throughout the life of the affected sources. The major health effect that results from these PM

and SO_2 emissions reductions is a reduction in premature mortality. Other health effects that occur are reductions in chronic bronchitis, asthma attacks, and work-lost days (*i.e.*, days when employees are unable to work).

While we are unable to monetize the benefits associated with the HAP emissions reductions, we are able to monetize the benefits associated with the PM and SO_2 emissions reductions. For SO_2 and PM, we estimated the benefits associated with health effects of PM, but were unable to quantify all categories of benefits (particularly those associated with ecosystem and environmental effects). Unquantified benefits are noted with "B" in the estimates presented below. Our primary estimate of the monetized benefits in 2005 associated with the implementation of the proposed alternative is $16.3 billion + B (1999 dollars). This estimate is about $15.3 billion + B (1999 dollars) higher than the estimated social costs shown earlier in this section. These benefit estimates are in advance of any facility demonstrating eligibility for the health-based compliance alternatives. Depending on the number of affected facilities demonstrating eligibility for the health-based compliance alternatives, the benefit estimate presuming the health-based compliance alternatives is $14.5 billion + B, which is $1.7 billion lower than the estimate for the final rule. This estimate is $13.8 billion + B higher than the estimated social costs presuming the health-based compliance alternatives. The general approach to calculating monetized benefits is discussed in more detail earlier in this preamble. For more detailed information on the benefits estimated for the final rule, refer to the RIA in the docket.

Future and Disproportionate Costs

The Unfunded Mandates Act requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the rule and any disproportionate budgetary effects. Our estimates of the future compliance costs of the final rule are discussed previously in this preamble.

We do not feel that there will be any disproportionate budgetary effects of the final rule on any particular areas of the country, State or local governments, types of communities (*e.g.*, urban, rural), or particular industry segments. This is true for the 257 facilities owned by 54 different government bodies, and this is borne out by the results of the "Economic Impact Analysis of the Industrial Boilers and Process Heaters NESHAP," the results of which are discussed previously in this preamble.

Effects on the National Economy

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

The nationwide economic impact of the final rule is presented in the "Economic Impact Analysis for the Industrial Boilers and Process Heaters MACT" in the docket. This analysis provides estimates of the effect of the final rule on some of the categories mentioned above. The results of the economic impact analysis are summarized previously in this preamble. The results show that there will be little impact on prices and output from the affected industries, and little impact on communities that may be affected by the final rule. In addition, there should be little impact on energy markets (in this case, coal, natural gas, petroleum products, and electricity). Hence, the potential impacts on the categories mentioned above should be minimal.

Consultation With Government Officials

The Unfunded Mandates Act requires that we describe the extent of the EPA's prior consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize our response to those comments or concerns. In addition, section 203 of the UMRA requires that we develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a rule. Although the final rule does not significantly affect any State, local, or Tribal governments, we have consulted with State and local air pollution control officials. We also have held meetings on the final rule with many of the stakeholders from numerous individual companies, environmental groups, consultants and vendors, labor unions, and other interested parties. We have added materials to the docket to document these meetings.

In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. While some small governments may have some sources affected by the final rule, the impacts are not expected to be significant. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA. However, EPA did complete a report containing analyses called for in the UMRA as a response to comments from many municipal utilities regarding the final rule and its potential impacts. This report, "Unfunded Mandates Reform Act Analysis for the Industrial Boilers and Process Heaters NESHAP," is in the docket.

E. Executive Order 13132: Federalism

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

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

The agency is required by section 112 of the CAA, to establish the standards in the final rule. The final rule primarily affects private industry, and does not impose significant economic costs on State or local governments. The final rule does not include an express provision preempting State or local regulations. Thus, the requirements of section 6 of the Executive Order do not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, we consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the final rule. This consultation took place during the ICCR Federal Advisory Committee Act (FACA) committee meetings where members representing State and local governments participated in developing recommendations for EPA's combustion-related rulemakings, including the final rule. The concerns raised by representatives of State and local governments were considered during the development of the final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to

promote communications between EPA and State and local governments, EPA specifically solicited comment on the final rule 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 final rule does not have tribal implications, as specified in Executive Order 13175.

The final rule does not significantly or uniquely affect the communities of Indian tribal governments. We do not know of any industrial-commercial-institutional 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. Thus, Executive Order 13175 does not apply to the final rule. The EPA specifically solicited additional comment on the final rule from tribal officials, but received none.

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 regulation 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, the EPA must evaluate the environmental health or safety effects of the planned regulation 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. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

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, Office of Management and Budget, 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 final rulemaking, and notices of final 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." The final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination is as follows.

The reduction in petroleum product output, which includes reductions in fuel production, is estimated at only 0.001 percent, or about 68 barrels per day based on 2000 U.S. fuel production nationwide. That is a minimal reduction in nationwide petroleum product output. The reduction in coal production is estimated at only 0.014 percent, or about 3.5 million tpy (or less than 1,000 tons per day) based on 2000 U.S. coal production nationwide. The combination of the increase in electricity usage estimated with the effect of the increased price of affected output yields an increase in electricity output estimated at only 0.012 percent, or about 0.72 billion kilowatt-hours per year based on 2000 U.S. electricity production nationwide. All energy price changes estimated show no increase in price more than 0.05 percent nationwide, and a similar result occurs for energy distribution costs. We also expect that there will be no discernable impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. All of the results presented above account for the pass through of costs to consumers, as well as the cost impact to producers. For more information on the estimated energy effects, please refer to the economic impact analysis for the final rule. The analysis is available in the public docket. It should be noted that these energy impact estimates are in advance of any facility demonstrating eligibility for the health-based compliance alternatives.

Depending on the number of affected facilities demonstrating eligibility for the health-based compliance alternatives, the reduction in petroleum product output, which includes reductions in fuel production, could fall to 65 barrels per day, or only 0.001 percent. The reduction in coal production could fall to only 0.010 percent, or about 2.5 million tpy based on 2000 U.S. coal production nationwide. The combination of the increase in electricity usage estimated with the effect of the increased price of affected output could yield an increase in electricity output could fall to only 0.0067 percent, or about 0.40 billion kilowatt-hours per year based on 2000 U.S. electricity production nationwide. All energy price changes estimated could now fall to increases of no more than 0.04 percent nationwide, and a similar result occurs for energy distribution costs. There should be no discernable impact on import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. All of the results presented with presumption of the health-based compliance alternatives also account for the pass through of costs to consumers as well as the cost impact to producers.

Therefore, we conclude that the final rule when implemented is not 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 the EPA to use voluntary consensus standards 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 directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 2, 2F, 2G, 3A, 3B, 4, 5, 5D, 17, 19, 26, 26A, 29 of 40 CFR part 60. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, and 19. The search and review results have been documented and are placed in the docket for the final rule.

The three voluntary consensus standards described below were identified as acceptable alternatives to EPA test methods for the purposes of the final rule.

The voluntary consensus standard ASME PTC 19–10–1981–Part 10, "Flue and Exhaust Gas Analyses," is cited in the final rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

The voluntary consensus standard ASTM D6522–00, "Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers" is an acceptable alternative to EPA Methods 3A and 10 for identifying carbon monoxide and oxygen concentrations for the final rule when the fuel is natural gas.

The voluntary consensus standard ASTM Z65907, "Standard Method for Both Speciated and Elemental Mercury Determination," is an acceptable alternative to EPA Method 29 (portion for mercury only) for the purpose of the final rule. This standard can be used in the final rule to determine the mercury concentration in stack gases for boilers with rated heat input capacities of greater than 250 MMBtu per hour.

In addition to the voluntary consensus standards EPA uses in the final rule, the search for emissions measurement procedures identified 15 other voluntary consensus standards. The EPA determined that 13 of these 15 standards identified for measuring emissions of the HAP or surrogates subject to the emission standards were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt these standards for this purpose. (See Docket ID No. OAR–2002–0058 for further information on the methods.)

Two of the 15 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

Section 63.7520 and Tables 4A through 4D of the final rule list the EPA testing methods. Under § 63.7(f) and § 63.8(f) of subpart A, 40 CFR part 63, 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. 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**. This action is a "major rule" as defined by 5 U.S.C. section 804(2). The rule will be effective on November 12, 2004.

List of Subjects in 40 CFR Part 63

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

Dated: February 26, 2004.

Michael O. Leavitt,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (b)(27) and paragraph (i)(3) and adding paragraph (b)(35) and paragraphs (b)(39) through (53) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(27) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers,[1] IBR approved for § 63.9307(c)(2), Table 4 of Subpart ZZZZ, and Table 5 to Subpart DDDDD of this part.

* * * * *

(35) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),[1] IBR approved for Table 5 to Subpart DDDDD of this part.

* * * * *

(39) ASTM Method D388–99,[ε1] Standard Classification of Coals by Rank,[1] IBR approved for § 63.7575.

(40) ASTM D396–02a, Standard Specification for Fuel Oils,[1] IBR approved for § 63.7575.

(41) ASTM D1835–03a, Standard Specification for Liquified Petroleum (LP) Gases,[1] IBR approved for § 63.7575.

(42) ASTM D2013–01, Standard Practice for Preparing Coal Samples for Analysis,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(43) ASTM D2234–00, [ε1] Standard Practice for Collection of a Gross Sample of Coal,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(44) ASTM D3173–02, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(45) ASTM D3683–94 (Reapproved 2000), Standard Test Method for Trace Elements in Coal and Coke Ash Absorption,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(46) ASTM D3684–01, Standard Test Method for Total Mercury in Coal by the Oxygen Bomb Combustion/Atomic Absorption Method,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(47) ASTM D5198–92 (Reapproved 2003), Standard Practice for Nitric Acid Digestion of Solid Waste,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(48) ASTM D5865–03a, Standard Test Method for Gross Calorific Value of Coal and Coke,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(49) ASTM D6323–98 (Reapproved 2003), Standard Guide for Laboratory Subsampling of Media Related to Waste Management Activities,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(50) ASTM E711–87 (Reapproved 1996), Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(51) ASTM E776–87 (Reapproved 1996), Standard Test Method for Forms of Chlorine in Refuse-Derived Fuel,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(52) ASTM E871–82 (Reapproved 1998), Standard Method of Moisture Analysis of Particulate Wood Fuels,[1] IBR approved for Table 6 to Subpart DDDDD of this part.

(53) ASTM E885–88 (Reapproved 1996), Standard Test Methods for Analyses of Metals in Refuse-Derived Fuel by Atomic Absorption Spectroscopy,[1] IBR approved for Table 6 to Subpart DDDDD of this part 63.

* * * * *

(i) * * *

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

* * * * *

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

Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

Sec.

What This Subpart Covers

63.7480 What is the purpose of this subpart?
63.7485 Am I subject to this subpart?
63.7490 What is the affected source of this subpart?
63.7491 Are any boilers or process heaters not subject to this subpart?
63.7495 When do I have to comply with this subpart?

Emission Limits and Work Practice Standards

63.7499 What are the subcategories of boilers and process heaters?
63.7500 What emission limits, work practice standards, and operating limits must I meet?

General Compliance Requirements

63.7505 What are my general requirements for complying with this subpart?
63.7506 Do any boilers or process heaters have limited requirements?
63.7507 What are the health-based compliance alternatives for the hydrogen chloride (HCl) and total selected metals (TSM) standards?

Testing, Fuel Analyses, and Initial Compliance Requirements

63.7510 What are my initial compliance requirements and by what date must I conduct them?
63.7515 When must I conduct subsequent performance tests or fuel analyses?
63.7520 What performance tests and procedures must I use?
63.7521 What fuel analyses and procedures must I use?
63.7522 Can I use emission averaging to comply with this subpart?
63.7525 What are my monitoring, installation, operation, and maintenance requirements?
63.7530 How do I demonstrate initial compliance with the emission limits and work practice standards?

Continuous Compliance Requirements

63.7535 How do I monitor and collect data to demonstrate continuous compliance?
63.7540 How do I demonstrate continuous compliance with the emission limits and work practice standards?
63.7541 How do I demonstrate continuous compliance under the emission averaging provision?

Notifications, Reports, and Records

63.7545 What notifications must I submit and when?
63.7550 What reports must I submit and when?
63.7555 What records must I keep?
63.7560 In what form and how long must I keep my records?

Other Requirements and Information

63.7565 What parts of the General Provisions apply to me?
63.7570 Who implements and enforces this subpart?
63.7575 What definitions apply to this subpart?

Tables to Subpart DDDDD of Part 63

Table 1 to Subpart DDDDD of Part 63—Emission Limits and Work Practice Standards
Table 2 to Subpart DDDDD of Part 63—Operating Limits for Boilers and Process Heaters With Particulate Matter Emission Limits
Table 3 to Subpart DDDDD of Part 63—Operating Limits for Boilers and Process Heaters With Mercury Emission Limits and Boilers and Process Heaters That Choose to Comply With the Alternative Total Selected Metals Emission Limits
Table 4 to Subpart DDDDD of Part 63—Operating Limits for Boilers and Process Heaters With Hydrogen Chloride Emission Limits
Table 5 to Subpart DDDDD of Part 63—Performance Testing Requirements
Table 6 to Subpart DDDDD of Part 63—Fuel Analysis Requirements
Table 7 to Subpart DDDDD of Part 63—Establishing Operating Limits
Table 8 to Subpart DDDDD of Part 63—Demonstrating Continuous Compliance
Table 9 to Subpart DDDDD of Part 63—Reporting Requirements
Table 10 to Subpart DDDDD of Part 63—Applicability of General Provisions to Subpart DDDDD

Appendix

Appendix A to Subpart DDDDD—Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives Specified for the Large Solid Fuel Subcategory

Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

What This Subpart Covers

§ 63.7480 What is the purpose of this subpart?

This subpart establishes national emission limits and work practice standards for hazardous air pollutants (HAP) emitted from industrial, commercial, and institutional boilers and process heaters. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limits and work practice standards.

§ 63.7485 Am I subject to this subpart?

You are subject to this subpart if you own or operate an industrial, commercial, or institutional boiler or process heater as defined in § 63.7575 that is located at, or is part of, a major source of HAP as defined in § 63.2 or § 63.761 (40 CFR part 63, subpart HH, National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities), except as specified in § 63.7491.

§ 63.7490 What is the affected source of this subpart?

(a) This subpart applies to new, reconstructed, or existing affected sources as described in paragraphs (a)(1) and (2) of this section.

(1) The affected source of this subpart is the collection of all existing industrial, commercial, and institutional boilers and process heaters within a subcategory located at a major source as defined in § 63.7575.

(2) The affected source of this subpart is each new or reconstructed industrial, commercial, or institutional boiler or

process heater located at a major source as defined in § 63.7575.

(b) A boiler or process heater is new if you commence construction of the boiler or process heater after January 13, 2003, and you meet the applicability criteria at the time you commence construction.

(c) A boiler or process heater is reconstructed if you meet the reconstruction criteria as defined in § 63.2, you commence reconstruction after January 13, 2003, and you meet the applicability criteria at the time you commence reconstruction.

(d) A boiler or process heater is existing if it is not new or reconstructed.

§ 63.7491 Are any boilers or process heaters not subject to this subpart?

The types of boilers and process heaters listed in paragraphs (a) through (o) of this section are not subject to this subpart.

(a) A municipal waste combustor covered by 40 CFR part 60, subpart AAAA, subpart BBBB, subpart Cb or subpart Eb.

(b) A hospital/medical/infectious waste incinerator covered by 40 CFR part 60, subpart Ce or subpart Ec.

(c) An electric utility steam generating unit that is a fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A fossil fuel-fired unit that cogenerates steam and electricity, and supplies more than one-third of its potential electric output capacity, and more than 25 megawatts electrical output to any utility power distribution system for sale is considered an electric utility steam generating unit.

(d) A boiler or process heater required to have a permit under section 3005 of the Solid Waste Disposal Act or covered by 40 CFR part 63, subpart EEE (*e.g.*, hazardous waste boilers).

(e) A commercial and industrial solid waste incineration unit covered by 40 CFR part 60, subpart CCCC or subpart DDDD.

(f) A recovery boiler or furnace covered by 40 CFR part 63, subpart MM.

(g) A boiler or process heater that is used specifically for research and development. This does not include units that only provide heat or steam to a process at a research and development facility.

(h) A hot water heater as defined in this subpart.

(i) A refining kettle covered by 40 CFR part 63, subpart X.

(j) An ethylene cracking furnace covered by 40 CFR part 63, subpart YY.

(k) Blast furnace stoves as described in the EPA document, entitled "National Emission Standards for Hazardous Air Pollutants (NESHAP) for Integrated Iron and Steel Plants—Background Information for Proposed Standards," (EPA–453/R–01–005).

(l) Any boiler and process heater specifically listed as an affected source in another standard(s) under 40 CFR part 63.

(m) Any boiler and process heater specifically listed as an affected source in another standard(s) established under section 129 of the Clean Air Act (CAA).

(n) Temporary boilers as defined in this subpart.

(o) Blast furnace gas fuel-fired boilers and process heaters as defined in this subpart.

§ 63.7495 When do I have to comply with this subpart?

(a) If you have a new or reconstructed boiler or process heater, you must comply with this subpart by November 12, 2004 or upon startup of your boiler or process heater, whichever is later.

(b) If you have an existing boiler or process heater, you must comply with this subpart no later than September 13, 2007.

(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, paragraphs (c)(1) and (2) of this section apply to you.

(1) Any new or reconstructed boiler or process heater at the existing facility must be in compliance with this subpart upon startup.

(2) Any existing boiler or process heater at the existing facility must be in compliance with this subpart within 3 years after the facility becomes a major source.

(d) You must meet the notification requirements in § 63.7545 according to the schedule in § 63.7545 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limits and work practice standards in this subpart.

Emission Limits and Work Practice Standards

§ 63.7499 What are the subcategories of boilers and process heaters?

The subcategories of boilers and process heaters are large solid fuel, limited use solid fuel, small solid fuel, large liquid fuel, limited use liquid fuel, small liquid fuel, large gaseous fuel, limited use gaseous fuel, and small gaseous fuel. Each subcategory is defined in § 63.7575.

§ 63.7500 What emission limits, work practice standards, and operating limits must I meet?

(a) You must meet the requirements in paragraphs (a)(1) and (2) of this section.

(1) You must meet each emission limit and work practice standard in Table 1 to this subpart that applies to your boiler or process heater, except as provided under § 63.7507.

(2) You must meet each operating limit in Tables 2 through 4 to this subpart that applies to your boiler or process heater. If you use a control device or combination of control devices not covered in Tables 2 through 4 to this subpart, or you wish to establish and monitor an alternative operating limit and alternative monitoring parameters, you must apply to the United States Environmental Protection Agency (EPA) Administrator for approval of alternative monitoring under § 63.8(f).

(b) As provided in § 63.6(g), EPA may approve use of an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.7505 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limits (including operating limits) and the work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You can demonstrate compliance with any applicable emission limit using fuel analysis if the emission rate calculated according to § 63.7530(d) is less than the applicable emission limit. Otherwise, you must demonstrate compliance using performance testing.

(d) If you demonstrate compliance with any applicable emission limit through performance testing, you must develop a site-specific monitoring plan according to the requirements in paragraphs (d)(1) through (4) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under § 63.8(f).

(1) For each continuous monitoring system (CMS) required in this section, you must develop and submit to the EPA Administrator for approval a site-specific monitoring plan that addresses paragraphs (d)(1)(i) through (iii) of this section. You must submit this site-specific monitoring plan at least 60 days

before your initial performance evaluation of your CMS.

(i) Installation of the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems; and

(iii) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(2) In your site-specific monitoring plan, you must also address paragraphs (d)(2)(i) through (iii) of this section.

(i) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), and (c)(4)(ii);

(ii) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(iii) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(3) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(4) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

(e) If you have an applicable emission limit or work practice standard, you must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

§ 63.7506 Do any boilers or process heaters have limited requirements?

(a) New or reconstructed boilers and process heaters in the large liquid fuel subcategory or the limited use liquid fuel subcategory that burn only fossil fuels and other gases and do not burn any residual oil are subject to the emission limits and applicable work practice standards in Table 1 to this subpart. You are not required to conduct a performance test to demonstrate compliance with the emission limits. You are not required to set and maintain operating limits to demonstrate continuous compliance with the emission limits. However, you must meet the requirements in paragraphs (a)(1) and (2) of this section and meet the CO work practice standard in Table 1 to this subpart.

(1) To demonstrate initial compliance, you must include a signed statement in the Notification of Compliance Status report required in § 63.7545(e) that indicates you burn only liquid fossil fuels other than residual oils, either alone or in combination with gaseous fuels.

(2) To demonstrate continuous compliance with the applicable emission limits, you must also keep records that demonstrate that you burn only liquid fossil fuels other than residual oils, either alone or in combination with gaseous fuels. You must also include a signed statement in each semiannual compliance report required in § 63.7550 that indicates you burned only liquid fossil fuels other than residual oils, either alone or in combination with gaseous fuels, during the reporting period.

(b) The affected boilers and process heaters listed in paragraphs (b)(1) through (3) of this section are subject to only the initial notification requirements in § 63.9(b) (*i.e.*, they are not subject to the emission limits, work practice standards, performance testing, monitoring, SSMP, site-specific monitoring plans, recordkeeping and reporting requirements of this subpart or any other requirements in subpart A of this part).

(1) Existing large and limited use gaseous fuel units.

(2) Existing large and limited use liquid fuel units.

(3) New or reconstructed small liquid fuel units that burn only gaseous fuels or distillate oil. New or reconstructed small liquid fuel boilers and process heaters that commence burning of any other type of liquid fuel must comply with all applicable requirements of this subpart and subpart A of this part upon startup of burning the other type of liquid fuel.

(c) The affected boilers and process heaters listed in paragraphs (c)(1) through (4) of this section are not subject to the initial notification requirements in § 63.9(b) and are not subject to any requirements in this subpart or in subpart A of this part (*i.e.*, they are not subject to the emission limits, work practice standards, performance testing, monitoring, SSM plans, site-specific monitoring plans, recordkeeping and reporting requirements of this subpart, or any other requirements in subpart A of this part.

(1) Existing small solid fuel boilers and process heaters.

(2) Existing small liquid fuel boilers and process heaters.

(3) Existing small gaseous fuel boilers and process heaters.

(4) New or reconstructed small gaseous fuel units.

§ 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 for large solid fuel boilers located at a single facility 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) In lieu of complying with the TSM emission standards in Table 1 to this subpart based on the sum of emissions for the eight selected metals, you may demonstrate eligibility for complying 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) under the procedures prescribed in appendix A to this subpart.

Testing, Fuel Analyses, and Initial Compliance Requirements

§ 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.

(b) For affected sources that elect to demonstrate compliance with the emission limits for HCl, mercury, or TSM through fuel analysis, your initial compliance requirement is to conduct 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 and establish operating limits according to § 63.7530 and Table 8 to this subpart.

(c) For affected sources that have an applicable work practice standard, your initial compliance requirements depend on the subcategory and rated capacity of your boiler or process heater. If your boiler or process heater is in any of the limited use subcategories or has a heat input capacity less than 100 MMBtu per hour, your initial compliance demonstration is conducting a performance test for carbon monoxide

according to Table 5 to this subpart. If 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, your initial compliance demonstration is conducting a performance evaluation of your continuous emission monitoring system for carbon monoxide according to § 63.7525(a).

(d) For existing affected sources, you must demonstrate initial compliance no later than 180 days after the compliance date that is specified for your source in § 63.7495 and according to the applicable provisions in § 63.7(a)(2) as cited in Table 10 to this subpart.

(e) If your new or reconstructed affected source commenced construction or reconstruction between January 13, 2003 and November 12, 2004, you must demonstrate initial compliance with either the proposed emission limits and work practice standards or the promulgated emission limits and work practice standards no later than 180 days after November 12, 2004 or within 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(f) If your new or reconstructed affected source commenced construction or reconstruction between January 13, 2003, and November 12, 2004, and you chose to comply with the proposed emission limits and work practice standards when demonstrating initial compliance, you must conduct a second compliance demonstration for the promulgated emission limits and work practice standards within 3 years after November 12, 2004 or within 3 years after startup of the affected source, whichever is later.

(g) If your new or reconstructed affected source commences construction or reconstruction after November 12, 2004, you must demonstrate initial compliance with the promulgated emission limits and work practice standards no later than 180 days after startup of the source.

§ 63.7515 When must I conduct subsequent performance tests or fuel analyses?

(a) You must conduct all applicable performance tests according to § 63.7520 on an annual basis, unless you follow the requirements listed in paragraphs (b) through (d) of this section. Annual performance tests must be completed between 10 and 12 months after the previous performance test, unless you follow the requirements listed in paragraphs (b) through (d) of this section.

(b) You can conduct performance tests less often for a given pollutant if your performance tests for the pollutant (particulate matter, HCl, mercury, or TSM) for at least 3 consecutive years show that you comply with the emission limit. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no more than 36 months after the previous performance test.

(c) If your boiler or process heater continues to meet the emission limit for particulate matter, HCl, mercury, or TSM, you may choose to conduct performance tests for these pollutants every third year, but each such performance test must be conducted no more than 36 months after the previous performance test.

(d) If a performance test shows noncompliance with an emission limit for particulate matter, HCl, mercury, or TSM, you must conduct annual performance tests for that pollutant until all performance tests over a consecutive 3-year period show compliance.

(e) If you have an applicable work practice standard for carbon monoxide and your boiler or process heater is in any of the limited use subcategories or has a heat input capacity less than 100 MMBtu per hour, you must conduct annual performance tests for carbon monoxide according to § 63.7520. Each annual performance test must be conducted between 10 and 12 months after the previous performance test.

(f) You must conduct a fuel analysis according to § 63.7521 for each type of fuel burned no later than 5 years after the previous fuel analysis for each fuel type. If you burn a new type of fuel, you must conduct a fuel analysis before burning the new type of fuel in your boiler or process heater. You must still meet all applicable continuous compliance requirements in § 63.7540.

(g) You must report the results of performance tests and fuel analyses within 60 days after the completion of the performance tests or fuel analyses. This report should also verify that the operating limits for your affected source have not changed or provide documentation of revised operating parameters established according to § 63.7530 and Table 7 to this subpart, as applicable. The reports for all subsequent performance tests and fuel analyses should include all applicable information required in § 63.7550.

§ 63.7520 What performance tests and procedures must I use?

(a) You must conduct all performance tests according to § 63.7(c), (d), (f), and (h). You must also develop a site-specific test plan according to the requirements in § 63.7(c) if you elect to demonstrate compliance through performance testing.

(b) You must conduct each performance test according to the requirements in Table 5 to this subpart.

(c) New or reconstructed boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil must demonstrate compliance according to § 63.7506(a).

(d) You must conduct each performance test under the specific conditions listed in Tables 5 and 7 to this subpart. You must conduct performance tests at the maximum normal operating load while burning the type of fuel or mixture of fuels that have the highest content of chlorine, mercury, and total selected metals, and you must demonstrate initial compliance and establish your operating limits based on these tests. These requirements could result in the need to conduct more than one performance test.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction.

(f) 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.

(g) To determine compliance with the emission limits, you must use the F-Factor methodology and equations in sections 12.2 and 12.3 of EPA Method 19 of appendix A to part 60 of this chapter to convert the measured particulate matter concentrations, the measured HCl concentrations, the measured TSM concentrations, and the measured mercury concentrations that result from the initial performance test to pounds per million Btu heat input emission rates using F-factors.

§ 63.7521 What fuel analyses and procedures must I use?

(a) You must conduct fuel analyses according to the procedures in paragraphs (b) through (e) of this section and Table 6 to this subpart, as applicable.

(b) You must develop and submit a site-specific fuel analysis plan to the EPA Administrator for review and approval according to the following procedures and requirements in paragraphs (b)(1) and (2) of this section.

(1) You must submit the fuel analysis plan no later than 60 days before the date that you intend to demonstrate compliance.

(2) You must include the information contained in paragraphs (b)(2)(i)

through (vi) of this section in your fuel analysis plan.

(i) The identification of all fuel types anticipated to be burned in each boiler or process heater.

(ii) For each fuel type, the notification of whether you or a fuel supplier will be conducting the fuel analysis.

(iii) For each fuel type, a detailed description of the sample location and specific procedures to be used for collecting and preparing the composite samples if your procedures are different from paragraph (c) or (d) of this section. Samples should be collected at a location that most accurately represents the fuel type, where possible, at a point prior to mixing with other dissimilar fuel types.

(iv) For each fuel type, the analytical methods, with the expected minimum detection levels, to be used for the measurement of selected total metals, chlorine, or mercury.

(v) If you request to use an alternative analytical method other than those required by Table 6 to this subpart, you must also include a detailed description of the methods and procedures that will be used.

(vi) If you will be using fuel analysis from a fuel supplier in lieu of site-specific sampling and analysis, the fuel supplier must use the analytical methods required by Table 6 to this subpart.

(c) At a minimum, you must obtain three composite fuel samples for each fuel type according to the procedures in paragraph (c)(1) or (2) of this section.

(1) If sampling from a belt (or screw) feeder, collect fuel samples according to paragraphs (c)(1)(i) and (ii) of this section.

(i) Stop the belt and withdraw a 6-inch wide sample from the full cross-section of the stopped belt to obtain a minimum two pounds of sample. Collect all the material (fines and coarse) in the full cross-section. Transfer the sample to a clean plastic bag.

(ii) Each composite sample will consist of a minimum of three samples collected at approximately equal intervals during the testing period.

(2) If sampling from a fuel pile or truck, collect fuel samples according to paragraphs (c)(2)(i) through (iii) of this section.

(i) For each composite sample, select a minimum of five sampling locations uniformly spaced over the surface of the pile.

(ii) At each sampling site, dig into the pile to a depth of 18 inches. Insert a clean flat square shovel into the hole and withdraw a sample, making sure that large pieces do not fall off during sampling.

(iii) Transfer all samples to a clean plastic bag for further processing.

(d) Prepare each composite sample according to the procedures in paragraphs (d)(1) through (7) of this section.

(1) Throughly mix and pour the entire composite sample over a clean plastic sheet.

(2) Break sample pieces larger than 3 inches into smaller sizes.

(3) Make a pie shape with the entire composite sample and subdivide it into four equal parts.

(4) Separate one of the quarter samples as the first subset.

(5) If this subset is too large for grinding, repeat the procedure in paragraph (d)(3) of this section with the quarter sample and obtain a one-quarter subset from this sample.

(6) Grind the sample in a mill.

(7) Use the procedure in paragraph (d)(3) of this section to obtain a one-quarter subsample for analysis. If the quarter sample is too large, subdivide it further using the same procedure.

(e) Determine the concentration of pollutants in the fuel (mercury, chlorine, and/or total selected metals) in units of pounds per million Btu of each composite sample for each fuel type according to the procedures in Table 6 to this subpart.

§ 63.7522 Can I use emission averaging to comply with this subpart?

(a) As an alternative to meeting the requirements of § 63.7500, if you have more than one existing large solid fuel boiler located at your facility, you may demonstrate compliance by emission averaging according to the procedures in this section in a State that does not choose to exclude emission averaging.

(b) 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.

(c) You may average particulate matter or TSM, HCl, and mercury emissions from existing large solid fuel boilers to demonstrate compliance with the limits in Table 1 to this subpart if you satisfy the requirements in paragraphs (d), (e), and (f) of this section.

(d) The weighted average emissions 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 paragraphs (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.

$$\text{AveWeighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Hm}) \div \sum_{i=1}^{n}\text{Hm} \qquad \text{(Eq. 1)}$$

Where:

AveWeighted = 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 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 can 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.

$$\text{AveWeighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Sm} \times \text{Cf}) \div \sum_{i=1}^{n}\text{Sm} \times \text{Cf} \qquad \text{(Eq. 2)}$$

Where:

AveWeighted = 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 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 12-month rolling average basis determined at the end of every month (12 times per year) according to paragraphs (f)(1) and (2). The first 12-month rolling-average 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 12-month rolling average weighted emission limit using the actual heat capacity for each existing large solid fuel boiler participating in the emissions averaging option.

$$\text{AveWeighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Hb}) \div \sum_{i=1}^{n}\text{Hb} \qquad \text{(Eq. 3)}$$

Where:

AveWeighted Emissions = 12-month rolling 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, 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 can use Equation 4 of this section as an alternative to using Equation 3 of this section to calculate the 12-month rolling average weighted emission limit using the actual steam generation from the large solid fuel boilers participating in the emissions averaging option.

$$\text{AveWeighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Sa} \times \text{Cf}) \div \sum_{i=1}^{n}\text{Sa} \times \text{Cf} \qquad \text{(Eq. 4)}$$

Where:

AveWeighted Emissions = 12-month rolling average weighted emission level for PM or TSM, HCl, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate, 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.

Sa = Actual steam generation for each calender 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.

(g) You must develop and submit an implementation plan for emission averaging to the applicable regulatory authority for review and approval according to the following procedures and requirements in paragraphs (g)(1) through (4).

(1) You must submit the implementation plan no later than 180 days before the date that the facility intends to demonstrate compliance using the emission averaging option.

(2) You must include the information contained in paragraphs (g)(2)(i) through (vii) of this section in your implementation plan for all emission sources included in an emissions average:

(i) The identification of all existing large solid fuel boilers in the averaging group, including for each either the applicable HAP emission level or the control technology installed on;

(ii) The process parameter (heat input or steam generated) that will be monitored for each averaging group of large solid fuel boilers;

(iii) The specific control technology or pollution prevention measure to be used for each emission source in the averaging group and the date of its installation or application. If the pollution prevention measure reduces or eliminates emissions from multiple sources, the owner or operator must identify each source;

(iv) The test plan for the measurement of particulate matter (or TSM), HCl, or mercury emissions in accordance with the requirements in § 63.7520;

(v) The operating parameters to be monitored for each control system or device and a description of how the operating limits will be determined;

(vi) If you request to monitor an alternative operating parameter pursuant to § 63.7525, you must also include:

(A) A description of the parameter(s) to be monitored and an explanation of the criteria used to select the parameter(s); and

(B) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device; the frequency and content of monitoring, reporting, and recordkeeping requirements; and a demonstration, to the satisfaction of the applicable regulatory authority, that the proposed monitoring frequency is sufficient to represent control device operating conditions; and

(vii) A demonstration that compliance with each of the applicable emission limit(s) will be achieved under representative operating conditions.

(3) Upon receipt, the regulatory authority shall review and approve or disapprove the plan according to the following criteria:

(i) Whether the content of the plan includes all of the information specified in paragraph (g)(2) of this section; and

(ii) Whether the plan presents sufficient information to determine that compliance will be achieved and maintained.

(4) The applicable regulatory authority shall not approve an emission averaging implementation plan containing any of the following provisions:

(i) Any averaging between emissions of differing pollutants or between differing sources; or

(ii) The inclusion of any emission source other than an existing large solid fuel boiler.

§ 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 according to the procedures in paragraphs (a)(1) through (6) of this section by the compliance date specified in § 63.7495.

(1) Each CEMS must be installed, operated, and maintained according to Performance Specification (PS) 4A of 40 CFR part 60, appendix B, and according to the site-specific monitoring plan developed according to § 63.7505(d).

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and according to PS 4A of 40 CFR part 60, appendix B.

(3) Each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) The CEMS data must be reduced as specified in § 63.8(g)(2).

(5) You must calculate and record a 30-day rolling average emission rate on a daily basis. A new 30-day rolling average emission rate is calculated as the average of all of the hourly CO emission data for the preceding 30 operating days.

(6) For purposes of calculating data averages, you must not use data recorded during periods of monitoring malfunctions, associated repairs, out-of-control periods, required quality assurance or control activities, or when your boiler or process heater is operating at less than 50 percent of its rated capacity. You must use all the data collected during all other periods in assessing compliance. Any period for which the monitoring system is out of control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(b) If you have an applicable opacity operating limit, you must install, operate, certify and maintain each continuous opacity monitoring system (COMS) according to the procedures in paragraphs (b)(1) through (7) of this section by the compliance date specified in § 63.7495.

(1) Each COMS must be installed, operated, and maintained according to PS 1 of 40 CFR part 60, appendix B.

(2) You must conduct a performance evaluation of each COMS according to the requirements in § 63.8 and according to PS 1 of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(i), each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) The COMS data must be reduced as specified in § 63.8(g)(2).

(5) You must include in your site-specific monitoring plan procedures and acceptance criteria for operating and maintaining each COMS according to the requirements in § 63.8(d). At a minimum, the monitoring plan must include a daily calibration drift assessment, a quarterly performance audit, and an annual zero alignment audit of each COMS.

(6) You must operate and maintain each COMS according to the requirements in the monitoring plan and the requirements of § 63.8(e). Identify periods the COMS is out of control including any periods that the COMS fails to pass a daily calibration drift assessment, a quarterly performance audit, or an annual zero alignment audit.

(7) You must determine and record all the 6-minute averages (and 1-hour block averages as applicable) collected for periods during which the COMS is not out of control.

(c) If you have an operating limit that requires the use of a CMS, you must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the procedures in paragraphs (c)(1) through (5) of this section by the compliance date specified in § 63.7495.

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

(2) Except for monitoring malfunctions, associated repairs, and required quality assurance or control

activities (including, as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation at all times that the unit is operating. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(3) For purposes of calculating data averages, you must not use data recorded during monitoring malfunctions, associated repairs, out of control periods, or required quality assurance or control activities. You must use all the data collected during all other periods in assessing compliance. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(4) Determine the 3-hour block average of all recorded readings, except as provided in paragraph (c)(3) of this section.

(5) Record the results of each inspection, calibration, and validation check.

(d) If you have an operating limit that requires the use of a flow measurement device, you must meet the requirements in paragraphs (c) and (d)(1) through (4) of this section.

(1) Locate the flow sensor and other necessary equipment in a position that provides a representative flow.

(2) Use a flow sensor with a measurement sensitivity of 2 percent of the flow rate.

(3) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow sensor calibration check at least semiannually.

(e) If you have an operating limit that requires the use of a pressure measurement device, you must meet the requirements in paragraphs (c) and (e)(1) through (6) of this section.

(1) Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum tolerance of 1.27 centimeters of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(4) Check pressure tap pluggage daily.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(f) If you have an operating limit that requires the use of a pH measurement device, you must meet the requirements in paragraphs (c) and (f)(1) through (3) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of scrubber effluent pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(g) If you have an operating limit that requires the use of equipment to monitor voltage and secondary current (or total power input) of an electrostatic precipitator (ESP), you must use voltage and secondary current monitoring equipment to measure voltage and secondary current to the ESP.

(h) If you have an operating limit that requires the use of equipment to monitor sorbent injection rate (*e.g.*, weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (c) and (h)(1) through (3) of this section.

(1) Locate the device in a position(s) that provides a representative measurement of the total sorbent injection rate.

(2) Install and calibrate the device in accordance with manufacturer's procedures and specifications.

(3) At least annually, calibrate the device in accordance with the manufacturer's procedures and specifications.

(i) If you elect to use a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (i)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in EPA–454/R–98–015, September 1997.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

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

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

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

(7) For positive pressure fabric filter systems that do not duct all compartments of cells to a common stack, a bag leak detection system must be installed in each baghouse compartment or cell.

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

§ 63.7530 How do I demonstrate initial compliance with the emission limits and work practice standards?

(a) You must demonstrate initial compliance with each emission limit and work practice standard that applies to you by either conducting initial performance tests and establishing operating limits, as applicable, according to § 63.7520, paragraph (c) of this section, and Tables 5 and 7 to this subpart OR conducting initial fuel analyses to determine emission rates and establishing operating limits, as applicable, according to § 63.7521, paragraph (d) of this section, and Tables 6 and 8 to this subpart.

(b) New or reconstructed boilers or process heaters in one of the liquid fuel subcategories that burn only fossil fuels and other gases and do not burn any residual oil must demonstrate compliance according to § 63.7506(a).

(c) If you demonstrate compliance through performance testing, you must establish each site-specific operating limit in Tables 2 through 4 to this subpart that applies to you according to the requirements in § 63.7520, Table 7 to this subpart, and paragraph (c)(4) of this section, as applicable. You must also conduct fuel analyses according to § 63.7521 and establish maximum fuel pollutant input levels according to paragraphs (c)(1) through (3) of this section, as applicable.

(1) You must establish the maximum chlorine fuel input (C_{input}) during the initial performance testing according to the procedures in paragraphs (c)(1)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in

your boiler or process heater that has the highest content of chlorine.

(ii) During the performance testing for HCl, you must determine the fraction of the total heat input for each fuel type burned (Q_i) based on the fuel mixture that has the highest content of chlorine, and the average chlorine concentration of each fuel type burned (C_i).

(iii) You must establish a maximum chlorine input level using Equation 5 of this section.

$$Cl_{input} = \sum_{i=1}^{n}[(C_i)(Q_i)] \quad \text{(Eq. 5)}$$

Where:

Cl_{input} = Maximum amount of chlorine entering the boiler or process heater through fuels burned in units of pounds per million Btu.

C_i = Arithmetic average concentration of chlorine in fuel type, i, analyzed according to § 63.7521, in units of pounds per million Btu.

Q_i = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine. If you do not burn multiple fuel types during the performance testing, it is not necessary to determine the value of this term. Insert a value of "1" for Q_i.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of chlorine.

(2) If you choose to comply with the alternative TSM emission limit instead of the particulate matter emission limit, you must establish the maximum TSM fuel input level (TSM_{input}) during the initial performance testing according to the procedures in paragraphs (c)(2)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your boiler or process heater that has the highest content of TSM.

(ii) During the performance testing for TSM, you must determine the fraction of total heat input from each fuel burned (Q_i) based on the fuel mixture that has the highest content of total selected metals, and the average TSM concentration of each fuel type burned (M_i).

(iii) You must establish a baseline TSM input level using Equation 6 of this section.

$$TSM_{input} = \sum_{i=1}^{n}[(M_i)(Q_i)] \quad \text{(Eq. 6)}$$

Where:

TSM_{input} = Maximum amount of TSM entering the boiler or process heater through fuels burned in units of pounds per million Btu.

M_i = Arithmetic average concentration of TSM in fuel type, i, analyzed according to § 63.7521, in units of pounds per million Btu.

Q_i = Fraction of total heat input from based fuel type, i, based on the fuel mixture that has the highest content of TSM. If you do not burn multiple fuel types during the performance test, it is not necessary to determine the value of this term. Insert a value of "1" for Q_i.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of TSM.

(3) You must establish the maximum mercury fuel input level ($Mercury_{input}$) during the initial performance testing using the procedures in paragraphs (c)(3)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your boiler or process heater that has the highest content of mercury.

(ii) During the compliance demonstration for mercury, you must determine the fraction of total heat input for each fuel burned (Q_i) based on the fuel mixture that has the highest content of mercury, and the average mercury concentration of each fuel type burned (HG_i).

(iii) You must establish a maximum mercury input level using Equation 7 of this section.

$$Mercury_{input} = \sum_{i=1}^{n}[(HG_i)(Q_i)] \quad \text{(Eq. 7)}$$

Where:

$Mercury_{input}$ = Maximum amount of mercury entering the boiler or process heater through fuels burned in units of pounds per million Btu.

HG_i = Arithmetic average concentration of mercury in fuel type, i, analyzed according to § 63.7521, in units of pounds per million Btu.

Q_i = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest mercury content. If you do not burn multiple fuel types during the performance test, it is not necessary to determine the value of this term. Insert a value of "1" for Q_i.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of mercury.

(4) You must establish parameter operating limits according to paragraphs (c)(4)(i) through (iv) of this section.

(i) For a wet scrubber, you must establish the minimum scrubber effluent pH, liquid flowrate, and pressure drop as defined in § 63.7575, as your operating limits during the three-run performance test. If you use a wet scrubber and you conduct separate performance tests for particulate matter, HCl, and mercury emissions, you must establish one set of minimum scrubber effluent pH, liquid flowrate, and pressure drop operating limits. The minimum scrubber effluent pH operating limit must be established during the HCl performance test. If you conduct multiple performance tests, you must set the minimum liquid flowrate and pressure drop operating limits at the highest minimum values established during the performance tests.

(ii) For an electrostatic precipitator, you must establish the minimum voltage and secondary current (or total power input), as defined in § 63.7575, as your operating limits during the three-run performance test.

(iii) For a dry scrubber, you must establish the minimum sorbent injection rate, as defined in § 63.7575, as your operating limit during the three-run performance test.

(iv) The operating limit for boilers or process heaters with fabric filters that choose to demonstrate continuous compliance through bag leak detection systems is that a bag leak detection system be installed according to the requirements in § 63.7525, and that each fabric filter must be operated such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period.

(d) If you elect to demonstrate compliance with an applicable emission limit through fuel analysis, you must conduct fuel analyses according to § 63.7521 and follow the procedures in paragraphs (d)(1) through (5) of this section.

(1) If you burn more than one fuel type, you must determine the fuel mixture you could burn in your boiler or process heater that would result in the maximum emission rates of the pollutants that you elect to demonstrate compliance through fuel analysis.

(2) You must determine the 90th percentile confidence level fuel pollutant concentration of the composite samples analyzed for each fuel type using the one-sided z-statistic test described in Equation 8 of this section.

$$P_{90} = \text{mean} + (SD \times t) \quad \text{(Eq. 8)}$$

Where:

P_{90} = 90th percentile confidence level pollutant concentration, in pounds per million Btu.

mean = Arithmetic average of the fuel pollutant concentration in the fuel samples analyzed according to § 63.7521, in units of pounds per million Btu.
SD = Standard deviation of the pollutant concentration in the fuel samples analyzed according to § 63.7521, in units of pounds per million Btu.
t = t distribution critical value for 90th percentile (0.1) probability for the appropriate degrees of freedom (number of samples minus one) as obtained from a Distribution Critical Value Table.

(3) To demonstrate compliance with the applicable emission limit for HCl, the HCl emission rate that you calculate for your boiler or process heater using Equation 9 of this section must be less than the applicable emission limit for HCl.

$$HCl = \sum_{i=1}^{n}\left[(C_{i90})(Q_i)(1.028)\right] \quad \text{(Eq. 9)}$$

Where:
HCl = HCl emission rate from the boiler or process heater in units of pounds per million Btu.
C_{i90} = 90th percentile confidence level concentration of chlorine in fuel type, i, in units of pounds per million Btu as calculated according to Equation 8 of this section.
Q_i = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Q_i.
n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of chlorine.
1.028 = Molecular weight ratio of HCl to chlorine.

(4) To demonstrate compliance with the applicable emission limit for TSM, the TSM emission rate that you calculate for your boiler or process heater using Equation 10 of this section must be less than the applicable emission limit for TSM.

$$TSM = \sum_{i=1}^{n}\left[(M_{i90})(Q_i)\right] \quad \text{(Eq. 10)}$$

Where:
TSM = TSM emission rate from the boiler or process heater in units of pounds per million Btu.
M_{i90} = 90th percentile confidence level concentration of TSM in fuel, i, in units of pounds per million Btu as calculated according to Equation 8 of this section.
Q_i = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of total selected metals. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Q_i.
n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of TSM.

(5) To demonstrate compliance with the applicable emission limit for mercury, the mercury emission rate that you calculate for your boiler or process heater using Equation 11 of this section must be less than the applicable emission limit for mercury.

$$Mercury = \sum_{i=1}^{n}\left[(HG_{i90})(Q_i)\right] \quad \text{(Eq. 11)}$$

Where:
Mercury = Mercury emission rate from the boiler or process heater in units of pounds per million Btu.
HG_{i90} = 90th percentile confidence level concentration of mercury in fuel, i, in units of pounds per million Btu as calculated according to Equation 8 of this section.
Q_i = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest mercury content. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Q_i.
n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest mercury content.

(e) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.7545(e).

Continuous Compliance Requirements

§ 63.7535 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section and the site-specific monitoring plan required by § 63.7505(d).

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, or required quality assurance or control activities in data averages and calculations used to report emission or operating levels. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system. Boilers and process heaters that have an applicable carbon monoxide work practice standard and are required to install and operate a CEMS, may not use data recorded during periods when the boiler or process heater is operating at less than 50 percent of its rated capacity.

§ 63.7540 How do I demonstrate continuous compliance with the emission limits and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit, operating limit, and work practice standard in Tables 1 through 4 to this subpart that applies to you according to the methods specified in Table 8 to this subpart and paragraphs (a)(1) through (10) of this section.

(1) Following the date on which the initial performance test is completed or is required to be completed under §§ 63.7 and 63.7510, whichever date comes first, you must not operate above any of the applicable maximum operating limits or below any of the applicable minimum operating limits listed in Tables 2 through 4 to this subpart at all times except during periods of startup, shutdown and malfunction. Operating limits do not apply during performance tests. Operation above the established maximum or below the established minimum operating limits shall constitute a deviation of established operating limits.

(2) You must keep records of the type and amount of all fuels burned in each boiler or process heater during the reporting period to demonstrate that all fuel types and mixtures of fuels burned would either result in lower emissions of TSM, HCl, and mercury, than the applicable emission limit for each pollutant (if you demonstrate compliance through fuel analysis), or result in lower fuel input of TSM, chlorine, and mercury than the maximum values calculated during the last performance tests (if you demonstrate compliance through performance testing).

(3) If you demonstrate compliance with an applicable HCl emission limit through fuel analysis and you plan to burn a new type of fuel, you must recalculate the HCl emission rate using Equation 9 of § 63.7530 according to paragraphs (a)(3)(i) through (iii) of this section.

(i) You must determine the chlorine concentration for any new fuel type in units of pounds per million Btu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.7521(b).

(ii) You must determine the new mixture of fuels that will have the highest content of chlorine.

(iii) Recalculate the HCl emission rate from your boiler or process heater under these new conditions using Equation 9 of § 63.7530. The recalculated HCl emission rate must be less than the applicable emission limit.

(4) If you demonstrate compliance with an applicable HCl emission limit through performance testing and you plan to burn a new type of fuel type 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).

(5) If you demonstrate compliance with an applicable TSM emission limit through fuel analysis, and you plan to burn a new type of fuel, you must recalculate the TSM emission rate using Equation 10 of § 63.7530 according to the procedures specified in paragraphs (a)(5)(i) through (iii) of this section.

(i) You must determine the TSM concentration for any new fuel type in units of pounds per million Btu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.7521(b).

(ii) You must determine the new mixture of fuels that will have the highest content of TSM.

(iii) Recalculate the TSM emission rate from your boiler or process heater under these new conditions using Equation 10 of § 63.7530. The recalculated TSM emission rate must be less than the applicable emission limit.

(6) If you demonstrate compliance with an applicable TSM 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 TSM input using Equation 6 of § 63.7530. If the results of recalculating the maximum total selected metals input using Equation 6 of § 63.7530 are higher than the maximum TSM 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 TSM 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).

(7) If you demonstrate compliance with an applicable mercury emission limit through fuel analysis, and you plan to burn a new type of fuel, you must recalculate the mercury emission rate using Equation 11 of § 63.7530 according to the procedures specified in paragraphs (a)(7)(i) through (iii) of this section.

(i) You must determine the mercury concentration for any new fuel type in units of pounds per million Btu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.7521(b).

(ii) You must determine the new mixture of fuels that will have the highest content of mercury.

(iii) Recalculate the mercury emission rate from your boiler or process heater under these new conditions using Equation 11 of § 63.7530. The recalculated mercury emission rate must be less than the applicable emission limit.

(8) If you demonstrate compliance with an applicable mercury 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 mercury input using Equation 7 of § 63.7530. If the results of recalculating the maximum mercury input using Equation 7 of § 63.7530 are higher than the maximum mercury 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 mercury 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).

(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 according to your SSMP, 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. You must also 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. You must also record the percent of the operating time during each 6-month period that the alarm sounds. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken to initiate corrective action.

(10) If you have an applicable work practice standard for carbon monoxide, and you are required to install a CEMS according to § 63.7525(a), then you must meet the requirements in paragraphs (a)(10)(i) through (iii) of this section.

(i) You must continuously monitor carbon monoxide according to §§ 63.7525(a) and 63.7535.

(ii) Maintain a carbon monoxide emission level below your applicable carbon monoxide work practice standard in Table 1 to this subpart at all times except during periods of startup, shutdown, malfunction, and when your boiler or process heater is operating at less than 50 percent of rated capacity.

(iii) Keep records of carbon monoxide levels according to § 63.7555(b).

(b) You must report each instance in which you did not meet each emission limit, operating limit, and work practice standard in Tables 1 through 4 to this subpart that apply to you. You must also report each instance during a startup, shutdown, or malfunction when you did not meet each applicable emission limit, operating limit, and work practice standard. These instances are deviations from the emission limits and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.7550.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the SSMP as required in § 63.7505(e).

(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 your SSMP. The EPA 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).

§ 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 (4) of this section.

(1) For each calendar month, demonstrate compliance with the average weighted emissions limit for the existing large solid fuel boilers participating in the emissions averaging option as determined in § 63.7522(f) and (g);

(2) For each existing solid fuel boiler participating in the emissions averaging option that is equipped with a dry control system, maintain opacity at or below the applicable limit;

(3) For each existing solid fuel boiler participating in the emissions averaging option that is equipped with a wet scrubber, maintain the 3-hour average parameter values at or below the operating limits established during the most recent performance test; and

(4) For each existing solid fuel boiler participating in the emissions averaging option that has an approved alternative operating plan, maintain the 3-hour average parameter values at or below the operating limits established in the most recent performance test.

(b) Any instance where the owner or operator fails to comply with the continuous monitoring requirements in paragraphs (a)(1) through (4) of this section, except during periods of startup, shutdown, and malfunction, is a deviation.

Notification, Reports, and Records

§ 63.7545 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8 (e), (f)(4) and (6), and 63.9 (b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before November 12, 2004, you must submit an Initial Notification not later than 120 days after November 12, 2004. The Initial Notification must include the information required in paragraphs (b)(1) and (2) of this section, as applicable.

(1) If your affected source has an annual capacity factor of greater than 10 percent, your Initial Notification must include the information required by § 63.9(b)(2).

(2) If your affected source has a federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent such that the unit is in one of the limited use subcategories (the limited use solid fuel subcategory, the limited use liquid fuel subcategory, or the limited use gaseous fuel subcategory), your Initial Notification must include the information required by § 63.9(b)(2) and also a signed statement indicating your affected source has a federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent.

(c) As specified in § 63.9(b)(4) and (b)(5), if you startup your new or reconstructed affected source on or after November 12, 2004, you must submit an Initial Notification not later than 15 days after the actual date of startup of the affected source.

(d) If you are required to conduct a performance test you must submit a Notification of Intent to conduct a performance test at least 30 days before the performance test is scheduled to begin.

(e) If you are required to conduct an initial compliance demonstration as specified in § 63.7530(a), you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). For each initial compliance demonstration, you must submit the Notification of Compliance Status, including all performance test results and fuel analyses, before the close of business on the 60th day following the completion of the performance test and/or other initial compliance demonstrations according to § 63.10(d)(2). The Notification of Compliance Status report must contain all the information specified in paragraphs (e)(1) through (9), as applicable.

(1) A description of the affected source(s) including identification of which subcategory the source is in, the capacity of the source, a description of the add-on controls used on the source description of the fuel(s) burned, and justification for the fuel(s) burned during the performance test.

(2) Summary of the results of all performance tests, fuel analyses, and calculations conducted to demonstrate initial compliance including all established operating limits.

(3) Identification of whether you are complying with the particulate matter emission limit or the alternative total selected metals emission limit.

(4) Identification of whether you plan to demonstrate compliance with each applicable emission limit through performance testing or fuel analysis.

(5) Identification of whether you plan to demonstrate compliance by emissions averaging.

(6) A signed certification that you have met all applicable emission limits and work practice standards.

(7) A summary of the carbon monoxide emissions monitoring data and the maximum carbon monoxide emission levels recorded during the performance test to show that you have met any applicable work practice standard in Table 1 to this subpart.

(8) If your new or reconstructed boiler or process heater is in one of the liquid fuel subcategories and burns only liquid fossil fuels other than residual oil either alone or in combination with gaseous fuels, you must submit a signed statement certifying this in your Notification of Compliance Status report.

(9) If you had a deviation from any emission limit or work practice standard, you must also submit a description of the deviation, the duration of the deviation, and the corrective action taken in the Notification of Compliance Status report.

§ 63.7550 What reports must I submit and when?

(a) You must submit each report in Table 9 to this subpart that applies to you.

(b) Unless the EPA Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7495 and ending on June 30 or December 31, whichever date is the first date that occurs at least 180 days after the compliance date that is specified for your source in § 63.7495.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.7495.

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

(4) Each subsequent compliance report must be postmarked or delivered

no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information required in paragraphs (c)(1) through (11) of this section.

(1) Company name and address.

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

(3) Date of report and beginning and ending dates of the reporting period.

(4) The total fuel use by each affected source subject to an emission limit, for each calendar month within the semiannual reporting period, including, but not limited to, a description of the fuel and the total fuel usage amount with units of measure.

(5) A summary of the results of the annual performance tests and documentation of any operating limits that were reestablished during this test, if applicable.

(6) A signed statement indicating that you burned no new types of fuel. Or, if you did burn a new type of fuel, you must submit the calculation of chlorine input, using Equation 5 of § 63.7530, that demonstrates that your source is still within its maximum chlorine input level established during the previous performance testing (for sources that demonstrate compliance through performance testing) or you must submit the calculation of HCl emission rate using Equation 9 of § 63.7530 that demonstrates that your source is still meeting the emission limit for HCl emissions (for boilers or process heaters that demonstrate compliance through fuel analysis). If you burned a new type of fuel, you must submit the calculation of TSM input, using Equation 6 of § 63.7530, that demonstrates that your source is still within its maximum TSM input level established during the previous performance testing (for sources that demonstrate compliance through performance testing), or you must submit the calculation of TSM emission rate using Equation 10 of § 63.7530 that demonstrates that your source is still meeting the emission limit for TSM emissions (for boilers or process heaters that demonstrate compliance through fuel analysis). If you burned a new type of fuel, you must submit the calculation of mercury input, using Equation 7 of § 63.7530, that demonstrates that your source is still within its maximum mercury input level established during the previous performance testing (for sources that demonstrate compliance through performance testing), or you must submit the calculation of mercury emission rate using Equation 11 of § 63.7530 that demonstrates that your source is still meeting the emission limit for mercury emissions (for boilers or process heaters that demonstrate compliance through fuel analysis).

(7) If you wish to burn a new type of fuel and you can not demonstrate compliance with the maximum chlorine input operating limit using Equation 5 of § 63.7530, the maximum TSM input operating limit using Equation 6 of § 63.7530, or the maximum mercury input operating limit using Equation 7 of § 63.7530, you must include in the compliance report a statement indicating the intent to conduct a new performance test within 60 days of starting to burn the new fuel.

(8) The hours of operation for each boiler and process heater that is subject to an emission limit for each calendar month within the semiannual reporting period. This requirement applies only to limited use boilers and process heaters.

(9) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i).

(10) If there are no deviations from any emission limits or operating limits in this subpart that apply to you, and there are no deviations from the requirements for work practice standards in this subpart, a statement that there were no deviations from the emission limits, operating limits, or work practice standards during the reporting period.

(11) If there were no periods during which the CMSs, including CEMS, COMS, and CPMS, were out of control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMSs were out of control during the reporting period.

(d) For each deviation from an emission limit or operating limit in this subpart and for each deviation from the requirements for work practice standards in this subpart that occurs at an affected source where you are not using a CMSs to comply with that emission limit, operating limit, or work practice standard, the compliance report must contain the information in paragraphs (c)(1) through (10) of this section and the information required in paragraphs (d)(1) through (4) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) A description of the deviation and which emission limit, operating limit, or work practice standard from which you deviated.

(3) Information on the number, duration, and cause of deviations (including unknown cause), as applicable, and the corrective action taken.

(4) A copy of the test report if the annual performance test showed a deviation from the emission limit for particulate matter or the alternative TSM limit, a deviation from the HCl emission limit, or a deviation from the mercury emission limit.

(e) For each deviation from an emission limitation and operating limit or work practice standard in this subpart occurring at an affected source where you are using a CMS to comply with that emission limit, operating limit, or work practice standard, you must include the information in paragraphs (c) (1) through (10) of this section and the information required in paragraphs (e) (1) through (12) of this section. This includes periods of startup, shutdown, and malfunction and any deviations from your site-specific monitoring plan as required in § 63.7505(d).

(1) The date and time that each malfunction started and stopped and description of the nature of the deviation (*i.e.*, what you deviated from).

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out of control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems,

process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMSs downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each parameter that was monitored at the affected source for which there was a deviation, including opacity, carbon monoxide, and operating parameters for wet scrubbers and other control devices.

(9) A brief description of the source for which there was a deviation.

(10) A brief description of each CMS for which there was a deviation.

(11) The date of the latest CMS certification or audit for the system for which there was a deviation.

(12) A description of any changes in CMSs, processes, or controls since the last reporting period for the source for which there was a deviation.

(f) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 9 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limit, operating limit, or work practice requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(g) If you operate a new gaseous fuel unit that is subject to the work practice standard specified in Table 1 to this subpart, and you intend to use a fuel other than natural gas or equivalent to fire the affected unit, you must submit a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.7575. The notification must include the information specified in paragraphs (g)(1) through (5) of this section.

(1) Company name and address.

(2) Identification of the affected unit.

(3) Reason you are unable to use natural gas or equivalent fuel, including the date when the natural gas curtailment was declared or the natural gas supply interruption began.

(4) Type of alternative fuel that you intend to use.

(5) Dates when the alternative fuel use is expected to begin and end.

§ 63.7555 What records must I keep?

(a) You must keep records according to paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status or semiannual compliance report that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, fuel analyses, or other compliance demonstrations, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each CEMS, CPMS, and COMS, you must keep records according to paragraphs (b)(1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for continuous opacity monitoring system during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (*i.e.*, superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Request for alternatives to relative accuracy test for CEMS as required in § 63.8(f)(6)(i).

(5) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in Table 8 to this subpart including records of all monitoring data and calculated averages for applicable operating limits such as opacity, pressure drop, carbon monoxide, and pH to show continuous compliance with each emission limit, operating limit, and work practice standard that applies to you.

(d) For each boiler or process heater subject to an emission limit, you must also keep the records in paragraphs (d)(1) through (5) of this section.

(1) You must keep records of monthly fuel use by each boiler or process heater, including the type(s) of fuel and amount(s) used.

(2) You must keep records of monthly hours of operation by each boiler or process heater. This requirement applies only to limited-use boilers and process heaters.

(3) A copy of all calculations and supporting documentation of maximum chlorine fuel input, using Equation 5 of § 63.7530, that were done to demonstrate continuous compliance with the HCl emission limit, for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of HCl emission rates, using Equation 9 of § 63.7530, that were done to demonstrate compliance with the HCl emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum chlorine fuel input or HCl emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate chlorine fuel input, or HCl emission rate, for each boiler and process heater.

(4) A copy of all calculations and supporting documentation of maximum TSM fuel input, using Equation 6 of § 63.7530, that were done to demonstrate continuous compliance with the TSM emission limit for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of TSM emission rates, using Equation 10 of § 63.7530, that were done to demonstrate compliance with the TSM emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum TSM fuel input or TSM emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate TSM fuel input, or TSM emission rates, for each boiler and process heater.

(5) A copy of all calculations and supporting documentation of maximum mercury fuel input, using Equation 7 of § 63.7530, that were done to demonstrate continuous compliance with the mercury emission limit for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of mercury emission rates, using Equation 11 of § 63.7530, that were done to demonstrate compliance with the mercury emission limit. Supporting documentation should

include results of any fuel analyses and basis for the estimates of maximum mercury fuel input or mercury emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate mercury fuel input, or mercury emission rates, for each boiler and process heater.

(e) If your boiler or process heater is subject to an emission limit or work practice standard in Table 1 to this subpart and has a federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent such that the unit is in one of the limited use subcategories, you must keep the records in paragraphs (e)(1) and (2) of this section.

(1) A copy of the federally enforceable permit that limits the annual capacity factor of the source to less than or equal to 10 percent.

(2) Fuel use records for the days the boiler or process heater was operating.

§ 63.7560 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 review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years.

Other Requirements and Information

§ 63.7565 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7570 Who implements and enforces this subpart?

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

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities listed in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency, however, the U.S. EPA retains oversight of this subpart and can take enforcement actions, as appropriate.

(1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.7500(a) and (b) under § 63.6(g).

(2) Approval of alternative opacity emission limits in § 63.7500(a) under § 63.6(h)(9).

(3) Approval of major change to test methods in Table 5 to this subpart under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major change to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major change to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7575 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2 (the General Provisions), and in this section as follows:

Annual capacity factor means the ratio between the actual heat input to a boiler or process heater from the fuels burned during a calendar year, and the potential heat input to the boiler or process heater had it been operated for 8,760 hours during a year at the maximum steady state design heat input capacity.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.*, baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on electrodynamic, triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Biomass fuel means unadulterated wood as defined in this subpart, wood residue, and wood products (*e.g.*, trees, tree stumps, tree limbs, bark, lumber, sawdust, sanderdust, chips, scraps, slabs, millings, and shavings); animal litter; vegetative agricultural and silvicultural materials, such as logging residues (slash), nut and grain hulls and chaff (*e.g.*, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds.

Blast furnace gas fuel-fired boiler or process heater means an industrial/commercial/institutional boiler or process heater that receives 90 percent or more of its total heat input (based on an annual average) from blast furnace gas.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Waste heat boilers are excluded from this definition.

Coal means all solid fuels classifiable as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials in ASTM D388–991 ε1, "Standard Specification for Classification of Coals by Rank 1" (incorporated by reference, see § 63.14(b)), coal refuse, and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat including but not limited to, solvent-refined coal, coal-oil mixtures, and coal-water mixtures, for the purposes of this subpart. Coal derived gases are excluded from this definition.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.

Commercial/institutional boiler means a boiler used in commercial establishments or institutional establishments such as medical centers, research centers, institutions of higher education, hotels, and laundries to provide electricity, steam, and/or hot water.

Construction/demolition material means waste building material that result from the construction or demolition operations on houses and commercial and industrial buildings.

Deviation. (1) Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard;

(ii) 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

(iii) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

(2) A deviation is not always a violation. The determination of whether a deviation constitutes a violation of the

standard is up to the discretion of the entity responsible for enforcement of the standards.

Distillate oil means fuel oils, including recycled oils, that comply with the specifications for fuel oil numbers 1 and 2, as defined by the American Society for Testing and Materials in ASTM D396–02a, "Standard Specifications for Fuel Oils [1]" (incorporated by reference, see § 63.14(b)).

Dry scrubber means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gas in the exhaust stream forming a dry powder material. Sorbent injection systems in fluidized bed boilers and process heaters are included in this definition.

Electric utility steam generating unit means a fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A fossil fuel-fired unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale is considered an electric utility steam generating unit.

Electrostatic precipitator means an add-on air pollution control device used to capture particulate matter by charging the particles using an electrostatic field, collecting the particles using a grounded collecting surface, and transporting the particles into a hopper.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Federally enforceable means all limitations and conditions that are enforceable by the EPA Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

Firetube boiler means a boiler in which hot gases of combustion pass through the tubes and water contacts the outside surfaces of the tubes.

Fossil fuel means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials.

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.

Gaseous fuel includes, but is not limited to, natural gas, process gas, landfill gas, coal derived gas, refinery gas, and biogas. Blast furnace gas is exempted from this definition.

Heat input means heat derived from combustion of fuel in a boiler or process heater and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources such as gas turbines, internal combustion engines, kilns, etc.

Hot water heater means a closed vessel with a capacity of no more than 120 U.S. gallons in which water is heated by combustion of gaseous or liquid fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 psig, including the apparatus by which the heat is generated and all controls and devices necessary to prevent water temperatures from exceeding 210°F (99°C).

Industrial boiler means a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, and/or electricity.

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 or gas supply emergencies, has a rated capacity of greater than 10 MMBtu per hour heat input, and has an annual capacity factor of greater than 10 percent.

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 has an annual capacity factor of greater than 10 percent. Large gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies 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 has an annual capacity factor of greater than 10 percent.

Limited use gaseous fuel subcategory includes any watertube boiler or process heater that burns gaseous fuels not combined with any liquid or solid fuels, burns liquid fuel only during periods of gas curtailment or gas supply emergencies, has a rated capacity of greater than 10 MMBtu per hour heat input, and has a federally enforceable annual average capacity factor of equal to or less than 10 percent.

Limited use 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 has a federally enforceable annual average capacity factor of equal to or less than 10 percent. Limited use gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies are not included in this definition.

Limited use 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 has a federally enforceable annual average capacity factor of equal to or less than 10 percent.

Liquid fossil fuel means petroleum, distillate oil, residual oil and any form of liquid fuel derived from such material.

Liquid fuel includes, but is not limited to, distillate oil, residual oil, waste oil, and process liquids.

Minimum pressure drop means 90 percent of the lowest test-run average pressure drop measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limit.

Minimum scrubber effluent pH means 90 percent of the lowest test-run average effluent pH measured at the outlet of the wet scrubber according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable hydrogen chloride emission limit.

Minimum scrubber flow rate means 90 percent of the lowest test-run average flow rate measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limit.

Minimum sorbent flow rate means 90 percent of the lowest test-run average sorbent (or activated carbon) flow rate measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits.

Minimum voltage or amperage means 90 percent of the lowest test-run average voltage or amperage to the electrostatic precipitator measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits.

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835–03a, "Standard Specification for Liquid Petroleum Gases" (incorporated by reference, see § 63.14(b)).

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Particulate matter means any finely divided solid or liquid material, other than uncombined water, as measured by the test methods specified under this subpart, or an alternative method.

Period of natural gas curtailment or supply interruption means a period of time during which the supply of natural gas to an affected facility is halted for reasons beyond the control of the facility. An increase in the cost or unit price of natural gas does not constitute a period of natural gas curtailment or supply interruption.

Process heater means an enclosed device using controlled flame, that is not a boiler, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, or solid) or to a heat transfer material for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not directly come into contact with process materials. Process heaters do not include units used for comfort heat or space heat, food preparation for on-site consumption, or autoclaves.

Residual oil means crude oil, and all fuel oil numbers 4, 5 and 6, as defined by the American Society for Testing and Materials in ASTM D396–02a, "Standard Specifications for Fuel Oils !" (incorporated by reference, see § 63.14(b)).

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

Small gaseous fuel subcategory includes any firetube boiler that burns gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment or gas supply emergencies, and any boiler or process heater that burns gaseous fuels not combined with any solid fuels, burns liquid fuel only during periods of gas curtailment or gas supply emergencies, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input.

Small liquid fuel subcategory includes any firetube boiler that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, and any boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input. Small gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies are not included in this definition.

Small solid fuel subcategory includes any firetube boiler that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, and any other boiler or process heater that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels and has a rated capacity of less than or equal to 10 MMBtu per hour heat input.

Solid fuel includes, but is not limited to, coal, wood, biomass, tires, plastics, and other nonfossil solid materials.

Temporary boiler means any gaseous or liquid fuel boiler that is designed to, and is capable of, being carried or moved from one location to another. A temporary boiler that remains at a location for more than 180 consecutive days is no longer considered to be a temporary boiler. Any temporary boiler that replaces a temporary boiler at a location and is intended to perform the same or similar function will be included in calculating the consecutive time period.

Total selected metals means the combination of the following metallic HAP: arsenic, beryllium, cadmium, chromium, lead, manganese, nickel and selenium.

Unadulterated wood means wood or wood products that have not been painted, pigment-stained, or pressure treated with compounds such as chromate copper arsenate, pentachlorophenol, and creosote. Plywood, particle board, oriented strand board, and other types of wood products bound by glues and resins are included in this definition.

Waste heat boiler means a device that recovers normally unused energy and converts it to usable heat. Waste heat boilers incorporating duct or supplemental burners that are designed to supply 50 percent or more of the total rated heat input capacity of the waste heat boiler are not considered waste heat boilers, but are considered boilers. Waste heat boilers are also referred to as heat recovery steam generators.

Watertube boiler means a boiler in which water passes through the tubes and hot gases of combustion pass over the outside surfaces of the tubes.

Wet scrubber means any add-on air pollution control device that mixes an aqueous stream or slurry with the exhaust gases from a boiler or process heater to control emissions of particulate matter and/or to absorb and neutralize acid gases, such as hydrogen chloride.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

Tables to Subpart DDDDD of Part 63

TABLE 1 TO SUBPART DDDDD OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS

As stated in § 63.7500, you must comply with the following applicable emission limits and work practice standards:

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .
1. New or reconstructed large solid fuel	a. Particulate Matter (or Total Selected Metals).	0.025 lb per MMBtu of heat input; or (0.0003 lb per MMBtu of heat input).
	b. Hydrogen Chloride	0.02 lb per MMBtu of heat input.
	c. Mercury	0.000003 lb per MMBtu of heat input.
	d. Carbon Monoxide	400 ppm by volume on a dry basis corrected to 7 percent oxygen (30-day rolling average for units 100 MMBtu/hr or greater, 3-run average for units less than 100 MMBtu/hr).

TABLE 1 TO SUBPART DDDDD OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.7500, you must comply with the following applicable emission limits and work practice standards:

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .
2. New or reconstructed limited use solid fuel ...	a. Particulate Matter (or Total Selected Metals).	0.025 lb per MMBtu of heat input; or (0.0003 lb per MMBtu of heat input).
	b. Hydrogen Chloride	0.02 lb per MMBtu of heat input.
	c. Mercury	0.000003 lb per MMBtu of heat input.
	d. Carbon Monoxide	400 ppm by volume on a dry basis corrected to 7 percent oxygen (3-run average).
3. New or reconstructed small solid fuel	a. Particulate Matter (or Total Selected Metals).	0.025 lb per MMBtu of heat input; or (0.0003 lb per MMBtu of heat input).
	b. Hydrogen Chloride	0.02 lb per MMBtu of heat input.
	c. Mercury	0.000003 lb per MMBtu of heat input.
4. New reconstructed large liquid fuel	a. Particulate Matter	0.03 lb per MMBtu of heat input.
	b. Hydrogen Chloride	0.0005 lb per MMBtu of heat input.
	c. Carbon Monoxide	400 ppm by volume on a dry basis corrected to 3 percent oxygen (30-day rolling average for units 100 MMBtu/hr or greater, 3-run average for units less than 100 MMBtu/hr).
5. New or reconstructed limited use liquid fuel ..	a. Particulate Matter	0.03 lb per MMBtu of heat input.
	b. Hydrogen Chloride	0.0009 lb per MMBtu of heat input.
	c. Carbon Monoxide	400 ppm by volume on a dry basis liquid corrected to 3 percent oxygen (3-run average).
6. New or reconstructed small liquid fuel	a. Particulate Matter	0.03 lb per MMBtu of heat input.
	b. Hydrogen Chloride	0.0009 lb per MMBtu of heat input.
7. New reconstructed large gaseous fuel	Carbon Monoxide	400 ppm by volume on a dry basis corrected to 3 percent oxygen (30-day rolling average for units 100 MMBtu/hr or greater, 3-run average for units less than 100 MMBtu/hr).
8. New or reconstructed limited use gaseous fuel.	Carbon Monoxide	400 ppm by volume on a dry basis corrected to 3 percent oxygen (3-run average).
9. Existing large solid fuel	a. Particulate Matter (or Total Selected Metals).	0.07 lb per MMBtu of heat input; or (0.001 lb per MMBtu of heat input).
	b. Hydrogen Chloride	0.09 lb per MMBtu of heat input.
	c. Mercury	0.000009 lb per MMBtu of heat input.
10. Existing limited use solid fuel	Particulate Matter (or Total Selected Metals) ..	0.21 lb per MMBtu of heat input; or (0.004 lb per MMBtu of heat input).

TABLE 2 TO SUBPART DDDDD OF PART 63.—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS WITH PARTICULATE MATTER EMISSION LIMITS

As stated in § 63.7500, you must comply with the applicable operating limits:

If you demonstrate compliance with applicable particulate matter emission limits using . . .	You must meet these operating limits . . .
1. Wet scrubber control	a. Maintain the minimum pressure drop and liquid flow-rate at or above the operating levels established during the performance test according to § 63.7530(c) and Table 7 to this subpart that demonstrated compliance with the applicable emission limit for particulate matter.
2. Fabric filter control	a. Install and operate a bag leak detection system according to § 63.7525 and operate the fabric filter such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during each 6-month period; or b. This option is for boilers and process heaters that operate dry control systems. Existing boilers and process heaters must maintain opacity to less than or equal to 20 percent (6-minute average) except for one 6-minute period per hour of not more than 27 percent. New boilers and process heaters must maintain opacity to less than or equal to 10 percent opacity (1-hour block average).
3. Electrostatic precipitator control	a. This option is for boilers and process heaters that operate dry control systems. Existing boilers and process heaters must maintain opacity to less than or equal to 20 percent (6-minute average) except for one 6-minute period per hour of not more than 27 percent. New boilers and process heaters must maintain opacity to less than or equal to 10 percent opacity (1-hour block average); or

TABLE 2 TO SUBPART DDDDD OF PART 63.—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS WITH PARTICULATE MATTER EMISSION LIMITS—Continued

As stated in § 63.7500, you must comply with the applicable operating limits:

If you demonstrate compliance with applicable particulate matter emission limits using . . .	You must meet these operating limits . . .
4. Any other control type	b. This option is only for boilers and process heaters that operate additional wet control systems. Maintain the minimum voltage and secondary current or total power input of the electrostatic precipitator at or above the operating limits established during the performance test according to § 63.7530(c) and Table 7 to this subpart that demonstrated compliance with the applicable emission limit for particulate matter. This option is for boilers and process heaters that operate dry control systems. Existing boilers and process heaters must maintain opacity to less than or equal to 20 percent (6-minute average) except for one 6-minute period per hour of not more than 27 percent. New boilers and process heaters must maintain opacity to less than or equal to 10 percent opacity (1-hour block average).

TABLE 3 TO SUBPART DDDDD OF PART 63.—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS WITH MERCURY EMISSION LIMITS AND BOILERS AND PROCESS HEATERS THAT CHOOSE TO COMPLY WITH THE ALTERNATIVE TOTAL SELECTED METALS EMISSION LIMITS

As stated in § 63.7500, you must comply with the applicable operating limits:

If you demonstrate compliance with applicable mercury and/or total selected metals emission limits using . . .	You must meet these operating limits . . .
1. Wet scrubber control	Maintain the minimum pressure drop and liquid flow-rate at or above the operating levels established during the performance test according to § 63.7530(c) and Table 7 to this subpart that demonstrated compliance with the applicable emission limits for mercury and/or total selected metals.
2. Fabric filter control	a. Install and operate a bag leak detection system according to § 63.7525 and operate the fabric filter such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period; or b. This option is for boilers and process heaters that operate dry control systems. Existing sources must maintain opacity to less than or equal to 20 percent (6-minute average) except for one 6-minute period per hour of not more than 27 percent. New sources must maintain opacity to less than or equal to 10 percent opacity (1-hour block average).
3. Electrostatic precipitator control	a. This option is for boilers and process heaters that operate dry control systems. Existing sources must maintain opacity to less than or equal to 20 percent (6-minute average) except for one 6-minute period per hour of not more than 27 percent. New sources must maintain opacity to less than or equal to 10 percent opacity (1-hour block average); or b. This option is only for boilers and process heaters that operate additional wet control systems. Maintain the minimum voltage and secondary current or total power input of the electrostatic precipitator at or above the operating limits established during the performance test according to § 63.7530(c) and Table 7 to this subpart that demonstrated compliance with the applicable emission limits for mercury and/or total selected metals.
4. Dry scrubber or carbon injection control	Maintain the minimum sorbent or carbon injection rate at or above the operating levels established during the performance test according to § 63.7530(c) and Table 7 to this subpart that demonstrated compliance with the applicable emission limit for mercury.
5. Any other control type	This option is only for boilers and process heaters that operate dry control systems. Existing sources must maintain opacity to less than or equal to 20 percent (6-minute average) except for one 6-minute period per hour of not more than 27 percent. New sources must maintain opacity to less than or equal to 10 percent opacity (1-hour block average).
6. Fuel analysis	Maintain the fuel type or fuel mixture such that the mercury and/or total selected metals emission rates calculated according to § 63.7530(d)(4) and/or (5) is less than the applicable emission limits for mercury and/or total selected metals.

TABLE 4 TO SUBPART DDDDD OF PART 63.—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS WITH HYDROGEN CHLORIDE EMISSION LIMITS

As stated in § 63.7500, you must comply with the following applicable operating limits:

If you demonstrate compliance with applicable hydrogen chloride emission limits using . . .	You must meet these operating limits . . .
1. Wet scrubber control	Maintain the minimum scrubber effluent pH, pressure drop, and liquid flow-rate at or above the operating levels established during the performance test according to § 63.7530(c) and Table 7 to this subpart that demonstrated compliance with the applicable emission limit for hydrogen chloride.
2. Dry scrubber control	Maintain the minimum sorbent injection rate at or above the operating levels established during the performance test according to § 63.7530(c) and Table 7 to this subpart that demonstrated compliance with the applicable emission limit for hydrogen chloride.
3. Fuel analysis	Maintain the fuel type or fuel mixture such that the hydrogen chloride emission rate calculated according to § 63.7530(d)(3) is less than the applicable emission limit for hydrogen chloride.

TABLE 5 TO SUBPART DDDDD OF PART 63.—PERFORMANCE TESTING REQUIREMENTS

As stated in § 63.7520, you must comply with the following requirements for performance test for existing, new or reconstructed affected sources:

To conduct a performance test for the following pollutant . . .	You must . . .	Using . . .
1. Particulate Matter	a. Select sampling ports location and the number of traverse points.	Method 1 in appendix A to part 60 of this chapter.
	b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G in appendix A to part 60 of this chapter.
	c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter, or ASME PTC 19, Part 10 (1981) (IBR, see § 63.14(i)).
	d. Measure the moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.
	e. Measure the particulate matter emission concentration.	Method 5 or 17 (positive pressure fabric filters must use Method 5D) in appendix A to part 60 of this chapter.
	f. Convert emissions concentration to lb per MMBtu emission rates.	Method 19 F-factor methodology in appendix A to part 60 of this chapter.
2. Total selected metals	a. Select sampling ports location and the number of traverse points.	Method 1 in appendix A to part 60 of this chapter.
	b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G in appendix A to part 60 of this chapter.
	c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter, or ASME PTC 19, Part 10 (1981) (IBR, see § 63.14(i)).
	d. Measure the moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.
	e. Measure the total selected metals emission concentration.	Method 29 in appendix A to part 60 of this chapter.
	f. Convert emissions concentration to lb per MMBtu emission rates.	Method 19 F-factor methodology in appendix A to part 60 of this chapter.
3. Hydrogen chloride	a. Select sampling ports location and the number of traverse points.	Method 1 in appendix A to part 60 of this chapter.
	b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G in appendix A to part 60 of this chapter.
	c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter, or ASME PTC 19, Part 10 (1981) (IBR, see § 63.14(i)).
	d. Measure the moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.
	e. Measure the hydrogen chloride emission concentration.	Method 26 or 26A in appendix A to part 60 of this chapter.
	f. Convert emissions concentration to lb per MMBtu emission rates.	Method 19 F-factor methodology in appendix A to part 60 of this chapter.
4. Mercury	a. Select sampling ports location and the number of traverse points.	Method 1 in appendix A to part 60 of this chapter.
	b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G in appendix A to part 60 of this chapter.
	c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter, or ASME PTC 19, Part 10 (1981) (IBR, see § 62.14(i)).

TABLE 5 TO SUBPART DDDDD OF PART 63.—PERFORMANCE TESTING REQUIREMENTS—Continued

As stated in § 63.7520, you must comply with the following requirements for performance test for existing, new or reconstructed affected sources:

To conduct a performance test for the following pollutant . . .	You must . . .	Using . . .
	d. Measure the moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.
	e. Measure the mercury emission concentration.	Method 29 in appendix A to part 60 of this chapter or Method 101A in appendix B to part 61 of this chapter or ASTM Method D6784–02 (IBR, see § 63.14(b)).
	f. Convert emissions concentration to lb per MMBtu emission rates.	Method 19 F-factor methodology in appendix A to part 60 of this chapter.
5. Carbon Monoxide	a. Select the sampling ports location and the number of traverse points.	Method 1 in appendix A to part 60 of this chapter.
	b. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B in appendix A to part 60 of this chapter, or ASTM D6522–00 (IBR, see § 63.14(b)), or ASME PTC 19, Part 10 (1981) (IBR, see § 63.14(i)).
	c. Measure the moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.
	d. Measure the carbon monoxide emission concentration.	Method 10, 10A, or 10B in appendix A to part 60 of this chapter, or ASTM D6522–00 (IBR, see § 63.14(b)) when the fuel is natural gas.

TABLE 6 TO SUBPART DDDDD OF PART 63.—FUEL ANALYSIS REQUIREMENTS

As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources:

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 D2234–00ε1 (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 D2013–01 (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 D5865–03a (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 D3173–02 (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 D3684–01 (for coal)(IBR, see § 63.14(b)) or SW–846–7471A (for solid samples) or SW–846 7470A (for liquid samples).
	g. Convert concentrations 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 D2234–00ε1 (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 D2013–01 (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 D5865–03a (for coal)(IBR, see § 63.14(b)) or ASTM E 711–87 (for biomass)(IBR, see § 63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173–02 (IBR, see § 63.14(b)) or ASTM E871 (IBR, see § 63.14(b)) or equivalent.

TABLE 6 TO SUBPART DDDDD OF PART 63.—FUEL ANALYSIS REQUIREMENTS—Continued

As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources:

To conduct a fuel analysis for the following pollutant . . .	You must . . .	Using . . .
	f. Measure total selected metals concentration in fuel sample.	SW–846–6010B or ASTM D3683–94 (2000) (for coal) (IBR, see § 63.14(b)) or ASTM E885–88 (1996) (for biomass)(IBR, see § 63.14(b)).
	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[c1] (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 D2013–01 (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 D5865–03a (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 D3173–02 (IBR, see § 63.14(b)) or ASTM E871–82 (1998)(IBR, see § 63.14(b)) or equivalent.
	f. Measure chlorine concentration in fuel sample.	SW–846–9250 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.	

TABLE 7 TO SUBPART DDDDD OF PART 63.—ESTABLISHING OPERATING LIMITS

As stated in § 63.7520, you must comply with the following requirements for establishing operating limits:

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements
1. Particulate matter, mercury, or total selected metals.	a. Wet scrubber operating parameters.	i. Establish a site-specific minimum pressure drop and minimum flow rate operating limit according to § 63.7530(c).	(1) Data from the pressure drop and liquid flow rate monitors and the particulate matter, mercury, or total selected metals performance test.	(a) You must collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the performance tests; (b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during each test run.
	b. Electrostatic precipitator operating parameters (option only for units with additional wet scrubber control).	i. Establish a site-specific minimum voltage and secondary current or total power input according to § 63.7530(c).	(1) Data from the pressure drop and liquid flow rate monitors and the particulate matter, mercury, or total selected metals performance test.	(a) You must collect voltage and secondary current or total power input data every 15 minutes during the entire period of the performance tests; (b) Determine the average voltage and secondary current or total power input for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during each test run.

TABLE 7 TO SUBPART DDDDD OF PART 63.—ESTABLISHING OPERATING LIMITS—Continued

As stated in § 63.7520, you must comply with the following requirements for establishing operating limits:

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements
2. Hydrogen Chloride ...	a. Wet scrubber operating parameters.	i. Establish a site-specific minimum pressure drop and minimum flow rate operating limit according to § 63.7530(c).	(1) Data from the pH, pressure drop, and liquid flow-rate monitors and the hydrogen chloride performance test.	(a) You must collect pH, pressure drop, and liquid flow-rate data every 15 minutes during the entire period of the performance tests; (b) Determine the average pH, pressure drop, and liquid flow-rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during each test run.
	b. Dry scrubber operating parameters.	i. Establish a site-specific minimum sorbent injection rate operating limit according to § 63.7530(c).	(1) Data from the sorbent injection rate monitors and hydrogen chloride performance test.	(a) You must collect sorbent injection rate data every 15 minutes during the entire period of the performance tests; (b) Determine the average sorbent injection rate for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during each test run.

TABLE 8 TO SUBPART DDDDD OF PART 63.—DEMONSTRATING CONTINUOUS COMPLIANCE

As stated in § 63.7540, you must show continuous compliance with the emission limitations for affected sources according to the following:

If you must meet the following operating limits or work practice standards . . .	You must demonstrate continuous compliance by . . .
1. Opacity	a. Collecting the opacity monitoring system data according to §§ 63.7525(b) and 63.7535; and b. Reducing the opacity monitoring data to 6-minute averages; and c. Maintaining opacity to less than or equal to 20 percent (6-minute average) except for one 6-minute period per hour of not more than 27 percent for existing sources; or maintaining opacity to less than or equal to 10 percent (1-hour block average) for new sources.
2. Fabric Filter Bag Leak Detection Operation	Installing and operating a bag leak detection system according to § 63.7525 and operating the fabric filter such that the requirements in § 63.7540(a)(9) are met.
3. Wet Scrubber Pressure Drop and Liquid Flow-rate	a. Collecting the pressure drop and liquid flow rate monitoring system data according to §§ 63.7525 and 63.7535; and b. Reducing the data to 3-hour block averages; and c. Maintaining the 3-hour average pressure drop and liquid flow-rate at or above the operating limits established during the performance test according to § 63.7530(c).
4. Wet Scrubber pH	a. Collecting the pH monitoring system data according to §§ 63.7525 and 63.7535; and b. Reducing the data to 3-hour block averages; and c. Maintaining the 3-hour average pH at or above the operating limit established during the performance test according to § 63.7530(c).
5. Dry Scrubber Sorbent or Carbon Injection Rate	a. Collecting the sorbent or carbon injection rate monitoring system data for the dry scrubber according to §§ 63.7525 and 63.7535; and b. Reducing the data to 3-hour block averages; and c. Maintaining the 3-hour average sorbent or carbon injection rate at or above the operating limit established during the performance test according to §§ 63.7530(c).
6. Electrostatic Precipitator Secondary Current and Voltage or Total Power Input.	a. Collecting the secondary current and voltage or total power input monitoring system data for the electrostatic precipitator according to §§ 63.7525 and 63.7535; and b. Reducing the data to 3-hour block averages; and

TABLE 8 TO SUBPART DDDDD OF PART 63.—DEMONSTRATING CONTINUOUS COMPLIANCE—Continued

As stated in § 63.7540, you must show continuous compliance with the emission limitations for affected sources according to the following:

If you must meet the following operating limits or work practice standards . . .	You must demonstrate continuous compliance by . . .
7. Fuel Pollutant Content	c. Maintaining the 3-hour average secondary current and voltage or total power input at or above the operating limits established during the performance test according to §§ 63.7530(c). a. Only burning the fuel types and fuel mixtures used to demonstrate compliance with the applicable emission limit according to § 63.7530(c) or (d) as applicable; and b. Keeping monthly records of fuel use according to § 63.7540(a).

TABLE 9 TO SUBPART DDDDD OF PART 63.—REPORTING REQUIREMENTS

As stated in § 63.7550, you must comply with the following requirements for reports:

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. Information required in § 63.7550(c)(1) through (11); and b. If there are no deviations from any emission limitation (emission limit and operating limit) that applies to you and there are no deviations from the requirements for work practice standards in Table 8 to this subpart that apply to you, a statement that there were no deviations from the emission limitations and work practice standards during the reporting period. If there were no periods during which the CMSs, including continuous emissions monitoring system, continuous opacity monitoring system, and operating parameter monitoring systems, were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMSs were out-of-control during the reporting period; and c. If you have a deviation from any emission limitation (emission limit and operating limit) or work practice standard during the reporting period, the report must contain the information in § 63.7550(d). If there were periods during which the CMSs, including continuous emissions monitoring system, continuous opacity monitoring system, and operating parameter monitoring systems, were out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.7550(e); and d. If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i)	Semiannually according to the requirements in § 63.7550(b).
2. An immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan, and the source exceeds any applicable emission limitation in the relevant emission standard.	a. Actions taken for the event; and	i. By fax or telephone within 2 working days after starting actions inconsistent with the plan; and
	b. The information in § 63.10(d)(5)(ii)	ii. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

TABLE 10 TO SUBPART DDDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD

As stated in § 63.7565, you must comply with the applicable General Provisions according to the following:

Citation	Subject	Brief description	Applicable
§ 63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, Severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; and GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; and for 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; and Correct malfunctions as soon as practicable; and Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and startup, shutdown, malfunction plan; and content of SSMP.	Yes.
§ 63.6(f)(1)	Compliance Except During SSM	Comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)(1)	Compliance with Opacity/VE Standards	Comply with opacity/VE emission limitations at all times except during SSM.	Yes.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/Visible Emission (VE) Standards.	If standard does not state test method, use Method 9 for opacity and Method 22 for VE.	No.
§ 63.6(h)(2)(ii)	[Reserved].		
§ 63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards	Criteria for when previous opacity/VE testing can be used to show compliance with this subpart.	Yes.
§ 63.6(h)(3)	[Reserved].		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Notify Administrator of anticipated date of observation.	No.
§ 63.6(h)(5)(i),(iii)–(v)	Conducting Opacity/VE Observations	Dates and Schedule for conducting opacity/VE observations.	No.

TABLE 10 TO SUBPART DDDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

As stated in § 63.7565, you must comply with the applicable General Provisions according to the following:

Citation	Subject	Brief description	Applicable
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with thirty, 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE observations.	Keep records available and allow Administrator to inspect.	No.
§ 63.6(h)(7)(i)	Report continuous opacity monitoring system Monitoring Data from Performance Test.	Submit continuous opacity monitoring system data with other performance test data.	Yes.
§ 63.6(h)(7)(ii)	Using continuous opacity monitoring system instead of Method 9.	Can submit continuous opacity monitoring system data instead of Method 9 results even if subpart requires Method 9, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging time for continuous opacity monitoring system during performance test.	To determine compliance, must reduce continuous opacity monitoring system data to 6-minute averages.	Yes.
§ 63.6(h)(7)(iv)	Continuous opacity monitoring system requirements.	Demonstrate that continuous opacity monitoring system performance evaluations are conducted according to §§ 63.8(e), continuous opacity monitoring systems are properly maintained and operated according to § 63.8(c) and data quality as § 63.8(d).	Yes.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	Continuous opacity monitoring system is probative but not conclusive evidence of compliance with opacity standard, even if Method 9 observation shows otherwise. Requirements for continuous opacity monitoring system to be probative evidence-proper maintenance, meeting PS 1, and data have not been altered.	Yes.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all continuous opacity monitoring system, Method 9, and Method 22 results, as well as information about operation and maintenance to determine compliance.	Yes.
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard.	Yes.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations.	Yes.
§ 63.7(a)(2)	Performance Test Dates	New source with initial startup date before effective date has 180 days after effective date to demonstrate compliance	Yes.
§ 63.7(a)(2)(ii–viii)	[Reserved].		
§ 63.7(a)(2)(ix)	Performance Test Dates	1. New source that commenced construction between proposal and promulgation dates, when promulgated standard is more stringent than proposed standard, has 180 days after effective date or 180 days after startup of source, whichever is later, to demonstrate compliance; and.	Yes.
		2. If source initially demonstrates compliance with less stringent proposed standard, it has 3 years and 180 days after the effective date of the standard or 180 days after startup of source, whichever is later, to demonstrate compliance with promulgated standard.	No.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA Section 114 at any time.	Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

As stated in § 63.7565, you must comply with the applicable General Provisions according to the following:

Citation	Subject	Brief description	Applicable
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	No.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 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; and performance audit requirements; and internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	1. Performance tests must be conducted under representative conditions; and	No.
		2. Cannot conduct performance tests during SSM; and	Yes.
		3. Not a deviation to exceed standard during SSM; and	Yes.
		4. Upon request of Administrator, make available records necessary to determine conditions of performance tests.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three separate test runs; and Compliance is based on arithmetic mean of three runs; and conditions when data from an additional test run can be used.	Yes.
§ 63.7(e)(4)	Interaction with other sections of the Act	Nothing in § 63.7(e)(1) through (4) can abrogate the Administrator's authority to require testing under Section 114 of the Act.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; and must submit performance test data 60 days after end of test with the Notification of Compliance Status; and keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard.	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in § 63.11 apply.	No.
§63.8(b)(1)(i)–(ii)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(1)(iii)	Monitoring	Flares not subject to this section unless otherwise specified in relevant standard.	No.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; and must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; and if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.

TABLE 10 TO SUBPART DDDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

As stated in § 63.7565, you must comply with the applicable General Provisions according to the following:

Citation	Subject	Brief description	Applicable
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Maintain and operate CMS according to § 63.6(e)(1).	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Must keep necessary parts available for routine repairs of CMSs.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	Must develop and implement an SSMP for CMSs.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements; and must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMSs must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No.
§ 63.8(c)(4)(i)	Continuous Monitoring System (CMS) Requirements.	Continuous opacity monitoring system must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period.	Yes.
§ 63.8(c)(4)(ii)	Continuous Monitoring System (CMS) Requirements.	Continuous emissions monitoring system must have a minimum of one cycle of operation for each successive 15-minute period.	No.
§ 63.8(c)(5)	Continuous Opacity Monitoring system (COMS) Requirements.	Must do daily zero and high level calibrations.	Yes.
§ 63.8(c)(6)	Continuous Monitoring System (CMS) Requirements.	Must do daily zero and high level calibrations.	No.
§ 63.8(c)(7)–(8)	Continuous Monitoring Systems Requirements.	Out-of-control periods, including reporting	Yes.
§ 63.8(d)	Continuous Monitoring Systems Quality Control.	Requirements for continuous monitoring systems quality control, including calibration, etc.; and must keep quality control plan on record for the life of the affected source. Keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	Continuous monitoring systems Performance Evaluation.	Notification, performance evaluation test plan, reports.	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy tests for continuous emissions monitoring system.	No.
§ 63.8(g)(1)–(4)	Data Reduction	Continuous opacity monitoring system 6-minute averages calculated over at least 36 evenly spaced data points; and continuous emissions monitoring system 1-hour averages computed over at least 4 equally spaced data points.	Yes.
§ 63.8(g)(5)	Data Reduction	Data that cannot be used in computing averages for continuous emissions monitoring system and continuous opacity monitoring system.	No.
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; and Notification of intent to construct/reconstruct; and Notification of commencement of construct/reconstruct; Notification of startup; and Contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	No.

TABLE 10 TO SUBPART DDDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

As stated in § 63.7565, you must comply with the applicable General Provisions according to the following:

Citation	Subject	Brief description	Applicable
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using Continuous Monitoring Systems.	Notification of performance evaluation; and notification using continuous opacity monitoring system data; and notification that exceeded criterion for relative accuracy.	Yes.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents; and due 60 days after end of performance test or other compliance demonstration, and when to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change.	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; and when to submit to Federal vs. State authority; and procedures for owners of more than 1 source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; and keep all records readily available and keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(v)	Records related to Startup, Shutdown, and Malfunction.	Occurrence of each of operation (process, equipment); and occurrence of each malfunction of air pollution equipment; and maintenance of air pollution control equipment; and actions during startup, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi) and (x–xi)	Continuous monitoring systems Records	Malfunctions, inoperative, out-of-control; and calibration checks; and adjustments, maintenance.	Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with emission limitations; and performance test, performance evaluation, and visible emission observation results; and measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	No.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1),(5)–(8),(10)–(15)	Records	Additional Records for continuous monitoring systems.	Yes.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for continuous monitoring systems.	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	What to report and when	Yes.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§ 63.10(e)(1)(2)	Additional continuous monitoring systems Reports.	Must report results for each CEM on a unit; and written copy of performance evaluation; and 3 copies of continuous opacity monitoring system performance evaluation.	Yes.
§ 63.10(e)(3)	Reports	Excess Emission Reports	No.
§ 63.10(e)(3)(i–iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No.

TABLE 10 TO SUBPART DDDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

As stated in § 63.7565, you must comply with the applicable General Provisions according to the following:

Citation	Subject	Brief description	Applicable
§ 63.10(e)(3)(iv–v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations); and provision to request semiannual reporting after compliance for one year; and submit report by 30th day following end of quarter or calendar half; and if there has not been an exceedance or excess emission (now defined as deviations), report contents is a statement that there have been no deviations.	No.
§ 63.10(e)(3)(iv–v)	Excess Emissions Reports	Must submit report containing all of the information in § 63.10(c)(5–13), § 63.8(c)(7–8).	No.
§ 63.10(e)(3)(vi–viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for continuous monitoring systems (now called deviations); Requires all of the information in § 63.10(c)(5–13), § 63.8(c)(7–8).	No.
§ 63.10(e)(4)	Reporting continuous opacity monitoring system data.	Must submit continuous opacity monitoring system data with performance test data.	Yes.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirements for flares	No.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential Information	Yes.

Appendix A to Subpart DDDDD—Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives Specified for the Large Solid Fuel Subcategory

1. Purpose/Introduction

This appendix provides the methodology and criteria for demonstrating that your affected source is eligible for the compliance alternative for the HCl emission limit and/or the total selected metals (TSM) emission limit. This appendix specifies emissions testing methods that you must use to determine HCl, chlorine, and manganese emissions from the affected units and what parts of the affected source facility must be included in the eligibility demonstration. You must demonstrate that your affected source is eligible for the health-based compliance alternatives using either a look-up table analysis (based on the look-up tables included in this appendix) or a site-specific compliance demonstration performed according to the criteria specified in this appendix. This appendix also specifies how and when you file any eligibility demonstrations for your affected source and how to show that your affected source remains eligible for the health-based compliance alternatives in the future.

2. Who Is Eligible To Demonstrate That They Qualify for the Health-Based Compliance Alternatives?

Each new, reconstructed, or existing affected source may demonstrate that they are eligible for the health-based compliance alternatives. Section 63.7490 of subpart DDDDD defines the affected source and explains which affected sources are new, existing, or reconstructed.

3. What Parts of My Facility Have To Be Included in the Health-Based Eligibility Demonstration?

If you are attempting to determine your eligibility for the compliance alternative for HCl, you must include every emission point subject to subpart DDDDD that emits either HCl or Cl_2 in the eligibility demonstration.

If you are attempting to determine your eligibility for the compliance alternative for TSM, you must include every emission point subject to subpart DDDDD that emits manganese in the eligibility demonstration.

4. How Do I Determine HAP Emissions From My Affected Source?

(a) You must conduct HAP emissions tests or fuel analysis for every emission point covered under subpart DDDDD within the affected source facility according to the requirements in paragraphs (b) through (f) of this section and the methods specified in Table 1 of this appendix.

(1) If you are attempting to determine your eligibility for the compliance alternative for HCl, you must test the subpart DDDDD units at your facility for both HCl and Cl_2. When conducting fuel analysis, you must assume any chlorine detected will be emitted as Cl_2.

(2) If you are attempting to determine your eligibility for the compliance alternative for TSM, you must test the subpart DDDDD units at your facility for manganese.

(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 § 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 § 63.7(e)(3). Each test run must last at least 1 hour.

(d) *Sampling locations.* Sampling sites must be located at the outlet of the control device 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 data at least every 15 minutes during the entire emissions test and establish the site-specific operating requirements in Tables 3 or 4, as appropriate, of subpart DDDDD using data from the monitoring system and the procedures specified in § 63.7530 of subpart DDDDD.

(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 condition in paragraph (f)(1) of this section is met for the manganese test method. Otherwise, nondetect data for individual HAP must be treated as one-half of the method detection limit.

(1) For manganese measured using Method 29 in appendix A to 40 CFR part 60, you analyze samples using atomic absorption spectroscopy (AAS).

(g) You must determine the maximum hourly emission rate for each appropriate emission point according to Equation 1 of this appendix.

$$\text{Max Hourly Emissions} = \sum_{i=1}^{n} (Er \times Hm) \qquad \text{(Eq. 1)}$$

Where:

Max Hourly Emissions = Maximum hourly emissions for hydrogen chloride, chlorine, or manganese, in units of pounds per hour.

Er = 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 hydrogen chloride, chlorine, or manganese, in units of pounds per million Btu of heat input.

Hm = Maximum rated heat input capacity of appropriate emission point, in units of million Btu per hour.

5. What Are the Criteria for Determining If My Facility Is Eligible for the Health-Based Compliance Alternatives?

(a) Determine the HAP emissions from each appropriate emission point within the affected source facility using the procedures specified in section 4 of this appendix.

(b) Demonstrate that your facility is eligible for either of the health-based compliance alternatives using either the methods described in section 6 of this appendix (look-up table analysis) or section 7 of this appendix (site-specific compliance demonstration).

(c) Your facility is eligible for the health-based compliance alternative for HCl if one of the following two statements is true:

(1) The calculated HCl-equivalent emission rate is below the appropriate value in the look-up table;

(2) Your site-specific compliance demonstration indicates that your maximum HI for HCl and Cl_2 at a location where people live is less than or equal to 1.0;

(d) Your facility is eligible for the health-based compliance alternative for TSM if one of the following two statements is true:

(1) The manganese emission rate for all your subpart DDDDD sources is below the appropriate value in the look-up table;

(2) Your site-specific compliance demonstration indicates that your maximum HQ for manganese at a location where people live is less than or equal to 1.0.

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 the HCl emission limit or the compliance alternative for TSM emission limit.

(a) *HCl health-based compliance alternative.* (1) To calculate the total toxicity-weighted HCl-equivalent emission rate for your facility, first calculate the total affected source emission rate of HCl by summing the maximum hourly HCl emission rates from all your subpart DDDDD sources. Then, similarly, calculate the total affected source emission rate for Cl_2. Finally, calculate the toxicity-weighted emission rate (expressed in HCl equivalents) according to Equation 2 of this appendix.

$$ER_{tw} = \sum \left(ER_i \times \left(RfC_{HCl} / RfC_i \right) \right) \qquad \text{(Eq. 2)}$$

Where:

ER_{tw} is the HCl-equivalent emission rate, lb/hr.

ER_i is the emission rate of HAP i in lbs/hr

RfC_i is the reference concentration of HAP i

RfC_{HCl} is the reference concentration of HCl (RfCs for HCl and Cl_2 can be found at *http://www.epa.gov/ttn/atw/toxsource/summary.html).*

(2) The calculated HCl-equivalent emission rate will then be compared to the appropriate allowable emission rate in Table 2 of this appendix. To determine the correct value from the table, an average value for the appropriate subpart DDDDD emission points should be used for stack height and the minimum distance between any appropriate subpart DDDDD stack at the facility and the property boundary should be used for property boundary distance. Appropriate emission points and stacks are those that emit HCl and/or Cl_2. If one or both of these values does not match the exact values in the lookup tables, then use the next lowest table value. (**Note:** If your average stack height is less than 5 meters, you must use the 5 meter row.) Your facility is eligible to comply with the health-based alternative HCl emission limit if your toxicity-weighted HCl equivalent emission rate, determined using the methods specified in this appendix, does not exceed the appropriate value in Table 2 of this appendix.

(b) *TSM Compliance Alternative.* To calculate the total manganese emission rate for your affected source, sum the maximum hourly manganese emission rates for all your subpart DDDDD sources. The calculated manganese emission rate will then be compared to the allowable emission rate in the Table 3 of this appendix. To determine the correct value from the table, an average value for the appropriate subpart DDDDD emission points should be used for stack height and the minimum distance between any appropriate subpart DDDDD stack at the facility and the property boundary should be used for property boundary distance. Appropriate emission points and stacks are those that emit manganese. If one or both of these values does not match the exact values in the lookup tables, then use the next lowest table value. (**Note:** If your average stack height is less than 5 meters, you must use the 5 meter row.) Your facility may exclude manganese when demonstrating compliance with the TSM emission limit if your manganese emission rate, determined using the methods specified in this appendix, does not exceed the appropriate value specified in Table 3 of this appendix.

7. How Do I Conduct a Site-Specific Compliance Demonstration?

If you fail to demonstrate that your facility is able to comply with one or both of the alternative health-based emission standards using the look-up table approach, you may choose to perform a site-specific compliance demonstration for your facility. You may use any scientifically-accepted peer-reviewed risk assessment methodology for your site-specific compliance demonstration. An example of one approach for performing a site-specific compliance 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_atoxic.html.*

(a) Your facility is eligible for the HCl alternative compliance option if your site-specific compliance demonstration shows that the maximum HI for HCl and Cl_2 from your subpart DDDDD sources is less than or equal to 1.0.

(b) Your facility is eligible for the TSM alternative compliance option if your site-specific compliance demonstration shows that the maximum HQ for manganese from your subpart DDDDD sources is less than or equal to 1.0.

(c) At a minimum, your site-specific compliance demonstration must:

(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 for the assessment so that it is transparent and can be reproduced by an experienced risk assessor and emissions measurement expert.

(d) Your site-specific compliance demonstration 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.

8. What Must My Health-Based Eligibility Demonstration Contain?

(a) Your health-based eligibility demonstration must contain, at a minimum, the information specified in paragraphs (a)(1) through (6) of this section.

(1) Identification of each appropriate emission point at the affected source facility, including the maximum rated capacity of each appropriate emission point.

(2) Stack parameters for each appropriate 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 control devices used to reduce emissions from each appropriate emission point.

(3) Emission test reports for each pollutant and appropriate emission point which has been tested using the test methods specified in Table 1 of this appendix, including a description of the process parameters identified as being worst case. Fuel analyses for each fuel and emission point which has been conducted including collection and analytical methods used.

(4) Identification of the RfC values used in your look-up table analysis or site-specific compliance demonstration.

(5) Calculations used to determine the HCl-equivalent or manganese emission rates according to sections 6(a) or (b) of this appendix.

(6) Identification of the controlling process factors (including, but not limited to, fuel type, heat input rate, type of control devices, process parameters reflecting the emissions rates used for your eligibility demonstration) that will become Federally enforceable permit conditions used to show that your facility remains eligible for the health-based compliance alternatives.

(b) If you use the look-up table analysis in section 6 of this appendix to demonstrate that your facility is eligible for either health-based compliance alternative, your eligibility demonstration must contain, at a minimum, the information in paragraphs (a) and (b)(1) through (3) of this section.

(1) Calculations used to determine the average stack height of the subpart DDDDD emission points that emit either manganese or HCl and Cl_2.

(2) Identification of the subpart DDDDD emission point, that emits either manganese or HCl and Cl_2, with the minimum distance to the property boundary of the facility.

(3) Comparison of the values in the look-up tables (Tables 2 and 3 of this appendix) to your maximum HCl-equivalent or manganese emission rates.

(c) If you use a site-specific compliance demonstration as described in section 7 of this appendix to demonstrate that your facility is eligible, your eligibility demonstration must contain, at a minimum, the information in paragraphs (a) and (c)(1) through (7) 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 (5) 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 any exposure assessment and risk characterization calculations.

(6) Comparison of the HQ HI to the limit of 1.0.

9. When Do I Have to Complete and Submit My Health-Based Eligibility Demonstration?

(a) If you have an existing affected source, you must complete and submit your eligibility demonstration to your permitting authority, along with a signed certification that the demonstration is an accurate depiction of your facility, no later than the date one year prior to the compliance date of subpart DDDDD. A separate copy of the eligibility demonstration must be submitted 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) 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 must comply with the requirements of subpart DDDDD until your eligibility demonstration is completed and submitted to your permitting authority.

(c) If you have a new or reconstructed affected source that starts up after 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 after the effective date for subpart DDDDD, then you must follow the schedule in paragraphs (c)(1) and (2) of this section.

(1) You must complete and submit a preliminary eligibility demonstration based on the information (*e.g.*, equipment types, estimated emission rates, etc.) used to obtain your title V permit. 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 HCl standard and subject to the compliance requirements in this appendix or, in the case of manganese, your compliance demonstration with the TSM emission limit is based on 7 metals (excluding manganese).

(2) You must conduct the emission tests or fuel analysis 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. To be eligible, you must meet the criteria in section 11 of this appendix within 18 months following initial startup of your affected source.

10. When Do I Become Eligible for the Health-Based Compliance Alternatives?

To be eligible for either health-based compliance alternative, the parameters that defined your affected source as eligible for the health-based compliance alternatives (including, but not limited to, fuel type, fuel mix (annual average), type of control devices, process parameters reflecting the emissions rates used for your eligibility demonstration) must be submitted for incorporation as Federally enforceable limits into your title V permit. If you do not meet these criteria, then your affected source is subject to the applicable emission limits, operating limits, and work practice standards in Subpart DDDDD.

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 you have a process change, such that any of the parameters that defined your affected source changes in a way that could result in increased HAP emissions (including, but not limited to, fuel type, fuel mix (annual average), change in type of control device, changes in process parameters documented as worst-case conditions during the emissions testing used for your approved eligibility demonstration).

(b) If you are updating your eligibility demonstration to account for an action in paragraph (a) of this section, then you must perform emission testing or fuel analysis according to section 4 of this appendix for the subpart DDDDD emission points that may have increased HAP emissions beyond the levels reflected in your previously approved eligibility demonstration due to the process

change. You must submit your revised eligibility demonstration to the permitting authority prior to revising your permit to incorporate the process change. If your updated eligibility demonstration indicates that 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.

12. What Records Must I Keep?

You must keep records of the information used in developing the eligibility demonstration for your affected source, including all of the information specified in section 8 of this appendix.

13. Definitions

The definitions in § 63.7575 of subpart DDDDD apply to this appendix. Additional definitions applicable for this appendix are as follows:

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 RfC.

Look-up table analysis means a risk screening analysis based on comparing the HAP or HAP-equivalent emission rate from the affected source to the appropriate maximum allowable HAP or HAP-equivalent emission rates specified in Tables 2 and 3 of this appendix.

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.

Worst-case operating conditions means operation of an affected 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 an affected unit firing solid fuel likely to produce the most HAP.

TABLE 1 TO APPENDIX B OF SUBPART DDDDD—EMISSION TEST METHODS

For . . .	You must . . .	Using . . .
(1) Each subpart DDDDD emission point for which you choose to use a compliance alternative.	Select sampling ports' location and the number of traverse points.	Method 1 of 40 CFR part 60, appendix A.
(2) Each subpart DDDDD emission point for which you choose to use a compliance alternative.	Determine velocity and volumetric flow rate; ...	Method 2, 2F, or 2G in appendix A to 40 CFR part 60.
(3) Each subpart DDDDD emission point for which you choose to use a compliance alternative.	Conduct gas molecular weight analysis	Method 3A or 3B in appendix A to 40 CFR part 60.
(4) Each subpart DDDDD emission point for which you choose to use a compliance alternative.	Measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60.
(5) Each subpart DDDDD emission point for which you choose to use the HCl compliance alternative.	Measure the hydrogen chloride and chlorine emission concentrations.	Method 26 or 26A in appendix A to 40 CFR part 60.
(6) Each subpart DDDDD emission point for which you choose to use the TSM compliance alternative.	Measure the manganese emission concentration.	Method 29 in appendix A to 40 CFR part 60.
(7) Each subpart DDDDD emission point for which you choose to use a compliance alternative.	Convert emissions concentration to lb per MMBtu emission rates.	Method 19 F-factor methodology in appendix A to part 60 of this chapter.

TABLE 2 TO APPENDIX A OF SUBPART DDDDD—ALLOWABLE TOXICITY-WEIGHTED EMISSION RATE EXPRESSED IN HCl EQUIVALENTS (lbs/hr)

Stack ht. (m)	Distance to property boundary (m)											
	0	50	100	150	200	250	500	1000	1500	2000	3000	5000
5	114.9	114.9	114.9	114.9	114.9	114.9	144.3	287.3	373.0	373.0	373.0	373.0
10	188.5	188.5	188.5	188.5	188.5	188.5	195.3	328.0	432.5	432.5	432.5	432.5
20	386.1	386.1	386.1	386.1	386.1	386.1	386.1	425.4	580.0	602.7	602.7	602.7
30	396.1	396.1	396.1	396.1	396.1	396.1	396.1	436.3	596.2	690.6	807.8	816.5
40	408.1	408.1	408.1	408.1	408.1	408.1	408.1	448.2	613.3	715.5	832.2	966.0
50	421.4	421.4	421.4	421.4	421.4	421.4	421.4	460.6	631.0	746.3	858.2	1002.8
60	435.5	435.5	435.5	435.5	435.5	435.5	435.5	473.4	649.0	778.6	885.0	1043.4
70	450.2	450.2	450.2	450.2	450.2	450.2	450.2	486.6	667.4	813.8	912.4	1087.4
80	465.5	465.5	465.5	465.5	465.5	465.5	465.5	500.0	685.9	849.8	940.9	1134.8
100	497.5	497.5	497.5	497.5	497.5	497.5	497.5	527.4	723.6	917.1	1001.2	1241.3
200	677.3	677.3	677.3	677.3	677.3	677.3	677.3	682.3	919.8	1167.1	1390.4	1924.6

TABLE 3 TO APPENDIX A OF SUBPART DDDDD—ALLOWABLE MANGANESE EMISSION RATE (lbs/hr)

Stack ht. (m)	Distance to property boundary (m)											
	0	50	100	150	200	250	500	1000	1500	2000	3000	5000
5	0.29	0.29	0.29	0.29	0.29	0.29	0.36	0.72	0.93	0.93	0.93	0.94
10	0.47	0.47	0.47	0.47	0.47	0.47	0.49	0.82	1.08	1.08	1.08	1.08
20	0.97	0.97	0.97	0.97	0.97	0.97	0.97	1.06	1.45	1.51	1.51	1.51
30	0.99	0.99	0.99	0.99	0.99	0.99	0.99	1.09	1.49	1.72	2.02	2.04
40	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.12	1.53	1.79	2.08	2.42
50	1.05	1.05	1.05	1.05	1.05	1.05	1.05	1.15	1.58	1.87	2.15	2.51
60	1.09	1.09	1.09	1.09	1.09	1.09	1.09	1.18	1.62	1.95	2.21	2.61
70	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.22	1.67	2.03	2.28	2.72
80	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.25	1.71	2.12	2.35	2.84
100	1.24	1.24	1.24	1.24	1.24	1.24	1.24	1.32	1.81	2.29	2.50	3.10
200	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.71	2.30	2.92	3.48	4.81

[FR Doc. 04–11221 Filed 9–10–04; 8:45 am]
BILLING CODE 6560–50–U

§ 165.T01–117 Security Zone; Queen Mary II Visit, Portland, Maine, Captain of the Port Zone.

(a) *Location.* The following area is a security zone:

All navigable waters within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, within a 300-yard radius of the Queen Mary II while it is underway, anchored, moored, or in the process of mooring.

(b) *Effective period.* This section is effective from 12:01 a.m. EDT on September 27, 2004, through 12:01 a.m. EDT on October 10, 2004.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port (COTP), Portland, Maine or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP, or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(3) The Captain of the Port, Portland Maine or his designated representative will notify the maritime community of periods during which these zones will be enforced. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(d) *Enforcement.* The COTP will enforce this zone and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: September 23, 2004.

Stephen P. Garrity,

Captain, U. S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 04–22138 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7812–8]

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretative rule.

SUMMARY: This interpretative rule concerns the applicability of the NESHAP for secondary aluminum producers, 40 CFR part 63, subpart RRR, to a specific type of facility which thermally delaminates aluminum foil from paper and plastic and then mechanically granulates the recovered metal. We decided to reconsider this matter after reviewing two applicability determinations which were issued by EPA regional offices for facilities of this type operated by the U.S. Granules Corporation in Plymouth, IN, and Henrietta, MO. We concluded that these applicability determinations reflected conflicting constructions of subpart RRR, and that the determinations should be vacated while we undertook a review to develop a uniform national construction of the rule.

In today's interpretative rule, we conclude that a delamination chamber of the type operated by the U.S. Granules facilities is a "scrap dryer/delacquering kiln/decoating kiln" as that term is defined in 40 CFR 63.1503. Accordingly, we believe that the facilities operated by U.S. Granules in Plymouth and Henrietta, and any other facilities which may engage in similar operations, are subject to the emission control requirements of subpart RRR.

EFFECTIVE DATE: This interpretative rule will take effect on November 1, 2004. After that date, this interpretative rule will govern all decisions concerning the applicability of 40 CFR part 63, subpart RRR, to affected facilities by EPA and by State and local permitting authorities.

FOR FURTHER INFORMATION CONTACT: For specific questions concerning the interpretation of 40 CFR part 63, subpart RRR, adopted in this notice, contact Scott Throwe at EPA by telephone at: (202) 564–7013, or by e-mail at: *throwe.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* This interpretative rule concerns applicability of 40 CFR part 63, subpart RRR, to specific facilities that thermally delaminate aluminum foil from paper and plastic and then mechanically granulate the recovered metal. This interpretative rule determines that these facilities are secondary aluminum production facilities as defined by subpart RRR, and that such facilities are therefore subject to regulation under that subpart. This interpretative rule does not govern determinations regarding the applicability of subpart RRR to other types of activities or operations, although the rationale for the conclusions in this interpretative rule may be relevant in other contexts.

Judicial Review. This interpretative rule is based on a determination of nationwide scope and effect. Under section 307(b)(1) of the CAA, judicial review of this interpretative rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 30, 2004. Moreover, under section 307(b)(2) of the CAA, any judicial review of this interpretative rule must be obtained pursuant to section 307(b)(1) and this interpretation may not be subjected to separate judicial review in any civil or criminal proceedings for enforcement.

I. Background for This Interpretative Rule

This interpretative rule is the outcome of a review by EPA of the applicability of the NESHAP for secondary aluminum producers, 40 CFR part 63, subpart RRR, to a specific type of facility which thermally delaminates aluminum foil from paper and plastic and then mechanically granulates the recovered metal. This review was undertaken following the decision of EPA to vacate two applicability determinations which were previously made by the EPA regional offices concerning facilities of this type owned and operated by the U.S. Granules Corporation.

One of these applicability determinations concerned the U.S. Granules facility in Plymouth, Indiana and was made by the EPA Region 5 Air Enforcement and Compliance Assurance Branch on August 21, 2002, in response to a request for such a determination by U.S. Granules dated August 14, 2002. Notice of this applicability determination (Control No. M020112) was published in the **Federal Register** on February 13, 2003. 68 FR 7373. EPA Region 5 based its conclusions in this determination on a phrase in the definition in subpart RRR of a "scrap dryer/delaquering kiln/decoating kiln" which states that such units are used to remove contaminants from aluminum scrap "prior to melting." EPA Region 5 concluded that the delamination chamber at the Plymouth facility does not fit within this definition because all processing of the recovered aluminum at the Plymouth facility is entirely mechanical and the recovered aluminum is never melted.

The other applicability determination concerned the U.S. Granules facility in Henrietta, Missouri, and was made by the EPA Region 7 Air Permitting and Compliance Branch on October 22, 2002, in response to a request for such a determination by U.S. Granules dated

October 11, 2002. Notice of this applicability determination (Control No. M020117) was also published in the **Federal Register** on February 13, 2003. 68 FR 7373. In the determination concerning the Henrietta facility, Region 7 concluded that the delamination chamber at the Henrietta facility is within the definition of a "scrap dryer/delacquering kiln/decoating kiln" even though the recovered aluminum is not melted at the Henrietta facility. Region 7 reasoned that the phrase "prior to melting" in the definition is merely intended to indicate that the recovery process is normally performed before the recovered aluminum is placed in a furnace to be melted. Region 7 noted that it is the use of heat to remove contaminants from scrap aluminum that generates the emissions of dioxins and furans that subpart RRR is intended to control. Region 7 also found that a unit at the Henrietta facility that dries alumninum chips was a "thermal chip dryer" subject to subpart RRR.

After issuance of these two applicability determinations, EPA determined that these determinations reflected conflicting constructions concerning the applicability of subpart RRR to aluminum delamination operations like those conducted at the U.S. Granules facilities. EPA also determined that the retention of such conflicting constructions would be inappropriate as a matter of law and policy. Accordingly, EPA decided to vacate both of these applicability determinations and to commence a process to adopt a single uniform construction of subpart RRR which would apply to all operations like those conducted at the U.S. Granules facilities.

The decision to vacate the determination concerning the Plymouth facility was announced in a letter to U.S. Granules dated June 19, 2003. The decision to vacate the Henrietta determination was announced in a letter to U.S. Granules dated June 23, 2003. Although the vacature of each of these applicability determinations was final and effective on the date that each letter announcing that vacature was signed, EPA also published a notice announcing vacature of these two applicability determinations. 68 FR 42397, September 3, 2003.

Following issuance of the affirmative determination concerning the applicability of subpart RRR to the Henrietta facility, U.S. Granules Corporation brought an action seeking judicial review of that determination. *U.S. Granules Corp.* v. *Whitman,* No. 03–1946 (8th Circuit). After EPA vacated the Henrietta determination and published the notice of vacature, U.S. Granules moved to dismiss its petition for review. That case was dismissed on September 4, 2003.

II. Interpretation Adopted by This Rule

After EPA decided to adopt a single uniform construction of subpart RRR which would apply to all operations like those conducted at the U.S. Granules facilities, EPA concluded that the appropriate vehicle to announce such a uniform construction is an interpretative rule. The interpretation adopted in an interpretative rule is binding on all EPA offices and permitting authorities, thereby assuring a uniform and predictable outcome. However, the reasonableness of the construction of subpart RRR adopted in this interpretative rule is still subject to appropriate judicial review.

This interpretative rule is limited solely to the question of whether a delamination chamber of the type operated at the Plymouth and Henrietta U.S. Granules facilities is a "scrap dryer/delacquering kiln/decoating kiln" as that term is defined in 40 CFR 63.1503. Although we believe that the affirmative applicability determination concerning the unit that dries aluminum chips at the Henrietta facility was correct, we do not believe it is necessary to revisit that determination because counsel for U.S. Granules advised EPA in a letter dated December 23, 2002, that U.S. Granules did not contest the determination concerning the chip dryer and that U.S. Granules intended to decomission and remove the chip dryer from that facility before the effective date of subpart RRR.

This interpretative rule is intended to be nationwide in scope and effect. It applies to any and all facilities that operate delamination units similar to those operated at the U.S. Granules Plymouth and Henrietta facilities, although we note that U.S. Granules believes that there are no other sources in North America that thermally delaminate aluminum scrap and then mechanically granulate the recovered metal.

We note at the outset that subpart RRR applies to "each new and existing scrap dryer/delacquering kiln/decoating kiln" at a facility that is a major source or area source of hazardous air pollutants. 40 CFR 63.1500(b)(3) and 63.1500(c)(2). 40 CFR 63.1503 defines a "scrap dryer/delacquering kiln/decoating kiln" as "a unit used primarily to remove various organic contaminants such as oil, paint, lacquer, ink, plastic, and/or rubber from aluminum scrap (including used beverage containers) prior to melting."

The delamination chambers at the U.S. Granules Plymouth and Henrietta facilities use heat to separate aluminum foil from paper and plastic in scrap, but the chambers operate at a maximum temperature of 900 degrees Fahrenheit and no melting of the recovered aluminum occurs in the chamber. If an identical delamination unit were located at a facility that itself melts the recovered aluminum, there would be no question that it would fit within this definition, and we do not understand U.S. Granules to dispute that conclusion. It is also clear that the delamination units used by U.S. Granules perform the same general type of operations for recovery of aluminum from scrap that EPA intended to regulate in subpart RRR. However, we acknowledge that the use of the phrase "prior to melting" in the definition of a scrap dryer/delacquering kiln/decoating kiln cannot simply be disregarded. In its affirmative applicability determination, Region 7 argues that the phrase "prior to melting" indicates that the recovery of aluminum from scrap would normally occur prior to melting. However, we think this argument is not persuasive unless the phrase in question was intended to be solely illustrative, and that is not clear on the face of the definition. If our conclusion turned solely on this factor, we would be more inclined to amend the rule in a manner which resolved the ambiguity than to try and construe the existing definition.

Fortunately, we need not resolve this issue to conclude that the delamination chambers at the U.S. Granules facilities are within the definition. The negative applicability determination by Region 5 appears to be based on the argument by U.S. Granules that the recovered aluminum must be melted at the same facility in order for the definition to apply. However, nothing in the definition indicates that the subsequent melting of recovered aluminum must occur at the same facility that conducts the recovery operation. Our discussions with U.S. Granules personnel and our review of the company's Web site indicate that some of the customers who buy the recovered aluminum granules from U.S. Granules subsequently melt the purchased material to produce new aluminum products. While some customers may use the aluminum granules without melting them, those granules which are subsequently melted are produced by an identical recovery process. This is sufficient to confirm that the operations to recover aluminum from scrap at the U.S. Granules facilities should not be treated differently from otherwise similar operations at sources

who themselves melt the recovered aluminum.

If we were to construe the definition in any other way, this would permit other sources to evade the applicability of emission controls required by the rule by merely moving those operations which melt the recovered secondary aluminum to another site. This result would violate our established requirement that sources may not fragment an operation in order to avoid regulation under an applicable standard. *See* 40 CFR 63.4(b)(3). We decline to construe the definitions in subpart RRR in a manner which would allow secondary aluminum production facilities to fragment their operations to evade emission control requirements.

Based on this analysis, we conclude that the delamination chambers operated by the U.S. Granules Plymouth and Henrietta facilities, and any similar secondary aluminum operations which may be conducted now or in the future at other sources, are governed by subpart RRR. Although this interpretative rule will take effect on November 1, 2004, we note that subpart RRR itself is already in effect. That is why the letters that we sent to U.S. Granules vacating the two previous conflicting applicability determinations stated that, if we were to adopt a construction of subpart RRR resulting in a new positive applicability determination for the affected facilities, we would afford U.S. Granules a reasonable period to undertake any activities required to come into compliance or to establish continued compliance with subpart RRR. Consequently, U.S. Granules will be required to comply with subpart RRR within 240 days of the effective date of this Interpretative Rule.

III. Other Review Requirements

Under Executive Order 12866, (58 FR 51736, October 4, 1993), this interpretative rule is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget.

Section 553(b)(3)(A) of the Administrative Procedure Act provides that interpretative rules are not subject to notice-and-comment requirements under the Administrative Procedure Act. Interpretative rules which do not involve the internal revenue laws of the United States are not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because notice-and-comment requirements do not apply to this interpretative rule, this rule is also not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 and 1535).

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 interpretative rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This interpretative rule will not have significant 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 interpretative rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. 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 interpretative rule 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 this interpretative rule, EPA has taken the 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 interpretative rule 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 interpretative rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Our compliance with statutes and Executive Orders in promulgating the rule which is interpreted herein (40 CFR part 63, subpart RRR) is discussed in the **Federal Register** notice concerning the original promulgated rule (63 FR 15690, March 23, 2000), and in the **Federal Register** notice concerning subsequent amendments to that rule (67 FR 79808, December 30, 2002).

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 have established an effective date of November 1, 2004. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: August 18, 2004.

Thomas V. Skinner,

Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 04–22084 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7822–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Dubose Oil Products Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Dubose Oil Products Site in Cantonment, Florida, from the National Priorities List (NPL), which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA requests comments on this deletion. The EPA and the State have determined that all appropriate Fund-financed responses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, the EPA and the State have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment. However, this deletion does not preclude future actions under Superfund.

DATES: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Caroline Robinson, Remedial Project Manager, U.S. Environmental Protection

E.O. 11295, 3 CFR, 1966–1970 Comp., p 570; sec. 236, Public Law 106–113, 113 Stat. 1501A–430; 18 U.S.C. 1621(a)(2).

■ 2. Revise § 51.27(b)(2)(iii)(B) to read as follows:

§ 51.27 Minors.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(B) A notarized written statement or notarized affidavit from the non-applying parent or guardian, if applicable, consenting to the issuance of the passport.

* * * * *

Dated: September 23, 2004.

Daniel B. Smith,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 04–22937 Filed 10–12–04; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OGC–2004–0004; FRL–7826–2]

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On April 14, 2003, pursuant to section 112 of the Clean Air Act (CAA), the EPA issued national emission standards to control hazardous air pollutants emitted from pushing, quenching, and battery stacks at new and existing coke oven batteries. This action amends the parametric operating limits and associated compliance provisions for capture systems used to control emissions from pushing. This action also amends the requirements for mobile scrubber cars that capture emissions which occur during pushing and travel.

DATES: The direct final rule amendments will be effective on January 11, 2005, unless we receive significant adverse comments by November 12, 2004, or by November 29, 2004 if a public hearing is requested. If such comments are received, we 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. Any distinct amendment, paragraph, or section of the final amendments for which we do not receive adverse comment will become effective on January 11, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OGC–2004–0004, 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: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Proposed Settlement Agreement in *AISI/ACCCI Coke Oven Environmental Task Force* v. *U.S. EPA,* No. 03–1167 (DC Cir.) Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, 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. OGC–2004–0004. 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. 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.

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 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 docket entitled "Proposed Settlement Agreement in *AISI/ACCCI Coke Oven Environmental Task Force* v. *U.S. EPA,* No. 03–1167 (DC Cir.)," Docket ID No. OGC–2004–0004, 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: Ms. Lula Melton, Emission Standards Division, Office of Air Quality Planning and Standards (C439–02), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–2910, fax number (919) 541–3207, e-mail address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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.

Category	NAICS code [1]	Examples of regulated entities
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 would be regulated by this action, you should examine the applicability criteria in § 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.

B. What Should I Consider as I Prepare My Comments for EPA?

Do not submit information containing CBI to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OGC–2004–0004. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in 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 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.

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's final amendments is also available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, 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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

D. What Are the Judicial Review Requirements?

Under section 307(b)(1) of the CAA, judicial review of the final 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 13, 2004. 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 can 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 the EPA to enforce these requirements.

E. Why Are We Publishing the Amendments as a Direct Final Rule?

We are publishing the amendments as a direct final rule 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 for the amendments contained in the direct final rule in the event that significant adverse comments are filed. If we receive any significant 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 based on the proposed rule (should we decide to issue a final rule). We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

F. How Is This Document Organized?

The information presented in this preamble is organized as follows:

II. Background
III. Summary of the Final Amendments
A. What changes are we making as a result of the settlement agreement?
B. What other changes are we making?
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

II. Background

On April 14, 2003 (68 FR 18008), we issued national emission standards for the control of hazardous air pollutants (HAP) from pushing, quenching, and battery stacks at new and existing coke oven batteries (40 CFR part 63, subpart CCCCC). The NESHAP implements section 112(d) of the CAA by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).[1]

After publication of the final rule, 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 standards (*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 amps, (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),

[1] The final rule should not be confused with the MACT standards for coke oven doors, lids, offtake systems, and charging which are the subject of special statutory provisions (CAA section 112(d)(8), 112(i)(8)). The EPA adopted MACT standards for those emission points in 1993 (58 FR 57898, October 27, 1993), and recently proposed residual risk standards pursuant to CAA section 112(f)(2) for these sources (69 FR 68338, August 9, 2004).

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).

The EPA and the petitioners anticipate that certain amendments to the final rule will resolve COETF's concerns. These amendments are set out in attachment A to a proposed settlement agreement between EPA and COETF. In accordance with section 113(g) of the CAA, EPA 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. The EPA received no comments on the proposed settlement agreement. Under the terms of the proposed settlement agreement, EPA must submit proposed amendments for publication in the **Federal Register** within 90 days after review of public comments received in response to the notice of the settlement agreement. Within 120 days after the close of the comment period on the proposal, EPA must submit for publication in the **Federal Register** a notice setting forth the Administrator's final decision on the issues covered by the proposal.

Concurrent with development of the proposed settlement agreement, a coke manufacturer constructing a new non-recovery plant noticed a gap in the promulgated rule. The new source is being constructed with a type of emission control system that is not addressed in the final rule. Therefore, the source requested EPA to develop an appropriate emission limit for that control system. In response, we are broadening the applicability of an existing emissions limit to include the control system and are adding appropriate implementation and compliance provisions.

III. Summary of the Final Amendments

A. What Changes Are We Making in Response to the Settlement Agreement?

The petitioners argued that the operating limit in 40 CFR 63.7290(3)(i) of the final rule for capture systems applied to pushing emissions (which requires the plant to maintain the daily average fan motor amperage at or above a certain level) was inappropriate for systems that did not use an electric motor to drive the fan. We agree with the petitioners because there are a few fans that are not powered by an electric motor. In response, we are amending the operating limit in 40 CFR 63.7290(b)(3)(i) to state that the requirement applies to capture systems that use an electric motor to drive the fan. We are adding a new operating limit in 40 CFR 63.7290(b)(3)(ii) that is appropriate for assessing the proper operation of a capture system that does not use an electric motor to drive the fan. The new operating limit requires the owner or operator to maintain the daily average static pressure at the inlet to the control device at an equal or greater vacuum than the level established during the initial performance test, or to maintain the daily average fan revolutions per minute (RPM) at or above the minimum level established during the initial performance test. We also renumbered the existing operating limit for the daily average volumetric flow rate in 40 CFR 63.7290(b)(3)(ii) as 40 CFR 63.7290(b)(3).

We also are adding requirements to the final rule for demonstrating initial and continuous compliance with the new operating limit for daily average static pressure or fan RPM. To establish the operating limit, a new procedure in 40 CFR 63.7323(c)(3) requires that the static pressure at the inlet of the control device or fan RPM during each push sampled for each particulate matter (PM) test run during the performance test be measured and recorded. The operating limit for static pressure is the minimum vacuum recorded during any of the three runs that meets the emission limit. The operating limit for fan RPM is the lowest RPM recorded during any of the three runs that meets the emission limit. To demonstrate initial compliance, a new provision in 40 CFR 63.7326(a)(4) requires that the owner or operator have a record of the static pressure at the inlet of the control device or fan RPM measured during the performance test. To demonstrate continuous compliance, 40 CFR 63.7330(d) requires the owner or operator to monitor the static pressure or the fan RPM at all times according to the requirements in 40 CFR 63.7331(i), which requires a device to measure static pressure at the inlet of the control device or the fan RPM. A new provision in 40 CFR 63.7333(d) requires the owner or operator to maintain the daily average static pressure at the inlet to the control device at an equal or greater vacuum than established during the initial or subsequent performance test, or to maintain the daily average fan RPM at or above the minimum level established during the initial or subsequent performance test. The owner or operator also must check the static pressure or fan RPM at least every 8 hours to verify the daily average static pressure at the inlet to the control device, or the daily average fan RPM, is at or above the required values and to record the results of each check. We also made conforming amendments in each of the affected sections to account for changes in the regulatory citations.

The petitioners also argued that the provision in 40 CFR 63.7300(c)(1), which requires that the operation and maintenance plan include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection, is unreasonable. We agree because there are a few repairs that may require more than 30 days to complete. Therefore, we are replacing the provision to complete all repairs within 30 days after the defect or deficiency is found to allow more time when necessary. If the repairs cannot be completed within 30 days, the owner or operator must estimate the number of days in which repairs can be completed. We developed provisions for two additional situations (*i.e.*, one for repairs that can be made within 60 days and one for repairs that will take longer than 60 days).

If repairs can be completed within 60 days from the date that the problem is discovered, the owner or operator must submit a written notice to the permitting authority within 30 days after the date that the problem is discovered. The notice must contain specific information, including a description of the defect or deficiency, the steps needed to correct the problem, the interim steps needed to mitigate the emissions impact of the defect or deficiency, and an explanation of why the repairs cannot be completed within 30 days from the date that the problem is discovered.

If the repairs cannot be completed within 60 days, the owner or operator must submit a written request to the permitting authority for an extension of time to complete the repairs. The owner or operator must submit this request to the permitting authority within 45 days after the date the defect or deficiency is discovered. The amendments require that this request include the information required for the previous notice, along with a detailed proposed schedule for completing the repairs and a request for approval of the proposed repair schedule. The permitting authority may consider all relevant factors in deciding whether to approved or deny the

request, including feasibility and safety, and may request modifications to the proposed schedule. If the permitting authority approves the request, the approved schedule must provide for completion of repairs as soon as practicable. This new requirement provides flexibility for unforeseen circumstances but also requires accountability for making needed repairs.

B. What Other Changes Are We Making?

A new non-recovery coke plant now under construction will use flat car pushing along with a mobile control system (closed hood capture system vented to a multicyclone) to control PM emissions during pushing and travel to the quench tower. There are no test data for the proposed control system because no such system has been built. Consequently, we cannot develop an alternative emissions limit. However, the existing emission limit of 0.04 pound per ton of coke in 40 CFR 63.7290(a)(4), which applies to mobile scrubber cars that capture emissions during travel, covers a comparable situation. Therefore, we are changing the applicability of the limit from "mobile scrubber car" to "mobile control device." Thus, the existing limit will apply to any type of mobile control device applied to pushing emissions that also captures emissions during travel at a new or existing coke oven battery.

While the existing rule contains monitoring provisions for scrubbers, baghouse, and capture systems, it does not include requirements applicable to multicyclones. Therefore, we have added an operating limit to the final rule, along with requirements for demonstrating initial and continuous compliance. Based on information in EPA's 1998 "Compliance Assurance Monitoring Technical Guidance Document" (available at *http://www.epa.gov/ttn/emc/cam*), we selected pressure drop as the indicator of proper control device performance. For multicyclones, control efficiency is a function of inlet velocity, and changes in velocity result in changes in pressure drop across the device. If the inlet velocity exceeds a certain level, turbulence becomes excessive and control efficiency decreases. Therefore, the operating limit requires the owner or operator to maintain the pressure drop at or below the level established during the initial performance test. A continuous parameter monitoring system (CPMS) is required to measure and record the pressure drop across the device. We also added rule provisions for establishing an operating limit; demonstrating initial compliance; installing, operating, and maintaining the CPMS; and demonstrating continuous compliance with the parametric operating limit.

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 12866, 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 provisions related to the settlement agreement do not increase the existing burden estimates for the final rule. The OMB has previously approved the information collection requirements contained 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 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 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 rule amendments.

For the purposes of assessing the impacts of today's final amendments on small entities, small entity is defined as: (1) A small business having no more than 1,000 employees, as defined by the Small Business Administration for NAICS codes 331111 and 324199; (2) a 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 amendments on small entities, the 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 add new compliance provisions to increase flexibility. 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.

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 to the private sector in any 1 year. No new costs are attributable to the final amendments. Thus, the final rule amendments are not subject to the requirements of 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 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, because tribal governments do not own or operate any sources subject to the final rule amendments. 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

As noted in the proposed amendments, 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 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,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA's compliance with section 112(d) of the NTTAA has been addressed in the preamble to the existing rule (68 FR 18025, April 14, 2003). The final rule amendments do 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 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). The final rule amendments will be effective on January 11, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: October 4, 2004.

Michael O. Leavitt,

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 CCCCC—[Amended]

■ 2. Section 63.7290 is amended by revising paragraphs (a)(4), (b) introductory text, and (b)(3) and by adding new paragraph (b)(4) to read as follows:

§ 63.7290 What emission limitations must I meet for capture systems and control devices applied to pushing emissions?

(a) * * *

(4) 0.04 lb/ton of coke if a mobile control device that captures emissions during travel is used.

(b) You must meet each operating limit in paragraphs (b)(1) through (4) of this section that applies to you for a new or existing coke oven battery.

* * * * *

(3) For each capture system applied to pushing emissions, you must maintain the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial performance test; or

(i) For each capture system that uses an electric motor to drive the fan, you must maintain the daily average fan motor amperes at or above the minimum level established during the initial performance test; and

(ii) For each capture system that does not use a fan driven by an electric motor, you must maintain the daily average static pressure at the inlet to the control device at an equal or greater vacuum than the level established during the initial performance test or maintain the daily average fan revolutions per minute (RPM) at or above the minimum level established during the initial performance test.

(4) For each multicyclone, you must maintain the daily average pressure drop at or below the minimum level established during the initial performance test.

■ 3. Section 63.7300 is amended as follows:

■ a. Removing the third (last) sentence in paragraph (c)(1) and adding in its place a new sentence; and

■ b. Adding new paragraphs (c)(1)(i) and (ii).

§ 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 except as specified in paragraphs (c)(1)(i) and (ii) of this section.

(i) If you determine that the repairs can be completed within 60 days, you must submit a written notice that must be received by the permitting authority within 30 days after the date that the defect or deficiency is discovered. Your notice 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 an explanation of why the repairs cannot be completed within 30 days. You must then complete the repairs within 60 days after the date that the defect or deficiency is discovered.

(ii) In those rare instances when repairs cannot be completed within 60 days, you must submit a written request for extension of time to complete the repairs. The request must be received by the permitting authority not more than 45 days after the date that the defect or deficiency is discovered. The request must contain all of the information required for the written notice described in paragraph (c)(1)(i) of this section, along with a detailed proposed schedule for completing the repairs and a request for approval of the proposed repair schedule. 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.

* * * * *

■ 4. Section 63.7323 is amended as follows:

■ a. Revising paragraph (c);

■ b. Redesignating paragraph (d) as (e);

■ c. Adding new paragraph (d); and

■ d. Revising newly designated paragraph (e) introductory text and revising newly designated paragraph (e)(3).

§ 63.7323 What procedures must I use to establish operating limits?

* * * * *

(c) For a capture system applied to pushing emissions from a coke oven battery, you must establish a site-specific operating limit according to the procedures in paragraphs (c)(1), (2), or (3) of this section.

(1) If you elect the operating limit in § 63.7290(b)(3) for volumetric flow rate, measure and record the total volumetric flow rate at the inlet of the control device during each push sampled for each particulate matter test run. Your operating limit is the lowest volumetric flow rate recorded during any of the three runs that meet the emission limit.

(2) If you elect the operating limit in § 63.7290(b)(3)(i) for fan motor amperes, measure and record the fan motor amperes during each push sampled for each particulate matter test run. Your operating limit is the lowest fan motor amperes recorded during any of the three runs that meet the emission limit.

(3) If you elect the operating limit in § 63.7290(b)(3)(ii) for static pressure or fan RPM, measure and record the static pressure at the inlet of the control device or fan RPM during each push sampled for each particulate matter test

run. Your operating limit for static pressure is the minimum vacuum recorded during any of the three runs that meets the emission limit. Your operating limit for fan RPM is the lowest fan RPM recorded during any of the three runs that meets the emission limit.

(d) For a multicyclone applied to pushing emissions from a coke oven battery, you must establish a site-specific operating limit for pressure drop according to the procedures in paragraphs (d)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7330(f), measure and record the pressure drop for each particulate matter test run during periods of pushing. A minimum of one pressure drop measurement must be obtained for each push.

(2) Compute and record the average pressure drop for each test run. Your operating limit is the highest average pressure drop value recorded during any of the three runs that meet the emission limit.

(e) You may change the operating limit for a venturi scrubber, capture system, or mobile control device that captures emissions during pushing if you meet the requirements in paragraphs (e)(1) through (3) of this section.

* * * * *

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (d) of this section.

■ 5. Section 63.7326 is amended as follows:

■ a. Revising paragraph (a)(1)(iii);

■ b. Revising paragraphs (a)(4)(i) and (a)(4)(ii);

■ c. Adding paragraph (a)(4)(iii); and

■ d. Adding paragraph (a)(5).

§ 63.7326 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) * * *

(1) * * *

(iii) 0.04 lb/ton of coke if a mobile control device that captures emissions during travel is used.

* * * * *

(4) * * *

(i) If you elect the operating limit in § 63.7290(b)(3) for volumetric flow rate, you have a record of the total volumetric flow rate at the inlet of the control device measured during the performance test in accordance with § 63.7323(c)(1); or

(ii) If you elect the operating limit in § 63.7290(b)(3)(i) for fan motor amperes, you have a record of the fan motor amperes during the performance test in accordance with § 63.7323(c)(2); or

(iii) If you elect the operating limit in § 63.7290(b)(3)(ii) for static pressure or fan RPM, you have a record of the static pressure at the inlet of the control device or fan RPM measured during the performance test in accordance with § 63.7323(c)(3).

(5) For each multicyclone applied to pushing emissions, you have established an appropriate site-specific operating limit and have a record of the pressure drop measured during the performance test in accordance with § 63.7323(d).

* * * * *

■ 6. Section 63.7330 is amended by revising paragraphs (d) and (e) and by adding paragraph (f) to read as follows:

§ 63.7330 What are my monitoring requirements?

* * * * *

(d) For each capture system applied to pushing emissions, you must at all times monitor the volumetric flow rate according to the requirements in § 63.7331(g), the fan motor amperes according to the requirements in § 63.7331(h), or the static pressure or the fan RPM according to the requirements in § 63.7331(i).

(e) For each by-product coke oven battery, you must monitor at all times the opacity of emissions exiting each stack using a COMS according to the requirements in § 63.7331(j).

(f) For each multicyclone applied to pushing emissions, you must monitor at all times the pressure drop using a CPMS according to the requirements in § 63.7331(k).

■ 7. Section 63.7331 is amended as follows:

■ a. Revising paragraphs (g) and (h);

■ b. Redesignating paragraph (i) as (j) and revising newly designated paragraph (j) introductory text;

■ c. Adding new paragraph (i); and

■ d. Adding new paragraph (k).

§ 63.7331 What are the installation, operation, and maintenance requirements for my monitors?

* * * * *

(g) If you elect the operating limit in § 63.7290(b)(3) for a capture system applied to pushing emissions, you must install, operate, and maintain a device to measure the total volumetric flow rate at the inlet of the control device.

(h) If you elect the operating limit in § 63.7290(b)(3)(i) for a capture system applied to pushing emissions, you must install, operate, and maintain a device to measure the fan motor amperes.

(i) If you elect the operating limit in § 63.7290(b)(3)(ii) for a capture system applied to pushing emissions, you must install, operate and maintain a device to measure static pressure at the inlet of the control device or the fan RPM.

(j) For each by-product coke oven battery, you must install, operate, and maintain a COMS to measure and record the opacity of emissions exiting each stack according to the requirements in paragraphs (j)(1) through (5) of this section.

* * * * *

(k) For each multicyclone applied to pushing emissions, you must install, operate, and maintain CPMS to measure and record the pressure drop across each multicyclone during each push according to the requirements in paragraphs (b) through (d) of this section except as specified in paragraphs (e)(1) through (3) of this section.

■ 8. Section 63.7333 is amended as follows:

■ a. Revising paragraph (d);

■ b. Revising paragraph (e)(2); and

■ c. Adding new paragraph (h).

§ 63.7333 How do I demonstrate continuous compliance with the emission limitations that apply to me?

* * * * *

(d) For each capture system applied to pushing emissions and subject to the operating limit in § 63.7290(b)(3), you must demonstrate continuous compliance by meeting the requirements in paragraph (d)(1), (2), or (3) of this section:

(1) If you elect the operating limit for volumetric flow rate in § 63.7290(b)(3):

(i) Maintaining the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the volumetric flow rate at least every 8 hours to verify the daily average is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(2) If you elect the operating limit for fan motor amperes in § 63.7290(b)(3)(i):

(i) Maintaining the daily average fan motor amperages at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the fan motor amperage at least every 8 hours to verify the daily average is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(3) If you elect the operating limit for static pressure or fan RPM in § 63.7290(b)(3)(ii):

(i) Maintaining the daily average static pressure at the inlet to the control device at an equal or greater vacuum

than established during the initial or subsequent performance test or the daily average fan RPM at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the static pressure or fan RPM at least every 8 hours to verify the daily average static pressure at the inlet to the control device is at an equal or greater vacuum than established during the initial or subsequent performance test or the daily average fan RPM is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(e) * * *

(2) Operating and maintaining a COMS and collecting and reducing the COMS data according to § 63.7331(j).

* * * * *

(h) For each multicyclone applied to pushing emissions and subject to the operating limit in § 63.7290(b)(4), you must demonstrate compliance by meeting the requirements in paragraphs (h)(1) through (3) of this section.

(1) Maintaining the daily average pressure drop at a level at or below the level established during the initial or subsequent performance test.

(2) Operating and maintaining each CPMS according to § 63.7331(k) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for pressure drop according to § 63.7331(e)(1) through (3).

[FR Doc. 04–22871 Filed 10–12–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0299; FRL–7681–8]

Mepanipyrim; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of mepanipyrim, 4-methyl-N-phenyl-6-(1-propynyl)-2-pyrimidinamine, and its metabolite, 4-methyl-N-phenyl-6-(2-hydroxypropyl)-2-pyrimidinamine, both free and conjugated in or on grape; grape, raisin; strawberry; and tomato. K-I Chemical U.S.A., Inc., requested these tolerances 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 October 13, 2004. Objections and requests for hearings must be received on or before December 13, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0299. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South 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.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of May 26, 2004 (69 FR 29940) (FRL–7357–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E5017) by K-I Chemical U.S.A., Inc., 11 Martine Ave., 9th Floor, White Plains, NY 10606. That notice included a summary of the petition prepared by K-I Chemical U.S.A., the petitioner. One comment from a private citizen was received in response to the notice of filing. The petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the fungicide mepanipyrim in or on grape at 2.0 parts per million (ppm); grape, raisin at 4.0 ppm; strawberry at 1.5 ppm; and tomato at 0.5 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section

[FR Doc. 04-26291 Filed 11-26-04; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR-2003-0188; FRL-7841-8]

RIN 2060-AL87

List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition To Delist of Ethylene Glycol Monobutyl Ether

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is amending the list of hazardous air pollutants (HAP) contained in section 112(b)(1) of the Clean Air Act (CAA) by removing the compound ethylene glycol monobutyl ether (EGBE) (2-Butoxyethanol) (Chemical Abstract Service (CAS) No. 111-76-2) from the group of glycol ethers. This action is being taken in response to a petition to delete EGBE from the HAP list submitted by the Ethylene Glycol Ethers Panel of the American Chemistry Council (ACC) (formerly the Chemical Manufacturers Association) on behalf of EGBE producers and consumers. Petitions to delete a substance from the HAP list are permitted under section 112(b)(3) of the CAA.

Based on the available information concerning the potential hazards of and projected exposures to EGBE, 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 EGBE] 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."

DATES: Effective November 29, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR-2003-0188 and A-99-24. 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 (Air Docket), EPA/DC, EPA West, Room B-102, 1301 Constitution Avenue, NW, Washington, DC 10460. 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. Kelly Rimer, Office of Air Quality Planning and Standards, Emission Standards Division, C404-01, U. S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-2962; fax number: 919-541-0840; e-mail address: *rimer.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially affected by this action are those industrial facilities that manufacture or use EGBE. The final rule amends the list of HAP contained in section 112(b)(1) of the CAA by removing the compound EGBE. The decision to issue a final rule to delist EGBE removes EGBE 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. Peer Review of New Data on EGBE Metabolite, Butoxyacetaldehyde
III. Public Comments on Proposed Rule to Delist EGBE
IV. Final Rule
  A. Rationale for Action
  B. Effective Date
V. References
VI. 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 list of HAPs that are 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.

Section 112(b)(2) of the CAA requires EPA to make periodic revisions to the initial list of HAPs set forth in 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 judgements about whether a pollutant causes an adverse environmental effect, 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 or her own initiative, the burden is on a 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, the Agency 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, the Agency publishes a written explanation of the basis for denial. A decision to deny a petition is final Agency action subject to review in the D.C. 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 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 effects to the human health or adverse environmental effects."

The 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 these criteria have been met. After affording an opportunity for comment and for a hearing, EPA will make a final determination whether the criteria have been met.

The 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 the Agency 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 which 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. The EPA will not grant a petition to delete a substance if there are major uncertainties which need to be addressed before EPA would have sufficient information to make the requisite determination.

B. The Present Petition and Rulemaking

On August 29, 1997, the ACC's Glycol Ethers Panel submitted a petition to delete EGBE (CAS No. 111-76-2) from the HAP list in CAA section 112(b)(1), 42 U.S.C. 7412(b)(1). Following the receipt of the petition, we conducted a preliminary evaluation to determine whether the petition was complete according to Agency criteria. 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. After receiving additional submittals through December 21, 1998, we determined the petition to delete EGBE to be complete. We published a notice of receipt of a complete petition in the **Federal Register** on August 3, 1999 and requested information to assist us in technically reviewing the petition.

We received eight submissions in response to our request for comment and information which would aid our technical review of the petition. The comments made general statements encouraging EPA to delist EGBE. None of the comments included technical information.

On November 4, 2003, based on a comprehensive review of the data provided in the petition and otherwise provided to EPA, the Agency made an initial determination that the statutory criteria for deletion of EGBE from the HAP list had been met. The EPA, therefore, granted the petition by the ACC's Glycol Ethers Panel and issued a proposed rule to delist EGBE (68 FR 65648, November 21, 2003).

The EPA received a total of 18 comments on the November 21, 2003 proposed rule. While three of the commenters opposed deleting EGBE from the HAP list, they provided no substantive arguments to support this position. There was no request for a public hearing.

The EPA's decision to remove EGBE from the list of HAP is based on the results of a risk assessment demonstrating that emissions of EGBE may not reasonably be anticipated to result in adverse human health or environmental effects. In addition to the risk assessment, we have considered public comments, as well as other information related to EGBE in making this decision, namely the transformation of EGBE into other HAP as it decomposes in the ambient air. We conclude that ambient concentrations of the transformed HAP are very small, and that they decompose rapidly. Therefore, we do not anticipate that EGBE transformation will be significant enough to have an adverse impact on human health.

We also considered the fact that EGBE is reported to the Toxics Release Inventory (TRI) as part of the group of glycol ethers. The 2000 TRI shows the air emissions of the class of chemicals "Certain Glycol Ethers" to be ranked number 12 by volume. Under the final rule, it will no longer be regulated as a HAP, but it will continue to be reported in the TRI, as part of the group "Certain Glycol Ethers" and regulated under EPA's criteria pollutant (ozone) program.

The EPA has made a final determination, after careful consideration of the petition and after completing additional analyses, that there are adequate data on the health and environmental effects of EGBE to determine that emissions, ambient concentrations, bioaccumulation, or deposition of EGBE may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

II. Peer Review of New Data on EGBE Metabolite, Butoxyacetaldehyde

In the preamble to the proposed rule, we stated that the Agency believes EGBE is not genotoxic and that two distinctly different nonlinear modes of action are principally responsible for the increased forestomach and liver tumors reported by NTP (2000a). These modes of action are discussed in detail in the Interim Final position paper, "An Evaluation of the Human Carcinogenic Potential of Ethylene Glycol Butyl Ether," available from the Docket for the final rule. We also stated that there are reports of weak positive effects by EGBE at high concentrations in some in vitro assays which may indicate the potential for genotoxicity by butoxyacetaldehyde (BAL), an EGBE metabolite known to cause clastogenic changes at high in vitro concentrations (see the section on "Other Possible Modes of Action for Forestomach Tumor Development in Female Mice" in the Agency's position paper). However, available evidence from a published EGBE physiologically based pharmacokinetic model that had

been modified to include kinetics for the metabolism of the BAL intermediate (Corley, 2003) suggested that the concentrations of BAL metabolite predicted to occur in vivo would be much lower than the concentrations used in the in vitro assays. Based on this, it appears that genotoxicity is not a factor in tumor development in female mice. This increases our confidence that a nonlinear mechanism is involved in tumor formation (versus a linear mechanism which would be suggested if genotoxicity was involved). As we discussed in the preamble to the proposed rule, additional research (*e.g.*, verification of these PBPK modeling results and further genotoxicity research using more appropriate assays and currently accepted test protocols) would be beneficial to provide a more definitive determination regarding the role of BAL in the formation of forestomach tumors in female mice.

Since the publication of the proposed rule, additional research has been completed and submitted to EPA. Subsequently, we commissioned a peer review panel to evaluate the new data submitted and EPA's conclusions of the proposed ruling and interim final position paper in light of the recent research and literature that has been submitted to the Agency in response to the Agency's proposed EGBE ruling. The peer review was conducted on May 19, 2004 by an external review panel of seven experts. A report on the results of this peer review is included in the docket for the final rule. In summary, the peer review panel was unanimous in agreeing that there is enough information to support an informed decision concerning the significance of BAL genotoxicity to the formation of EGBE induced liver and forestomach tumors. The available information support a nonlinear mode of action, not a linear mode of action (*e.g.*, genotoxicity) for the male mouse liver tumors and female mouse forestomach tumors observed following EGBE exposure. That is, the reviewers concluded that genotoxicity is not important in the development of these tumors.

The panel also concluded that it is reasonable to expect that a lack of hemolytic effects in humans would preclude the formation of liver tumors in humans and that a lack of hyperplastic effects in the region of the gastroesophogeal junction in humans would preclude the formation of gastrointestinal tumors in humans. That is, the data support the finding that we would not expect to find these tumors in humans following environmental exposures. The RfC and RfD values for EGBE have been set at levels that prevent both the precursor events that would lead to tumors and other noncancer effects, and the Agency has determined that exposures to EGBE are at levels well below the RfC and RfD. We can therefore conclude with confidence that emissions, ambient concentrations, bioaccumulation, or deposition of EGBE may not reasonably be anticipated to cause any adverse effects to the human health.

III. Public Comments on Proposed Rule To Delist EGBE

Of the 18 written comments we received pertaining to the proposed delisting of EGBE, 15 were supportive of the decision to delist and 3 opposed the decision to delist.

The EPA has considered carefully all the comments both supporting and opposing the proposed delisting. A summary of the comments and EPA responses to them has been included in the docket for this proceeding. We received substantive comments with regard to the BAL issue, which we discussed in detail above. We received no substantive negative comments. Two of the comments in support of the delisting also asked specific policy questions. We respond to those questions below.

Comment: One commenter asked if the rule also applies to diethylene glycol monobutyl ether (DEGBE). The commenter expressed support for delisting both chemicals in the rule.

Response: The final rule applies only to EGBE, one of the compounds included in the group of glycol ethers listed in the section 112(b)(1) HAP list. The petition requested that one single compound, EGBE, be delisted; it did not request EPA to consider removing any other compounds in the group of glycol ethers. Therefore this action pertains only to EGBE.

Comment: One commenter urged EPA to address the "Once In, Always In" policy in the final rulemaking for facilities that will no longer be major sources for MACT standards once EGBE is delisted. This commenter requested that the "Once In, Always In" policy not apply to delistings in general, since a facility that was only over the major source threshold due to emissions of a subsequently delisted HAP may never have been a "major source" from a health perspective, and therefore never really "in". The commenter argued that the purpose of the policy that sources not be allowed to backslide from MACT standards, is not applicable to delistings because in such cases the health and environmental protection of a standard is not undermined since the delisted chemical has been determined not to be a health and environmental threat.

Response: This action addresses a request to remove a specific pollutant from the HAP list. Any questions about the "Once In Always In Policy" are beyond the scope of today's action. The EPA will address the "Once In Always In Policy" in the future.

IV. Final Rule

A. Rationale for Action

The detailed factual rationale for supporting the Agency's initial determination that the criteria in Clean Air Act section 112(b)(3)(C) had been met is set forth in the proposed rule published in the **Federal Register** on November 21, 2003 (68 FR 65648). However, as described above, EPA received additional data during the public comment period and had those data peer reviewed. The results of the peer review strengthen the case for delisting. The EPA also received 18 public comments on the proposed rule, none of which caused EPA to revise the scientific basis upon which the initial determination to delist EGBE was predicated. The 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 EGBE. Based on that assessment, the Agency's evaluation of the comments, and additional information submitted during the rulemaking (as summarized above), EPA has made a determination that there are adequate data on the health and environmental effects of EGBE 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 November 29, 2004, the date it is published in the **Federal Register**. Although Section 553(d) of the Administrative Procedures 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 rule was promulgated pursuant to CAA section 307(d), and that provision expressly states that the provisions of section 553 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."

V. References

References cited in the preamble can be viewed in the docket for the final rule.

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 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.

Pursuant to the terms of Executive Order 12866, it has been determined that the final action does not constitute a "significant regulatory action" and is, therefore, not subject to OMB review.

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 final action will remove EGBE 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)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this final action, can include manufacturing (NAICS 3999- 03) and air transportation (NAICS 4522- 98 and 4512- 98) operations that employ less 1,000 people and engineering services (NAICS 8711- 98) operations that earn less than $20 million annually; (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 rule on small entities, I certify that this final 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 of the final 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. The final rule will eliminate the burden of additional controls necessary to reduce EGBE emissions and the associated operating, monitoring and reporting requirements. We have, therefore, concluded that today's final rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the final rule on small entities and welcome comments on issues related to such impacts.

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. The 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.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires 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 final regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the final regulation.

Today's final rule removes the substance EGBE 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, the requirements of section 6 of the Executive Order do 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. The final rule will eliminate control requirements for EGBE and, therefore, reduces control costs and reporting requirements for any tribal entity operating a EGBE source subject to control under the CAA. 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, 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 is not subject to Executive Order 13045 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. This determination is based on the fact that the RfC is determined to be protective of sensitive sub-populations, including children.

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

Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant energy actions." The final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 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. The EPA will submit a report containing the 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**. However, this action is not a major rule as defined by 5 U.S.C. 804(2). The final rule will be effective November 29, 2004.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous

substances, Reporting and recordkeeping requirements.

Dated: November 18, 2004.

Michael O. Leavitt,

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 § 63.63 to read as follows:

§ 63.63 Deletion of ethylene glycol monobutyl ether from the list of hazardous air pollutants.

The substance ethylene glycol monobutyl ether (EGBE,2-Butoxyethanol) (CAS Number 111- 76- 2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

[FR Doc. 04- 26071 Filed 11- 26- 04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03–185; FCC 04–220]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules for digital low power television (LPTV) and television translator stations, and resolves issues related to digital television booster stations. This proceeding marks the beginning of the digital television conversion for these services. The rules and policies provide the framework for this conversion.

DATES: Effective January 28, 2005, except §§ 73.6027, 74.703, 74.705, 74.707, 74.710, 74.786 through 74.788, 74.790, and 74.793 through 74.796 of the Commission's rules, which contain information collection requirements under the Paperwork Reduction Act (PRA) and are not effective until approved by the Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due January 28, 2005. The Commission will publish a document in the **Federal Register** announcing the effective date for these rules.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, *Shaun.Maher@fcc.gov,* (202) 418- 1600. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau (202) 418-1600. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith at 202- 418- 0217, or via the Internet at *Leslie.Smith @fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order (R&O)* in MB Docket No. 03- 185, FCC 04- 220, adopted September 9, 2004, and released September 30, 2004. This proceeding was initiated by the *Notice of Proposed Rule Making,* 68 FR 55566, September 26, 2003. The complete text of this *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY- A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW, CY- B402, Washington, DC 20554. The *R&O* is also available on the Internet at the Commission's Web site: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418- 7365 or at *Brian.Millin@fcc.gov*

Paperwork Reduction Act

This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104- 13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding.

Summary of the Report and Order

1. The *R&O* adopts definitions and permissible use provisions for digital TV translator and LPTV stations to mirror the analog operation of these stations. Digital translators will rebroadcast DTV broadcast signals. Whenever operating, a digital LPTV station must use some of its channel capacity to provide a free video programming service to the public. Upon meeting this requirement, LPTV stations may offer ancillary and supplementary services on the same basis as DTV broadcast licensees.

2. As to the timing of the digital transition for these stations, LPTV, TV translator, and Class A stations are required to convert to digital operation, but the Commission has discretion to set the date by which analog operations of these stations must cease. The *R&O* states that the Commission will seek to hasten their transition to digital service and will work toward the goal of achieving an end-date at, or soon after, the end date of the full-power transition. Although the Commission intends to hasten their transition to digital service, certain issues regarding the transition of full service stations must be resolved before a low-power transition deadline can be set. The final transition date of these stations will be considered in the Commission's Third DTV periodic review proceeding.

3. Existing LPTV and TV translator stations may convert to digital operations ("flash cut") on their current channel. Applications for this purpose will be accepted on a first-come, first serve basis. Mutually exclusive applicants will be resolved by auction. In addition, to facilitate their digital transition, licensees and permittees of LPTV, TV translator, and Class A stations will be allowed to seek a digital companion channel for their analog station operations. A filing window for this purpose will be announced at a later date. The Commission will determine the deadline and process for stations' obtaining a digital companion channel to return of one of their channels. At a later date, the Commission will institute a separate first-come-first-served filing procedure not limited to incumbent low power stations.

4. Due to limited spectrum availability, the R&O makes available VHF channels 2- 13, inclusive, and UHF channels 14- 51, inclusive (except channel 37) for digital LPTV and TV translator operations. The *R&O* also permits the use of channels 52- 69 on a limited basis. Existing LPTV and TV translator stations on channels 52- 69 may flash-cut to digital operations. The use of channels 52- 59 for digital companion channels is limited to those stations that can certify the unavailability of any in-core channel

* * * * *

[FR Doc. 04–28087 Filed 12–22–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0023; FRL–7852–3]

RIN 2060–AK49

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks. The standards are commonly known as the Hazardous Organic NESHAP or the HON. This action amends the HON to allow vapor balancing in conjunction with the use of a pressure setting to comply with the storage tank control requirements of the standards.

DATES: The direct final rule will be effective on March 8, 2005 without further notice, unless adverse comments are received by January 24, 2005, or by February 7, 2005 if a public hearing is requested. See the proposed rule amendments in this issue of the **Federal Register** for information on the hearing. If we receive timely adverse comments, we will withdraw the direct final rule and take final action pursuant to the proposed rule amendments.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0023, 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–2003–0023. 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), U.S. 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 code	Examples of regulated entities
Industrial	325	Chemical manufacturing facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation 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 63.100. 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.

What Should I Consider as I Prepare My Comments for EPA?

Submitting CBI. Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in 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.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should 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.*, 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. Randy McDonald 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.

Comments. We are publishing the direct final rule without prior proposal because we view it as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed. If we receive any adverse comments on a specific element of the direct final rule, 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 based on the proposed rule amendments. 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. Any parties interested in commenting must do so at this time.

World Wide 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 *http://www.epa.gov/ttn/caaa.* 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.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by February 22, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

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

I. Why are we publishing the amendments as a direct final rule?
II. What amendments are we making to the HON?
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 & 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. Why Are We Publishing the Amendments as a Direct Final Rule?

We are publishing the amendments without prior proposal because we view the changes as noncontroversial and anticipate no adverse comment. The final rule amendments to the HON increase flexibility by adding a new compliance option. The final rule amendments do not alter the stringency of the standards, have no adverse health or environmental impacts, and will not increase costs. The compliance option of vapor balancing and use of a pressure setting to comply with storage tank control requirements has been used in several maximum achievable control technology (MACT) standards including the NESHAP for Pharmaceuticals Production, the NESHAP for Pesticide Active Ingredient Production, and the NESHAP for Miscellaneous Organic Chemical Manufacturing.

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 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. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

II. What Amendments Are We Making to the HON?

We are amending the HON to allow vapor balancing in conjunction with the use of a tank pressure setting to comply with the storage tank control requirements. Vapor balancing captures the displaced emissions, or working losses, from the storage tank and returns the vapors to the tank truck, railcar, or barge. To eliminate diurnal breathing losses from storage vessels, the vapor balancing provisions require a pressure setting of 2.5 pounds per square inch gage (psig) on the pressure-relief valve on storage vessels. The vapor balancing provision requires that displaced vapors from tank trucks and railcars be controlled at the reloading or cleaning facility to at least 95 percent, the control level of the standard.

As a means of demonstrating continuous compliance with the pressure setting requirement, the provisions require the owner or operator to record the pressure vent setting during each transfer operation and to monitor the pressure relief valve on a quarterly basis to ensure no breathing losses. To demonstrate compliance with the offsite provisions, the owner or operator must obtain a certification from the cleaning and reloading facility indicating that the control requirements will be met. In addition, tank trucks, railcars, and barges would be required to have current certification of compliance with pressure test

requirements, and the owner or operator would be required to keep a record of the certifications.

We are making the direct final rule amendments because they provide the industry with another compliance option, one that will result in emissions reductions equal to, or greater than, those achieved by the existing control options. The direct final rule amendments would also result in a more efficient use of resources because a tank owner would not have to purchase and operate control equipment if a liquid supplier agrees to capture the vapors from the tank and treat them offsite. Vapor balancing provisions identical to those we are adding to the HON are already included in the promulgated NESHAP for Pharmaceuticals Production, Pesticide Active Ingredient Production, and Miscellaneous Organic Chemical Manufacturing.

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. However, 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 2060–0282 (EPA ICR No. 1414.04).

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. 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 Analysis

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

For purposes of assessing the impacts of today's 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 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.

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, since the primary purpose of the regulatory flexibility analysis 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, any 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 amendments add a compliance option granting greater flexibility to small entities subject to the HON 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. The final rule amendments provide a source owner or operator with another option to comply with the standards. Therefore, the 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 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.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicits comment on the 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 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.

The EPA specifically solicits additional comment on the final rule amendments from tribal officials.

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 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).

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 16, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 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 G—[AMENDED]

■ 2. Section 63.119 is amended by:
■ a. Revising paragraphs (a)(1) and (2); and
■ b. Adding paragraph (g).

The revisions and addition read as follows:

§ 63.119 Storage vessel provisions-reference control technology.

(a) * * *

(1) For each Group 1 storage vessel (as defined in table 5 of this subpart for existing sources and table 6 of the subpart for new sources) storing a liquid for which the maximum true vapor pressure of the total organic hazardous air pollutants in the liquid is less than 76.6 kilopascals, the owner or operator shall reduce hazardous air pollutants emissions to the atmosphere either by operating and maintaining a fixed roof and internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, a closed vent system and control device, routing the emissions to a process or a fuel gas system, or vapor balancing in accordance with the requirements in paragraph (b), (c), (d), (e), (f), or (g) of this section, or equivalent as provided in § 63.121 of this subpart.

(2) For each Group 1 storage vessel (as defined in table 5 of this subpart for existing sources and table 6 of this subpart for new sources) storing a liquid for which the maximum true vapor pressure of the total organic hazardous air pollutants in the liquid is greater than or equal to 76.6 kilopascals, the owner or operator shall operate and maintain a closed vent system and control device meeting the requirements specified in paragraph (e) of this section, route the emissions to a process or a fuel gas system as specified in paragraph (f) of this section, vapor balance as specified in paragraph (g) of this section, or equivalent as provided in § 63.121 of this subpart.

* * * * *

(g) The owner or operator who elects to vapor balance to comply with the requirements of paragraphs (a)(1) and (2) of this section shall comply with paragraphs (g)(1) through (7) of this section and the recordkeeping requirements of § 63.123(i).

(1) The vapor balancing system must be designed and operated to route organic HAP vapors displaced from loading of the storage tank to the railcar, tank truck, or barge from which the storage tank is filled.

(2) Tank trucks and railcars must have a current certification in accordance with the U.S. Department of Transportation pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars. Barges must have a current certification of vapor-tightness through testing in accordance with 40 CFR 63.565.

(3) Hazardous air pollutants must only be unloaded from tank trucks or railcars when vapor collection systems are connected to the storage tank's vapor collection system.

(4) No pressure relief device on the storage tank, or on the railcar or tank truck, shall open during loading or as a result of diurnal temperature changes (breathing losses).

(5) Pressure relief devices must be set to no less than 2.5 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 (g)(5)(i) through (iii) of this section for each pressure relief valve.

(i) The pressure relief valve shall be monitored quarterly using the method described in § 63.180(b).

(ii) An instrument reading of 500 ppmv or greater defines a leak.

(iii) 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).

(6) Railcars, tank trucks, or barges that deliver HAP to a storage tank must be reloaded or cleaned at a facility that utilizes the control techniques specified in paragraph (g)(6)(i) or (ii) of this section.

(i) The railcar, tank truck, or barge must be connected to a closed-vent system with a control device that reduces inlet emissions of HAP by 95 percent by weight or greater.

(ii) A vapor balancing system designed and operated to collect organic HAP vapor displaced from the tank truck, railcar, or barge during reloading must be used to route the collected HAP vapor to the storage tank from which the liquid being transferred originated.

(7) The owner or operator of the facility where the railcar, tank truck, or barge is reloaded or cleaned must comply with paragraphs (g)(7)(i) through (iii) of this section.

(i) 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 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 (g)(7).

(ii) If complying with paragraph (g)(6)(i) of this section, comply with the requirements for a closed vent system and control device specified in §§ 63.119 through 63.123.

(iii) If complying with paragraph (g)(6)(ii) of this section, keep the records specified in § 63.123(i)(3).

■ 3. Section 63.123 is amended by adding paragraph (i) to read as follows:

§ 63.123 Storage vessel provisions—recordkeeping.

* * * * *

(i) An owner or operator who elects to comply with § 63.119(g) shall keep the records specified in paragraphs (i)(1) through (3) of this section.

(1) A record of the U.S. Department of Transportation certification required by § 63.119(g)(2).

(2) A record of the pressure relief vent setting specified in § 63.119(g)(5).

(3) If complying with § 63.119(g)(6)(ii), keep the records specified in paragraphs (i)(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 railcar, tank truck, or barge 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 § 63.119(g)(6)(ii).

[FR Doc. 04–27992 Filed 12–22–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[RCRA–2004–0009; FRL–7854–2]

Land Disposal Restrictions: Site-Specific Treatment Standard Variance for Selenium Waste for Chemical Waste Management, Chemical Services, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On November 19, 2004, the Environmental Protection Agency published a direct final rule to grant a

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). This action merely approves state and local declarations that rules implementing certain federal standards are unnecessary, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan submission that otherwise satisfies the provisions of the Clean Air Act. 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 rule 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.*, 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2005. Filing a petition for reconsideration by the Administrator of this direct final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*See* 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 21, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

■ Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart GG—New Mexico

■ 2. Subpart GG is amended by adding a new undesignated center heading and a new § 62.7881 to read as follows:

Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units

§ 62.7881 Identification of sources—negative declaration.

Letter from the City of Albuquerque Air Pollution Control Division dated September 10, 2002, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subparts CCCC and DDDD under its jurisdiction in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

[FR Doc. 05–342 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OGC–2004–0004; FRL–7859–8]

RIN 2060–AM83

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On October 13, 2004, the EPA issued direct final amendments to the national emission standards for hazardous air pollutants (NESHAP) for pushing, quenching, and battery stacks at new and existing coke oven batteries. The amendments were issued as a direct final rule, along with a parallel proposal to be used as the basis for final action in the event EPA received any significant adverse comments on the direct final amendments. Because a significant adverse comment was received on one provision, EPA is withdrawing the corresponding parts of the direct final rule. We will address the adverse comment in a subsequent final rule based on the parallel proposal published on October 13, 2004.

DATES: As of January 10, 2005, the EPA withdraws the direct final amendments to 40 CFR 63.7300(c)(1) published on October 13, 2004 (69 FR 60813). The remaining provisions published on October 13, 2004, will be effective on January 11, 2005.

ADDRESSES: *Docket:* 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 Docket ID No. OGC–2004–0004, 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. Steve Fruh, Emission Standards Division (C439–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–2837, fax number (919) 541–3207, e-mail address: *fruh.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2004, we published a direct final rule (69 FR 60813) and a parallel proposal (69 FR 60837) amending the NESHAP for pushing, quenching, and battery stacks at new and existing coke oven batteries (40 CFR part 63, subpart CCCCC). The direct final rule amendments added provisions for a control system not covered by the existing rule, adjusted the parametric operating limits and associated compliance requirements for capture systems used to control pushing emissions, and adjusted the operation and maintenance requirements for capture systems in 40 CFR 63.7300(c)(1).

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), 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 comments from one commenter on the amendments to the operation and maintenance requirements for capture systems in 40 CFR 63.7300(c)(1). The direct final amendments to 40 CFR 63.7300(c)(1) included:

- 40 CFR 63.7300(c)(1), which required completion of repairs within 30 days except as allowed in paragraphs (c)(1)(i) and (ii);
- 40 CFR 63.7300(c)(1)(i), which required the facility to notify the permitting authority if the repair could be completed within 60 days; and
- 40 CFR 63.7300(c)(1)(ii), which required the facility to request an extension if the repair could not be completed within 60 days.

Accordingly, we are withdrawing all amendments to 40 CFR 63.7300(c)(1). The amendments are withdrawn as of January 10, 2005. We will take final action on the proposed rule after considering the comment 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 January 11, 2005, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 63

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

Dated: January 4, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ Accordingly, the Amendment to 40 CFR 63.7300 (c) (1), published in the **Federal Register** on October 13, 2004 (69 FR 60813) which was to become effective January 11, 2005 is withdrawn.

[FR Doc. 05–423 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Department of the Navy

RIN 0703–ZA00

Policies and Responsibilities for Implementation of SECNAVINST 7220.85, Notice of Back Pay for Members of the Navy and Marine Corps Selected for Promotion While Interned as Prisoners of War (POW) During World War II

AGENCY: Department of the Navy, DoD.

ACTION: Policy statement.

SUMMARY: The Department of the Navy (DON) hereby gives notice of implementing its instruction (SECNAVINST 7220.85), an internal regulation that establishes the responsibilities and procedures within DON regarding the payment of back pay to any person who, by reason of being interned as a POW while serving as a member of the Navy or Marine Corps during World War II (WW II), was not available to accept a promotion for which the person had been selected.

DATES: This rule is effective until January 10, 2007.

ADDRESSES: The WW II Prisoner of War Promotion Back Pay Application and all pertinent information should be mailed to Headquarters, U.S. Marine Corps, 2 Navy Annex, RFF–F10, Washington, DC 20380–1775 or Commander, Navy Personnel Command (PERS 62), 5720 Integrity Drive, Millington, TN 38055.

FOR FURTHER INFORMATION CONTACT: Deputy Commandant of the Marine Corps for Programs & Resources, [Headquarters, U.S. Marine Corps, 2 Navy Annex, RFF–F10, Washington, DC 20380–1775 / 1–866–472–7139] or Commander, Navy Personnel (PERS 62) [Retired Activities Branch-62, 5720 Integrity Drive, Millington, Tennessee 38055 / (901) 874–4396].

SUPPLEMENTARY INFORMATION: Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, sec. 667 (Pub. L. 106–398), directed the DON to pay, from currently available appropriations, back pay to persons interned during World War II, who were selected for promotion but not available to accept the promotion. The Act authorizes payment to the former member or a surviving spouse of the deceased former member. If there is no surviving spouse of the deceased former member, no claim may be paid.

The amount of back pay payable is the amount equal to the difference between:

(1) The total amount of basic pay that would have been paid if the person had been promoted to the grade to which selected; and

(2) The total amount of basic pay that was actually paid.

The back pay computation period is the period:

(1) Beginning on the date as of when that person's promotion would have been effective for pay purposes but for the person's internment as a POW; and

(2) Ending on the earliest of:

(a) The date of the person's discharge or release from active duty;

(b) The date on which the person's promotion to that grade in fact became effective for pay purposes; or

(c) The end of World War II.

To be eligible for payment, claims must be postmarked within 2 years of publication in the **Federal Register**.

Definitions

a. World War II. The period of time beginning on December 7, 1941, and ending on December 31, 1946, as defined in 38 U.S.C. 101(8).

b. Surviving spouse. A husband or wife by lawful marriage who out lives the other spouse.

Policy

a. DON will take action to ensure that the benefits and eligibility for benefits are widely publicized and that all persons eligible for payment are afforded an opportunity to apply. Notification will be made through all appropriate means such as organizational newsletters, Internet websites, published media, and retiree correspondence.

b. While there is no requirement to submit a POW Promotion Back Pay Application, eligible veterans or surviving spouses must provide the information requested on the POW

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	* *
155	Portable Fuel Container Spillage Control.	6/3/04	2/7/05	[Insert *FR* citation from published date].	(c)(53)	All of Chapter 155 is approved with the exception of the word "or" in Subsection 7C which Maine did not submit as part of the SIP revision.
*	*	*	*	*	*	* *

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–2060 Filed 2–4–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0194; FRL–7869–7]

RIN 2060–AL89

National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

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 leather finishing operations, which were issued on February 27, 2002, under section 112 of the Clean Air Act (CAA). The direct final amendments clarify the frequency for categorizing leather product process types, modify the definition of "specialty leather," add a definition for "vacuum mulling," and add an alternative procedure for determining the actual monthly solvent loss from an affected source. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant 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 leather finishing operations if significant adverse comments are filed.

DATES: The direct final rule is effective on February 28, 2005 without further notice, unless EPA receives adverse written comment by February 17, 2005 or by February 22, 2005 if a public hearing is requested. If significant adverse comments are received, 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–2003–0194, 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–2003–0194. 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 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.

FOR FURTHER INFORMATION CONTACT: Mr. William 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: Since these rule amendments do not add substantive requirements and ease certain compliance obligations, EPA finds that there is good cause to make the rule amendments immediately effective upon the close of the comment period, within the meaning of 5 U.S.C. section 553(d).

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

Category	NAICS* code	Examples of regulated entities
Industry	3161	Leather finishing operations.
	31611	Leather finishing operations.
	316110	Leather finishing operations.
Federal government	.....	Not affected.
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 40 CFR 63.5285. 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 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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate significant 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 national emission standards for leather finishing operations if significant adverse comments are filed. If we receive any significant 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 significant 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 February 28, 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 amendments.

I. Background
  A. Frequency of Testing for Product Process Type Categorization
  B. Revised Specialty Leather Definition
  C. Alternative Procedure for Determining Actual Solvent Loss
II. Amendments to 40 CFR Part 63, Subpart TTTT
III. Statutory and Executive Order Reviews
  A. Executive Order 12866, Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
  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 of 1995
  J. Congressional Review Act

I. Background

The EPA promulgated NESHAP for leather finishing operations on February 27, 2002 (67 FR 9156). The final rule (40 CFR part 63, subpart TTTT) includes standards for hazardous air pollutants (HAP), as well as monitoring, performance testing, recordkeeping, and reporting requirements related to those standards. Today's action includes direct final rule amendments to clarify the frequency for categorizing leather product process types, modify the definition of "specialty leather," add a definition for "vacuum mulling," and add an alternative procedure for determining the actual monthly solvent loss from an affected source.

A. Frequency of Testing for Product Process Type Categorization

We noticed that the promulgated standards were silent regarding how often an affected source will perform appropriate testing to properly categorize each finish application in one of four leather product process operations: (1) Upholstery operations with less than four grams of finish add-ons, (2) upholstery operations with four grams or more of finish add-ons, (3) water-resistant/specialty, and (4) nonwater-resistant. In the final rule, to determine whether a leather finish application is categorized as "water-resistant" or "nonwater-resistant," you must use the Maeser Flexes test method on finished leather samples according to

American Society for Testing and Materials (ASTM) Designation D2099–00, or use an alternative testing method approved by the Administrator (40 CFR 63.5345–63.5350). We are amending the final rule to clarify that once you have determined that a unique finish application corresponds to one of the four product process operations, the applied finish categorization can remain valid for up to 5 years, provided there are no changes in the applied finish chemical characteristics. However, if the chemical characteristics of the applied finish change, or if you operate for 5 years with an unchanged applied finish formula, you must re-categorize the applied finish using appropriate testing procedures to document the leather product process operation to which the applied finish will correspond. Thus, once a leather finish application has been categorized through proper documentation, you will need to renew the categorization every 5 years or when the applied finish chemical characteristics change, whichever occurs sooner.

B. Revised Specialty Leather Definition

The definition of specialty leather in the final rule states that it is a select grade of chrome tanned, bark retanned, or fat liquored leather that is retanned through the application of greases, waxes, and oils in quantities greater than 25 percent of the dry leather weight. The specialty leather definition was added to the final rule after commenters to the proposed rule noted that leather that has been retanned with greater than 25 percent greases, fats, and oils requires finishing with coatings that contain more solvents and, therefore, more HAP to achieve proper adhesion of the finish to the leather and produce the color and textures the market demands.

While the definition in the final rule appeared to cover all the specialty leather produced at the time, one leather finishing company (Horween Leather Company) raised the issue that they finish leather that should meet the definition of "specialty" based on the amount of solvent they are required to use in the coatings. These products, however, did not meet the definition of specialty leather in the final rule. In fact, in order to produce some high-quality dress or performance shoe leathers, higher solvent-based finishes are required to provide the rich color, luster, or an oily/tacky feel demanded by the market. These leathers are produced by retanning with oils, fat, and greases of less than 25 percent which does not qualify them for the specialty leather category.

In a letter sent via a facsimile on December 3, 2002, Horween Leather provided EPA with technical information relating to the solvent content of the coatings required for their proposed specialty leather products and the oil, fat, and grease content of the retanned leather. This information clearly showed that higher solvent coatings were required to achieve satisfactory product qualities down to some oil, fat, and grease content of approximately 12 percent. EPA discussed this information with representatives of Horween, as well as with coatings experts for the leather industry, to determine whether alternatives for the higher solvent coatings could be used with lower oil, fat, and grease content leather and achieve the same results. After considering these discussions and reviewing the data, EPA determined that the only means of producing this leather with the lower fat, oil, and grease content and achieving the same results is by revising the specialty leather definition.

The revised specialty leather definition in the direct final rule amendments lowers the minimum percentage of applied grease, waxes, and oil used for retanning the leather to greater than 12 percent of the dry leather weight. This revision enables leather finishers to use the higher solvent coatings required to achieve the desired results since no other options exist. The Agency estimates that this change in definition will only affect one or two facilities that produce this specialty leather and will enable them to meet market demand for products with a lower fat, oil, and grease content. The fraction of leather produced at these facilities that will be affected by this change is estimated to be approximately 3 percent of their total amount of leather finished in a year. This change will therefore have the effect of moving this quantity of leather from the non-water resistant leather category with an emission limit of 3.7 pounds of HAP loss per 1,000 square feet of leather finished to the water resistant/specialty leather category with an emission limit of 5.6 pounds of HAP loss per 1,000 square feet of leather finished.

In addition to lowering the percentage of oil, fat, and grease, we are revising the specialty leather definition to also include high-quality dress or performance shoe leather that can withstand one or both of the following visual tests: Moisture injection into the leather using vacuum mulling without signs of blistering, or prolonged ironing at 200 °F for smoothing out surface roughness without finish lift off. As noted above, one of the reasons for using higher solvent coatings was to achieve a higher level of adhesion. Vacuum mulling and prolonged ironing are used as an indicator of coating adhesion to the leather substrate and are, therefore, being incorporated into the definition. Incorporating these criteria into a revised specialty leather definition allows for these mostly low-production quantities of high-quality dress or performance shoe leathers to be appropriately categorized as "specialty leather" products.

C. Alternative Procedure for Determining Actual Solvent Loss

After promulgation of the final rule, we received several comment letters on behalf of the trade organization, Leather Industries of America (LIA), and two leather finishing companies (Prime Tanning Company and S.B. Foot Tanning Company). The primary issue centered on the potential recordkeeping burden of a finish inventory log to determine the actual monthly solvent loss from an affected source. As stated in the final rule, each source must record the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish. The basis for this type of recordkeeping was that each source knew the chemical composition of each applied finish and was capable of measuring the amount of finish as applied to each leather product; thus, a "measure-as-you-directly-apply" approach appears generally reasonable.

Two leather finishing companies indicated that current company practices determine actual monthly solvent loss through mass balance calculations based on a detailed inventory of stored chemicals, at the beginning- and end-of-each month, and business purchasing records to indicate additions to the inventory of chemical supplies. Thus, the net loss of finishing solvents is determined by subtracting the end-of-the month chemical inventory from the beginning-of-the-month chemical inventory and adding the quantities of all chemicals purchased during the same 1-month period. Typically, a unique finish application is prepared by removing known quantities of chemicals from a storage location, and the unique finish is formulated in a separate location, commonly referred to as a mixing room. In situations when an excess amount of finish is formulated, the companies indicated that the excess amount is generally accounted for in the mass balance procedures as consumed by the process (*i.e.*, fugitive solvent loss). This assumption is often taken as a

simplifying step which results in a conservative and slightly overestimated measure of the solvent loss. Excess finish may eventually be used in other finish applications; thus, its use and consumption by the process may not be immediate. Nonetheless, the excess amount is immediately accounted for as a solvent loss.

In other situations, the companies indicated they may choose to dispose of the excess finish and make an appropriate adjustment in their corresponding mass balance calculations. If the disposed quantities of finish are small, the companies may choose to record the disposed quantity in the mass balance as consumed by the process (*i.e.*, fugitive solvent loss). Again, this assumption is a simplifying step which results in a conservative and slightly overestimated measure of the solvent loss. However, the companies may choose to record the quantity as disposed and remove the quantity from the mass balance, so it is neither listed as released to the air nor is the quantity of solvent listed as remaining in the inventory.

The two companies indicated it would cause an extreme labor and cost burden to change and implement a "measure-as-you-directly-apply" approach. Furthermore, they stated that their current "mass balance" approach is just as accurate in determining actual monthly solvent losses as the "measure-as-you-directly-apply" approach. Both of these leather finishing companies provided sufficient supporting documentation that their current solvent measurement procedures are capable of accurately determining the quantity of solvent finishes used each month and determining the mass fraction of HAP in the consumed solvent finishes.

Therefore, in today's action, we are allowing a monthly chemical inventory mass balance as an alternative procedure in 40 CFR 63.5335(b) for determining actual monthly HAP loss from an affected source. A monthly chemical inventory mass balance is appropriate, as long as the source follows its detailed mass balance procedures and calculations in its plan for demonstrating compliance, in accordance with 40 CFR 63.5325. Regardless of which approach is used to determine finish loss, each source is still required to maintain a written or printed log that documents the total quantity of solvents/finishes used each month in the process and the mass fraction of HAP in each solvent/finish.

II. Amendments to 40 CFR Part 63, Subpart TTTT

Today's action includes amendments that add an alternative procedure for determining the actual monthly solvent loss from an affected source, clarify the frequency in which leather product process types must be categorized, modify the definition of "specialty leather," and add a definition for "vacuum mulling."

Section 63.5335 of 40 CFR part 63 is amended by adding a new alternative requirement for maintaining a finish application log based on a detailed chemical inventory mass balance. This was accomplished by splitting paragraph (b) into two subparagraphs to list the two acceptable methodologies for determining actual monthly solvent loss from an affected source. The revised paragraph (b)(1) includes the previous requirements for maintaining a log of finish types as they are applied to a leather product process. Previously, these requirements were listed in paragraphs (b)(1) through (7) of § 63.5335. However, the requirements have been redesignated, without any further changes, as paragraphs (b)(1)(i) through (vii). Paragraph (b)(2) of § 63.5335 includes the new alternative requirements for maintaining a finish application log based on a detailed chemical inventory mass balance.

Section 63.5345 is amended by adding paragraph (d) to clarify the frequency for the two types of upholstery product process operations which must be categorized.

Section 63.5350 is amended by clarifying the frequency for water-resistant and nonwater-resistant product process operations which must be categorized, incorporating the revised definition of specialty leather, and by providing alternative visual test criteria to support the categorization of high-quality dress or performance shoe leather as specialty leather. We have also clarified the frequency for categorizing specialty leather product process operations.

Section 63.5460 is amended by revising the definition for the term specialty leather and adding a definition for the term vacuum mulling.

III. Statutory and Executive Order Review

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 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 modifies a definition and adds a new definition to the final standards. It also adds an alternative option for determining HAP loss from the process. Since this action only clarifies the existing standards and adds 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 2060–0478 (EPA ICR No. 1985.02).

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 email 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 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 impact of today's direct final rule amendments on small entities, small entities are defined as: (1) A small business that has fewer than 750 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.

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

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 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 leather finishing industry and clarify the frequency for categorizing leather product process types, modify the definition of "specialty leather," add a definition for "vacuum mulling," and add an alternative procedure for determining the actual monthly solvent loss from an affected source and, therefore, impose no additional burden on sources. 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 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" are defined in the Executive Order to include regulations that has "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 apply only to affected sources in the leather finishing industry and clarify the frequency for categorizing leather product process types, modify the definition of "specialty leather," add a definition for "vacuum mulling," and add an alternative procedure for determining the actual monthly solvent loss from an affected source 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 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 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 direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. The direct final rule amendments apply only to affected sources in the leather finishing industry and clarify the frequency for categorizing leather product process types, modify the definition of "specialty leather," add a definition for "vacuum mulling," and add an alternative procedure for determining the actual monthly solvent loss from an affected source 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 and

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 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 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 direct final rule amendments. Therefore, the 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).

List of Subjects in 40 CFR Part 63

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

Dated: February 1, 2005.

Stephen L. Johnson,

Acting 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 TTTT—[AMENDED]

■ 2. Section 63.5335(b) is revised to read as follows:

§ 63.5335 How do I determine the actual HAP loss?

* * * * *

(b) Use one of the procedures listed in either paragraph (b)(1) or (b)(2) of this section for determining the actual HAP loss from your affected sources. Regardless of which procedure is used to determine HAP loss, each source is still required to maintain a written or printed log that documents the total quantity of solvents/finishes used each month in the process and the mass fraction of HAP in each solvent/finish.

(1) *Measure Finish as Applied.* Use a finish inventory log to record the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish. Figure 1 of this subpart shows an example log for recording the minimum information necessary to determine your finish usage and HAP loss. The finish inventory log must contain, at a minimum, the information for each type of finish applied listed in paragraphs (b)(1)(i) through (vii) of this section:

(i) Finish type;

(ii) Pounds (or density and volume) of each finish applied to the leather;

(iii) Mass fraction of HAP in each applied finish;

(iv) Date of the recorded entry;

(v) Time of the recorded entry;

(vi) Name of the person recording the entry;

(vii) Product process operation type.

(2) *Chemical Inventory Mass Balance.* Determine the actual monthly HAP loss from your affected source through mass balance calculations. You must follow your detailed mass balance procedures and calculations in your plan for demonstrating compliance in accordance with § 63.5325. The HAP mass balance must be based on a detailed inventory of stored chemicals at the beginning and end of each month, and business purchasing records to indicate additions to the inventory of chemical supplies. The net loss of chemicals used for finish applications is determined by subtracting the end of the month chemical inventory from the beginning of the month chemical inventory and adding the quantities of all chemicals purchased during the same 1-month period. In situations when an excess amount of finish is formulated, you must have documented procedures on how the excess amount is accounted for in the mass balance.

* * * * *

■ 3. Section 63.5345 is amended by adding paragraph (d) to read as follows:

§ 63.5345 How do I distinguish between the two upholstery product process operations?

* * * * *

(d) For each leather product with a unique finish application, you must maintain records to support how the leather product was categorized to a product process operations type. You must repeat the leather product categorization to a product process operation type no less frequently than once every 5 years if the applied finish chemical characteristics of the leather product have not changed, or when the applied finish chemical characteristics of the leather product change, whichever is sooner.

■ 4. Section 63.5350 is amended as follows:

■ a. adding paragraph (b)(3),

■ b. revising paragraphs (c) introductory text and (c)(2), and

■ c. adding paragraphs (c)(3) and (c)(4).

§ 63.5350 How do I distinguish between the water-resistant/specialty and nonwater-resistant leather product process operations?

* * * * *

(b) * * *

(3) For each leather product with a unique finish application, you must maintain records to support how the leather product was categorized to a product process operations type. You must repeat the leather product categorization to a product process operation type no less frequently than once every 5 years if the applied finish chemical characteristics of the leather product have not changed, or when the applied finish chemical characteristics of the leather product do change, whichever is sooner.

(c) To determine whether your product process operation produces specialty leather, you must meet the criteria in paragraphs (c)(1) and (2), or (c)(3) of this section:

* * * * *

(2) The leather must be retanned through the application of grease, waxes, and oil in quantities greater than 12 percent of the dry leather weight. Specialty leather is also finished with higher solvent-based finishes that provide rich color, luster, or an oily/tacky feel. Specialty leather products may include, but are not limited to, specialty shoe leather and top grade football leathers.

(3) The leather must be a high-quality dress or performance shoe leather that can withstand one of the visual tests in paragraph (c)(3)(i) or (ii) of this section:

(i) Moisture injection into the leather using vacuum mulling without signs of blistering.

(ii) Prolonged ironing at 200° F for smoothing out surface roughness without finish lift off.

(4) For each leather product with a unique finish application, you must maintain records to support how the leather product was categorized to a product process operations type. You must repeat the leather product categorization to a product process operation type no less frequently than once every 5 years if the applied finish chemical characteristics of the leather product have not changed, or when the applied finish chemical characteristics of the leather product do change, whichever is sooner.

■ 5. Section 63.5460 is amended by revising the definition for the term "Specialty leather", and adding, in alphabetical order, a definition for the term "Vacuum mulling" to read as follows:

§ 63.5460 What definitions apply to this subpart?

* * * * *

Specialty leather means a select grade of chrome tanned, bark retanned, or fat liquored leather that is retanned through the application of grease, waxes, and oil in quantities greater than 12 percent of the dry leather weight or high-quality dress or performance shoe leather that can withstand one or more of the following visual tests: moisture injection into the leather using vacuum mulling without signs of blistering, or prolonged ironing at 200° F for smoothing out surface roughness without finish lift off. Specialty leather is also finished with higher solvent-based finishes that provide rich color, luster, or an oily/tacky feel. Specialty leather products are generally low volume, high-quality leather, such as specialty shoe leather and top grade football leathers.

* * * * *

Vacuum mulling means the injection of water into the leather substrate using a vacuum process to increase the moisture content of the leather.

* * * * *

[FR Doc. 05–2303 Filed 2–4–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WA–04–005; FRL–7866–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Washington; Yakima County Nonattainment Area Boundary Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is taking final action to correct an error in the initial delineation of the boundary of the Yakima County nonattainment area (Yakima NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). This correction revises the boundary of the Yakima NAA to exclude a small portion that lies within the exterior boundary of the Yakama Indian Reservation. The excluded area will revert to an unclassifiable designation, consistent with the original and current designation of the Yakama Indian Reservation.

EFFECTIVE DATE: This rule is effective on March 9, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. WA–04–005. Publicly available docket materials are available in hard copy at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. This Docket facility is open from 8:30–4, Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Gina Bonifacino, Office of Air, Waste and Toxics (OAWT–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–2970, or e-mail address: bonifacino.gina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us" or "our" is used, we mean EPA. Information is organized as follows:

Table of Contents

I. Background
II. What Comments Did EPA Receive on the Proposed Action?
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On November 29, 2004, EPA solicited public comment on a proposal to correct the boundary of the Yakima County nonattainment area (Yakima NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) by excluding approximately six square miles of Yakama Indian Reservation land. Section 107(d)(4)(B) of the Clean Air Act (CAA or the Act) sets out the general process by which areas were to be designated nonattainment for the national ambient air quality standards (NAAQS) for PM–10 upon enactment of the 1990 Clean Air Act amendments. The Act states that each area that had been identified by EPA as a PM–10 Group I area [1] prior to the 1990 CAA Amendments is designated nonattainment for PM–10 by operation of the law upon enactment of the 1990 CAA Amendments. Prior to enactment of the 1990 CAA amendments, EPA published technical corrections clarifying the boundaries of concern for some of the areas previously identified as Groups I and II areas. See 55 FR 45799. October 31, 1990. With this action, the Yakima County Group I area was revised to correspond to a rectangular study area that encompassed

[1] Group I areas were areas that, at the time the particulate matter indicator was changed from total suspended particulate (TSP) to PM–10, were estimated to have a high probability of exceeding the PM–10 NAAQS.



Federal Register

Wednesday,
February 9, 2005

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0033; AD–FRL–7969–9]

RIN 2060–AK51

National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On April 11, 2002, pursuant to section 112 of the Clean Air Act (CAA), the EPA issued national emission standards to control hazardous air pollutants emitted from catalytic cracking units, catalytic reforming units, and sulfur recovery units at petroleum refineries. This action promulgates amendments to several sections of the existing standards. The amendments will change the affected source designations and add new compliance options for catalytic reforming units that use different types of emission control systems, new monitoring alternatives for catalytic cracking units and catalytic reforming units, and a new procedure for determining the metal or total chloride concentration on catalyst particles. The amendments will also defer technical requirements for most continuous parameter monitoring systems, clarify testing and monitoring requirements, and make editorial corrections.

DATES: The final amendments will be effective on April 11, 2005, unless we receive significant adverse comments by March 11, 2005, or by March 28, 2005 if a public hearing is requested. If such comments are received, we will publish a timely withdrawal in the **Federal Register** indicating which amendments, paragraph, or section will become effective and which amendments, paragraph, or section are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of the direct final amendments for which we do not receive adverse comment will become effective on April 11, 2005.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2002–0033, 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.*
- *Fax:* (202) 566–1741.
- *Mail:* National Emission Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, 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–2002–0033. 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. 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.

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 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 in Docket ID No. OAR–2002–0033 (or A–97–36), 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. Robert B. Lucas, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0884, fax number (919) 541–3470, e-mail address: *lucas.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	32411	Petroleum refineries that operate catalytic cracking units, catalytic reforming units, or sulfur recovery units.
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 63.1561 of the NESHAP for petroleum refineries: Catalytic cracking units, catalytic reforming units, and sulfur recovery units. If you have questions regarding the applicability of this action to a particular entity, consult the contact 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 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 direct 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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 11, 2005. 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 can 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 the EPA to enforce these requirements.

Comments. We are publishing the amendments as a direct final rule 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 for the amendments contained in this direct final rule in the event that significant adverse comments are filed. If we receive any significant 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 based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

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

I. Background
II. Summary of the Direct Final Rule Amendments
A. How are we changing the affected source designations?
B. How are we changing the testing and monitoring requirements for catalytic cracking units?
C. What new procedure is available for determining the metal or total chloride concentration on catalyst particles?
D. What new alternative is available for calculating the volumetric flow rate of exhaust gases from catalytic cracking units?
E. What new monitoring alternative is available for a catalytic cracking unit with a wet scrubber if the unit is subject to the new source performance standards for petroleum refineries?
F. How are we clarifying the emission limitations for catalytic reforming units?
G. How are we changing the monitoring requirements for catalytic reforming units?
H. What new options are available for a catalytic reforming unit with an internal scrubbing system?
I. What new options are available for a catalytic reforming unit with a different type of control system?
J. How are we changing the requirements for continuous parameter monitoring systems?
K. What corrections are we making?
III. Summary of Non-Air Health, Environmental, Energy, and Cost Impacts
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 Advancement Act
J. Congressional Review Act

I. Background

On April 11, 2002 (67 FR 17762), we issued the national emission standards for hazardous air pollutants (NESHAP) for catalytic cracking units (CCU), catalytic reforming units (CRU), and sulfur recovery units (SRU) at petroleum refineries (40 CFR part 63, subpart UUU). The NESHAP establish emissions limits for hazardous air pollutants (HAP) emitted from vents on the three types of process units, as well as work practice standards for by-pass lines. The NESHAP implement section 112(d) of the CAA by requiring all petroleum refineries that are major sources to meet standards reflecting the application of the maximum achievable control technology (MACT).

After publication of the NESHAP, two industry trade associations and various individual refineries raised issues and questions regarding the applicability of the NESHAP and the technical requirements for installation, operation, and maintenance of continuous parameter monitoring systems (CPMS). The industry representatives and a control technology manufacturer also requested that we clarify the requirements for CRU depressurizing and purging, add more compliance provisions for CRU with internal scrubbing systems, and include new provisions for CRU that use emission control technologies other than scrubbers. The industry representatives also requested clarification of various performance testing and monitoring provisions. Other questions were raised at an implementation workshop held in January 2003. Today's direct final rule amendments respond to the issues raised since promulgation and will reduce compliance uncertainties, encourage the use of new control technologies, and improve understanding of the NESHAP requirements.

In addition, since publication of the NESHAP, we have identified a number of minor technical and editorial errors requiring correction. Rather than publish a separate notice of corrections, we are including those changes along with the amendments.

II. Summary of the Direct Final Rule Amendments

A. How Are We Changing the Affected Source Designations?

One of the issues raised by the industry representatives concerns the language in 40 CFR 63.1562 where we identified the affected sources as each CCU that regenerates catalyst, each CRU that regenerates catalyst, and each SRU and the tail gas treatment unit serving it. In designating the affected source as the unit rather than the vent or group of vents on the unit (as originally proposed), we inadvertently made the NESHAP more stringent for some facilities, and these facilities did not have an opportunity to comment on the change. Therefore, we are revising the designation of affected sources to be

more consistent with the rule as proposed. The direct final rule amendments define the process unit affected sources as:

- The process vent or group of process vents on fluidized CCU units that is associated with regeneration of the catalyst used in the unit (*i.e.*, the catalyst regeneration flue gas vent).
- The process vent or group of process vents on CRU (including but not limited to semi-regenerative, cyclic, or continuous processes), that is associated with regeneration of the catalyst used in the unit. This affected source includes vents that are used during the unit depressurization, purging, coke burn, and catalyst rejuvenation.
- The process vent or group of process vents on Claus or other types of sulfur recovery plant units or the tail gas treatment units serving sulfur recovery plants that is associated with sulfur recovery.

B. How Are We Changing the Testing and Monitoring Requirements for Catalytic Cracking Units?

The initial compliance provisions in 40 CFR 63.1564(b)(1) require the owner or operator to install, operate, and maintain a CPMS according to the requirements in 40 CFR 63.1572 and Table 3 to subpart UUU. Facilities that are not subject to the new source performance standards (NSPS) for petroleum refineries and that elect to meet the particulate matter (PM) or nickel (Ni) limit in the NESHAP are required to monitor the gas flow rate to a wet scrubber. After promulgation, industry representatives recommended that we revise the CCU monitoring requirements to allow gas flow rate measurements before or after the control device. The direct final rule amendments revise the requirements in Table 3 to subpart UUU to allow measurement of the gas flow rate entering or exiting the control device. This change will improve implementation of the NESHAP and avoid unnecessary costs of changing current practices. The direct final rule amendments also revise the footnotes to Tables 3 and 7 to subpart UUU to change the citation for the alternative method for determining gas flow rate from 40 CFR 63.1573(a) to 40 CFR 63.1573(a)(1) to accommodate the new alternative for calculating the volumetric flow rate of exhaust gases when computing the PM emissions rate.

The initial compliance provisions in 40 CFR 63.1564(b)(2) require the owner or operator to conduct a performance test for certain CCU according to the requirements in Table 4 to subpart UUU. After promulgation, industry representatives recommended that we delete the sampling rate requirements cited for EPA Method 29 (40 CFR part 60, appendix A). According to the commenters, the sampling rate requirement is unnecessary because the method already includes appropriate sampling requirements. We agree and have deleted the 0.028 dry standard cubic meters per minute (dscm/min)/ 0.74 dry standard cubic feet per minute (dscf/min) sampling rate requirement from Table 4 to subpart UUU.

C. What New Procedure Is Available for Determining the Metal or Total Chloride Concentration on Catalyst Particles?

The owner or operator of a CCU subject to a Ni limit for inorganic HAP emissions must determine the equilibrium catalyst (E-cat) Ni concentration value during the initial performance test and at frequent intervals afterward for monitoring requirements. Several methods are currently used within the industry for this purpose and are referenced in the NESHAP, as well as any alternative method satisfactory to the Administrator. Industry experts and vendors recommended that the NESHAP allow a new procedure that was not fully developed at the time the NESHAP were promulgated. The direct final rule amendments add the new procedure, "Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)" to appendix A of subpart UUU. This procedure can be used to analyze catalyst particles (Ni compounds and total chlorides) from CCU, CRU, and other processes specified within EPA regulations. The direct final rule amendments revise Table 4 to subpart UUU to reference the new procedure.

D. What New Alternative is Available for Calculating the Volumetric Flow Rate of Exhaust Gases From Catalytic Cracking Units?

The initial compliance provisions in 40 CFR 63.1564(b)(4) require the owner or operator of a CCU subject to the PM limit in the NSPS for petroleum refineries to compute the PM emission rate using Equation 1 of 40 CFR 63.1564. This calculation requires measurement of the volumetric flow rate of exhaust gas from the catalyst regenerator ("Q_r"). The direct final rule amendments revise the definition of "Q_r" to refer to a new alternative procedure in 40 CFR 63.1573(a)(2) that can be used to determine the volumetric flow rate of exhaust gas. This procedure can be used by plants that have a gas analyzer installed in the catalytic cracking regenerator exhaust vent prior to the addition of air or other gas streams. The new alternative allows measurement of the flow rate after an electrostatic precipitator, but requires measurement of the flow rate before a carbon monoxide boiler.

E. What New Monitoring Alternative is Available for a Catalytic Cracking Unit With a Wet Scrubber if the Unit Is Subject to the New Source Performance Standards for Petroleum Refineries?

The NSPS for petroleum refineries (40 CFR part 60, subpart J) require a continuous opacity monitoring system (COMS) for a fluidized CCU to demonstrate continuous compliance with the opacity limit in 40 CFR 60.102(a)(2). Subpart UUU requires facilities that are already subject to the NSPS to meet the NSPS requirements, including the opacity limit and COMS requirements.

Technical experience has shown that COMS are not feasible for wet scrubber PM control systems. We have already acknowledged the technical problems associated with the use of COMS on wet scrubbers by requiring other monitoring methods (CPMS for pressure drop and liquid-to-gas ratio). However, these requirements apply under other compliance options and not to CCU already subject to the NSPS.

Some facilities with CCU subject to the NSPS use wet scrubbers to meet the PM limit and already have alternative monitoring requirements approved under the NSPS. For these reasons, one industry representative requested that the NESHAP accept alternative monitoring requirements that have already been approved under the NSPS. Therefore, we are adding a new paragraph (f) to 40 CFR 63.1573 to provide for use of the approved alternative under subpart UUU.

Monitoring alternatives for CCU subject to the NSPS that have already been approved may not meet the criteria for MACT standards. For example, the alternative may not include provisions for demonstrating continuous compliance such as meeting an operating limit, collecting and reducing monitoring data, and recordkeeping/ reporting requirements. While we cannot automatically approve an alternative that we have not seen, we see no reason to require a second formal approval process for the same control system and emission limit. To this end, we have added procedures for requesting alternative requirements specific to this situation.

We are requiring that an owner or operator submit a copy of the approved alternative monitoring method in the notification of compliance status (or

before), along with a brief description of the continuous monitoring system, the applicable operating limit, and the continuous compliance requirements. We will contact you within 30 calendar days after receipt, to tell you if the alternative is approved. This alternative does not eliminate your responsibility to comply with the opacity limit, which would remain applicable for enforcement purposes. This option is not available to facilities that elect to comply with the NSPS requirements in subpart UUU. These facilities must request an alternative monitoring method under the procedures in 40 CFR 63.8(f).

F. How Are we Clarifying the Emission Limitations for Catalytic Reforming Units?

The requirements for organic HAP emissions in 40 CFR 63.1566(a)(3) state that the CRU emissions and operating limits in Tables 15 and 16 to subpart UUU apply to emissions from process vents that occur during depressuring and purging operations. The NESHAP specify in 40 CFR 63.1566(a)(4) that the limits do not apply to depressurizing and purging operations when the reactor vent pressure is 5 pounds per square inch (psig) or less. Applicable process vents include those used during unit depressurization, purging, coke burn, catalyst rejuvenation, and reduction or activation purge. Industry representatives noted the current language is unclear as to whether the limits apply only to the initial depressurization cycle or include subsequent depressuring and purging cycles when the reactor pressure is greater than 5 psig. In response, we are amending 40 CFR 63.1566(a)(3) to clarify our intent regarding the control of organic HAP emissions from CRU depressurizing and purging.

Our intent in the NESHAP was that the organic HAP requirements apply to the initial depressuring and catalyst purging operations that occur prior to coke burn-off. Organic HAP emissions are expected during the initial depressurization and catalyst purge cycles. No additional organic HAP emission controls are used during coke burn-off, beyond the combustion process inherent during this process, and our data indicate there are minimal organic emissions from coke burn-off and subsequent CRU regeneration cycle purges.

Industry representatives suggested that we limit the applicability of the emissions limit to only the initial depressuring and first nitrogen purge. We do expect that, after some number of purges, the HAP concentration in the purge may be less than the required outlet HAP concentration from a combustion control device. Under the NESHAP, all purges greater than 5 psig go to a combustion control device (or equivalent combustion device), regardless of the HAP concentration in the affected stream.

Initially, we attempted to specify the number of purges to be controlled because the organic HAP emissions would generally be very low beyond the first or second purge. However, our information indicates that the purging processes vary widely (*e.g.*, different systems use different purge gases, different purge temperatures, and different amounts of purge gas per unit of catalyst). Consequently, specifying the number of purges that must be controlled does not necessarily reflect a performance level. Additionally, recent data show that, for some CRU purge conditions, subsequent purges after the initial nitrogen purge may contain substantial amounts of benzene—on the order of 100 parts per million by volume (ppmv), which translates to emissions of about 1 ton per year (tpy). For other process purging conditions, however, subsequent purges have very low levels of HAP. We concluded that mandating specific purging conditions would reduce operator flexibility and would make compliance, for certain CRU processes, to be technically infeasible. We decided, therefore, to clarify that uncontrolled purging operations greater than 5 psig are acceptable if the total organic carbon (TOC) concentration is less than the currently required outlet concentration of a combustion control device (*i.e.*, less than 20 ppmv), and to provide compliance options for these purges.

Furthermore, the background information supporting the performance achievable by a combustion control device indicates that the 20 ppmv emissions limit was established "by compound exit concentration" rather than by a specified indicator of TOC, such as propane. As the primary HAP of concern from these CRU depressuring and purging vents is benzene, it is more appropriate to establish the 20 ppmv emission limit as hexane (*i.e.*, a C_6 hydrocarbon) rather than as propane. We are, therefore, changing the CRU TOC concentration requirements (which are used as a surrogate for organic HAP) to 20 ppmv TOC or nonmethane TOC (dry basis as hexane), corrected to 3 percent oxygen. This applies to both the concentration limit for the control device and the concentration limit for emissions discharged directly to the atmosphere.

This approach adds compliance options for "uncontrolled" purging cycles that are greater than 5 psig and less than 20 ppmv TOC (dry basis as hexane). First, the purging conditions used by the plant to remove organic HAP from the CRU catalyst during controlled purges prior to direct release to the atmosphere must be specified in the operation, maintenance, and monitoring plan. An initial performance test is conducted on the first directly released catalyst purge (following the purging conditions specified in the plan) to demonstrate that the purges specified in the plan effectively achieve the required emission limit. Subsequently, adherence to the purging procedures as specified in the plan is used to demonstrate continuous compliance.

Industry representatives also requested that we clarify the emission limits for organic HAP emissions from CRU in 40 CFR 63.1567(a) to indicate which limits apply when different reactors in the CRU are regenerated in separate regeneration systems. The direct final rule amendments state that, in this case, the emission limits in Table 22 to subpart UUU apply to each separate regeneration system. The direct final rule amendments also clarify that the TOC outlet concentration limit is 20 ppmv dry basis as hexane.

In response to industry comments, we expanded the number of test methods that can be use to measure organic HAP emissions. For the 98 percent mass emission reduction standard, you can use EPA Method 25 in 40 CFR part 60, appendix A, to directly measure nonmethane TOC as carbon or the combination of EPA Methods 25A and 18 in 40 CFR part 60, appendix A, to determine nonmethane TOC emissions. If the outlet TOC concentration is expected to be less than 50 ppmv (as carbon), you can use EPA Method 25A to measure the TOC concentration as hexane. For the 20 ppmv concentration limit, you can measure the TOC concentration using EPA Method 25A or determine the nonmethane TOC concentration using the combination of Methods 25A and 18. We made changes to the equations in 40 CFR 63.1564 and relevant tables to make these distinctions. We also added a definition of "nonmethane TOC" to 40 CFR 63.1579.

The direct final rule amendments also clarify the inorganic HAP emission and operating limits to indicate that the requirements apply to each applicable CRU process vent during coke burn-off and catalyst rejuvenation. In response to industry comments, we are also changing the compliance equations in

40 CFR 63.1567 to allow for hydrogen chloride (HCl) measurements below detectable limits of the method after correction for oxygen content.

G. How Are we Changing the Monitoring Requirements for Catalytic Reforming Units?

The NESHAP allow plants to measure and record the pH of the water (or scrubbing liquid) exiting the scrubber at least once an hour as an alternative to a pH CPMS. After promulgation, industry representatives recommended that we allow alkalinity measurements as an alternative to pH. Alkalinity measurements are more reliable because they give the actual acid content of the water (or scrubbing liquid) while pH measurements indicate only how much (more or less) acid is needed. We agree and have changed 40 CFR 63.1573(b) to allow plants to measure and record the alkalinity of the water (or scrubbing liquid) exiting the wet scrubber at least once an hour during coke burn-off and catalyst rejuvenation using titration as an alternative to a CPMS. We have also changed Tables 23, 24, 25, and 28 to subpart UUU to include the alternative for alkalinity measurements. In response to industry comments, we have also allowed the pH alternative to apply to CRU meeting the HCl percent reduction standard.

The NESHAP allow plants to measure the catalytic regenerator exhaust gas flow rate from a CCU as an approved alternative to a CPMS if the unit does not introduce any other gas streams into the catalyst regeneration vent (*i.e.*, complete combustion units with no additional combustion devices). In response to industry comments, we have expanded the alternative in 40 CFR 63.1573(a) to apply to CRU that operate as a constant pressure system during the coke burn and rejuvenation cycles.

After promulgation, industry representatives recommended that we also expand the CRU monitoring requirements to allow gas flow rate measurements before or after the control device. We agree and have changed Tables 24 and 25 of subpart UUU accordingly.

In response to questions raised at implementation workshops for plant personnel, we have added provisions to the performance test requirements for CRU to reflect differences among semi-regenerative, cyclic, and continuous processes. The direct final rule amendments require plants to test semi-regenerative and cyclic units during the coke burn-off and catalyst rejuvenation cycle. However, the tests cannot be done during the first hour or the last 6 hours of the cycle for a semi-regenerative unit, or during the first hour or the last 2 hours of the cycle for a cyclic regeneration unit. Plants must conduct the performance test for a continuous regeneration unit no sooner than 3 days after the process unit or control system startup.

H. What New Options Are Available For a Catalytic Reforming Unit With an Internal Scrubbing System?

Industry representatives expressed concern that the NESHAP do not contain provisions allowing a CRU with an internal scrubbing system to meet the percent reduction standard instead of the concentration limit for HCl emissions.

The direct final rule amendments change the rule language related to the HCl emissions limits (and other provisions) by removing the phrase "using a control device." These changes allow CRU with an internal scrubbing system or alternative emissions reduction technique to meet either the percent reduction standard or concentration limit. To improve understanding of the NESHAP, we have added a definition for "internal scrubbing system." The direct final rule amendments also add provisions to Tables 23 through 28 to subpart UUU for CRU with an internal scrubbing system meeting the HCl percent reduction standard and CRU with a fixed-bed or moving-bed gas-solid adsorption system.

The direct final rule amendments establish operating limits and compliance provisions specific to CRU with an internal scrubbing system meeting the HCl percent reduction standard. The operating limits require plants to maintain the daily average pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system and the daily average liquid-to-gas ratio at or above the limit established during the performance test. Plants must conduct performance tests to demonstrate initial compliance with the applicable HCl emission standard and to establish operating limits. Performance test procedures are given for each type of system. To demonstrate continuous compliance, plants must install, operate, and maintain CPMS to monitor during coke burn-off and catalyst rejuvenation, the daily average pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system, and the daily average liquid-to-gas ratio. Plants may use pH strips as an approved alternative to a pH CPMS, or discrete titration as an alternative to a CPMS for alkalinity.

I. What New Options Are Available For a Catalytic Reforming Unit With a Different Type of Control System?

Industry representatives and technology vendors expressed concern that the NESHAP do not include compliance provisions for continuous CRU that may use process modifications, pollution prevention control techniques, or alternative control systems other than internal or external (add-on) wet scrubbers to comply with the emission limitations. A refinery process design firm provided data indicating that gas-solid adsorption systems can meet the HCl emission limitations for CRU. The system also acted as a pollution prevention technique by reducing the total amount of chloriding agent needed during catalyst regeneration. The direct final rule amendments add provisions to accommodate these control scenarios. The new provisions improve the NESHAP by encouraging the use of new technologies that meet the MACT level of control.

Plants with a fixed-bed gas-adsorption system must meet two operating limits during coke burn-off and catalyst rejuvenation:

- The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test; and
- The HCl concentration in the adsorption system exhaust gas must not exceed the limit established during the performance test.

Plants must conduct a performance test to demonstrate initial compliance and to establish operating limits. To demonstrate continuous compliance, plants must install, operate, and maintain CPMS to monitor the daily average temperature of the gas entering or exiting the adsorption system. In addition, plants must monitor HCl during coke burn-off and catalyst rejuvenation using a colormetric tube sampling system to measure the concentration in the adsorption system exhaust and at a point within the adsorbent bed not to exceed 90 percent of the total length of the bed. If the HCl concentration at the sampling location with the adsorption bed exceeds the operating limit, plants must follow the procedures in their operation and maintenance plan. These procedures must require, at a minimum, that plants remeasure the HCl concentration at both the adsorption system exhaust and at the sampling location within the adsorbent bed and replace the sorbent material in the bed before the next regeneration cycle if the HCl

concentration at either location is above the operating limit.

The direct final rule amendments also establish operating limits and compliance provisions for CRU with moving-bed gas-solid adsorption systems. The operating limits are:

- The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test;
- The weekly average chloride level on the sorbent entering the adsorption system must not exceed the design or manufacturer's recommended limit (1.35 weight percent for the Chlorsorb™ system); and
- The weekly average chloride level on the sorbent exiting the adsorption system must not exceed the design or manufacturer's recommended limit (1.8 weight percent for the Chlorsorb™ system).

Plants must conduct a performance test to demonstrate initial compliance and to establish an operating limit for the daily average gas temperature. To demonstrate continuous compliance, plants must monitor the daily average gas temperature using a CPMS. To demonstrate continuous compliance with the operating limits for chloride level, plants must collect and analyze samples of the sorbent entering and exiting the system for total chloride concentration using the new procedure, "Determination of Metal Concentration on Catalyst Particles (Instrument Analyzer Procedure)" in appendix A of these direct final amendments or the specified methods in EPA Publication No. SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (Revision 5, April 1998). Plants must determine and record the weekly chloride content and maintain the weekly average chloride content below the design operating limits.

J. How Are We Changing The Requirements For Continuous Parameter Monitoring Systems?

The technical specifications for CPMS in Table 41 to subpart UUU were added to the NESHAP after proposal based on provisions we have included in other NESHAP. We included these provisions to ensure that CPMS are installed, calibrated, and operated in a manner that would yield accurate and reliable information on the performance of control devices. Industry representatives objected to the inclusion of such detailed requirements after proposal with no opportunity to comment on the provisions.

We have decided not to include the performance specifications for CPMS in the rule at this time. As discussed in the preamble to the Generic MACT NESHAP amendments (67 FR 46260, July 12, 2002), we are currently developing Performance Specification (PS–17) for CPMS and quality assurance procedures that will apply to all sources subject to NESHAP under 40 CFR part 63. A proposed rule for these specifications is expected to be available in 2005. This approach will avoid the possibility that the specifications ultimately issued for all NESHAP differ significantly from those in the Petroleum Refineries NESHAP.

The NESHAP state that each CPMS must be installed, operated, and maintained according to the requirements in Table 41 of subpart UUU and in a manner consistent with the manufacturer's or other written procedures that provide adequate assurance that the equipment will monitor accurately. The amendments remove the reference to Table 41 from 40 CFR 63.1572(c) for those CPMS that will be covered by PS–17 and quality assurance procedures. Until PS–17 is available, facilities must install, operate, and maintain CPMS in a manner consistent with the manufacturer's or other written procedures that provide adequate assurance that the equipment will monitor accurately.

Table 41 to subpart UUU also contains requirements for pH strips and colormetric sampling systems. These requirements were added to the NESHAP in response to comments and are not expected to be covered by the new PS–17 and quality assurance procedures. Consequently, we have not removed these requirements from the table.

K. What Corrections Are We Making?

We are correcting numbering errors and citations in several sections of the NESHAP. We are also amending the rule to correct publication errors in various tables.

We are correcting a unit conversion error in Tables 1 through 3 to subpart UUU. These tables cite the incremental PM emission rate for discharged gases that pass through an incinerator or waste heat boiler in which auxiliary or supplemental liquid or solid fossil fuel is burned as 43.0 grams per Megajoule of heat input attributable to the liquid or solid fossil fuel. The corrected value is 43.0 grams per Gigajoule; no change is being made to the English unit equivalent limit (0.10 pound per million British thermal units). We are making several minor corrections to these tables to ensure that both limits are cited consistently and accurately.

We are correcting Table 5 to subpart UUU to list the proper test methods required for PM performance tests for metal HAP emissions. The amended table requires EPA Method 5B or 5F (40 CFR part 60, appendix A) to determine PM emissions and associated moisture content for a unit without a wet scrubber; EPA Method 5B is required to determine PM emissions and associated moisture content for a unit with a wet scrubber.

We are correcting Table 6 to subpart UUU to specify the use of Equation 1 (the proper equation for calculation of coke burn-off) rather than Equation 2.

We are correcting Table 18 to subpart UUU to correct a typographical error in a cross reference to certain requirements for flares in the NESHAP General Provisions (40 CFR part 63, subpart A).

We are correcting Tables 31, 33, and 34 to subpart UUU to clarify the monitoring and compliance requirements for a sulfur recovery unit subject to the TRS limit. Under this option, the owner or operator may use a TRS continuous emission monitoring system or CPMS, and the continuous compliance requirements depend on the type of monitoring system. The direct final rule amendments separate the requirements according to the type of monitoring system and clarify that compliance is based on a 12-hour rolling average like the NSPS requirements.

We also are clarifying our comment in the explanation column of Table 44 for the citation 40 CFR 63.6(i), which allows facilities to request a 1-year extension of compliance if necessary to install controls. We are revising the table to state that the extension of compliance under 40 CFR 63.6(i)(4) is not applicable to a facility that installs catalytic cracking feed hydrotreating and receives an extended compliance date under 40 CFR 63.1563(c). We are also revising Table 44 to subpart UUU to change the citation to 40 CFR 63.9(b)(3) to indicate its current reserved status under the NESHAP General Provisions (40 CFR part 63).

III. Summary of Non-Air Health, Environmental, Energy, and Cost Impacts

The NESHAP will reduce emissions of many HAP emitted from the affected sources at petroleum refineries, including particulate metals, organics, and reduced sulfur compounds. When fully implemented, we estimate that HAP emissions will be reduced by nearly 11,000 tpy. Emissions of other pollutants such as volatile organic

compounds, particulate matter, carbon monoxide, and hydrogen sulfide will be reduced by about 60,000 tpy.

There will not be any adverse non-air health, environmental, energy, cost (or economic) impacts as a result of the direct final rule amendments because no new requirements are imposed on any facility. The new option for CRU will allow for the use of new control technology to meet the HCl emission limitations, which may reduce the costs and energy impacts of add-on controls.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the 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.

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. The direct final rule amendments consist primarily of new compliance options, clarifications, and corrections to the NESHAP that impose no new information collection requirements on industry or EPA. However, the OMB has previously approved the information collection requirements in the existing regulation (40 CFR part 63, subpart UUU) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0554, EPA Information Collection Request (ICR) number 1844.02. A copy of the OMB approved 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; 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 the direct final rule amendments.

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 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, the 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.

There will be a positive impact on small entities because the direct final rule amendments add new compliance provisions to increase flexibility, decrease unnecessary costs, and make clarifying changes to improve implementation of the NESHAP. These changes are voluntary and do not impose new costs. We have, therefore, concluded that today's direct 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 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 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 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. No new costs are attributable to the direct final rule amendments. Thus, today's direct final rule amendments are not subject to the requirements of 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 because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the 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. 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, because State and local governments do not own or operate any sources that would be subject to the direct final rule amendments. 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 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 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 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 & 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.

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 direct final rule amendments are not subject to Executive Order 13045 because the NESHAP (and subsequent 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

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 of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in the 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 Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The direct final rule amendments include a new procedure, "Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)." This procedure was developed in consultation with industry experts and equipment vendors for the purpose of determining the metal or total chloride concentration on catalyst particles. This new procedure was not fully developed at the time the NESHAP were issued and reflects current practices used by many plants within the industry. The new procedure is not mandatory; plants also may use one of several existing EPA methods in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW–846, Revision 5, April 1998) or an alternative method satisfactory to the Administrator.

Consistent with the NTTAA, we conducted a search to identify voluntary consensus standards for use in determining the metal or total chloride concentration on catalyst particles. This search identified one voluntary consensus standard, ASTM D7085–04, "Standard Guide for Determination of Chemical Elements in Fluid Catalytic Cracking Catalysts by X-Ray Fluorescence Spectrometry (XRF)." This method contains detailed sample preparation procedures that may be a useful supplement to the instrumental method included in the direct final rule amendments. However, we have not adopted ASTM D7085–04 as an alternative to the instrumental method because the method does not include equivalent procedures for determining zero and calibration drift, instrument energy calibration, and calibration accuracy, or specific quality assurance procedures for analyzing calibration standards or catalyst samples.

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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments will be effective on April 11, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: February 1, 2005.

Stephen L. Johnson,

Acting 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 UUU—[AMENDED]

■ 2. Section 63.1562 is amended by revising paragraphs (b)(1) through (3) to read as follows:

§ 63.1562 What parts of my plant are covered by this subpart?

* * * * *

(b) * * *

(1) The process vent or group of process vents on fluidized catalytic cracking units that are associated with regeneration of the catalyst used in the unit (*i.e.*, the catalyst regeneration flue gas vent).

(2) The process vent or group of process vents on catalytic reforming units (including but not limited to semi-regenerative, cyclic, or continuous processes) that are associated with regeneration of the catalyst used in the unit. This affected source includes vents that are used during the unit depressurization, purging, coke burn, and catalyst rejuvenation.

(3) The process vent or group of process vents on Claus or other types of sulfur recovery plant units or the tail gas treatment units serving sulfur recovery plants, that are associated with sulfur recovery.

* * * * *

■ 3. Section 63.1564(b)(4) is amended by revising the definition of the symbol "Q_r" for Equation 1 of to read as follows:

§ 63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?

* * * * *

Q_r = Volumetric flow rate of exhaust gas from catalyst regenerator before adding air or gas streams. Example: You may measure upstream or downstream of an electrostatic precipitator, but you must measure upstream of a carbon monoxide boiler, dscm/min (dscf/min). You may use the alternative in either § 63.1573(a)(1) or (a)(2), as applicable, to calculate Q_r;

* * * * *

■ 4. Section 63.1566 is amended by:

■ a. Revising paragraphs (a)(1)(ii) and (a)(3);

■ b. Revising paragraph (b)(4)(i) introductory text;

■ c. Revising the definitions of the symbols "E" and "M_c" in Equation 1 of paragraph (b)(4)(i);

■ d. Revising Equation 2 of paragraph (b)(4)(i);

■ e. Redesignating paragraph (b)(5) as (b)(4)(ii);

■ f. Revising Equation 4 in the newly designated paragraph (b)(4)(ii); and

■ g. Redesignating paragraphs (b)(6) through (b)(9) as (b)(5) through (b)(8).

The revisions and additions read as follows:

§ 63.1566 What are my requirements for organic HAP emissions from catalytic reforming units?

(a) * * *

(1) * * *

(ii) You can elect to meet a TOC or nonmethane TOC percent reduction standard or concentration limit, whichever is less stringent (Option 2).

* * * * *

(3) Except as provided in paragraph (a)(4) of this section, the emission limitations in Tables 15 and 16 of this subpart apply to emissions from catalytic reforming unit process vents associated with initial catalyst depressuring and catalyst purging operations that occur prior to the coke burn-off cycle. The emission limitations in Tables 15 and 16 of this subpart do not apply to the coke burn-off, catalyst rejuvenation, reduction or activation vents, or to the control systems used for these vents.

* * * * *

(b) * * *

(4) * * *

(i) If you elect the percent reduction standard under Option 2, calculate the emission rate of nonmethane TOC using Equation 1 of this section (if you use Method 25) or Equation 2 of this section (if you use Method 25A or Methods 25A and 18), then calculate the mass emission reduction using Equation 3 of this section as follows:

* * * * *

(Eq. 1)

Where:

E = Emission rate of nonmethane TOC in the vent stream, kilograms-C per hour;

* * * * *

M_c = Mass concentration of total gaseous nonmethane organic (as carbon) as measured and calculated using Method 25 in appendix A to part 60 of this chapter, mg/dscm; and

* * * * *

$$E = K_5\left(C_{TOC} - \tfrac{1}{6}C_{methane}\right)Q_s \quad \text{(Eq. 2)}$$

Where:

K_5 = Constant, 1.8×10^{-4} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (gram-C per gram-mole-hexane) (kilogram per gram) (minutes per hour), where the standard temperature (standard cubic meter) is at 20 degrees C (uses 72g-C/g.mole hexane);

C_{TOC} = Concentration of TOC on a dry basis in ppmv as hexane as measured by Method 25A in appendix A to part 60 of this chapter;

$C_{methane}$ = Concentration of methane on a dry basis in ppmv as measured by Method 18 in appendix A to part 60 of this chapter. If the concentration of methane is not determined, assume $C_{methane}$ equals zero; and

Q_s = Vent stream flow rate, dry standard cubic meters per minute, at a temperature of 20 degrees C. * * *

$$C_{NMTOC,\,3\%O_2} = \left(C_{TOC} - \tfrac{1}{6}C_{methane}\right)\left(\frac{17.9\%}{20.9\% - \%O_2}\right) \quad \text{(Eq. 4)}$$

Where:

$C_{NMTOC,\,3\%O_2}$ = Concentration of nonmethane TOC on a dry basis in ppmv as hexane corrected to 3 percent oxygen.

■ 5. Section 63.1567 is amended by:
■ a. Revising paragraphs (a)(1) introductory text and (a)(1)(i);
■ b. Redesignating paragraphs (b)(4) through (b)(6) as paragraphs (b)(5) through (b)(7); and
■ c. Adding new paragraph (b)(4).

The addition and revisions read as follows:

§ 63.1567 What are my requirements for inorganic HAP emissions from catalytic reforming units?

(a) * * *

(1) Meet each emission limitation in Table 22 to this subpart that applies to you. If you operate a catalytic reforming unit in which different reactors in the catalytic reforming unit are regenerated in separate regeneration systems, then these emission limitations apply to each separate regeneration system. These emission limitations apply to emissions from catalytic reforming unit process vents associated with the coke burn-off and catalyst rejuvenation operations during coke burn-off and catalyst regeneration. You can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to meet a percent reduction standard for hydrogen chloride (HCl) emissions (Option 1); or

* * * * *

(b) * * *

(4) Use the equations in paragraphs (b)(4)(i) through (iv) of this section to determine initial compliance with the emission limitations.

(i) Correct the measured HCl concentration for oxygen (O_2) content in the gas stream using Equation 1 of this section as follows:

$$C_{HCl,\,3\%O_2} = \left(\frac{17.9\%}{20.9\% - \%O_2}\right) C_{HCl} \qquad \text{(Eq. 1)}$$

Where:

$C_{HCl,3\%}\,O_2$ = Concentration of HCl on a dry basis in ppmv corrected to 3 percent oxygen or 1 ppmv, whichever is greater;

C_{HCl} = Concentration of HCl on a dry basis in ppmv, as measured by Method 26A in 40 CFR part 60, appendix A; and

$\%O_2$ = Oxygen concentration in percent by volume (dry basis).

(ii) If you elect the percent reduction standard, calculate the emission rate of HCl using Equation 2 of this section; then calculate the mass emission reduction from the mass emission rates using Equation 3 of this section as follows:

$$E_{HCl} = K_6 C_{HCl} Q_s \qquad \text{(Eq. 2)}$$

Where:

E_{HCl} = Emission rate of HCl in the vent stream, grams per hour;

K_6 = Constant, 0.091 (parts per million) $^{-1}$ (grams HCl per standard cubic meter) (minutes per hour), where the standard temperature (standard cubic meter) is at 20 degrees Celsius (C); and

Q_s = Vent stream flow rate, dscm/min, at a temperature of 20 degrees C.

$$HCl\%reduction = \frac{E_{HCl,\,i} - E_{HCl,\,o}}{E_{HCl,\,i}} \times 100\% \qquad \text{(Eq. 3)}$$

Where:

$E_{HCl,i}$ = Mass emission rate of HCl at control device inlet, g/hr; and

$E_{HCl,o}$ = Mass emission rate of HCl at control device outlet, g/hr.

(iii) If you are required to use a colormetric tube sampling system to demonstrate continuous compliance with the HCl concentration operating limit, calculate the HCl operating limit using Equation 4 of this section as follows:

$$C_{HCl,\,ppmvLimit} = 0.9 C_{HCl,\,AveTube} \left(\frac{C_{HCl,\,RegLimit}}{C_{HCl,\,3\%O_2}}\right) \qquad \text{(Eq. 4)}$$

Where:

$C_{HCl,ppmvLimit}$ = Maximum permissible HCl concentration for the HCl concentration operating limit, ppmv;

$C_{HCl,AveTube}$ = Average HCl concentration from the colormetric tube sampling system, calculated as the arithmetic average of the average HCl concentration measured for each performance test run, ppmv or 1 ppmv, whichever is greater; and

$C_{HCl,RegLimit}$ = Maximum permissible outlet HCl concentration for the applicable catalytic reforming unit as listed in Table 22 of this subpart, either 10 or 30 ppmv.

(iv) If you are required to use a colormetric tube sampling system to demonstrate continuous compliance with the percent reduction operating limit, calculate the HCl operating limit using Equation 5 of this section as follows:

$$C_{HCl,\,\%Limit} = 0.9 C_{HCl,\,AveTube} \left(\frac{100 - \%HClReduction_{Limit}}{100 - \%HClReduction_{Test}}\right) \qquad \text{(Eq. 5)}$$

Where:

$C_{HCl,\%Limit}$ = Maximum permissible HCl concentration for the percent reduction operating limit, ppmv;

$\%HCl\ Reduction_{Limit}$ = Minimum permissible HCl reduction for the applicable catalytic reforming unit as listed in Table 22 of this subpart, either 97 or 92 percent; and

$\%HCl\ Reduction_{Test}$ = Average percent HCl reduction calculated as the arithmetic average HCl reduction calculated using Equation 3 of this section for each performance source test, percent.

* * * * *

■ 6. Section 63.1572 is amended by revising paragraphs (c) introductory text and (c)(1) to read as follows:

§ 63.1572 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(c) You must install, operate, and maintain each continuous parameter monitoring system according to the requirements in paragraphs (c)(1) through (5) of this section.

(1) The owner or operator shall install, operate, and maintain each continuous parameter monitoring system in a manner consistent with the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately. The owner or operator shall also meet the equipment specifications in Table 41 of this subpart if pH strips or colormetric tube sampling systems are used.

* * * * *

■ 7. Section 63.1573 is amended by:

■ a. Revising paragraphs (a) and (b); and

■ b. Adding new paragraph (f).

The revisions and addition read as follows:

§ 63.1573 What are my monitoring alternatives?

(a) *What are the approved alternatives for measuring gas flow rate?* (1) You may use this alternative to a continuous parameter monitoring system for the catalytic regenerator exhaust gas flow rate for your catalytic cracking unit if the unit does not introduce any other gas streams into the catalyst regeneration vent (i.e., complete combustion units with no additional combustion devices). You may also use this alternative to a continuous parameter monitoring system for the catalytic regenerator atmospheric exhaust gas flow rate for your catalytic reforming unit during the coke burn and rejuvenation cycles if the unit operates as a constant pressure system during these cycles. If you use this alternative, you shall use the same procedure for the performance test and for monitoring after the performance test. You shall:

(i) Install and operate a continuous parameter monitoring system to measure and record the hourly average volumetric air flow rate to the catalytic cracking unit or catalytic reforming unit regenerator. Or, you may determine and record the hourly average volumetric air flow rate to the catalytic cracking unit or catalytic reforming unit regenerator using the appropriate control room instrumentation.

(ii) Install and operate a continuous parameter monitoring system to measure and record the temperature of the gases entering the control device (or exiting the catalyst regenerator if you do not use an add-on control device).

(iii) Calculate and record the hourly average actual exhaust gas flow rate using Equation 1 of this section as follows:

$$Q_{gas} = (1.12 scfm/dscfm) \times (Q_{air} + Q_{other}) \times \left(\frac{Temp_{gas}}{293° K}\right) \times \left(\frac{1 atm.}{P_{vent}}\right) \quad \text{(Eq. 1)}$$

Where:

Q_{gas} = Hourly average actual gas flow rate, acfm;

1.12 = Default correction factor to convert gas flow from dry standard cubic feet per minute (dscfm) to standard cubic feet per minute (scfm);

Q_{air} = Volumetric flow rate of air to regenerator, as determined from the control room instrumentations, dscfm;

Q_{other} = Volumetric flow rate of other gases entering the regenerator as determined from the control room instrumentations, dscfm. (Examples of "other" gases include an oxygen-enriched air stream to catalytic cracking unit regenerators and a nitrogen stream to catalytic reforming unit regenerators.);

$Temp_{gas}$ = Temperature of gas stream in vent measured as near as practical to the control device or opacity monitor, °K. For wet scrubbers, temperature of gas prior to the wet scrubber; and

P_{vent} = Absolute pressure in the vent measured as near as practical to the control device or opacity monitor, as applicable, atm. When used to assess the gas flow rate in the final atmospheric vent stack, you can assume P_{vent} = 1 atm.

(2) You may use this alternative to calculating Q_r, the volumetric flow rate of exhaust gas for the catalytic cracking regenerator as required in Equation 1 of § 63.1564, if you have a gas analyzer installed in the catalytic cracking regenerator exhaust vent prior to the addition of air or other gas streams. You may measure upstream or downstream of an electrostatic precipitator, but you shall measure upstream of a carbon monoxide boiler. You shall:

(i) Install and operate a continuous parameter monitoring system to measure and record the hourly average volumetric air flow rate to the catalytic cracking unit regenerator. Or, you can determine and record the hourly average volumetric air flow rate to the catalytic cracking unit regenerator using the catalytic cracking unit control room instrumentation.

(ii) Install and operate a continuous gas analyzer to measure and record the concentration of carbon dioxide, carbon monoxide, and oxygen of the catalytic cracking regenerator exhaust.

(iii) Calculate and record the hourly average flow rate using Equation 2 of this section as follows:

$$Q_r = \frac{79 \times Q_{air} + (100 - \%O_{xy}) \times Q_{oxy}}{100 - \%CO_2 - \%CO - \%O_2} \quad \text{(Eq. 2)}$$

Where:

Q_r = Volumetric flow rate of exhaust gas from the catalyst regenerator before adding air or gas streams, dscm/min (dscf/min);

79 = Default concentration of nitrogen and argon in dry air, percent by volume (dry basis);

$\%O_{xy}$ = Oxygen concentration in oxygen-enriched air stream, percent by volume (dry basis);

Q_{oxy} = Volumetric flow rate of oxygen-enriched air stream to regenerator as determined from the catalytic cracking unit control room instrumentations, dscm/min (dscf/min);

$\%CO_2$ = Carbon dioxide concentration in regenerator exhaust, percent by volume (dry basis);

CO = Carbon monoxide concentration in regenerator exhaust, percent by volume (dry basis); and

$\%O_2$ = Oxygen concentration in regenerator exhaust, percent by volume (dry basis).

(b) *What is the approved alternative for monitoring pH or alkalinity levels?* You may use the alternative in paragraph (b)(1) or (2) of this section for a catalytic reforming unit.

(1) You shall measure and record the pH of the water (or scrubbing liquid) exiting the wet scrubber or internal scrubbing system at least once an hour during coke burn-off and catalyst rejuvenation using pH strips as an alternative to a continuous parameter monitoring system. The pH strips must meet the requirements in Table 41 of this subpart.

(2) You shall measure and record the alkalinity of the water (or scrubbing liquid) exiting the wet scrubber or internal scrubbing system at least once an hour during coke burn-off and catalyst rejuvenation using titration as an alternative to a continuous parameter monitoring system.

* * * * *

(f) *How do I apply for alternative monitoring requirements if my catalytic cracking unit is equipped with a wet scrubber and I have approved alternative monitoring requirements under the new source performance standards for petroleum refineries?*

(1) You may request alternative monitoring requirements according to the procedures in this paragraph if you meet each of the conditions in paragraphs (f)(1)(i) through (iii) of this section:

(i) Your fluid catalytic cracking unit regenerator vent is subject to the PM limit in 40 CFR 60.102(a)(1) and uses a wet scrubber for PM emissions control;

(ii) You have alternative monitoring requirements for the continuous opacity monitoring system requirement in 40 CFR 60.105(a)(1) approved by the Administrator; and

(iii) You are required by this subpart to install, operate, and maintain a continuous opacity monitoring system for the same catalytic cracking unit regenerator vent for which you have approved alternative monitoring requirements.

(2) You can request approval to use an alternative monitoring method prior to submitting your notification of compliance status, in your notification of compliance status, or at any time.

(3) You must submit a copy of the approved alternative monitoring requirements along with a monitoring plan that includes a description of the continuous monitoring system or method, including appropriate operating parameters that will be monitored, test results demonstrating compliance with the opacity limit used to establish an enforceable operating limit(s), and the frequency of measuring and recording to establish continuous compliance. If applicable, you must also include operation and maintenance requirements for the continuous monitoring system.

(4) We will contact you within 30 days of receipt of your application to inform you of approval or of our intent to disapprove your request.

■ 8. Section 63.1574 is amended by:

■ a. Revising paragraph (a)(3)(ii);

■ b. Revising paragraph (c); and

■ c. Revising the first sentence of paragraph (f) introductory text, revising paragraph (f)(2) introductory text, revising paragraphs (f)(2)(vi) and (f)(2)(x), and adding new paragraphs (f)(2)(xi) and (xii).

The revisions read as follows:

§ 63.1574 What notifications must I submit and when?

(a) * * *

(3) * * *

(ii) For each initial compliance demonstration that includes a performance test, you must submit the notification of compliance status, including the performance test results, no later than 150 calendar days after the compliance date specified for your affected source in § 63.1563.

* * * * *

(c) If you startup your new or reconstructed affected source on or after April 11, 2002, you must submit the initial notification no later than 120 days after you become subject to this subpart.

* * * * *

(f) As required by this subpart, you must prepare and implement an operation, maintenance, and monitoring plan for each control system and continuous monitoring system for each affected source. * * *

(2) Each plan must include, at a minimum, the information specified in paragraphs (f)(2)(i) through (xii) of this section.

* * * * *

(vi) Procedures you will use to determine the HCl concentration of gases from a catalytic reforming unit when you use a colormetric tube sampling system, including procedures for correcting for pressure (if applicable to the sampling equipment) and the sampling locations that will be used for compliance monitoring purposes.

* * * * *

(x) Maintenance schedule for each monitoring system and control device for each affected source that is generally consistent with the manufacturer's instructions for routine and long-term maintenance.

(xi) If you use a fixed-bed gas-solid adsorption system to control emissions from a catalytic reforming unit, you must implement corrective action procedures if the HCl concentration measured at the selected compliance monitoring sampling location within the bed exceeds the operating limit. These procedures must require, at minimum, repeat measurement and recording of the HCl concentration in the adsorption system exhaust gases and at the selected compliance monitoring sampling location within the bed. If the HCl concentration at the selected compliance monitoring location within the bed is above the operating limit during the repeat measurement while the HCl concentration in the adsorption system exhaust gases remains below the operating limit, the adsorption bed must be replaced as soon as practicable. Your procedures must specify the sampling frequency that will be used to monitor the HCl concentration in the adsorption system exhaust gases subsequent to the repeat measurement and prior to replacement of the sorbent material (but not less frequent than once every 4 hours during coke burn-off). If the HCl concentration of the adsorption system exhaust gases is above the operating limit when measured at any time, the adsorption bed must be replaced within 24 hours or before the next regeneration cycle, whichever is longer.

(xii) Procedures that will be used for purging the catalyst if you do not use a control device to comply with the organic HAP emission limits for catalytic reforming units. These procedures will include, but are not limited to, specification of the minimum

catalyst temperature and the minimum cumulative volume of gas per mass of catalyst used for purging prior to uncontrolled releases (i.e., during controlled purging events); the maximum purge gas temperature for uncontrolled purge events; and specification of the monitoring systems that will be used to monitor and record data during each purge event.

■ 9. Section 63.1576 is amended by revising paragraph (a)(2) to read as follows:

§ 63.1576 What records must I keep, in what form, and for how long?

(a) * * *

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

* * * * *

■ 10. Section 63.1579 is amended by:

■ a. Adding, in alphabetical order, new definitions for the terms "Internal scrubbing system" and "Nonmethane TOC"; and

■ b. Revising the definition for the term "TOC."

The additions and revision read as follows:

§ 63.1579 What definitions apply to this subpart?

* * * * *

Internal scrubbing system means a wet scrubbing, wet injection, or caustic injection control device that treats (in-situ) the catalytic reforming unit recirculating coke burn exhaust gases for acid (HCl) control during reforming catalyst regeneration upstream of the atmospheric coke burn vent.

* * * * *

Nonmethane TOC means, for the purposes of this subpart, emissions of total organic compounds, excluding methane, that serve as a surrogate measure of the total emissions of organic HAP compounds including, but not limited to, acetaldehyde, benzene, hexane, phenol, toluene, and xylenes and nonHAP VOC as measured by Method 25 in appendix A to part 60 of this chapter, by the combination of Methods 18 and 25A in appendix A to part 60 of this chapter, or by an approved alternative method.

* * * * *

TOC means, for the purposes of this subpart, emissions of total organic compounds that serve as a surrogate measure of the total emissions of organic HAP compounds including, but not limited to, acetaldehyde, benzene, hexane, phenol, toluene, and xylenes and nonHAP VOC as measured by Method 25A in appendix A to part 60 of this chapter or by an approved alternative method.

* * * * *

■ 11. Tables 1 through 44 to subpart UUU of part 63 are amended to remove the phrase, "you must" and add in its place the phrase "you shall" in the introductory text and in the last column heading, where applicable (i.e., Tables 1 through 3, 6 through 10, 13 through 17, 20 through 24, 27 through 31, 34 through 37, 39, and 41 through 43).

■ 12. Table 1 to subpart UUU of part 63 is amended to revising entries 1 and 2 to read as follows:

TABLE 1 TO SUBPART UUU OF PART 63—METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS.

* * * * *

For each new or existing catalytic cracking unit . . .	You shall meet the following emission limits for each catalyst regenerator vent . . .
1. Subject to new source performance standard (NSPS) for PM in 40 CFR 60.102.	PM emissions must not the exceed 1.0 kilogram (kg) per 1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or in supplemental liquid or solid fossil fuel, the incremental rate of PM emissions must not exceed 43.0 grams per Gigajoule (g/GJ) or 0.10 pounds per million British thermal units (lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.
2. Option 1: NSPS requirements not subject to the NSPS for PM in 40 CFR 60.102.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.

* * * * * *

■ 13. Table 3 to subpart UUU of part 63 is revised to read as follows:

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(b)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If your catalytic cracking unit is . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
1. Subject to the NSPS for PM in 40 CFR 60.102.	Any size	Electrostatic precipitator or wet scrubber or no control device.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If your catalytic cracking unit is . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
2. Option 1: NSPS limits not subject to the NSPS for PM in 40 CFR 60.102.	Any size	Electrostatic precipitator or wet scrubber or no control device.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the gas flow rate entering or exiting the control device [1] and the voltage and secondary current (or total power input) to the control device.
	c. Any size	i. Wet scrubber	(1) Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate entering or exiting the control device [1], and total liquid (or scrubbing liquor) flow rate to the control device. (2) If you use a wet scrubber of the non-venturi jet-ejector design, you're not required to install and operate a continuous parameter monitoring system for pressure drop.
	d. Any size	No electrostatic precipitator or wet scrubber.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regnerator vent.
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device [1].
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device [1]; or continuous parameter monitoring systems to measure and record the gas flow rate entering or exiting the control device [1] and the voltage and secondary current (or total power input) to the control device.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If your catalytic cracking unit is . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
	c. Any size	Wet scrubber	(1) Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate entering or exiting the control device [1], and total liquid (or scrubbing liquor) flow rate to the control device. (2) If you use a wet scrubber of the non-venturi jet-ejector design, you're not required to install and operate a continuous parameter monitoring system for pressure drop.
	d. Any size	No electrostatic precipitator or wet scrubber.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate [1].
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device [1].
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device [1]; or continuous parameter monitoring systems to measure and record the gas flow rate entering or exiting the control device [1] and the voltage and secondary current (or total power input) to the control device.
	c. Any size	Wet scrubber	Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate entering or exiting the control device [1], and total liquid (or scrubbing liquor) flow rate to the control device.
	d. Any size	No electrostatic precipitator or wet scrubber.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate [1].

[1] If applicable, you can use the alternative in § 63.1573(a)(1) instead of a continuous parameter monitoring system for gas flow rate.

■ 14. Table 4 to subpart UUU of part 63 is amended by revising entries 2, 3, 4, and 5; revising footnote 1; and adding new footnote 2 to read as follows:

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS (NSPS) FOR PARTICULATE MATTER (PM)

* * * * * * *

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You shall . . .	Using . . .	According to these requirements . . .
* *	* *	* *	* *
2. Option 1: Elect NSPS	a. Measure PM emissions.	Method 5B or 5F (40 CFR part 60, appendix A) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5B (40 CFR part 60, appendix A) to determine PM emissions and associated moisture content for unit with wet scrubber.	You must maintain a sampling rate of at least 0.15 dry standard cubic meters per minute (dscm/min) (0.53 dry standard cubic feet per minute (dscf/min).
	b. Compute PM emission rate (lbs/1,000 lbs) of coke burn-off.	Equations 1, 2, and 3 of § 63.1564 (if applicable).	
	c. Measure opacity of emissions.	Continuous opacity monitoring system.	You must collect opacity monitoring data every 10 seconds during the entire period of the Method 5B or 5F performance test and reduce the data to 6-minute averages.
3. Option 2: PM limit	a. Measure PM emissions.	See item 2. of this table.	See item 2. of this table.
	b. Compute coke burn-off rate and PM emission rate.	Equations 1 and 2 of § 63.1564.	
	c. Establish your site-specific opacity operating limit if you use a continuous opacity monitoring system.	Data from the continuous opacity monitoring system.	You must collect opacity monitoring data every 10 seconds during the entire period of the Method 5B or 5F performance test and reduce the data to 6-minute averages; determine and record the hourly average opacity from all the 6-minute averages; and compute the site-specific limit using Equation 4 of § 63.1564.
4. Option 3: Ni lb/hr	a. Measure concentration of Ni and total metal HAP.	Method 29 (40 CFR part 60, appendix A).	
	b. Compute Ni emission rate (lb/hr).	Equation 5 of § 63.1564.	
	c. Determine the equilibrium catalyst Ni concentration.	XRF procedure in appendix A to this subpart[1]; or EPA Method 6010B or 6020 or EPA Method 7520 or 7521 in SW–846[2]; or an alternative to the SW-846 method satisfactory to the Administrator.	You must obtain 1 sample for each of the 3 runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571.
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 6 and 7 of § 63.1564 using data from continuous opacity monitoring system, gas flow rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the hourly average opacity from all the 6-minute averages. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate from all the readings.
5. Option 4: Ni lbs/1,000 lbs of coke burn-off.	a. Measure concentration of Ni and total HAP.	Method 29 (40 CFR part 60, appendix A).	

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS (NSPS) FOR PARTICULATE MATTER (PM)—Continued

* * * * * * *

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You shall . . .	Using . . .	According to these requirements . . .
	b. Compute Ni emission rate (lb/1,000 lbs of coke burn-off).	Equations 1 and 8 of § 63.1564.	
	c. Determine the equilibrium catalyst Ni concentration.	See item 4.c. of this table.	You must obtain 1 sample for each of the 3 runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571.
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 9 and 10 of § 63.1564 with data from continuous opacity monitoring system, coke burn-off rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the hourly average opacity from all the 6-minute averages. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow rate as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate from all the readings.
	e. Record the catalyst addition rate for each test and schedule for the 10- day period prior to the test.		

* * * * * *

[1] Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure).

[2] EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, and EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

■ 15. Table 5 to subpart UUU of part 63 is amended by revising entries 1, 2, and 3 to read as follows:

TABLE 5 TO SUBPART UUU OF PART 63.—INITIAL-COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

* * * * *

For each new and existing catalytic cracking unit catalyst regenerator vent . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Subject to the NSPS for PM in 40 CFR 60.102.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 grams per Gigajoule (g/GJ) or 0.10 pounds per million British thermal units (lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM emission rate is less than or equal to 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. If applicable, you have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM rate is less than or equal to 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel. As part of the Notification of Compliance Status, you must certify that your vent meets the PM emission limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance test to demonstrate initial compliance with the NSPS and the average hourly opacity is no more than 30 percent. Except: One 6-minute average in any 1-hour period can exceed 30 percent. As part of the Notification of Compliance Status, you must certify that your vent meets the opacity limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you certify that your continuous opacity monitoring system meets the requirements in § 63.1572. You are not required to do a performance evaluation to demonstrate initial compliance.
2. Option 1: Elect NSPS not subject to the NSPS for PM.	PM emission must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	The average PM emission rate, measured using EPA Method 5B or 5F (for a unit without a wet scrubber) or 5B (for a unit with a wet scrubber), over the period of the initial performance test, is no higher than 1.0 kg/1,000 kg (1.0 lb/1,000 lb of coke burn-off in the catalyst regenerator. The PM emission rate is calculated using Equations 1 and 2 of § 63.1564. If applicable, the average PM emission rate, measured using EPA Method 5B emission rate, measured using EPA Method 5B or 5F (for a unit without a wet scrubber) or Method 5B (for a unit with a wet scrubber) over the period of the initial performance test, is no higher than 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel. The PM emission rate is calculated using Equation 3 of § 63.1564; no more than one 6-minute average measured by the continuous opacity monitoring system exceeds 30 percent opacity in any 1-hour period over the period of the performance test; and your performance evaluation shows the continuous opacity monitoring system meets the applicable requirements in § 63.1572.
3. Option 2: Not subject to the NSPS for PM.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator.	The average PM emission rate, measured using EPA Method 5B or 5F (for a unit without a wet scrubber) or Method 5B (for a unit with a wet scrubber), over the period of the initial performance test, is less than or equal to 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. The PM emission rate is calculated using Equations 1 and 2 of § 63.1564; and if you use a continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.

TABLE 5 TO SUBPART UUU OF PART 63.—INITIAL-COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

* * * * *

For each new and existing catalytic cracking unit catalyst regenerator vent . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
*	* * * * * *	

■ 16. Table 6 to subpart UUU of part 63 is amended by revising entries 1, 3, and 5 to read as follows:

TABLE 6 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

* * * * *

For each new and existing catalytic cracking unit . . .	Subject to this emission limit for your catalyst regenerator vent . . .	You shall demonstrate continuous compliance by . . .
1. Subject to the NSPS for PM in 40 CFR 60.102.	a. PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	i. Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) using Equation 1 in § 63.1564 and the hours of operation for each catalyst regenerator; maintaining PM emission rate below 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off; if applicable, determining and recording each day the rate of combustion of liquid or solid fossil fuels (liters/hour or kilograms/hour) and the hours of operation during which liquid or solid fossil-fuels are combusted in the incinerator-waste heat boiler; if applicable, maintaining the PM rate incinerator below 43 g/GJ (0.10 lb/million Btu) of heat input attributable to the solid or liquid fossil fuel; collecting the continuous opacity monitoring data for each catalyst regenerator vent according to § 63.1572; and maintaining each 6-minute average at or below 30 percent except that one 6-minute average during a 1-hour period can exceed 30 percent.
*	* * *	* * *
3. Option 2: PM limit not subject to the NSPS for PM.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator.	Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) and the hours of operation for each catalyst regenerator by Equation 1 of § 63.1564 (you can use process data to determine the volumetric flow rate); and maintaining the PM emission rate below 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off.
*	* * *	* * *
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM.	Ni emissions must not exceed 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.	Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) and the hours of operation for each catalyst regenerator by Equation 1 of § 63.1564 (you can use process data to determine the volumetric flow rate); and maintaining Ni emission rate below 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.

■ 17. Table 7 to subpart UUU of part 63 is revised to read as follows:

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
1. Subject to NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable.	Complying with Table 6 of this subpart.
2. Option 1: Elect NSPS not subject to the NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable.	Complying with Table 6 of this subpart.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	The opacity of emissions from your catalyst regenerator vent must not exceed the site-specific opacity operating limit established during the performance test.	Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; and maintaining the hourly average opacity at or below the site-specific limit.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate entering or exiting the control device must not exceed the operating limit established during the performance test.	Collecting the hourly and daily average gas flow rate monitoring data according to § 63.1572[1]; and maintaining the daily average gas flow rate at or below the limit established during the performance test.
		ii. The daily average voltage and secondary current (or total power input) to the control device must not fall below the operating limit established during the performance test.	Collecting the hourly and daily average voltage and secondary current (or total power input) monitoring data according to § 63.1572; and maintaining the daily average voltage and secondary current (or total power input) at or above the limit established during the performance test.
	c. Continuous parameter monitoring systems—wet scrubber.	i. The daily average pressure drop across the scrubber must not fall below the operating limit established during the performance test.	Collecting the hourly and daily average pressure drop monitoring data according to § 63.1572; and maintaining the daily average pressure drop above the limit established during the performance test.
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	Collecting the hourly average gas flow rate and water (or scrubbing liquid) flow rate monitoring data according to § 63.1572[1]; determining and recording the hourly average liquid-to-gas ratio; determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	The daily average Ni operating value must not exceed the site-specific Ni operating limit established during the performance test.	Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; determining and recording equilibrium catalyst Ni concentration at least once a week[2]; collecting the hourly average gas flow rate monitoring data according to § 63.1572[1]; determining and recording the hourly average Ni operating value using Equation 11 of § 63.1564; determining and recording the daily average Ni operating value; and maintaining the daily average Ni operating value below the site-specific Ni operating limit established during the performance test.

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate entering or exiting the control device must not exceed the operating limit established during the performance test.	See item 3.b.i. of this table.
		ii. The daily average voltage and secondary current (or total power input) must not fall below the level established in the performance test.	See item 3.b.ii. of this table.
		iii. The monthly rolling average of the equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	Determining and recording the equilibrium catalyst Ni concentration at least once a week[2]; determining and recording the monthly rolling average of the equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test.
	c. Continuous parameter monitoring systems—wetscrubber.	i. The daily average pressure drop must not fall below the operating limit established in the performance test.	See item 3.c.i. of this table.
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	See item 3.c.ii. of this table.
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	Determining and recording the equilibrium catalyst Ni concentration at least once a week[2]; determining and recording the monthly rolling average of equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test.
5. Option 4: Ni lb/ton of coke burnoff not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	The daily average Ni operating value must not exceed the site-specific Ni operating limit established during the performance test.	Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; collecting the hourly average gas flow rate monitoring data according to § 63.1572[1]; determining and recording equilibrium catalyst Ni concentration at least once a week[2]; determining and recording the hourly average Ni operating value using Equation 12 of § 63.1564; determining and recording the daily average Ni operating value; and maintaining the daily average Ni operating value below the site-specific Ni operating limit established during the performance test.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate to the control device must not exceed the level established in the performance test.	See item 3.b.i. of this table.

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
		ii. The daily average voltage and secondary current (or total power input) must not fall below the level established in the performance test.	See item 3.b.ii. of this table.
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 4.b.iii. of this table.
	c. Continuous parameter monitoring systems—wet scrubber.	i. The daily average pressure drop must not fall below the operating limit established in the performance test.	See item 3.c.i. of this table.
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	See item 3.c.ii. of this table.
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 4.c.iii. of this table.

[1] If applicable, you can use the alternative in § 63.1573(a)(1) for gas flow rate instead of a continuous parameter monitoring system if you used the alternative method in the initial performance test.

[2] The equilibrium catalyst Ni concentration must be measured by the procedure, Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure) in appendix A to this subpart; or by EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, or EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration; or by an alternative to EPA Method 6010B, 6020, 7520, or 7521 satisfactory to the Administrator. The EPA Methods 6010B, 6020, 7520, and 7521 are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These methods are also available at *http://www.epa.gov/epaoswer/hazwaste/test/main.htm.*

■ 18. Table 15 to subpart UUU of part 63 is amended by revising the heading in column 1 and 2 and by revising entry 2 as follows:

TABLE 15 TO SUBPART UUU OF PART 63.—ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

* * * * *

For each applicable process vent for a new or existing catalytic reforming unit . . .	You shall meet this emission limit during initial catalyst depressuring and catalyst purging operations . . .
* * * * * * *	
2. Option 2	Reduce uncontrolled emissions of total organic compounds (TOC) or nonmethane TOC from your process vent by 98 percent by weight using a control device or to a concentration of 20 ppmv (dry basis as hexane), corrected to 3 percent oxygen, whichever is less stringent. If you vent emissions to a boiler or process heater to comply with the percent reduction or concentration emission limitation, the vent stream must be introduced into the flame zone, or any other location that will achieve the percent reduction or concentration standard.

■ 19. Table 16 to subpart UUU of part 63 is amended by revising the heading in column 3 and by revising entry 2 as follows:

TABLE 16 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

* * * * *

For each new or existing catalytic reforming unit . . .	For this type of control device . . .	You shall meet this operating limit during initial catalyst depressuring and purging operations . . .
*	*	*
2. Option 2: Percent reduction or concentration limit.	a. Thermal incinerator, boiler or process heater with a design heat input capacity under 44 MW, or boiler or process heater in which all vent streams are not introduced into the flame zone.	The daily average combustion zone temperature must not fall below the limit established during the performance test.
	b. No control device	Operate at all times according to your operation, maintenance, and monitoring plan regarding minimum catalyst purging conditions that must be met prior to allowing uncontrolled purge releases.

■ 20. Table 17 to subpart UUU of part 63 is amended by revising the heading in column 1 as follows:

TABLE 17 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

* * * * * * *

For each applicable process vent for a new or existing catalytic reforming unit . . .	If you use this type of control device . . .	You shall install and operate this type of continuous monitoring system . . .
*	*	*

■ 21. Table 18 to subpart UUU of part 63 is amended by revising entry 1 and 2 as follows:

TABLE 18 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

* * * * * * *

For each new or existing catalytic reforming unit . . .	You shall . . .	Using . . .	According to these requirements . . .
1. Option 1: Vent to a flare	a. Conduct visible emission observations.	Method 22 (40 CFR part 60, appendix A).	2-hour observation period. Record the presence of a flame at the pilot light over the full period of the test.
	b. Determine that the flare meets the requirements for net heating value of the gas being combusted and exit velocity.	Not applicable.	40 CFR 63.11(b)(6) through (8).
2. Option 2: Percent reduction or concentration limit.	a. Select sampling site	Method 1 or 1A (40 CFR part 60, appendix A). No traverse site selection method is needed for vents smaller than 0.10 meter in diameter.	Sampling sites must be located at the inlet (if you elect the emission reduction standard) and outlet of the control device and prior to any releases to the atmosphere.
	b. Measure gas volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A), as applicable.	

TABLE 18 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

* * * * * * *

For each new or existing catalytic reforming unit . . .	You shall . . .	Using . . .	According to these requirements . . .
	c. Measure TOC concentration (for percent reduction standard).	Method 25 (40 part 60, appendix A) to measure nonmethane TOC concentration (in carbon equivalents) at inlet and outlet of the control device. If the nonmethane TOC outlet concentration is expected to be less than 50 ppm (as carbon), you can use Method 25A to measure TOC concentration (as hexane) at the inlet and the outlet of the control device. If you use Method 25A, you may use Method 18 (40 CFR part 60, appendix A) to measure the methane concentration to determine the nonmethane TOC concentration.	Take either an integrated sample or four grab samples during each run. If you use a grab sampling technique, take the samples at approximately equal intervals in time, such as 15-minute intervals during the run.
	d. Calculate TOC or nonmethane TOC emission rate and mass emission reduction.	.....	Calculate emission rate by Equation 1 of § 63.1566 (if you use Method 25) or Equation 2 of § 63.1566 (if you use Method 25A). Calculate mass emission reduction by Equation 3 of § 63.1566.
	e. For concentration standard, measure TOC concentration. (Optional: Measure methane concentration.)	Method 25A (40 CFR part 60, appendix A) to measure TOC concentration (as hexane) at the outlet of the control device. You may elect to use Method 18 (40 CFR part 60, appendix A) to measure the methane concentration.	
	f. Determine oxygen content in the gas stream at the outlet of the control device.	Method 3A or 3B (40 CFR part 60, appendix A), as applicable.	
	g. Calculate the TOC or nonmethane TOC concentration corrected for oxygen content (for concentration standard).	Equation 4 of § 63.1566.	
	h. Establish each operating limit in Table 16 of this subpart that applies to you for a thermal incinerator, or process heater or boiler with a design heat input capacity under 44 MW, or process heater or boiler in which all vent streams are not introduced into flame zone.	Data from the continuous parameter monitoring systems.	Collect the temperature monitoring data every 15 minutes during the entire period of the initial TOC performance test. Determine and record the minimum hourly average combustion zone temperature.
	i. If you do not use a control device, document the purging conditions used prior to testing following the minimum requirements in the operation, maintenance, and monitoring plan.	Data from monitoring systems as identified in the operation, maintenance, and monitoring plan.	Procedures in the operation, maintenance, and monitoring plan.

■ 22. Table 19 to subpart UUU of part 63 is revised as follows:

TABLE 19 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1566(b)(7), you shall meet each requirement in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
Option 1	Visible emissions from a flare must not exceed a total of 5 minutes during any 2 consecutive hours.	Visible emissions, measured using Method 22 over the 2-hour observation period of the performance test, do not exceed a total of 5 minutes.
Option 2	Reduce uncontrolled emissions of total organic compounds (TOC) or nonmethane TOC from your process vent by 98 percent by weight using a control device or to a concentration of 20 ppmv (dry basis as hexane), corrected to 3 percent oxygen, whichever is less stringent.	The mass emission reduction of nonmethane TOC measured by Method 25 over the period of the performance test is at least 98 percent by weight as calculated using Equations 1 and 3 of § 63.1566; or the mass emission reduction of TOC measured by Method 25A (or nonmethane TOC measured by Methods 25A and 18) over the period of the performance test is at least 98 percent by weight as calculated using Equations 2 and 3 of § 63.1566; or the TOC concentration measured by Method 25A (or the nonmethane TOC concentration measured by Methods 25A and 18) over the period of the performance test does not exceed 20 ppmv (dry basis as hexane) corrected to 3 percent oxygen as calculated using Equation 4 of § 63.1566.

■ 23. Table 20 to subpart UUU of part 63 is revised as follows:

TABLE 20 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1566(c)(1), you shall meet each requirement in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit . . .	For this emission limit . . .	You shall demonstrate continuous compliance during initial catalyst depressuring and catalyst purging operations by . . .
1. Option 1	Vent emissions from your process vent to a flare that meets the requirements in § 63.11(b).	Maintaining visible emissions from a flare below a total of 5 minutes during any 2 consecutive hours.
2. Option 2	Reduce uncontrolled emissions of total organic compounds (TOC) or nonmethane TOC from your process vent by 98 percent by weight using a control device or to a concentration of 20 ppmv (dry basis as hexane), corrected to 3 percent oxygen, whichever is less stringent.	Maintaining a 98 percent by weight emission reduction of TOC or nonmethane TOC; or maintaining a TOC or nonmethane TOC concentration of not more than 20 ppmv (dry basis as hexane), corrected to 3 percent oxygen, whichever is less stringent.

■ 24. Table 21 to Subpart UUU of part 63 is revised as follows:

TABLE 21 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(c)(1), you shall meet each requirement in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance during initial catalyst depressuring and purging operations by . . .
1. Option 1	Flare that meets the requirements in § 63.11(b).	The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it.	Collecting flare monitoring data according to § 63.1572; and recording for each 1-hour period whether the monitor was continuously operating and the pilot light was continuously present during each 1-hour period.

TABLE 21 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1566(c)(1), you shall meet each requirement in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance during initial catalyst depressuring and purging operations by . . .
2. Option 2	a. Thermal incinerator boiler or process heater with a design input capacity under 44 MW or boiler or process heater in which not all vent streams are not introduced into the flame zone.	Maintain the daily average combustion zone temperature above the limit established during the performance test.	Collecting, the hourly and daily temperature monitoring data according to § 63.1572; and maintaining the daily average combustion zone temperature above the limit established during the performance test.
	b. No control device	Operate at all times according to your operation, maintenance, and monitoring plan regarding minimum purging conditions that must be met prior to allowing uncontrolled purge releases.	Recording information to document compliance with the procedures in your operation, maintenance, and monitoring plan.

■ 25. Table 22 to subpart UUU of part 63 is revised as follows:

TABLE 22 TO SUBPART UUU OF PART 63.—INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(a)(1), you shall meet each emission limitation in the following table that applies to you.]

For . . .	You shall meet this emission limit for each applicable catalytic reforming unit process vent during coke burn-off and catalyst rejuvenation . . .
1. Each existing semi-regenerative catalytic reforming unit	Reduce uncontrolled emissions of hydrogen chloride (HCl) by 92 percent by weight or to a concentration of 30 ppmv (dry basis), corrected to 3 percent oxygen.
2. Each existing cyclic or continous catalytic reforming unit	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.
3. Each new semi-regenerative, cyclic, or continous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.

■ 26. Table 23 to subpart UUU of part 63 is revised as follows:

TABLE 23 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(a)(2), you shall meet each operating limit in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit with this type of control device . . .	You shall meet this operating limit during coke burn-off and catalyst rejuvenation . . .
1. Wet scrubber	The daily average pH or alkalinity of the water (or scrubbing liquid) exiting the scrubber must not fall below the limit established during the performance test; and the daily average liquid-to-gas ratio must not fall below the limit established during the performance test.
2. Internal scrubbing system or no control device (*e.g.*, hot regen system) meeting outlet HCl concentration limit.	The daily average HCl concentration in the catalyst regenerator exhaust gas must not exceed the limit established during the performance test.
3. Internal scrubbing system meeting HCl percent reduction standard.	The daily average pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system must not fall below the limit established during the performance test; and the daily average liquid-to-gas ratio must not fall below the limit established during the performance test.
4. Fixed-bed gas-solid adsorption system	The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test; and the HCl concentration in the adsorption system exhaust gas must not exceed the limit established during the performance test.

TABLE 23 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(a)(2), you shall meet each operating limit in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit with this type of control device . . .	You shall meet this operating limit during coke burn-off and catalyst rejuvenation . . .
5. Moving-bed gas-solid adsorption system (*e.g.*, Chlorsorb™ System).	The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test; and the weekly average chloride level on the sorbent entering the adsorption system must not exceed the design or manufacturer's recommended limit (1.35 weight percent for the Chlorsorb™ System); and the weekly average chloride level on the sorbent leaving the adsorption system must not exceed the design or manufacturer's recommended limit (1.8 weight percent for the Chlorsorb™ System).

■ 27. Table 24 to subpart UUU of part 63 is revised as follows:

TABLE 24 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(1), you shall meet each requirement in the following table that applies to you.]

If you use this type of control device for your vent . . .	You shall install and operate this type of continuous monitoring system . . .
1. Wet scrubber	Continuous parameter monitoring system to measure and record the total water (or scrubbing liquid) flow rate entering the scrubber during coke burn-off and catalyst rejuvenation; and continuous parameter monitoring system to measure and record gas flow rate entering or exiting the scrubber during coke burn-off and catalyst rejuvenation [1]; and continuous parameter monitoring system to measure and record the pH or alkalinity of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation. [2]
2. Internal scrubbing system or no control device (e.g., hot regen system) to meet HC1 outlet concentration limit.	Colormetric tube sampling system to measure the HC1 concentration in the catalyst regenerator exhaust gas during coke burn-off and catalyst rejuvenation. The colormetric tube sampling system must meet the requirements in Table 41 of this subpart.
3. Internal scrubbing system to meet HC1 percent reduction standard ..	Continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation; and continuous parameter monitoring system to measure and record the total water (or scrubbing liquid) flow rate entering the internal scrubbing system during coke burn-off and catalyst rejuvenation; and continuous parameter monitoring system to measure and record the pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation. [2]
4. Fixed-bed gas-solid adsorption system	Continuous parameter monitoring system to measure and record the temperature of the gas entering or exiting the adsorption system during coke burn-off and catalyst rejuvenation; and colormetric tube sampling system to measure the gaseous HC1 concentration in the adsorption system exhaust and at a point within the absorbent bed not to exceed 90 percent of the total length of the absorbent bed during coke burn-off and catalyst rejuvenation. The colormetric tube sampling system must meet the requirements in Table 41 of this subpart.
5. Moving-bed gas-solid adsorption system (e.g., Chlorsorb™ System).	Continuous parameter monitoring system to measure and record the temperature of the gas entering or exiting the adsorption system during coke burn-off and catalyst rejuvenation.

[1] If applicable, you can use the alternative in § 63.1573 (a)(1) instead of a continuous parameter monitoring system for gas flow rate or instead of a continuous parameter monitoring system for the cumulative volume of gas.

[2] If applicable, you can use the alternative in § 63.1573(b)(1) instead of a continuous parameter monitoring system for pH of the water (or scrubbing liquid) or the alternative in § 63.1573(b)(2) instead of a continuous parameter monitoring system for alkalinity of the water (or scrubbing liquid).

■ 28. Table 25 to subpart UUU of part 63 is revised as follows:

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(2) and (3), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using . . .	You shall . . .	Using . . .	According to these requirements . . .
1. Any or no control system	a. Select sampling port location(s) and the number of traverse points.	Method 1 or 1A (40 CFR part 60, appendix A), as applicable.	(1) If you operate a control device and you elect to meet an applicable HCl percent reduction standard, sampling sites must be located at the inlet of the control device or internal scrubbing system and at the outlet of the control device or internal scrubber system prior to any release to the atmosphere. For a series of fixed-bed systems, the outlet sampling site should be located at the outlet of the first fixed-bed, prior to entering the second fixed-bed in the series. (2) If you elect to meet an applicable HCl outlet concentration limit, locate sampling sites at the outlet of the control device or internal scrubber system prior to any release to the atmosphere. For a series of fixed-bed systems, the outlet sampling site should be located at the outlet of the first fixed-bed, prior to entering the second fixed-bed in the series. If there is no control device, locate sampling sites at the outlet of the catalyst regenerator prior to any release to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A), as applicable..	
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B (40 CFR part 60, appendix A), as applicable.	
	d. Measure moisture content of the stack gas.	Method 4 (40 CFR part 60, appendix A).	
	e. Measure the HCl concentration at the selected sampling locations.	Method 26 or 26A (40 CFR part 60, appendix A). If your control device is a wet scrubber or internal scrubbing system, you must use Method 26A.	(1) For semi-regenerative and cyclic regeneration units, conduct the test during the coke burn-off and catalyst rejuvenation cycle, but collect no samples during the first hour or the last 6 hours of the cycle (for semi- regenerative units) or during the first hour or the last 2 hours of the cycle (for cyclic regeneration units). For continuous regeneration units, the test should be conducted no sooner than 3 days after process unit or control system start up. (2) Determine and record the HCl concentration corrected to 3 percent oxygen (using Equation 1 of § 63.1567) for each sampling location for each test run. (3) Determine and record the percent emission reduction, if applicable, using Equation 3 of § 63.1567 for each test run. (4) Determine and record the average HCl concentration (corrected to 3 percent oxygen) and the average percent emission reduction, if applicable, for the overall source test from the recorded test run values.
2. Wet scrubber	a. Establish operating limit for pH level or alkalinity.	i. Data from continuous parameter monitoring systems.	Measure and record the pH or alkalinity of the water (or scrubbing liquid) exiting scrubber every 15 minutes during the entire period of the performance test. Determine and record the minimum hourly average pH or alkalinity level from the recorded values.
		ii. Alternative pH procedure in § 63.1573 (b)(1).	Measure and record the pH of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation using pH strips at least three times during each test run. Determine and record the average pH level for each test run. Determine and record the minimum test run average pH level.

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FOR CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(b)(2) and (3), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using . . .	You shall . . .	Using . . .	According to these requirements . . .
		iii. Alternative alkalinity method in § 63.1573(b)(2).	Measure and record the alkalinity of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation using discrete titration at least three times during each test run. Determine and record the average alkalinity level for each test run. Determine and record the minimum test run average alkalinity level.
	b. Establish operating limit for liquid-to-gas ratio.	i. Data from continuous parameter monitoring systems.	Measure and record the gas flow rate entering or exiting the scrubber and the total water (or scrubbing liquid) flow rate entering the scrubber every 15 minutes during the entire period of the performance test. Determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate. Determine and record the minimum liquid-to-gas ratio from the recorded, paired values.
		ii. Alternative procedure for gas flow rate in § 63.1573(a)(1).	Collect air flow rate monitoring data or determine the air flow rate using control room instruments every 15 minutes during the entire period of the initial performance test. Determine and record the hourly average rate of all the readings. Determine and record the maximum gas flow rate using Equation 1 of § 63.1573.
3. Internal scrubbing system or no control device (e.g., hot regen system) meeting HCl outlet concentration limit.	Establish operating limit for HCl concentration.	Data from continuous parameter monitoring system.	Measure and record the HCl concentration in the catalyst regenerator exhaust gas using the colormetric tube sampling system at least three times during each test run. Determine and record the average HCl concentration for each test run. Determine and record the average HCl concentration for the overall source test from the recorded test run averages. Determine and record the operating limit for HCl concentration using Equation 4 of § 63.1567.
4. Internal scrubbing system meeting HCl percent reduction standard.	a. Establish operating limit for pH level or alkalinity.	i. Data from continuous parameter monitoring system.	Measure and record the pH alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system every 15 minutes during the entire period of the performance test. Determine and record the minimum hourly average pH or alkalinity level from the recorded values.
		ii. Alternative pH method in § 63.1573(b)(1).	Measure and in record pH of the water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation using pH strips at least three times during each test run. Determine and record the average pH level for each test run. Determine and record the minimum test run average pH level.
		iii. Alternative alkalinity method in § 63.1573(b)(2).	Measure and record the alkalinity water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation using discrete titration at least three times during each test run. Determine and record the average alkalinity level for each test run. Determine and record the minimum test run average alkalinity level.
	b. Establish operating limit for liquid-to-gas ratio.	Data from continuous parameter monitoring systems.	Measure and record the gas entering or exiting the internal scrubbing system and the total water (or scrubbing liquid) flow rate entering the internal scrubbing system every 15 minutes during the entire period of the performance test. Determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate. Determine and record the minimum liquid-to-gas ratio from the recorded, paired values.
5. Fixed-bed gas-solid adsorption system. Gas-solid.	a. Establish operating limit for temperature.	Data from continuous parameter monitoring system.	Measure and record the temperature of gas entering or exiting the adsorption system every 15 minutes. Determine and record the maximum hourly average temperature.

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FOR CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(b)(2) and (3), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using . . .	You shall . . .	Using . . .	According to these requirements . . .
	b. Establish operating limit for HCl concentration.	i. Data from continuous parameter monitoring systems.	(1) Measure and record the HCl concentration in the exhaust gas from the fixed-bed adsorption system using the colormetric tube sampling system at least three times during each test run. Determine and record the average HCl concentration for each test run. Determine and record the average HCl concentration for the overall source test from the recorded test run averages. (2) If you elect to comply with the HCl outlet concentration limit (Option 2), determine and record the operating limit for HCl concentration using Equation 4 of § 63.1567. If you elect to comply with the HCl percent reduction standard (Option 1), determine and record the operating limit for HCl concentration using Equation 5 of § 63.1567.
6. Moving-bed gas-solid adsorption system (e.g., Chlorsorb™ System).	a. Establish operating limit for temperature.	Data from continuous parameter monitoring systems.	Measure and record the temperature of gas entering or exiting the adsorption system every 15 minutes. Determine and record the maximum hourly average temperature.
	b. Measure the chloride level on the sorbent entering and exiting the adsorption system.	Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure) in appendix A to subpart UUU; or EPA Method 5050 combined either with EPA Method 9056, or with EPA Method 9253; or EPA Method 9212 with the soil extraction procedures listed within the method.[1]	Measure and record the chloride concentration of the sorbent material entering and exiting the adsorption system at least three times during each test run. Determine and record the average weight percent chloride concentration of the sorbent entering the adsorption system for each test run. Determine and record the average weight percent chloride concentration of the sorbent exiting the adsorption system for each test run.

[1] The EPA Methods 5050, 9056, 9212 and 9253 are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These methods are also available at *http://www.epa.gov/epaoswer/hazwaste/test/main.htm.*

■ 29. Table 26 to subpart UUU of part 63 is revised as follows:

TABLE 26 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(4), you shall meet each requirement in the following table that applies to you.]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each existing semi-regenerative catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 92 percent by weight or to a concentration of 30 ppmv, (dry basis), corrected to 3 percent oxygen.	Average emissions HCl measured using Method 26 or 26A, as applicable, over the period of the performance test, are reduced by 92 percent or to a concentration less than or equal to 30 ppmv (dry basis) corrected to 3 percent oxygen.
2. Each existing cyclic or continuous catalytic reforming unit and each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Average emissions of HCl measured using Method 26 or 26A, as applicable, over the period of the performance test, are reduced by 97 percent or to a concentration less than or equal to 10 ppmv (dry basis) corrected to 3 percent oxygen.

■ 30. Table 27 to subpart UUU of part 63 is revised as follows:

TABLE 27 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(c)(1), you shall meet each requirement in the following table that applies to you.]

For . . .	For this emission limit . . .	You shall demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by . . .
1. Each existing semi-regenerative catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 92 percent by weight or to a concentration of 30 ppmv (dry basis), corrected to 3 percent oxygen..	Maintaining a 92 percent HCl emission reduction or an HCl concentration no more than 30 ppmv (dry basis), corrected to 3 percent oxygen.
2. Each existing cyclic or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Maintaining a 97 percent HCl control efficiency or an HCl concentration no more than 10 ppmv (dry basis), corrected to 3 percent oxygen.
3. Each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Maintaining a 97 percent HCl control efficiency or an HCl concentration no more than 10 ppmv (dry basis), corrected to 3 percent oxygen.

■ 31. Table 28 to subpart UUU of part 63 is revised as follows:

TABLE 28 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using this type of control device or system . . .	For this operating limit . . .	You shall demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by . . .
1. Wet scrubber	a. The daily average pH or alkalinity of the water (or scrubbing liquid) exiting the scrubber must not fall below the level established during the performance test.	Collecting the hourly and daily average pH or alkalinity monitoring data according to § 63.1572[1]; and maintaining the daily average pH or alkalinity above the operating limit established during the performance test.
	b. The daily average liquid-to-gas ratio must not fall below the level established during the performance test.	Collecting the hourly average gas flow rate[2] and total water (or scrubbing liquid) flow rate monitoring data according to § 63.1572; and determining and recording the hourly average liquid-to-gas ratio; and determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.
2. Internal scrubbing system or no control device (e.g., hot regen system) meeting HCl concentration limit.	The daily average HCl concentration in the catalyst regenerator exhaust gas must not exceed the limit established during the performance test.	Measuring and recording the HCl concentration at least 4 times during a regeneration cycle (equally spaced in time) or every 4 hours, whichever is more frequent, using a colormetric tube sampling system; calculating the daily average HCl concentration as an arithmetic average of all samples collected in each 24-hour period from the start of the coke burn-off cycle or for the entire duration of the coke burn-off cycle if the coke burn-off cycle is less than 24 hours; and maintaining the daily average HCl concentration below the applicable operating limit.
3. Internal scrubbing system meeting percent HCl reduction standard.	a. The daily average pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system must not fall below the limit established during the performance test.	Collecting the hourly and daily average pH or alkalinity monitoring data according to § 63.1572[1] and maintaining the daily average pH or alkalinity above the operating limit established during the performance test.
	b. The daily average liquid-to-gas ratio must not fall below the level established during the performance test.	Collecting the hourly average gas flow rate[2] and total water (or scrubbing liquid) flow rate monitoring data according to § 63.1572; and determining and recording the hourly average liquid-to-gas ratio; and determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.

TABLE 28 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using this type of control device or system . . .	For this operating limit . . .	You shall demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by . . .
4. Fixed-bed gas-solid adsorption systems.	a. The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to § 63.1572; and maintaining the daily average temperature below the operating limit established during the performance test.
	b. The HCl concentration in the exhaust gas from the fixed-bed gas-solid adsorption system must not exceed the limit established during the performance test.	Measuring and recording the concentration of HCl weekly or during each regeneration cycle, whichever is less frequent, using a colormetric tube sampling system at a point within the adsorbent bed not to exceed 90 percent of the total length of the adsorption bed during coke-burn-off and catalyst rejuvenation; implementing procedures in the operating and maintenance plan if the HCl concentration at the sampling location within the adsorption bed exceeds the operating limit; and maintaining the HCl concentration in the gas from the adsorption system below the applicable operating limit.
5. Moving-bed gas-solid adsorption system (e.g., Chlorsorb™ System.	a. The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to § 63.1572; and maintaining the daily average temperature below the operating limit established during the performance test.
	b. The weekly average chloride level on the sorbent entering the adsorption system must not exceed the design or manufacturer's recommended limit (1.35 weight percent for the Clorsorb™.	Collecting samples of the sorbent exiting the adsorption system three times per week (on non-consecutive days); and analyzing the samples for total chloride [3]; and determining and recording the weekly average chloride concentration; and maintaining the chloride concentration below the design or manufacturer's recommended limit (1.35 weight percent for the Chlorsorb™ System).
	c. The weekly average chloride level on the sorbent exiting the adsorption system must not exceed the design or manufacturer's recommended limit (1.8 weight percent for the Clorsorb™ System).	Collecting samples of the sorbent exiting the adsorption system three times per week (on non-consecutive days); and analyzing the samples for total chloride concentration; and determining and recording the weekly average chloride concentration; and maintaining the chloride concentration below the design or manufacturer's recommended limit (1.8 weight percent Chlorsorb™ System).

[1] If applicable, you can use either alternative in § 63.1573(b) instead of a continuous parameter monitoring system for pH or alkalinity if you used the alternative method in the initial performance test.

[2] If applicable, you can use the alternative in § 63.1573(a)(1) instead of a continuous parameter monitoring system for the gas flow rate or cumulative volume of gas entering or exiting the system if you used the alternative method in the initial performance test.

[3] The total chloride concentration of the sorbent material must be measured by the procedure, "Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)" in appendix A to this subpart; or by using EPA Method 5050, Bomb Preparation Method for Solid Waste, combined either with EPA Method 9056, Determination of Inorganic Anions by Ion Chromatography, or with EPA Method 9253, Chloride (Titrimetric, Silver Nitrate); or by using EPA Method 9212, Potentiometric Determination of Chloride in Aqueous Samples with Ion-Selective Electrode, and using the soil extraction procedures listed within the method. The EPA Methods 5050, 9056, 9212 and 9253 are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These methods are also available at *http://www.epa.gov/epaoswer/hazwaste/test/main.htm.*

■ 32. Table 31 to subpart UUU of part 63 is amended by revising entry 1 and 3 as follows:

TABLE 31 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

* * * * *

For . . .	For this limit . . .	You shall install and operate this continuous monitoring system . . .
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of SO_2 (dry basis) at zero percent excess air for each exhaust stack. This system must include an oxygen monitor for correcting the data for excess air.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of reduced sulfur and oxygen (O_2) emissions. Calculate the reduced sulfur emissions as SO_2 (dry basis) at zero percent excess air. *Exception:* You can use an instrument having an air or SO_2 dilution and oxidation system to convert the reduced sulfur to SO_2 for continuously monitoring and recording the concentration (dry basis) at zero percent excess air of the resultant SO_2 instead of the reduced sulfur monitor. The monitor must include an oxygen monitor for correcting the data for excess oxygen.
* *	* * *	* *
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	300 ppmv of total reduced sulfur (TRS) compounds, expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen.	i. Continuous emission monitoring system to measure and record the hourly average concentration of TRS for each exhaust stack; this monitor must include an oxygen monitor for correcting the data for excess oxygen; or ii. Continuous parameter monitoring systems to measure and record the combustion zone temperature of each thermal incinerator and the oxygen content (percent, dry basis) in the vent stream of the incinerator.

■ 33. Table 33 to subpart UUU of part 63 is revised as follows:

TABLE 33 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

[As stated in § 63.1568(b)(5), you shall meet each requirement in the following table that applies to you.]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and each 12-hour rolling average concentration of SO_2 emissions measured by the continuous emission monitoring system is less than or equal to 250 ppmv (dry basis) at zero percent excess air. As part of the Notification of Compliance Status, you must certify that your vent meets the SO_2 limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to do another performance evaluation to demonstrate initial compliance.

TABLE 33 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(b)(5), you shall meet each requirement in the following table that applies to you.]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and each 12-hour rolling average concentration of reduced sulfur compounds measured by your continuous emission monitoring system is less than or equal to 300 ppmv, calculated as ppmv SO_2 (dry basis) at zero percent excess air. As part of the Notification of Compliance Status, you must certify that your vent meets the SO_2 limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to do another performance evaluation to demonstrate initial compliance.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Each 12-hour rolling average concentration of SO_2 emissions measured by the continuous emission monitoring system during the initial performance test is less than or equal to 250 ppmv (dry basis) at zero percent excess air; and your performance evaluation shows the monitoring system meets the applicable requirements in § 63.1572.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Each 12-hour rolling average concentration of reduced sulfur compounds measured by the continuous emission monitoring system during the initial performance test is less than or equal to 300 ppmv, calculated as ppmv SO_2 (dry basis) at zero percent excess air; and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	300 ppmv of TRS compounds expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen.	If you use continuous parameter monitoring systems, the average concentration of TRS emissions measured using Method 15 during the initial performance test is less than or equal to 300 ppmv expressed as equivalent SO_2 concentration (dry basis) at zero percent oxygen. If you use a continuous emission monitoring system, each 12-hour rolling average concentration of TRS emissions measured by the continuous emission monitoring system during the initial performance test is less than or equal to 300 ppmv expressed as an equivalent SO_2 (dry basis) at zero percent oxygen; and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.

■ 34. Table 34 to subpart UUU of part 63 is revised as follows:

TABLE 34 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

[As stated in § 63.1568(c)(1), you shall meet each requirement in the following table that applies to you.]

For . . .	For this emission limit . . .	You shall demonstrate continuous compliance by . . .
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Collecting the hourly average SO_2 monitoring data (dry basis, percent excess air) according to § 63.1572; determining and recording each 12-hour rolling average concentration of SO_2; maintaining each 12-hour rolling average concentration of SO_2 at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of SO_2 greater than the applicable emission limitation in the compliance report required by § 63.1575.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Collecting the hourly average reduced sulfur (and air or O_2 dilution and oxidation) monitoring data according to § 63.1572; determining and recording each 12-hour rolling average concentration of reduced sulfur; maintaining each 12-hour rolling average concentration of reduced sulfur at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of reduced sulfur greater than the applicable emission limitation in the compliance report required by § 63.1575.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Collecting the hourly average SO_2 data (dry basis, percent excess air) according to § 63.1572; determining and recording each 12-hour rolling average concentration of SO_2; maintaining each 12-hour rolling average concentration of SO_2 at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of SO_2 greater than the applicable emission limitation in the compliance report required by § 63.1575.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Collecting the hourly average reduced sulfur (and air or O_2 dilution and oxidation) monitoring data according to § 63.1572; determining and recording each 12-hour rolling average concentration of reduced sulfur; maintaining each 12-hour rolling average concentration of reduced sulfur at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of reduced sulfur greater than the applicable emission limitation in the compliance report required by § 63.1575.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	300 ppmv of TRS compounds, expressed as an SO_2 concentration (dry basis) at zero percent oxygen or reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air.	i. If you use continuous parameter monitoring systems, collecting the hourly average TRS monitoring data according to § 63.1572 and maintaining each 12-hour average concentration of TRS at or below the applicable emission limitation; or
		ii. If you use a continuous emission monitoring system, collecting the hourly average TRS monitoring data according to § 63.1572, determining and recording each 12-hour rolling average concentration of TRS; maintaining each 12-hour rolling average concentration of TRS at or below the applicable emission limitation; and reporting any 12-hour rolling average TRS concentration greater than the applicable emission limitation in the compliance report required by § 63.1575.

■ 35. Table 36 to subpart UUU is amended to revise entry 1 as follows:

TABLE 36 TO SUBPART UUU OF PART 63.—WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

Option	You shall meet one of these equipment standards . . .
1. Option 1	Install and operate a device (including a flow indicator, level recorder, or electronic valve position monitor) to demonstrate, either continuously or at least every hour, whether flow is present in the by bypass line. Install the device at or as near as practical to the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere.
* * * * * * *	

■ 36. Table 38 to subpart UUU is revised as follows:

TABLE 38 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

[As stated in § 63.1569(b)(2), you shall meet each requirement in the following table that applies to you.]

Option . . .	For this work practice standard . . .	You have demonstrated initial compliance if . . .
1. Each new or existing bypass line associated with a catalytic cracking unit, catalytic reforming unit, or sulfur recovery unit.	a. Option 1: Install and operate a device (including a flow indicator, level recorder, or electronic valve position monitor) to demonstrate, either continuously or at least every hour, whether flow is present in bypass line. Install the device at or as near as practical to the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere.	The installed equipment operates properly during each run of the performance test and no flow is present in the line during the test.
	b. Option 2: Install a car-seal or lock-and-key device placed on the mechanism by which the bypass device flow position is controlled (e.g., valve handle, damper level) when the bypass device is in the closed position such that the bypass line valve cannot be opened without breaking the seal or removing the device.	As part of the notification of compliance status, you certify that you installed the equipment, the equipment was operational by your compliance date, and you identify what equipment was installed.
	c. Option 3: Seal the bypass line by installing a solid blind between piping flanges.	See item 1.b of this table.
	d. Option 4: Vent the bypass line to a control device that meets the appropriate requirements in this subpart.	See item 1.b of this table.

■ 37. Table 39 to subpart UUU is amended by revising entry 1 as follows:

TABLE 39 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

* * * * *

If you elect this standard . . .	You shall demonstrate continuous compliance by . . .
1. Option 1: Flow indicator, level recorder, or electronic valve position monitor.	Monitoring and recording on a continuous basis or at least every hour whether flow is present in the bypass line; visually inspecting the device at least once every hour if the device is not equipped with a recording system that provides a continuous record; and recording whether the device is operating properly and whether flow is present in the bypass line.
* * * * * * *	

■ 38. Table 40 to subpart UUU is amended to revise entry 4, 5, 6, and 8 as follows:

TABLE 40 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS OPACITY MONITORING SYSTEMS AND CONTINUOUS EMISSION MONITORING SYSTEMS

* * * * *

This type of continuous opacity or emission monitoring system . . .	Must meet these requirements . . .
* * * * * * *	
4. SO_2 continuous emission monitoring system for sulfur recovery unit with oxidation control system or reduction control system; this monitor must include an O_2 monitor for correcting the data for excess air.	Performance specification 2 (40 CFR part 60, appendix B); span value of 500 ppm SO_2; use Methods 6 or 6C and 3A or 3B (40 CFR part 60, appendix A) for certifying O_2 monitor; and procedure 1 (40 CFR part 60, appendix F) except relative accuracy test audits are required annually instead of quarterly.
5. Reduced sulfur and O_2 continuous emission monitoring system for sulfur recovery unit with reduction control system not followed by incineration; this monitor must include an O_2 monitor for correcting the data for excess air unless exempted.	Performance specification 5 (40 CFR part 60, appendix B), except calibration drift specification is 2.5 percent of the span value instead of 5 percent; 450 ppm reduced sulfur; use Methods 15 or 15A and 3A or 3B (40 CFR part 60, appendix A) for certifying O_2monitor; if Method 3A or 3B yields O_2 concentrations below 0.25 percent during the performance evaluation, the O_2 concentration can be assumed to be zero and the O_2 monitor is not required; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.
6. Instrument with an air or O_2 dilution and oxidation system to convert reduced sulfur to SO_2 for continuously monitoring the concentration of SO_2 instead of reduced sulfur monitor and O_2 monitor.	Performance specification 5 (40 CFR part 60, appendix B); span value of 375 ppm SO_2; use Methods 15 or 15A and 3A or 3B for certifying O_2 monitor; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.
* * * * * * *	
8. O_2 monitor for oxygen concentration.	If necessary due to interferences, locate the oxygen sensor prior to the introduction of any outside gas stream; performance specification 3 (40 CFR part 60, appendix B; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.

■ 39. Table 41 to Subpart UUU is revised as follows:

TABLE 41 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS PARAMETER MONITORING SYSTEMS

[As stated in § 63.1572(c)(1), you shall meet each requirement in the following table that applies to you.]

If you use . . .	You shall . . .
1. pH strips	Use pH strips with an accuracy of ± 10 percent.
2. Colormetric tube sampling system.	Use a colormetric tube sampling system with a printed numerical scale in ppmv, a standard measurement range of 1 to 10 ppmv (or 1 to 30 ppmv if applicable), and a standard deviation for measured values of no more than ± 15 percent. System must include a gas detection pump and hot air probe if needed for the measurement range.

■ 40. Table 44 to subpart UUU of part 63 is revised as follows:

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.1	Applicability	Yes	Except that subpart UUU specifies calendar or operating day.
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5(A)–(C)	Construction and Reconstruction.	Yes	In § 63.5(b)(4), replace the reference to § 63.9 with § 63.9(b)(4) and (5).

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.5(d)(1)(i)	Application for Approval of Construction or Reconstruction—General Application Requirements.	Yes	Except, subpart UUU specifies the application is submitted as soon as practicable before startup but not later than 90 days (rather then 60) after the promulgation date where construction or reconstruction had commenced and initial startup had not occurred before promulgation.
§ 63.5(d)(1)(ii)		Yes	Except that emission estimates specified in § 63.5(d)(1)(ii)(H) are not required.
§ 63.5(d)(1)(iii)		No	Subpart UUU specifies submission of notification of compliance status.
§ 63.5(d)(2)		No.	
§ 63.5(d)(3)		Yes	Except that § 63.5(d)(3)(ii) does not apply.
§ 63.5(d0(4)		Yes.	
§ 63.5(e)	Approval of Construction or Reconstruction.	Yes.	
§ 63.5(f)(1)	Approval of Construction or Reconstruction Based on State Review.		
§ 63.5(f)(2)		Yes	Except that 60 days is changed to 90 days and cross-reference to 53.9(B)(2) does not apply.
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Yes.	
§ 63.6(b)(5)		Yes	Except that subpart UUU specifies different compliance dates for sources.
§ 63.6(b)(6)	[Reserved]	Not applicable.	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Yes.	
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Yes	Except that subpart UUU specifies different compliance dates for sources subject to Tier II gasoline sulfur control requirements.
§ 63.6(c)(3)–(4)	[Reserved]	Not applicable.	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Yes.	
§ 63.6(d)	[Reserved]	Not applicable.	
§ 63.6(e)(1)–(2)	Operation and Maintenance Requirements.	Yes.	
§ 63.6(e)(3)(i)–(iii)	Startup, Shutdown, and Malfunction Plan.	Yes.	
§ 63.6(e)(3)(iv)		Yes	Except that reports of actions not consistent with plan are not required within 2 and 7 days of action but rather must be included in next periodic report.
§ 63.6(e)(3)(v)–(viii)		Yes	The owner or operator is only required to keep the latest version of the plan.
§ 63.6(f)(1)–(2)(iii)(C)	Compliance with Emission Standards.	Yes.	
§ 63.6(f)(2)(iii)(D)		No.	
§ 63.6(f)(2)(iv)–(v)		Yes.	
§ 63.6(f)(3)		Yes.	
§ 63.6(g)	Alternative Standard	Yes.	
§ 63.6(h)	Opacity/VE Standards	Yes.	
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	No	Subpart UUU specifies methods.
§ 63.6(h)(2)(ii)	[Reserved]	Not applicable.	
§ 63.6(h)(2)(iii)		Yes.	
§ 63.6(h)(3)	[Reserved]	Not applicable.	
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Yes	Applies to Method 22 tests.
§ 63.6(h)(5)	Conducting Opacity/VE Observations.	No.	

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Yes	Applies to Method 22 observations.
§ 63.6(h)(7)(i)	Report COM Monitoring Data from Performance Test.	Yes.	
§ 63.6(h)(7)(ii)	Using COM Instead of Method 9.	No.	
§ 63.6(h)(7)(iii)	Averaging Time for COM during Performance Test.	Yes.	
§ 63.6(h)(7)(iv)	COM Requirements	Yes.	
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Yes.	
§ 63.6(h)(9)	Adjusted Opacity Standard	Yes.	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes	Extension of compliance under § 63.6(i)(4) not applicable to a facility that installs catalytic cracking feed hydrotreating and receives an extended compliance date under § 63.1563(c).
§ 63.6(i)(15)	[Reserved]	Not applicable.	
§ 63.6(i)(16)		Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements Applicability.	Yes	Except that subpart UUU specifies the applicable test and demonstration procedures.
§ 63.7(a)(2)	Performance Test Dates	No	Test results must be submitted in the Notification of Compliance Status report due 150 days after the compliance date.
§ 63.7(a)(3)	Section 114 Authority	Yes.	
§ 63.7(b)	Notifications	Yes	Except that subpart UUU specifies notification at least 30 days prior to the scheduled test date rather than 60 days.
§ 63.7(c)	Quality Assurance Program/Site-Specific Test Plan.	Yes.	
§ 63.7(d)	Performance Test Facilities	Yes.	
§ 63.7(e)	Conduct of Tests	Yes.	
§ 63.7(f)	Alternative Test Method	Yes.	
§ 63.7(g)	Data Analysis, Recordkeeping, Reporting.	Yes	Except performance test reports must be submitted with notification of compliance status due 150 days after the compliance date.
§ 63.7(h)	Waiver of Tests	Yes.	
§ 63.8(a)(1)	Monitoring Requirements-Applicability.	Yes.	
§ 63.8(a)(2)	Performance Specifications	Yes.	
§ 63.8(a)(3)	[Reserved]	Not applicable.	
§ 63.8(a)(4)	Monitoring with Flares	Yes.	
§ 63.8(b)(1)	Conduct of Monitoring	Yes.	
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Yes	Subpart UUU specifies the required monitoring locations.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Yes.	
§ 63.8(c)(1)(i)–(ii)	Startup, Shutdown, and Malfunctions.	Yes	Except that subpart UUU specifies that reports are not required if actions are consistent with the SSM plan, unless requested by the permitting authority. If actions are not consistent, actions must be described in next compliance report.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	Yes.	
§ 63.8(c)(2)–(3)	Monitoring System Installation.	Yes	Except that subpart UUU specifies that for continuous parameter monitoring systems, operational status verification includes completion of manufacturer written specifications or installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment will monitor accurately.
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart UUU specifies operational requirements.

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.8(c)(4)(i)–(ii)	Continuous Monitoring System Requirements.	Yes	Except that these requirements apply only to a continuous opacity monitoring system or a continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits.
§ 63.8(c)(5)	COM Minimum Procedures	Yes.	
§ 63.8(c)(6)	CMS Requirements	No	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes.	
§ 63.8(d)	Quality Control Program	Yes	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits.
§ 63.8(e)	CMS Performance Evaluation.	Yes	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits. Results are to be submitted as part of the Notification Compliance Status due 150 days after the compliance date.
§ 63.8(f)(1)–(5)	Alternative Monitoring Methods.	Yes	Except that subpart UUU specifies procedures for requesting alternative monitoring systems and alternative parameters.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Yes	Applicable to continuous emission monitoring systems if performance specification requires a relative accuracy test audit.
§ 63.8(g)(1)–(4)	Reduction of Monitoring Data.	Yes	Applies to continuous opacity monitoring system or continuous emission monitoring system.
§ 63.8(g)(5)	Data Reduction	No	Subpart UUU specifies requirements.
§ 63.9(a)	Notification Requirements—Applicability.	Yes	Duplicate Notification of Compliance Status report to the Regional Administrator may be required.
§ 63.9(b)(1)–(2), (4)–(5)	Initial Notifications	Yes	Except that notification of construction or reconstruction is to be submitted as soon as practicable before startup but no later than 30 days (rather than 60 days) after the effective date if construction or reconstruction had commenced but startup had not occurred before the effective date.
§ 63.9(b)(3)	[Reserved].		
§ 63.9(c)	Request for Extension of Compliance.	Yes.	
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
§ 63.9(e)	Notification of Performance Test.	Yes	Except that notification is required at least 30 days before test.
§ 63.9(f)	Notification of VE/Opacity Test.	Yes.	
§ 63.9(g)	Additional Notification Requirements for Sources with Continuous Monitoring Systems.	Yes	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits.
§ 63.9(h)	Notification of Compliance Status.	Yes	Except that subpart UUU specifies the notification is due no later than 150 days after compliance date.
§ 63.9(i)	Adjustment of Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information.	Yes.	
63.10(a)	Recordkeeping and Reporting Applicability.	Yes.	
§ 63.10(b)	Records	Yes	Except that § 63.10(b)(2)(xiii) applies if you use a continuous emission monitoring system to meet the NSPS or you select to meet the NSPS, CO, or SO_2 reduced sulfur limit and the performance evaluation requires a relative accuracy test audit.

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.10(c)(1)–(6), (9)–(15) ...	Additional Records for Continuous Monitoring Systems.	Yes	Except that these requirements apply if you use a continuous opacity monitoring system or a continuous emission monitoring system to meet the NSPS or elect to meet the NSPS opacity, CO, or SO_2 limits.
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Exceedances.	No	Subpart UUU specifies requirements.
§ 63.10(d)(1)	General Reporting Requirements.	Yes.	
§ 63.10(d)(2)	Performance Test Results	No	Subpart UUU requires performance test results to be reported as part of the Notification of Compliance Status due 150 days after the compliance date.
§ 63.10(d)(3)	Opacity or VE Observations.	Yes.	
§ 63.10(d)(4)	Progress Reports	Yes.	
§ 63.10(d)(5)(i)	Startup, Shutdown, and Malfunction Reports.	Yes	Except that reports are not required if actions are consistent with the SSM plan, unless requested by permitting authority.
§ 63.10(d)(5)(ii)		Yes	Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Yes	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits. Reports of performance evaluations must be submitted in Notification of Compliance Status.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Subpart UUU specifies the applicable requirements.
§ 63.10(e)(4)	COMS Data Reports	Yes.	
§ 63.10(f)	Recordkeeping/Reporting Waiver.	Yes.	
§ 63.11	Control Device Requirements.	Yes	Applicable to flares.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Available of Information	Yes.	

■ 41. Subpart UUU of part 63 is amended by adding appendix A to read as follows:

Appendix A To Subpart UUU of Part 63—Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)

1.0 Scope and Application.

1.1 Analytes. The analytes for which this method is applicable include any elements with an atomic number between 11 (sodium) and 92 (uranium), inclusive. Specific analytes for which this method was developed include:

Analyte	CAS No.	Minimum detectable limit
Nickel compounds	7440–02–0	<2 % of span.
Total chlorides	16887–00–6	<2 % of span.

1.2 Applicability. This method is applicable to the determination of analyte concentrations on catalyst particles. This method is applicable for catalyst particles obtained from the fluid catalytic cracking unit (FCCU) regenerator (*i.e.*, equilibrium catalyst), from air pollution control systems operated for the FCCU catalyst regenerator vent (FCCU fines), from catalytic reforming units (CRU), and other processes as specified within an applicable regulation. This method is applicable only when specified within the regulation.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from the analytical method.

2.0 Summary of Method.

2.1 A representative sample of catalyst particles is collected, prepared, and analyzed for analyte concentration using either energy or wavelength dispersive X-ray flourescent (XRF) spectrometry instrumental analyzers. In both types of XRF spectrometers, the instrument irradiates the sample with high energy (primary) x-rays and the elements in

the sample absorb the x-rays and then re-emit secondary (fluorescent) x-rays of characteristic wavelengths for each element present. In energy dispersive XRF spectrometers, all secondary x-rays (of all wavelengths) enter the detector at once. The detector registers an electric current having a height proportional to the photon energy, and these pulses are then separated electronically, using a pulse analyzer. In wavelength dispersive XRF spectrometers, the secondary x-rays are dispersed spatially by crystal diffraction on the basis of wavelength. The crystal and detector are made to synchronously rotate and the detector then receives only one wavelength at a time. The intensity of the x-rays emitted by each element is proportional to its concentration, after correcting for matrix effects. For nickel compounds and total chlorides, the XRF instrument response is expected to be linear to analyte concentration. Performance specifications and test procedures are provided to ensure reliable data.

3.0 Definitions.

3.1 Measurement System. The total equipment required for the determination of analyte concentration. The measurement system consists of the following major subsystems:

3.1.1 Sample Preparation. That portion of a system used for one or more of the following: sample acquisition, sample transport, sample conditioning, or sample preparation prior to introducing the sample into the analyzer.

3.1.2 Analyzer. That portion of the system that senses the analyte to be measured and generates an output proportional to its concentration.

3.1.3 Data Recorder. A digital recorder or personal computer used for recording measurement data from the analyzer output.

3.2 Span. The upper limit of the gas concentration measurement range displayed on the data recorder.

3.3 Calibration Standards. Prepared catalyst samples or other samples of known analyte concentrations used to calibrate the analyzer and to assess calibration drift.

3.4 Energy Calibration Standard. Calibration standard, generally provided by the XRF instrument manufacturer, used for assuring accuracy of the energy scale.

3.5 Accuracy Assessment Standard. Prepared catalyst sample or other sample of known analyte concentrations used to assess analyzer accuracy error.

3.6 Zero Drift. The difference in the measurement system output reading from the initial value for zero concentration level calibration standard after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.7 Calibration Drift. The difference in the measurement system output reading from the initial value for the mid-range calibration standard after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.8 Spectral Interferences. Analytical interferences and excessive biases caused by elemental peak overlap, escape peak, and sum peak interferences between elements in the samples.

3.9 Calibration Curve. A graph or other systematic method of establishing the relationship between the analyzer response and the actual analyte concentration introduced to the analyzer.

3.10 Analyzer Accuracy Error. The difference in the measurement system output reading and the ideal value for the accuracy assessment standard.

4.0 Interferences.

4.1 Spectral interferences with analyte line intensity determination are accounted for within the method program. No action is required by the XRF operator once these interferences have been addressed within the method.

4.2 The X-ray production efficiency is affected by particle size for the very lightest elements. However, particulate matter (PM) 2.5 particle size effects are substantially < 1 percent for most elements. The calibration standards should be prepared with material of similar particle size or be processed (ground) to produce material of similar particle size as the catalyst samples to be analyzed. No additional correction for particle size is performed. Alternatively, the sample can be fused in order to eliminate any potential particle size effects.

5.0 Safety.

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 X-ray Exposure. The XRF uses X-rays; XRF operators should follow instrument manufacturer's guidelines to protect from accidental exposure to X-rays when the instrument is in operation.

5.3 Beryllium Window. In most XRF units, a beryllium (Be) window is present to separate the sample chamber from the X-ray tube and detector. The window is very fragile and brittle. Do not allow sample or debris to fall onto the window, and avoid using compressed air to clean the window because it will cause the window to rupture. If the window should rupture, note that Be metal is poisonous. Use extreme caution when collecting pieces of Be and consult the instrument manufacturer for advice on cleanup of the broken window and replacement.

6.0 Equipment and Supplies.

6.1 Measurement System. Use any measurement system that meets the specifications of this method listed in section 13. The typical components of the measurement system are described below.

6.1.1 Sample Mixer/Mill. Stainless steel, or equivalent to grind/mix catalyst and binders, if used, to produce uniform particle samples.

6.1.2 Sample Press/Fluxer. Stainless steel, or equivalent to produce pellets of sufficient size to fill analyzer sample window, or alternatively, a fusion device capable of preparing a fused disk of sufficient size to fill analyzer sample window.

6.1.3 Analytical Balance. ±0.0001 gram accuracy for weighing prepared samples (pellets).

6.1.4 Analyzer. An XRF spectrometer to determine the analyte concentration in the prepared sample. The analyzer must meet the applicable performance specifications in section 13.

6.1.5 Data Recorder. A digital recorder or personal computer for recording measurement data. The data recorder resolution (*i.e.*, readability) must be 0.5 percent of span. Alternatively, a digital or analog meter having a resolution of 0.5 percent of span may be used to obtain the analyzer responses and the readings may be recorded manually.

7.0 Reagents and Standards.

7.1 Calibration Standards. The calibration standards for the analyzer must be prepared catalyst samples or other material of similar particle size and matrix as the catalyst samples to be tested that have known concentrations of the analytes of interest. Preparation (grinding/milling/fusion) of the calibration standards should follow the same processes used to prepare the catalyst samples to be tested. The calibration standards values must be established as the average of a minimum of three analyses using an approved EPA or ASTM method with instrument analyzer calibrations traceable to the U.S. National Institute of Standards and Technology (NIST), if available. The maximum percent deviation of the triplicate calibration standard analyses should agree within 10 percent of the average value for the triplicate analysis (see Figure 1). If the calibration analyses do not meet this criteria, the calibration standards must be re-analyzed. If unacceptable variability persists, new calibration standards must be prepared. Approved methods for the calibration standard analyses include, but are not limited to, EPA Methods 6010B, 6020, 7520, or 7521 of SW–846.[1] Use a minimum of four calibration standards as specified below (see Figure 1):

7.1.1 High-Range Calibration Standard. Concentration equivalent to 80 to 100 percent of the span. The concentration of the high-range calibration standard should exceed the maximum concentration anticipated in the catalyst samples.

7.1.2 Mid-Range Calibration Standard. Concentration equivalent to 40 to 60 percent of the span.

7.1.3 Low-Range Calibration Standard. Concentration equivalent to 1 to 20 percent of the span. The concentration of the low-range calibration standard should be selected so that it is less than either one-forth of the applicable concentration limit or of the lowest concentration anticipated in the catalyst samples.

7.1.4 Zero Calibration Standard. Concentration of less than 0.25 percent of the span.

7.2 Accuracy Assessment Standard. Prepare an accuracy assessment standard and determine the ideal value for the accuracy assessment standard following the same procedures used to prepare and analyze the

calibration standards as described in section 7.1. The maximum percent deviation of the triplicate accuracy assessment standard analyses should agree within 10 percent of the average value for the triplicate analysis (see Figure 1). The concentration equivalent of the accuracy assessment standard must be between 20 and 80 percent of the span.

7.3 Energy Calibration Standard. Generally, the energy calibration standard will be provided by the XRF instrument manufacturer for energy dispersive spectrometers. Energy calibration is performed using the manufacturer's recommended calibration standard and involves measurement of a specific energy line (based on the metal in the energy calibration standard). This is generally an automated procedure used to assure the accuracy of the energy scale. This calibration standard may not be applicable to all models of XRF spectrometers (particularly wavelength dispersive XRF spectrometers).

8.0 Sample Collection, Preservation, Transport, and Storage. [Reserved]

9.0 Quality Control.

9.1 Energy Calibration. For energy dispersive spectrometers, conduct the energy calibration by analyzing the energy calibration standard provided by the manufacturer. The energy calibration involves measurement of a specific energy line (based on the metal in the energy calibration standard) and then determination of the difference between the measured peak energy value and the ideal value. This analysis, if applicable, should be performed daily prior to any sample analyses to check the instrument's energy scale. This is generally an automated procedure and assures the accuracy of the energy scale. If the energy scale calibration process is not automated, follow the manufacturer's procedures to manually adjust the instrument, as necessary.

9.2 Zero Drift Test. Conduct the zero drift test by analyzing the analyte concentration output by the measurement system with the initial calibration value for the zero calibration standard (see Figure 2). This analysis should be performed with each set of samples analyzed.

9.3 Calibration Drift Test. Conduct the calibration drift test by analyzing the analyte concentration output by the measurement system with the initial calibration value for the mid-range calibration standard (see Figure 2). This analysis should be performed with each set of samples analyzed.

9.4 Analyzer Accuracy Test. Conduct the analyzer accuracy test by analyzing the accuracy assessment standard and comparing the value output by the measurement system with the ideal value for the accuracy assessment standard (see Figure 2). This analysis should be performed with each set of samples analyzed.

10.0 Calibration and Standardization.

10.1 Perform the initial calibration and set-up following the instrument manufacturer's instructions. These procedures should include, at a minimum, the major steps listed in sections 10.2 and 10.3. Subsequent calibrations are to be performed when either a quality assurance/quality control (QA/QC) limit listed in section 13 is exceeded or when there is a change in the excitation conditions, such as a change in the tube, detector, X-ray filters, or signal processor. Calibrations are typically valid for 6 months to 1 year.

10.2 Instrument Calibration. Calibration is performed initially with calibration standards of similar matrix and binders, if used, as the samples to be analyzed (see Figure 1).

10.3 Reference Peak Spectra. Acquisition of reference spectra is required only during the initial calibration. As long as no processing methods have changed, these peak shape references remain valid. This procedure consists of placing the standards in the instrument and acquiring individual elemental spectra that are stored in the method file with each of the analytical conditions. These reference spectra are used in the standard deconvolution of the unknown spectra.

11.0 Analytical Procedure.

11.1 Sample Preparation. Prepare catalyst samples using the same procedure used to prepare the calibration standards. Measure and record the weight of sample used. Measure and record the amount of binder, if any, used. Pellets or films must be of sufficient size to cover the analyzer sample window.

11.2 Sample Analyses. Place the prepared catalyst samples into the analyzer. Follow the manufacturer's instructions for analyzing the samples.

11.3 Record and Store Data. Use a digital recorder or personal computer to record and store results for each sample. Record any mechanical or software problems encountered during the analysis.

12.0 Data Analysis and Calculations.

Carry out the following calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Drift. Calculate the zero and calibration drift for the tests described in sections 9.2 and 9.3 (see also Figure 2) as follows:

$$\text{QC Value} = \frac{\text{CurrentAnalyzerCal.Response} - \text{InitialCal.Response}}{\text{Span}} \times 100 \qquad \text{(Eq. A-1)}$$

Where:
CurrentAnalyzerCal.Response = Instrument response for current QC sample analyses;
InitialCal.Response = Initial instrument response for calibration standard;
QC Value = QC metric (zero drift or calibration drift), percent of span;
Span = Span of the monitoring system.

12.2 Analyzer Accuracy. Calculate the analyzer accuracy error for the tests described in section 9.4 (see also Figure 2) as follows:

$$\text{Accuracy Value} = \frac{\text{CurrentAnalyzerCal.Response} - \text{IdealCal.Response}}{\text{IdealCal.Response}} \times 100 \qquad \text{(Eq. A-2)}$$

Where:
Accuracy Value = Percent difference of instrument response to the ideal response for the accuracy assessment standard;
CurrentAnalyzerCal.Response = Instrument response for current QC sample analyses;
IdealCal.Response = Ideal instrument response for the accuracy assessment standard.

13.0 Method Performance.

13.1 Analytical Range. The analytical range is determined by the instrument design. For this method, a portion of the analytical range is selected by choosing the span of the monitoring system. The span of the monitoring system must be selected such that it encompasses the range of concentrations anticipated to occur in the catalyst sample. If applicable, the span must be selected such that the analyte concentration equivalent to the emission standard is not less than 30 percent of the span. If the measured analyte concentration exceeds the concentration of the high-range calibration standard, the sample analysis is considered invalid. Additionally, if the measured analyte concentration is less than the concentration of the low-range calibration standard but above the detectable limit, the sample analysis results must be flagged with a footnote stating, in effect, that the analyte was detected but that the reported concentration is below the lower quantitation limit.

13.2 Minimum Detectable Limit. The minimum detectable limit depends on the signal-to-noise ratio of the measurement system. For a well-designed system, the minimum detectable limit should be less than 2 percent of the span.

13.3 Zero Drift. Less than ±2 percent of the span.

13.4 Calibration Drift. Less than ±5 percent of the span.

13.5 Analyzer Accuracy Error. Less than ±10 percent.

14.0 Pollution Prevention. [Reserved]

15.0 Waste Management. [Reserved]

16.0 Alternative Procedures. [Reserved]

17.0 References.

1. U.S. Environmental Protection Agency. 1998. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. EPA Publication No. SW–846, Revision 5 (April 1998). Office of Solid Waste, Washington, DC.

18.0 Tables, Diagrams, Flowcharts, and Validation Data.

Date:

Analytic Method Used:

	Zero [a]	Low-Range [b]	Mid-Range [c]	High-Range [d]	Accuracy Std [e]
Sample Run:.					
1.					
2.					
3.					
Average.					
Maximum Percent Deviation.					

[a] Average must be less than 0.25 percent of span.
[b] Average must be 1 to 20 percent of span.
[c] Average must be 40 to 60 percent of span.
[d] Average must be 80 to 100 percent of span.
[e] Average must be 20 to 80 percent of span.

Figure 1. Data Recording Sheet for Analysis of Calibration Samples.

Source Identification:
Run Number:
Test Personnel:
Span:
Date:

	Initial calibration response	Current analyzer calibration response	Drift (percent of span)
Zero Standard.			
Mid-range Standard.			

	Ideal calibration response	Current analyzer calibration response	Accuracy error (percent of ideal)
Accuracy Standard.			

Figure 2. Data Recording Sheet for System Calibration Drift Data.

[FR Doc. 05–2308 Filed 2–8–05; 8:45 am]
BILLING CODE 6560–50–P



Federal Register

Tuesday,
March 29, 2005

Part II

Environmental Protection Agency

40 CFR Part 63

Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0056; FRL–7887–7]

RIN 2060–AM96

Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is revising the regulatory finding that it issued in December 2000 pursuant to section 112(n)(1)(A) of the Clean Air Act (CAA), and based on that revision, removing coal- and oil-fired electric utility steam generating units ("coal- and oil-fired Utility Units") from the CAA section 112(c) source category list. Section 112(n)(1)(A) of the CAA is the threshold statutory provision underlying today's action. That provision requires EPA to conduct a study to examine the hazards to public health that are reasonably anticipated to occur as the result of hazardous air pollutant (HAP) emissions from Utility Units after imposition of the requirements of the CAA. The provision also provides that EPA shall regulate Utility Units under section 112, but only if the Administrator determines that such regulation is both "appropriate" and "necessary" considering, among other things, the results of the study. EPA completed the study in 1998 (the Utility Study), and in December 2000 found that it was "appropriate and necessary" to regulate coal- and oil-fired Utility Units under CAA section 112. That December 2000 finding focused primarily on mercury (Hg) emissions from coal-fired Utility Units. In light of the finding, EPA in December 2000 announced its decision to list coal- and oil-fired Utility Units on the section 112(c) list of regulated source categories. In January 2004, EPA proposed revising the December 2000 appropriate and necessary finding and, based on that revision, removing coal- and oil-fired Utility Units from the section 112(c) list.

By this action, we are revising the December 2000 appropriate and necessary finding and concluding that it is neither appropriate nor necessary to regulate coal- and oil-fired Utility Units under section 112. We are taking this action because we now believe that the December 2000 finding lacked foundation and because recent information demonstrates that it is not appropriate or necessary to regulate coal- and oil-fired Utility Units under section 112. Based solely on the revised finding, we are removing coal- and oil-fired Utility Units from the section 112(c) list. The reasons supporting this action are described in detail below. Other actions related to this final rule include the recent promulgation of the final Clean Air Interstate Rule (CAIR) and the final Clean Air Mercury Rule (CAMR).

DATES: *Effective Date:* The effective date of the final rule is March 29, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2002–0056. 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 EPA Docket 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 EPA Docket Center is (202) 566–1742.

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Judicial Review. Pursuant to CAA section 307(b), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by May 31, 2005. EPA designates this action a CAA section 307(d) rulemaking. (See CAA section 307(d)(1)(V); 69 FR 4653 (January 30, 2004).) Under CAA section 307(d)(7)(B), only an objection to the rule that was raised with reasonable specificity during the time period for public comment can be raised during judicial review. Section 307(d)(7)(B) further provides that if the person raising the objection can demonstrate to the Administrator that it was impracticable to raise the objection during the public comment period or if the grounds for the objection arose after the public comment period but within the time period specified for judicial review and if the objection is of central relevance, EPA will 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.

I. Statutory Background

In the 1990 Amendments to the CAA, Congress substantially modified CAA section 112, the provision of the CAA addressing HAP. Among other things, section 112 contains a list of "hazardous air pollutants," which are "pollutants which present, or may present, * * * a threat of adverse human health effects * * * or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise." (See CAA section 112(b)(2).) In the 1990 amendments to the CAA, Congress listed 190 HAP, and authorized EPA to add or remove pollutants from the list.[1] (See CAA Section 112(b)(1)–(b)(3).)

The types of sources addressed under section 112 include: major sources, area sources, and electric utility steam generating units (Utility Units). (See CAA 112(a)(1), (a)(2), (a)(8).) A "major source" is any stationary source[2] or group of stationary sources at a single location and under common control that emits or has the potential to emit ten tons or more per year of any HAP or 25 tons or more per year of any combination of HAP. (See CAA 112(a)(1).) A stationary source of HAP that is not a "major source" is an "area source." (See CAA 112(a)(2).) Finally, an electric utility steam generating unit is any "fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale." (See CAA 112(a)(8).)

There are two important steps under section 112: (1) Determining whether a source category meets the statutory criteria for regulation under section 112; and (2) promulgating emission standards for those source categories regulated under section 112. In terms of the first step, Congress required EPA to publish a list of categories and

[1] The current section 112(b) list includes 188 HAP.

[2] A "stationary source" of hazardous air pollutants is any building, structure, facility or installation that emits or may emit any air pollutant. (See CAA Section 111(a)(3) and 112(a)(3).)

subcategories of major sources and area sources by November 15, 1991.[3] (See CAA 112(c)(1) & (c)(3).) Congress further directed EPA to revise this initial list periodically, based on, for example, new information. (See 112(c)(1).) EPA is required to list a category of major sources under section 112(c)(1) if at least one stationary source in the category meets the definition of a major source—*i.e.*, if a certain amount of a HAP (or combination of HAP) is emitted from the source. (See 112(a)(1).) By contrast, EPA is required to list categories or subcategories of area sources only if they meet one of the following statutory criteria: (1) EPA determines that the category of area sources presents a threat of adverse effects to human health or the environment that warrants regulation under CAA section 112; or (2) the category of area sources falls within the purview of CAA section 112(k)(3)(B) (the Urban Area Source Strategy). (See CAA 112(c)(3).)

For those source categories regulated under section 112, the next step concerns the establishment of emission standards. Under section 112(d), EPA must establish emission standards that "require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section" that the Administrator determines is achievable based on technology, taking into account certain factors such as cost, energy requirements, and other impacts. The emission standard for new sources cannot be, however, less stringent than the level of control achieved by the best controlled similar source, and the emission standard for existing sources cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category, regardless of cost, energy requirements and other impacts. CAA 112(d)(2) and (3). Finally, within eight years after promulgation of section 112(d) emission standards for a listed source category, EPA must promulgate additional standards if such standards are necessary to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. (See CAA section 112(f).) These additional standards under CAA section 112(f) are commonly referred to as "residual risk" standards.

[3] EPA published the initial list on July 16, 1992. See 57 FR 31,576, July 16, 1992. EPA did not include Utility Units on the initial section 112(c) list because Congress required EPA to conduct and consider the results of the study required by section 112(n)(1)(A) before regulating these units and, therefore, listing in 1992 was not authorized by statute.

The criteria for listing major and area sources established in section 112(c)(1) and (c)(3) do not apply to Utility Units because Congress treated Utility Units differently from other major and area sources. Indeed, Congress enacted a special provision for Utility Units in section 112(n)(1)(A), which governs whether Utility Units should even be regulated under section 112.[4] Section 112(n)(1)(A) directs EPA to conduct a study to evaluate what "hazards to public health [are] reasonably anticipated to occur" as the result of HAP emissions from Utility Units "after imposition of the requirements of th[e] Act," (emphasis added) and to report the results of such study to Congress by November 15, 1993. Congress also directed EPA to describe in the report to Congress "alternative control strategies for [those] emissions that may warrant regulation under this section." (See CAA section 112(n)(1)(A).) Section 112(n)(1)(A) further provides that EPA shall regulate Utility Units under section 112 if the Administrator determines, considering the results of the study, that such regulation is "appropriate and necessary." Thus, unlike other major and area sources, Congress first required EPA to examine how "imposition of the requirements of th[e] Act" would affect the overall level of utility HAP emissions, and then determine whether regulation of Utility Units under section 112 is both appropriate and necessary. Section 112(n)(1)(A) therefore sets an important and unique condition precedent for regulating Utility Units under section 112 and provides EPA discretion in determining whether that condition precedent has been met.

II. Regulatory Background

A. EPA's December 20, 2000 Regulatory Finding

On December 20, 2000, EPA issued a finding pursuant to CAA section 112(n)(1)(A) that it was appropriate and necessary to regulate coal- and oil-fired Utility Units under section 112. In making that finding, EPA considered the Utility Study, which was completed and submitted to Congress in February 1998.

In the Utility Study, we divided Utility Units into three subcategories based on fuel type: coal-, oil-, and gas-fired units. We then analyzed HAP emissions from each subcategory. We followed this approach because each subcategory burns a different fuel, which, in turn, leads to different emissions profiles, which can require different emission controls. This approach is also consistent with EPA's historical practice of subcategorizing Utility Units based on fuel type. (*See, e.g.*, 40 CFR 60.44(a).)

Because EPA subcategorized Utility Units for purposes of the Utility Study, EPA, in December 2000, made separate "appropriate and necessary" findings under section 112(n)(1)(A) for gas-fired, coal-fired, and oil-fired Utility Units. In making these findings, EPA considered the Utility Study and certain additional information obtained after completion of the Utility Study, including the National Academy of Sciences' report concerning the health effects of methylmercury and actual emissions data obtained in response to an information collection request EPA issued to all coal-fired Utility Units in 1999. *See* 65 FR 79826. EPA reasonably relied on this additional information because the information provided a more comprehensive and contemporaneous record concerning Hg emissions from coal-fired units. Nothing in section 112(n)(1)(A) suggests that Congress sought to preclude EPA from considering more current information in making the appropriate and necessary finding.

In the December 2000 finding, EPA determined that it was appropriate and necessary to regulate coal- and oil-fired units, but not gas-fired units.[5] With respect to the latter, EPA found that regulation of HAP emissions from natural gas-fired Utility Units "is not appropriate or necessary because the *impacts due to HAP emissions from such units are negligible based on the results of the study documented in the utility RTC.*" (Emphasis added) *See* 65 FR 79831.

EPA provided three primary reasons in support of its finding that it was "appropriate" to regulate coal- and oil-fired Utility Units under section 112. First, EPA found that it was appropriate to regulate HAP emissions from coal- and oil-fired Utility Units because Utility Units "are the largest domestic source of Hg emissions." *See* 65 FR 79830. EPA next found that it was

[4] No one would dispute that certain Utility Units would meet the definition of a "major source" based on the quantity of HAP emitted from such units, or that other Utility Units may meet the "area source" criteria for listing under section 112(c)(3), but Congress recognized this fact in 1990 and specifically enacted section 112(n)(1)(A), which establishes an entirely different test for determining whether Utility Units should be regulated under section 112.

[5] Although the December 2000 finding addressed three subcategories of Utility Units—coal-, oil-, and gas-fired units, the majority of the finding concerned Hg emissions from coal-fired power plants. 65 FR 79826–29 (explaining that Hg from coal-fired units is the HAP of greatest concern); Utility Study, ES–27 ("mercury from coal-fired utilities is the HAP of greatest potential concern.").

appropriate to regulate coal- and oil-fired Utility Units because "mercury in the environment presents significant hazards to public health and the environment."[6] *See* 65 FR 79830. Finally, EPA explained that it was appropriate to regulate HAP emissions from coal- and oil-fired units because it had identified certain control options that, it anticipated, would effectively reduce HAP from such units. In discussing the appropriate finding, EPA also noted that uncertainties remained concerning the extent of the public health impact from HAP emissions from oil-fired units. Thus, EPA's determination that it was "appropriate" to regulate coal- and oil-fired units under section 112 hinged on the health effects associated with Hg emissions from coal-fired Utility Units, the uncertainties associated with the health effects of HAP from oil-fired Utility Units, and EPA's belief that control options would be available to reduce certain utility HAP emissions.[7]

Once EPA determined that it was "appropriate" to regulate coal- and oil-fired Utility Units under section 112 of the CAA, EPA next concluded that it was also "necessary" to regulate HAP emissions from such units under section 112. Interpreting the term "necessary" in section 112(n)(1)(A), EPA found that it was necessary to regulate HAP from coal- and oil-fired Utility Units "because the implementation of other requirements under the CAA will not adequately address the serious public health and environmental hazards arising from such emissions identified in the Utility RTC." *See* 65 FR 79830.

In light of the positive appropriate and necessary determination, EPA in December 2000 listed coal- and oil-fired Utility Units on the section 112(c) source category list. *See* 65 FR 79831 (our finding that it is appropriate and necessary to regulate coal- and oil-fired Utility Units under section 112 "adds these units to the list of source categories under section 112(c)."). Relying on CAA section 112(e)(4), EPA explained in its December 2000 finding that neither the appropriate and necessary finding under section 112(n)(1)(A), nor the associated listing were subject to judicial review at that time. EPA did not add natural-gas fired units to the section 112(c) list in December 2000 because it did not make a positive appropriate and necessary finding for such units.

B. Litigation Challenging December 2000 Regulatory Finding

Shortly after issuance of the December 2000 Finding, an industry group challenged the December 2000 finding in the United States Court of Appeals for the District of Columbia Circuit (DC Circuit). *UARG* v. *EPA*, 2001 WL 936363, No. 01–1074 (DC Cir. July 26, 2001). EPA moved to dismiss the lawsuit on the basis of section 112(e)(4), which provides, in pertinent part, that "no action of the Administrator * * * listing a source category or subcategory under subsection (c) of this section *shall be a final agency action subject to judicial review*, except that any such action may be reviewed under such section 7607 of this title when the Administrator issues emission standards for such pollutant or category." (Emphasis added.) (*See* CAA Section 112(e)(4).)

In its motion to dismiss the petition, EPA argued to the DC Circuit, among other things, that the December 2000 listing of coal- and oil-fired Utility Units was inseparable from the appropriate and necessary finding and that the appropriate and necessary finding and listing actions are not final agency actions pursuant to section 112(e)(4). *See also* 65 FR 79826. EPA further noted in its motion to dismiss that both the finding and the listing would be subject to additional notice and comment as part of the section 112(d) rulemaking. *See* EPA's Motion to Dismiss, *UARG* v. *EPA*, 2001 WL 936363, No. 01–1074S ("Because the decision to add coal and oil fired electric utility steam generating units to the source category list is not yet final agency action, it will be among the matters subject to further comment in the subsequent [standards] rulemaking."); 65 FR 79831 (noting that issues related to the listing, such as "the exact dimension of the source category," will be subject to additional comment in the emission standard rulemaking process). The DC Circuit dismissed the challenge to the December 2000 finding for lack of jurisdiction based on section 112(e)(4) of the CAA. The December 2000 finding and associated listing are therefore not final agency actions.

C. January 30, 2004 Proposed Rule and March 2004 Supplemental Notice

On January 30, 2004, EPA published in the **Federal Register** a proposed rule entitled "Proposed National Emissions Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units." (*See* 69 FR 4652 (January 30, 2004).) In that rule, EPA proposed three alternative regulatory approaches. First, EPA proposed to retain the December 2000 Finding and associated listing of coal- and oil-fired Utility Units and to issue under section 112(d) maximum achievable control technology-based (MACT) emission standards for both subcategories. Second, EPA alternatively proposed revising the Agency's December 2000 Finding, removing coal and oil-fired Utility Units from the section 112(c) list,[8] and issuing final standards of performance under CAA section 111 for new and existing coal-fired units that emit Hg and new and existing oil-fired units that emit nickel. Finally, as a third alternative, EPA proposed retaining the December 2000 finding, removing coal and oil-fired Utility Units from the section 112(c) list, and regulating Hg emissions from Utility Units under CAA section 112(n)(1)(A).

Shortly thereafter, on March 16, 2004, EPA published in the **Federal Register** a supplemental notice of proposed rulemaking entitled "Supplemental Notice of Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units." *See* 69 FR 13298 (March 16, 2004). In that

[6] Section IV below addresses our conclusion that it is not appropriate and necessary to regulate coal- and oil-fired Utility Units under section 112 and explains why we now believe that our December 2000 finding lacked foundation. As explained below, one of the reasons the December 2000 "appropriate" finding for oil-fired Utility Units lacks foundation is because the record that was before the Agency in December 2000 establishes that Hg is a HAP of concern only as emitted from coal-fired units, not oil-fired units. Utility Study ES–5,13,27. EPA therefore should not have relied upon Hg emissions as a basis for finding it was appropriate to regulate oil-fired units under section 112. (*See, e.g.*, Utility Study ES–5, ES–27.)

[7] The "appropriate" finding for oil-fired units stemmed primarily from EPA's concerns over the potential health effects of nickel from such units. As explained in the January 2004 proposed rule, the record before the Agency in December 2000 supported a distinction between nickel and the other HAP emitted from oil-fired units. *See* 69 FR 4688. We proposed that this distinction was reasonable based on the relative amount of nickel emitted from oil-fired units and the health effects associated with such emissions. (See also Utility Study at ES–12 (noting higher population concentrations surrounding oil-fired units). At the time of the proposed rule, we recognized, however, the uncertainties in the data underlying our "appropriate" finding for oil-fired units based on nickel emissions, and for that reason solicited information as to whether nickel emissions from oil-fired plants currently pose a hazard to public health.

[8] We did not propose revising the December 2000 finding for gas-fired Utility Units because EPA continues to believe that regulation of such units under section 112 is not appropriate and necessary. We have not received any information that would cause us to change our conclusion in this regard. In fact, the information that we have received since the Utility Study only confirms the conclusion we reached in December 2000. We therefore take no action today with regard to the December 2000 finding for gas-fired Utility Units.

notice, EPA proposed certain additional regulatory text, which largely governed the proposed section 111 standards of performance for Hg, which included a cap-and-trade program. The supplemental notice also proposed state plan approvability criteria and a model cap-and-trade rule for Hg emissions from coal-fired Utility Units. The Agency received thousands of comments on the proposed rule and supplemental notice.[9] Comments relating to the central issues concerning today's action are addressed in this preamble. The remainder of our responses are contained in the response to comments document which is in the docket.[10]

D. The December 2004 Notice of Data Availability

On December 1, 2004, EPA published in the **Federal Register** a notice of data availability entitled "Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources, Electric Utility Steam Generating Units: Notice of Data Availability." *See* 69 FR 69864 (December 1, 2004). EPA issued this notice to seek additional information and input concerning: (1) Certain Hg data and information that the Agency received in response to the proposed rule and supplemental notice, (2) the different forms of Hg that are emitted into the atmosphere from coal-fired Utility Units and how those forms respond to different control technologies; and (3) a revised proposed benefits methodology for assessing the benefits of Hg regulation. The benefits methodology generally involves analyzing Hg emissions from coal-fired Utility Units, conducting deposition modeling based on the identified Hg emissions, and relating that deposition modeling to methylmercury concentrations in fish. EPA conducts benefits analyses for rulemakings consistent with the provisions of Executive Order 12866.

[9] We initially estimated that we had over 680,000 submissions from the public on the proposed rule and the supplemental notice, which came primarily in the form of letters and e-mails. A recent review of the electronic docket reveals that our initial estimate was over-stated. The docket reflects approximately 500,000 separate submissions from the public, about 5,000 of which represent unique comments.

[10] The response to comments document relevant to this rule is called: "Response to Significant Public Comments Concerning the Proposed Revision of the December 2000 Appropriate and Necessary Finding and Proposed Removal of Utility Units From the Section 112(c) List."

III. EPA's Interpretation of CAA Section 112(n)(1)(A)

As explained above, Congress treated Utility Units differently from other major and area sources and provided EPA considerable discretion in evaluating whether to regulate Utility Units under section 112. Section 112(n)(1)(A) provides, in full:

> The Administrator shall perform a study of the *hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units* of pollutants listed under subsection (b) of this section after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is *appropriate and necessary after considering the results* of the study required by this subparagraph. (Emphasis added.).

The italicized terms in the above paragraph are central terms in section 112(n)(1)(A). Before we address our interpretation of these terms, however, we again summarize the requirements of section 112(n)(1)(A). The first step under section 112(n)(1)(A), which is addressed by the first three sentences of section 112(n)(1)(A), concerns the completion of a study and submission of the results of that study to Congress by November 15, 1993. The study is to examine the hazards to public health from utility HAP emissions that are reasonably anticipated to occur following imposition of the requirements of the CAA and to identify alternative control strategies for those HAP that may warrant regulation under section 112. The second step, which is addressed by the last sentence of section 112(n)(1)(A), requires EPA to determine whether regulation of Utility Units under section 112 is appropriate and necessary considering, among other things, the results of the study. Congress provided no deadline by which this determination must be made.

Section 112(n)(1)(A) itself contains no clear standard to govern EPA's analysis and determination of whether it is "appropriate and necessary" to regulate utilities under section 112. The first sentence of the subparagraph describes the scope of the study EPA was to conduct. The sentence on EPA's "appropriate and necessary" finding then says that the Agency must make that finding after considering the results of the study. But Congress did not supply an actual definition or test for determining whether regulation of utilities under section 112 is "appropriate and necessary." Thus, EPA must supply a reasonable interpretation of those terms to fill the gap. *Chevron USA Inc.* v. *NRDC*, 467 U.S. 837 (1984).

Congress' direction on the study provides the only guidance in section 112(n)(1)(A) about the substance of EPA's inquiry. Because the statute provides no other explicit guidance, EPA has chosen to extrapolate from Congress' description of the study to adopt a reasonable interpretation of the phrase "appropriate and necessary." The following sections describe how the Agency has used Congress' guidance on the study to formulate different aspects of our interpretation and application of the "appropriate and necessary" test.

A. Hazards to Public Health Reasonably Anticipated To Occur

In section 112(n)(1)(A), Congress directed EPA to perform a study of "hazards to public health" that would likely result from utility HAP emissions, before making any further decisions about regulating utilities under section 112. Unlike other sections of the CAA, section 112(n)(1)(A) focuses only on hazards to public health. It does not require that EPA study other factors, such as environmental effects without any established pathways to human health effects. In contrast, section 112(n)(1)(B) requires a separate EPA study, although not as a precursor to a regulatory determination, of the "health and environmental effects" of "mercury emissions" from a broad range of sources. Also unlike Section 112(n)(1)(A), many of the other requirements of section 112 explicitly require both an assessment of human health effects and, in addition, an assessment of adverse environmental effects. For example, the Administrator is charged with periodically reviewing the list of Hazardous Air Pollutants and adding pollutants that present a threat of either "adverse human health effects" or "adverse environmental effects." CAA Section 112(b)(2). The Administrator examines area sources of HAPs to determine if they present "a threat of adverse effects to human health or the environment." CAA Section 112(c)(3). The Administrator is to prioritize action under section 112(d) after considering "the known or anticipated adverse effects of such pollutants on public health and environment." CAA Section 112(e)(2)(A). Nor did Congress appear to view the two terms as synonymous. Under section 112(f), the EPA

promulgates emission standards at a level "with an ample margin of safety" to "protect public health." CAA Section 112(f)(2)(A). The Administrator may go further and impose more stringent standards to protect against "an adverse environmental effect" only after considering "cost, energy, safety, and other relevant factors." *Id.*

As described above, section 112(n)(1)(A) also provides no clear standard for analyzing public health effects—in contrast to, for example, section 112(f). Under section 112(f), the issue is whether additional regulation is needed to "provide an ample margin of safety to protect public health." Section 112(f) also expressly incorporates EPA's pre-1990 two-part inquiry for evaluating what level of emission reduction is needed to provide an ample margin of safety to protect public health. See CAA section 112(f)(2)(B) (incorporating EPA's two-part ample margin of safety inquiry, set forth at 54 FR 38044 September 14, 1989, which implemented the requirements of section 112 of the 1977 CAA).[11] By contrast, section 112(n)(1)(A) neither includes the "ample margin of safety to protect public health" requirement, nor does it incorporate EPA's pre-1990 ample margin of safety inquiry.

Because of the focus on "public health" in the section 112(n)(1)(A) study requirement, and because as discussed above Congress did not define the scope of the "appropriate and necessary" finding, EPA is reasonably interpreting section 112(n)(1)(A) to base that finding on an assessment of whether utility HAP emissions likely would result in "hazards to public health."

Moreover, EPA reasonably interprets section 112(n)(1)(A) not to require the Agency either to study or to base its "appropriate and necessary" finding on an assessment of environmental effects unrelated to public health.

As described above, Section 112(n)(1)(A) requires only that the Administrator "consider" the results of the public health study before determining whether utility regulation is "appropriate and necessary." This mild direction, when paired with the considerable discretion inherent in any judgment about whether an action is "appropriate and necessary," has led EPA to conclude that the statute permits the agency to consider other relevant factors when determining whether to regulate emissions from utility units under section 112. This is not to say, however, that EPA believes it may ignore the context of section 112(n) in making its determination.

The Supreme Court has recognized that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act," as here, where section 112(n)(1)(A) refers to public health and conspicuously omits any reference to adverse environmental effect, "it is generally presumed that Congress acts intentionally * * * in the disparate inclusion or exclusion." *Russello* v. *United States,* 464 U.S. 16, 23 (1983). The only direction that Congress explicitly provided to guide our "appropriate and necessary" finding was that we consider the results of a study of only those "hazards to public health" that the agency "reasonably anticipate[s] to occur."

EPA must reconcile the broad discretion to determine what is "appropriate and necessary" with the implicit Congressional decision that information about environmental effects unrelated to human health effects was not needed for that determination. Rather than conclude that EPA is prohibited from considering environmental effects, however, EPA interprets section 112(n)(1)(A) to permit the agency to consider other relevant factors as part of its "appropriate and necessary" determination, as refined further below, but these factors may not independently, or in conjunction with one another, justify regulation under section 112(n) when EPA has concluded that hazards to U.S. public health are not reasonably anticipated to occur. Compare CAA section 112(f)(2)(A) (Administrator may set a more stringent standard than is required to protect health if necessary, considering factors such as cost, to prevent an adverse environmental effect).

In evaluating hazards to public health under section 112(n)(1)(A) we look at various factors, including, for example, the affected population, the characteristics of exposure (*e.g.,* level and duration), the nature of the data, including the uncertainties associated with the data, and the nature and degree of health effects. In terms of assessing health effects, we have numerous tools at our disposal. See Section VI.H (for fuller discussion of factors relevant to assessing the hazards to public health). For example, for cancer effects, we can assess the lifetime excess cancer risk, and for other effects, we look to tools, such as the reference dose.[12] As explained below, the "hazards to public health reasonably anticipated to occur" standard is relevant not only for the Study, but also for the appropriate and necessary determination.

EPA has also taken note of the context for assessing "hazards to public health," for the language of section 112(n)(1)(A), calls for an analysis of the "hazards to public health" reasonably anticipated to "occur as a result of emissions by electric utility steam generating units." (Emphasis added.) Section 110(a)(2)(D) provides an instructive comparison in this regard. In section 110(a)(2)(D), Congress required that each state implementation plan contain adequate provisions "prohibiting * * * any source or other type of emissions activity within the State from emitting any air pollutant in amounts" that will "contribute significantly to nonattainment" of the national ambient air quality standards. This provision demonstrates that Congress knew how to require regulation of emissions of air pollutants even where the pollutants themselves do not cause a problem, but rather only "contribute to a problem." Unlike section 110(a)(2)(D), in section 112(n)(1)(A), Congress focused exclusively on the "hazards to public health" of HAP emissions "result[ing] from" Utility Units. Rather, it is the EPA study performed pursuant to section 112(n)(1)(B), not the inquiry under section 112(n)(1)(A), that examines all current anthopogenic sources of Hg emissions and their effects on human health and the environment. EPA has concluded that its inquiry under section 112(n)(1)(A) may reasonably focus solely on whether the utility HAP emissions themselves are posing a hazard to public health. This focus on utility emissions only is consistent with Congress' overall decision to provide for separate treatment of utilities in section 112(n)(1)(A).

B. Imposition of the Requirements of This Act

Congress required EPA to examine the hazards to public health from utility emissions "after imposition of the requirements of this Act." The phrase "imposition of the requirements of th[e] Act" is susceptible to different

[11] Section 112 of the 1977 CAA directed EPA to promulgate emission standards "at the level which in * * * [the Administrator's judgment] provides an ample margin of safety to protect the public health." Congress substantially amended section 112 in 1990 and enacted several new provisions. Congress specifically incorporated the "ample margin of safety to protect public health" requirement into section 112(f), which applies to any source category that is regulated under section 112(d)(2) and (d)(3). Significantly, Congress did not include the "ample margin of safety" language in section 112(n)(1)(A). Instead, Congress directed EPA to assess the "hazards to public health reasonably anticipated to occur" from utility HAP emissions after imposition of the requirements of the CAA, and then determine whether Utility unit emissions should be regulated under section 112 of the CAA.

[12] Section VI below discusses the reference dose ("RfD") in detail.

interpretations because Congress did not specify the scope of the requirements under the CAA to be considered or, more importantly, the time period over which the imposition of requirements was to be examined. EPA reasonably interprets the phrase "imposition of the requirements of th[e] Act" to include not only those requirements already imposed and in effect, but also those requirements that EPA reasonably anticipates will be implemented and will result in reductions of utility HAP emissions. This interpretation is reasonable in view of the fact that Congress called for the study to be completed within three years of enactment of the 1990 CAA Amendments. At such time, EPA could have only forecast, to the extent possible, how implementation of the requirements of the CAA would impact utility HAP emissions, based on the science and the state of technology at the time.[13]

We are interpreting the phrase "requirements of th[e] Act" broadly to include CAA requirements that could either directly or indirectly result in reductions of utility HAP emissions. For example, certain provisions of the CAA that affect Utility Units, such as the requirements of Title I and Title IV, require controls on pollutants like SO_2 or NO_X. Although these pollutants are not HAP, the controls that are required to achieve the needed reductions have the added effect of reducing HAP emissions. Thus, given our interpretation of the phrase "imposition of the requirements of th[e] Act," we read the first sentence of section 112(n)(1)(A) as calling for a study of the hazards to public health from utility HAP emissions that EPA reasonably anticipates would occur after implementation of the CAA requirements that EPA, at the time of the study, should have reasonably anticipated would be implemented and would directly or indirectly result in reductions of utility HAP emissions.

Finally, it is telling that Congress directed EPA to examine the utility HAP emissions remaining "after imposition of the requirements of th[e] Act," because there is no other provision in section 112 that calls for EPA to examine the requirements of the CAA in assessing whether to regulate a source category under section 112.[14] Congress plainly treated Utility Units differently from other source categories, and that special treatment reveals Congress' recognition that Utility Units are a broad, diverse source category that is subject to numerous CAA requirements, including requirements under both Title I and Title IV, and that such sources should not be subject to duplicative or otherwise inefficient regulation.[15] See 136 Cong. Rec. H12911, 12934 (daily ed. Oct. 26, 1990) (Statement of Congressman Oxley) (stating that the conferees adopted section 112(n)(1)(A) "because of the logic of basing any decision to regulate on the results of scientific study and because of the emission reductions that will be achieved and the extremely high costs that electric utilities will face under other provisions of the new Clean Air Act amendments.").

C. Appropriate and Necessary After Considering the Results of the Study

Section 112(n)(1)(A) requires EPA to make a determination as to whether regulation of Utility Units under section 112 is "appropriate and necessary." Congress did not define the terms "appropriate" and "necessary," but provided that regulation of Utility Units under section 112 could occur only if EPA determines that such regulation is both "appropriate" and "necessary."

1. Considering the Results of the Study

The appropriate and necessary determination is to be made only after "considering the results of the study" required under section 112(n)(1)(A). We interpret the phrase "considering the results of the study" to mean that EPA must consider the results of the study in making its determination, but that EPA is not foreclosed from analyzing other relevant information that becomes available after completion of the study. This interpretation is reasonable because section 112(n)(1)(A) contains no deadline by which EPA must determine whether it is "appropriate and necessary" to regulate Utility Units under section 112.

Moreover, nothing in section 112(n)(1)(A) suggests that EPA is precluded from considering new relevant information obtained after completion of the Utility Study in determining whether regulation of Utility Units under section 112 is appropriate and necessary. Indeed, the term "considering" in section 112(n)(1)(A) is analogous to the terms "based on" or "including," which are neither limiting nor exclusive terms.[16] In a recent case, the DC Circuit rejected an argument advanced by the petitioners that an EPA rule was invalid because the statute required EPA to promulgate the regulation "based on the study," and according to petitioners EPA's rule was not based on a study that met the requirements of the CAA. *Sierra Club* v. *EPA*, 325 F.3d 374 (DC Cir. 2003). In rejecting petitioners' arguments, the Court held, among other things, that "the statute doesn't say that the rule must be based exclusively on the study." *Sierra Club* v. *EPA*, 325 F.3d at 377 (emphasis in original); See also *United States* v. *United Technologies Corp.*, 985 F.2d 1148, 1158 (2d Cir. 1993) ("based upon" does not mean "solely"); *McDaniel* v. *Chevron Corp.*, 203 F.3d 1099, 1111 (9th Cir. 2000). Consistent with this reasoning, EPA reasonably interprets the phrase "considering the results of the study," to mean that EPA must consider the study, but that it can consider other relevant information obtained after completion of the study. Congress could not have reasonably intended for EPA to

[13] Although the December 2000 finding does not provide an interpretation of the phrase "after imposition of the requirements of the[e] Act," the Utility Study, on which that finding was based, does account for the phrase by evaluating utility HAP emission levels in 2010. See Utility Study ES–2 (the "2010 scenario was selected to meet the section 112(n)(1)(A) mandate to evaluate hazards 'after imposition of the requirements of 'the CAA."). We do not believe that the December 2000 finding or the January 2004 proposal properly give effect to all of the terms of section 112(n)(1)(A), including the first sentence of section 112(n)(1)(A). We therefore provide our interpretation of the central terms in that sentence above, as those terms are relevant to the final actions we are taking today.

[14] Section 112(m)(6) provides an instructive comparison because it requires EPA to examine the other provisions of section 112, and to determine whether those provisions are adequate to prevent serious adverse effects to public health and the environment associated with atmospheric deposition to certain waterbodies. Section 112(m)(6) also requires EPA to promulgate additional regulations setting emission standards or control requirements, "in accordance with" section 112 and under the authority of section 112(m)(6), if EPA determines that the other provisions of section 112 are adequate, and such regulations are appropriate and necessary to prevent serious adverse public health and environmental effects. Section 112(n)(1)(A) provides EPA far greater discretion because under that section, EPA is not only to evaluate the reasonably anticipated public health hazards remaining "after imposition of the requirements of th[e] Act," but also to determine whether to regulate Utility Units under section 112 of the CAA at all.

[15] As noted elsewhere, section 112(n)(1)(A) was included in the House Committee bill and adopted by the House; while the Senate included a different provision. In the Conference Committee, the House version prevailed. Sen. Durenberger, a Senate conferee and an evident opponent of the provision, alluded to another purpose for the provision, which concerns the fact that "mercury is a global problem." Legislative History of the Clean Air Act Amendments of 1990, at 872 (Oct. 27, 1990) (statement of Sen. Durenberger). Based on Sen. Durenberger's statement, it appears that one of the reasons for the wide deference Congress accorded EPA under section 112(n)(1)(A) was to allow EPA to account for the fact that Hg emissions from U.S. utilities are a very small part of overall Hg emissions, and therefore that EPA should exercise discretion in considering the uncontrollable amount of risk from Hg that would remain regardless of the extent to which U.S. utilities are controlled.

[16] In fact, the term "considering," on its face, is less limiting than the phrase "based on."

ignore relevant information concerning HAP emissions from Utility Units solely because that information was obtained after completion of the Utility Study.[17]

2. Appropriate and Necessary

The condition precedent for regulating Utility Units under section 112 is whether such regulation is "appropriate" and "necessary." These are two very commonly used terms in the English language, and Congress has not ascribed any particular meaning to these terms in the CAA. The legislative history does not resolve Congress' intent with regard to these terms. We therefore first examine the structure of section 112(n)(1)(A) and then discuss our interpretation of the terms "appropriate" and "necessary."

a. Examining the Structure of Section 112(n)(1)(A). In interpreting the terms "appropriate" and "necessary" in section 112(n)(1)(A), we begin with the structure of section 112(n)(1)(A). As an initial matter, the order of the terms in the phrase "appropriate and necessary" suggests that the first decision EPA must make is whether regulation of Utility Units under section 112 is "appropriate." Even if EPA determines that regulation of Utility Units under section 112 is appropriate, it must still determine whether such regulation is also necessary. Were EPA to find, however, that regulation of Utility Units under section 112 met only one prong, then regulating Utility Units under section 112 would not be authorized by the statute.

The structure of section 112(n)(1)(A) also reveals that the appropriate and necessary finding is to be made by reference to the reasonably anticipated public health risks of utility HAP emissions that remain after "imposition of the requirements of th[e] Act." The first sentence of section 112(n)(1)(A) contains an important direction to EPA, which sets the predicate for the entire provision. That first sentence calls for EPA to identify the hazards to public health reasonably anticipated to occur as a result of the utility HAP emissions remaining "after imposition of the requirements of th[e] Act." Stated differently, Congress wanted EPA to identify the utility HAP emissions that would remain "after imposition of the requirements of th[e] Act" and identify the hazards to public health reasonably anticipated to occur as the result of such emissions. As noted above, we interpret the phrase "imposition of the requirements of th[e] Act" to include those CAA requirements that EPA should have reasonably anticipated would be implemented and would result in reductions of utility HAP emissions.[18] Congress' focus on the other requirements of the CAA reflects its recognition that Utility Units are subject to numerous CAA provisions and its intent to avoid duplicative and unnecessary regulation. We therefore reasonably conclude that the appropriate and necessary finding is to be made by reference to the reasonably anticipated public health risks from utility HAP emissions that remain "after imposition of the requirements of th[e] Act."

b. EPA's interpretations of the terms "appropriate" and "necessary." (i) Appropriate. In December 2000, EPA found that it was appropriate to regulate coal- and oil-fired Utility Units under section 112. At that time, we did not provide an interpretation of the term "appropriate." Instead, we focused on the following facts and circumstances. We first found that it was "appropriate" to regulate coal- and oil-fired Utility Units under section 112 because "mercury in the environment presents significant hazards to public health." *See* 65 FR 79830. We also determined that it was appropriate to regulate oil-fired Utility Units based on the uncertainties "regarding the extent of the public health impact from HAP emissions from" such units. *See* 65 FR 79830. Finally, we found that it was appropriate to regulate HAP emissions from coal-and oil-fired units under section 112 because we had identified control options that we anticipated would effectively reduce certain HAP emissions. We also indicated that certain control options could "greatly reduc[e] mercury control costs." *See* 65 FR 79830.

In January 2004, we proposed reversing our "appropriate" finding in large part. Specifically, we proposed that it is not "appropriate" to regulate coal-fired units on the basis of non-Hg HAP and oil-fired units on the basis of non-Ni HAP because the record that was before the Agency in December 2000 indicates that emissions of such pollutants do not result in hazards to public health. *See* Section IV.B.

Webster's dictionary defines the term "appropriate" to mean "especially suitable or compatible." Miriam-Webster's Online Dictionary, 10th ed. Determining whether something is "especially suitable or compatible" for a particular situation requires consideration of different factors. In section 112(n)(1)(A), Congress requires EPA to determine whether it is "appropriate" to regulate Utility Units under section 112. In making this determination, we begin as we did in December 2000, by assessing the paramount factor, which is whether the level of utility HAP emissions remaining "after imposition of the requirements of th[e] Act" would result in hazards to public health. We determine whether the remaining utility HAP emissions cause hazards to public health by analyzing available health effects data and assessing, among other things, the uncertainties associated with those data, the weight of the scientific evidence, and the extent and nature of the health effects. See Section VI. If the remaining HAP emissions from Utility Units do not result in hazards to public health, EPA does not believe that it would be "especially suitable"—*i.e.*, "appropriate"—to regulate such units under section 112. In this situation, there would be no need to consider any additional factors under the "appropriate" inquiry because the threshold fact critical to making a finding that it is appropriate to regulate Utility Units under section 112 would be missing.

Even if the remaining utility HAP emissions cause hazards to public health, it still may not be appropriate to regulate Utility Units under section 112 because there may be other relevant factors particular to the situation that would lead the Agency to conclude that it is not "especially suitable" or "appropriate" to regulate Utility Units under section 112. For example, it might not be appropriate to regulate the utility HAP emissions remaining "after imposition of the requirements of th[e] Act," if the controls mandated under section 112(d) would be ineffective at eliminating or reducing the identified hazards to public health. Similarly, it might not be appropriate to regulate the

[17] Consistent with this interpretation, in December 2000, EPA relied not only on the Utility Study, but also on certain information concerning Hg obtained after completion of the study, including actual emissions data from coal-fired plants for calendar year 1999 and a report from the National Academy of Sciences on the health effects of methylmercury. See 65 FR 79825–27.

[18] The comments of Rep. Oxley, a member of the Conference Committee, about section 112(n)(1)(A) support EPA's interpretation of that provision. Rep. Oxley stated:

> Pursuant to section 112(n), the Administrator may regulate fossil fuel fired electric utility steam generating units only if the studies described in section 112(n) clearly establish that emissions of any pollutant, or aggregate of pollutants, from such units cause a significant risk of serious adverse effects on the public health. Thus, if the Administrator regulates any of these units, he may regulate only those units that he determines—*after taking into account compliance with all other provisions of the CAA* and any other federal, state or local regulation and voluntary emission reductions—have been demonstrated to cause a significant threat of adverse effects on public health.

136 Cong. Rec. H12911, 12934 (daily ed. Oct. 26, 1990) (Statement of Rep. Oxley) (emphasis added).

remaining utility HAP emissions under section 112 if the health benefits expected as the result of such regulation are marginal and the cost of such regulation is significant and therefore substantially outweighs the benefits. These examples illustrate that situation-specific factors, including cost, may affect whether it "is appropriate" to regulate utility HAP emissions under section 112.[19] (See Section 112(n)(1)(A).)

It cannot be disputed that Congress under section 112(n)(1)(A) entrusted EPA to exercise judgment by evaluating whether regulation of Utility Units under section 112 is, in fact, "appropriate." We believe that in exercising that judgment, we have the discretion to examine all relevant facts and circumstances, including any special circumstances that may lead us to determine that regulation of Utility Units under CAA section 112 is not appropriate.[20]

(ii) Necessary. Like the "appropriate" finding, the "necessary" finding must be made by reference to the utility HAP emissions remaining after imposition of the requirements of the CAA.

Specifically, we interpret the term "necessary" in section 112(n)(1)(A) to mean that it is necessary to regulate Utility Units under section 112 only if there are no other authorities available under the CAA that would, if implemented, effectively address the remaining HAP emissions from Utility Units. Assessing whether an alternative authority would effectively address the remaining utility HAP emissions would involve not only: (a) An analysis of whether the alternative legal authority, if implemented, would address the identified hazards to public health, which was a concept specifically addressed in December 2000 and in the January 2004 proposal, but also (b) an analysis of whether the alternative legal authority, if implemented, would result in effective regulation, including, for example, its cost-effectiveness and its administrative effectiveness. See *Michigan* v. *EPA*, 213 F.3d, 663, 678 (addressing consideration of costs).

This interpretation of the term "necessary" differs slightly from the interpretation advanced in December 2000 and January 2004. In December 2000 and January 2004, we interpreted the term "necessary" to mean that it is only necessary to regulate Utility Units under section 112 if there are no other authorities under the CAA that would adequately address utility HAP emissions. Several commenters noted that under this interpretation, EPA could never regulate HAP under section 112 if it identified an alternative viable legal authority. In light of these comments and further review of section 112(n)(1)(A), we refined our interpretation of the term "necessary" as noted above. We agree that if we found an alternative authority under the CAA but we also determined that such authority would not effectively address the remaining HAP emissions, we should be able to address those emissions under section 112. Accordingly, we maintain that it is necessary to regulate Utility Units under section 112 only if there are no other authorities under the CAA that, if implemented, would effectively address the remaining HAP emissions from Utility Units.

Some commenters argued that the "appropriate and necessary" finding is a public health threshold finding, not an investigation into whether another provision of the CAA would address HAP emissions from utilities. This argument is without merit, however, because it conflates the terms "appropriate" and "necessary" and renders one term mere surplusage. Congress required EPA to determine whether it was both appropriate and necessary to regulate Utility Units under section 112. EPA agrees that it must evaluate the hazards to public health associated with HAP from utilities in terms of assessing whether regulation under section 112 is "appropriate." But Congress meant something different by the term "necessary," and EPA's interpretation of that term is reasonable. Moreover, we believe that the emissions inquiry envisioned under the first sentence of section 112(n)(1)(A) is distinct from the "necessary" inquiry called for by the last sentence of section 112(n)(1)(A), because under the "necessary" inquiry the issue is not whether EPA reasonably anticipated that a particular provision of the CAA will be implemented and will reduce HAP emissions, but rather whether there are any other authorities in the CAA that could be implemented, and if implemented, could effectively address the hazards to public health that result from the remaining HAP emissions.

Other commenters argued that EPA cannot consider other statutory authorities under the "necessary" prong of the "appropriate and necessary" inquiry because those authorities do not provide for regulation of utility HAP according to the provisions of CAA section 112(d) and (f). This argument is also without merit because it again renders mere surplusage the "necessary" prong of the determination. Moreover, as explained above, Congress did not incorporate the requirements of section 112(f) into section 112(n)(1)(A), but instead, as we interpret section 112(n)(1)(A), called on EPA to consider the "hazards to public health reasonably anticipated to occur" from utility HAP emissions after imposition of the requirements of the CAA, in determining whether it is both appropriate and necessary to regulate Utility Units under section 112.

3. The Timing and Nature of the "Appropriate and Necessary" Determination

Congress set no deadline in section 112(n)(1)(A) by which EPA must determine whether regulation of Utility Units is appropriate and necessary. We believe that Congress provided

[19] Nothing precludes EPA from considering costs in assessing whether regulation of Utility Units under section 112 is appropriate in light of all of the facts and circumstances presented. The DC Circuit has indicated that regulatory provisions should be read with a presumption in favor of considering costs: "It is only where there is 'clear congressional intent to preclude consideration of cost' that we find agencies barred from considering costs. [Citations omitted.]" *Michigan* v. *EPA*, 213 F.3d 663, 678 (DC Cir. 2000), cert. den., 532 U.S. 903 (2001) (upholding EPA's interpretation of "contribute significantly" under CAA section 110(a)(2)(D) to include a cost component). The Supreme Court's decision in *Whitman* v. *American Trucking Assn's (ATA)*, Inc., 531 U.S. 457 (2001), is not to the contrary. In that case, the Court held that EPA lacked authority to consider costs in the context of setting the national ambient air quality standards under CAA section 109(b)(1), because the "modest words 'adequate margin' and 'requisite'" in that section do not "leave room" to consider cost. 531 U.S. 466. By contrast, EPA is not setting emission standards in today's action, but rather determining, as Congress directed, whether it is "appropriate" and "necessary" to regulate Utility Units under CAA section 112. The terms "appropriate" and "necessary" are broad terms, which by contrast to the terms at issue in ATA do, in fact, leave room for consideration of costs in deciding whether to regulate utilities under section 112. Moreover, the legislative history of section 112(n) indicates that Congress intended for EPA to consider costs. See 136 Cong. Rec. H12911, 12934 (daily ed. Oct. 26, 1990) (statement of Rep. Oxley) ("[T]he conference committee produced a utility air toxics provision that will provide ample protection of the public health while avoiding the imposition of excessive and unnecessary costs on residential, industrial and commercial consumers of electricity."). Finally, section 112(n)(1)(A) requires EPA to consider alternative control strategies, and the focus on such strategies may reasonably be read as further evidence of the relevance of costs. *See, e.g.*, 65 FR 79830 (discussing costs in relation to certain technologies).

[20] Significantly, in December 2000, we acknowledged that factors other than the hazards to public health resulting from utility HAP emissions should be examined in determining whether regulation of Utility Units is appropriate under section 112. Indeed, after concluding that the Hg emissions from coal-fired Utility Units caused hazards to public health, we proceeded with the appropriate inquiry and examined whether there were any control technologies that could effectively reduce Hg. We also commented on the costs of achieving such reductions. *See, e.g.*, 65 FR 79828, 79830.

sufficient discretion under section 112(n)(1)(A)—in terms of both the substance and the timing of the appropriate and necessary finding—that nothing precludes us from revising our appropriate and necessary finding if we determine either that the finding was in error based on information before the Agency at the time of the finding, or that the finding is incorrect given new information concerning utility HAP emissions obtained after issuance of the finding. Both of these situations are present here, as explained in section IV below.

Moreover, EPA reasonably interprets the last sentence of section 112(n)(1)(A) as authorizing EPA to issue separate appropriate and necessary findings for different subcategories of "electric utility steam generating units." EPA typically subcategorizes large source categories such as utilities. This is especially true for Utility Units because the nature of the fuel used in different units (*e.g.*, coal-, oil-, or gas-fired Utility Units), affects the type and amount of HAP emitted from the units, which, in turn, affects the issue of whether hazards to public health may exist from such emissions.[21] Even where section 112(n)(1)(A) read to require EPA to make only one appropriate and necessary finding for all "electric utility steam generating units," EPA's conclusions, as described below, would remain the same.

IV. Revision of the December 2000 Appropriate and Necessary Finding

In Section II above, we summarize the December 2000 appropriate and necessary finding for coal- and oil-fired Utility Units. In this section, we explain why we now believe that the December 2000 finding lacked foundation and therefore was erroneous. We also address below certain new information obtained since the finding that confirms that it is not appropriate and necessary to regulate coal- and oil-fired Utility Units under section 112. Our discussion below is divided into two sections, the first of which concerns the December 2000 finding for coal-fired units, and the second of which addresses the December 2000 finding for oil-fired units.

A. Revision of the December 2000 Appropriate and Necessary Finding for Coal-fired Units

The majority of the December 2000 finding concerned Hg emissions from coal-fired Utility Units. *See, e.g.*, 65 FR 79826 ("mercury * * * is emitted from coal-fired units, and * * * is the HAP of greatest concern to public health from the industry."); 65 FR 79829–30 (conclusions section of December 2000 finding focuses almost exclusively on Hg); Utility Study, ES–27 ("mercury from coal-fired utilities is the HAP of greatest potential concern."). For that reason, we first address how EPA erred in making the appropriate and necessary finding for coal-fired units based on Hg emissions. We then discuss the December 2000 finding for coal-fired units with regard to non-Hg HAP.

1. It Is Not Appropriate and Necessary To Regulate Coal-Fired Units on the Basis of Hg Emissions

a. It Is Not Appropriate to Regulate Coal-fired Units on the Basis of Hg Emissions. As noted above, EPA's December 2000 "appropriate" finding is framed primarily in terms of health effects resulting from Hg emissions from coal-fired Utility Units.[22] *See* 65 FR 79829. The December 2000 finding also discusses environmental effects, primarily in the context of public health. In particular, the appropriate finding discusses the effects of Hg on fish because the public's primary route of exposure to Hg is through consumption of fish containing methylmercury. *See* 65 FR 79829–30. *See also* Section VI (discussing health effects of Hg). The December 2000 finding also discusses briefly the effects of methymercury on certain fish-eating wildlife, such as racoons and loons. See 65 FR 79830.

As explained above, EPA interprets section 112(n)(1)(A) as not requiring the Agency to consider environmental effects of utility HAP emissions that are unrelated to public health. Nevertheless, EPA believes it has authority under the "appropriate" inquiry to consider other factors, including non-public health related environmental factors. As explained above, however, given the focus in section 112(n)(1)(A) on hazards to public health, we believe that environmental factors unrelated to public health, although they can be considered in the appropriate inquiry, may not independently or, in conjunction with one another, justify regulation of Utility Units under section 112 when EPA has concluded that hazards to public health are not reasonably anticipated to result from utility HAP emissions.

EPA reasonably addressed non-public health related environmental factors, such as exposure to wildlife, in the December 2000 finding, because we separately concluded that Hg emissions from coal-fired Utility Units pose hazards to public health. As explained below, we believe that our December 2000 appropriate finding lacks foundation, and that conclusion is supported by certain recent information. Specifically, we conclude today that the level of Hg emissions remaining after imposition of the requirements of the Act will not cause hazards to public health, and therefore we need not consider other factors, such as non-public health related environmental effects. We do, of course, discuss the effects of Hg on fish, because the ingestion of fish contaminated with methylmercury is the public's primary route of exposure to Hg. See Section VI (discussing health effects of Hg).[23]

As noted above, EPA's December 2000 appropriate finding for coal-fired units hinged primarily on the health and environmental effects resulting from Hg emissions. *See* 65 FR 79830 ("mercury in the environment presents significant hazards to public health and the environment."). This finding lacks foundation, however, for the reasons described below.

(i) The December 2000 Appropriate Finding Is Overbroad To The Extent It Hinged On Environmental Effects. EPA should not have made its appropriate

[21] We received no adverse comments concerning our subcategorization of Utility Units for purposes of section 112(n)(1)(A).

[22] The "appropriate" rationale set forth in the December 2000 finding focused exclusively on Hg with regard to coal-fired Utility Units. The December 2000 "necessary" finding can be read, however, to suggest that under the appropriate prong, EPA also determined that non-Hg from coal-fired Utility Units resulted in hazards to public health. See 65 FR 79830 ("*It is necessary to regulate HAP emissions from coal- and oil-fired*" Utility Units under section 112 "because the implementation of other requirements of the CAA will not address the serious public health and environmental hazards arising from such emissions."). As explained below in section IV.B, the record that was before the Agency in December 2000 confirms that the non-Hg HAP emissions remaining "after imposition of the requirements of th[e] Act" do not result in hazards to public health. In the proposed rule, EPA solicited comment on this issue. We did not receive any new information concerning non-Hg HAP during the comment period that would cause us to change our position as to these HAP.

[23] We note, however, that as part of our overall inquiry into the effects of Hg emissions, we assessed the available information on the environmental effects of Hg emissions, including effects that appear to be unrelated to public health. See 1997 Mercury Report to Congress. While that information, in a very general sense, suggests that environmental effects of Hg emissions (unrelated to public health) may be of some concern and therefore warrant further study, the available information is not specific to the effects of Hg emissions from domestic utilities. See RIA Appendix C. Thus, even if EPA were either required or permitted to give unlimited consideration to these non-health-related environmental effects of utility Hg emissions in making the regulatory determination under section 112(n)(1)(A), we would conclude that there is insufficient causal information to conclusively link utility emissions to deleterious effects (in wildlife) from Hg exposure.

finding because of "hazards to * * * the environment" resulting from Hg emissions from coal-fired Utility Units. Section 112(n)(1)(A) requires EPA to analyze only the "hazards to public health" resulting from utility HAP emissions, not the environmental effects caused by such emissions. Under section 112(n)(1)(A), the condition precedent for regulation under section 112 is public health hazards, not environmental effects, which Congress included in other provisions of section 112. *See, e.g.*, 112(c)(3) ("a threat of adverse effect to human health or the environment."). The Supreme Court has recognized that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally * * * in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U.S. 16, 23 (1983). Accordingly, EPA erred in its December 2000 "appropriate" finding to the extent that it hinged on the environmental effects of HAP, including Hg.

(ii) The December 2000 Appropriate Finding Lacks Foundation Because EPA Did Not Fully Consider The Hg Reductions That Would Result From "Imposition of the Requirements of th[e] Act." As explained above, EPA interprets section 112(n)(1)(A) as providing that the "appropriate" finding should be made by reference to the level of HAP emissions remaining after "imposition of the requirements of th[e] Act." We reasonably interpret the phrase "imposition of the requirements of th[e] Act" to include those requirements that EPA should have reasonably anticipated would be implemented and would result in reductions of utility HAP emissions.

The December 2000 "appropriate" finding lacks foundation because EPA failed to fully account for the Hg emissions remaining after "imposition of the requirements of th[e] Act." [24] That failure resulted in an overestimate of the remaining utility Hg emissions, which is the level of emissions that we considered in making our December 2000 appropriate finding. Had we properly considered the Hg reductions remaining "after imposition of the requirements of th[e] Act" in December 2000, we might well have (and, as discussed below, now believe should have) reached a different conclusion as to whether it was "appropriate" to regulate coal-fired units on the basis of Hg emissions.

We begin our analysis with a brief background concerning the Utility Study. In an attempt to address the requirement in section 112(n)(1)(A) of evaluating utility emissions "after imposition of the requirements of th[e] Act", the Utility Study estimates utility HAP emissions as of the year 2010. See Utility Study ES–1. In quantifying 2010 utility HAP emissions, our analysis focused almost exclusively on the acid rain provisions of Title IV. Title IV of the CAA establishes a national, annual emissions cap for sulfur dioxide (SO_2) emissions from Utility Units, which is to be implemented in two phases. Phase I commences January 1, 1995, and Phase II on January 1, 2000.

EPA relied in the Utility Study on a 1997 Department of Energy report concerning the effects of the implementation of Title IV of the CAA on utilities. Utility Study 2–31 to 2–33, 2–39. That report provides that 53 percent of Utility Units subject to Phase 1 requirements switched to a lower-sulfur coal, 27 percent purchased additional emissions allowances, and 16 percent (*i.e.*, 27 Utility Units) installed flue gas scrubbers to comply with the Phase I requirements.[25] In the 2010 utility HAP emissions analysis, EPA accounted for the 27 Utility Units that installed scrubbers to comply with the phase I requirements. Utility Study 2–31. EPA accounted for these scrubbers in the 2010 analysis because it recognized that scrubbers, which control SO_2, achieve HAP reductions, including Hg.[26] Utility Study at ES–19 & 25, 1–2, 2–32, 3–14 (discussing ability of PM controls (including SO_2 controls) to reduce Hg and other HAP emissions from Utility Units).[27] Significantly, however, EPA did not incorporate into the 2010 utility HAP emissions analysis the Hg reductions that we reasonably should have anticipated achieving through implementation of the requirements of Title I of the CAA. See Utility Study, at 2–31 to 2–33. In this regard, EPA erred in, at least, two respects.

First, EPA erred by not accounting for the utility Hg reductions that it should have reasonably anticipated would result from implementation of the nonattainment provisions of Title I, including, in particular, the revised NAAQS for ozone that EPA issued in July 1997, before the report was completed, under the nonattainment provisions.[28] The Utility Study expressly recognizes that the revised NAAQS would result in, among other things, significant reductions of SO_2 and NO_X. See generally Utility Study at 1–2 to 1–3. The Utility Study also indicates that the revised NAAQS would result in approximately a 16 percent reduction (11 tons per year) of Hg emissions by 2010, primarily due to the fact that Utility Units would need to install controls, like scrubbers, to meet the SO_2 reductions needed to attain the PM NAAQS. (Utility Study 1–3, ES–25, 3–14). Notwithstanding these significant estimated reductions, EPA did not take these reductions into account in its 2010 utility HAP emissions analysis.[29] ES–25 ("analyses performed to assess compliance with the revised NAAQS * * * indicate that Hg emissions in 2010 may be reduced by approximately 16 percent (11 tpy) *over those projected in this report.*"). Accordingly, the December 2000 appropriate finding lacks foundation because we made the finding based on an inaccurate level of Hg emissions remaining after imposition of the requirements of the CAA. Had we properly accounted in December 2000 for the 11 tons per year of Hg reductions that we projected in our own analyses, we might well have (and, as discussed below, now believe should have) concluded that it was not appropriate to regulate coal-fired units under section

[24] For ease of reference, we refer to the level of utility Hg emissions remaining "after imposition of the requirements" of the CAA as the "remaining Hg emissions."

[25] Flue gas scrubbers are a type of control technology used to control SO_2.

[26] EPA did not account in its 2010 analysis for the installation of any scrubbers associated with Phase II of the acid rain program, because it only had industry projections as to which units would install scrubbers and, for various reasons, it did not find those projections reliable. Utility Study 2–31 to 2–33.

[27] In the December 2000 finding, we indicate that recent data show that technologies used to control criteria pollutants, like PM, SO_2, and NO_X are not "effective" in controlling Hg. See 65 FR 79828. This statement is incorrect. It is not only inconsistent with other statements in the December 2000 finding, it is contrary to the record that was before the Agency in December 2000. The record indicates that technologies used to control PM, SO_2, and NO_X do reduce HAP, including Hg. Furthermore, insofar as Hg is concerned, these technologies result in important reductions of oxidized Hg, which is the type of Hg that tends to deposit locally and regionally. Utility Study at ES–19 & 25, 1–2, 2–32, 3–14.

[28] For additional background concerning the nonattainment provisions of Title I and the revised PM and ozone NAAQS, see Section V below.

[29] In the Utility Study, we explained that we did not account for the identified Hg reductions in the 2010 analysis because we lacked information on the specific number of units that would install scrubbers and related PM control technologies since we had not yet designated which areas of the country were in nonattainment of the revised NAAQS. See Utility Study 2–32. Although we had not yet designated areas of the country as being in nonattainment of the revised standards, as explained in section V, we were generally aware of the likelihood of widespread nonattainment with the revised NAAQS. In fact, that recognition formed the basis of our analysis that resulted in an estimated 16 percent reduction in Hg emissions from implementation of the revised NAAQS.

112 on the basis of the remaining Hg emissions. Indeed, recent modeling confirms that we likely would have reached such a conclusion. That modeling specifically demonstrates that about a 13 ton reduction in utility Hg emissions from 1990 levels would result in a level of Hg emissions that does not cause hazards to public health. We conducted these recent analyses in conjunction with the recently signed Clean Air Interstate Rule ("CAIR") issued pursuant to CAA section 110(a)(2)(D), which is explained more fully in section V below.

Second, EPA erred in December 2000 by not examining, and therefore not accounting for, the reductions in utility Hg emissions that would result from two other rules issued pursuant to Title I of the CAA. The first rule set new source performance standards ("NSPS") under CAA section 111(b) for NO_X emitted from utility and industrial boilers. The second rule, promulgated under CAA section 110(a)(2)(D), requires 22 states and the District of Columbia to revise their state implementation plans ("SIP") to mitigate for the interstate transport of ozone. This rule is called the NO_X SIP-call rule and requires significant reductions of NO_X emissions in the eastern half of the United States. EPA determined those NO_X reductions by analyzing Utility Units and large nonpoint utility sources and identifying the amount of reductions that those units could achieve in a "highly cost-effective" manner. Both the NO_X SIP call and the NSPS rule were premised on a NO_X control technology called selective catalytic reduction ("SCR"). The data on the effectiveness of SCR at controlling utility Hg emissions was limited in February 1998. See Utility Study 2–32. As of December 2000, however, EPA had additional data that confirmed that SCR would lead to certain reductions in utility Hg emissions. *See, e.g.,* 65 FR 79829 (SCR—a NO_X control technology "may also oxidize mercury and therefore enhance mercury control."). EPA therefore should have been able to reasonably estimate in December 2000 that some Hg reductions would occur as the result of implementation of the NSPS and the NO_X SIP-call rules. Because we did not account for reductions in utility Hg emissions as the result of implementation of these rules, we made our appropriate finding in December 2000 based on an incorrect estimate of the remaining Hg utility emissions. Based on all of the above, the December 2000 "appropriate" finding lacked foundation because it was not based on the level of utility Hg emissions remaining "after imposition of the requirements of th[e] Act."

(iii) It Is Not Appropriate to Regulate Coal-fired Utility Units Under Section 112 on the Basis of Hg Emissions Because New Information Reveals that the Level of Utility Hg Emissions Remaining After Imposition of the Requirements of the CAA Does Not Cause Hazards to Public Health. In addition to the errors noted above with regard to the December 2000 finding, we have new information that confirms that it is not appropriate to regulate coal-fired units under section 112 on the basis of Hg emissions. EPA recently signed a rulemaking implementing section 110(a)(2)(D), called the Clean Air Interstate Rule. (See Section V below for further discussion of CAIR.) This rulemaking, among other things, requires a number of eastern states to develop SIPs providing for substantial reductions of SO_2 and NO_X emissions. Although affected states retain flexibility to decide how to achieve those reductions, EPA has concluded that the reductions from Utility Units are highly cost-effective, and anticipates that affected states will meet their emission reduction obligations by controlling Utility Unit emissions. EPA also concluded that the technologies that most cost-effectively achieve SO_2 and NO_X reductions for Utility Units are scrubbers for SO_2 and SCR for NO_X. These technologies, as noted above, result in reductions of utility Hg emissions. In conjunction with the CAIR rulemaking, EPA analyzed the nature of Hg emissions that would remain after implementation of the rule and assumed that states would choose to regulate Utility Units, which is the most cost-effective option for achieving the required reductions. That modeling reveals that the implementation of section 110(a)(2)(D), through CAIR, would result in a level of Hg emissions from Utility Units that would not cause hazards to public health. See Section V for further detail. Because this new information demonstrates that the level of Hg emissions projected to remain "after imposition of" section 110(a)(2)(D) does not cause hazards to public health, we conclude that it is not appropriate to regulate coal-fired Utility Units under section 112 on the basis of Hg emissions.[30]

In addition to CAIR, we today finalized a rule pursuant to section 111, called the Clean Air Mercury Rule ("CAMR"). (See section VII below for further discussion of CAMR.) That rule requires even greater reductions in Hg emissions from coal-fired Utility Units than CAIR. As explained in greater detail in Section VI, the computer modeling completed in support of that rule, like the modeling completed on CAIR, demonstrates that CAMR, independent of CAIR, will result in levels of utility Hg emissions that do not result in hazards to public health. Thus, the implementation of CAMR provides an independent basis for our conclusion that it is not appropriate to regulate coal-fired Utility Units under section 112 because the utility Hg emissions remaining after implementation of section 111 will be at a level that results in no hazards to public health.[31]

b. It Is Not Necessary to Regulate Coal-fired Units on the Basis of Hg Emissions. Even if Congress had intended EPA to focus on a more limited set of requirements in interpreting the phrase "after imposition of the requirements of th[e] Act," that would mean only that EPA did not err in December 2000 in terms of its "appropriate" finding for coal-fired units based on Hg emissions. EPA nevertheless concludes today that it still erred in December 2000 with regard to its "necessary" finding. In section 112(n)(1)(A), Congress called on EPA to make a finding as to whether regulation of Utility Units under section 112 was not only "appropriate," but "necessary." To give effect to the term "necessary," we interpret the "necessary" prong of the section 112(n)(1)(A) inquiry to require EPA to examine whether there are any other available authorities under the CAA that, if implemented, would effectively address the remaining Hg emissions from coal-fired Utility Units.

[30] The reductions achieved through CAIR overlap, in part, with the 11 tons per year of reductions discussed in the prior section, which EPA estimated in 1998 would occur as the result of implementation of the revised NAAQS. The reductions necessarily overlap because in the Utility Study EPA projected forward 13 years, by examining utility HAP emissions in 2010. In analyzing the level of utility Hg emissions remaining "after imposition of [section 110(a)(2)(D)]" through CAIR, we are accounting for the full impact of CAIR and that necessarily includes reductions that occur between today and 2010, and beyond. See Section V (discussing requirements of CAIR in 2010 and 2015).

[31] Nothing in section 112(n)(1)(A) precludes EPA from revising a prior appropriate and necessary finding based on new information. In light of CAIR and, independently, CAMR, we can now reasonably anticipate the reductions in utility Hg emissions that would result from implementation of sections 110(a)(2)(D) and 111 of the CAA. Accordingly, we are accounting for those reductions in assessing the level of utility Hg emissions remaining after "imposition of the requirements of th[e] Act," which include section 110(a)(2)(D) and 111. We then based our new appropriate finding on these remaining Hg emissions.

In December 2000, EPA did not consider CAA sections 110(a)(2)(D)[32] and 111,[33] which are viable alternative authorities under the CAA, that, if implemented, would effectively address the remaining utility Hg emissions. See Section VI below. Regulation under these authorities would effectively address the remaining utility Hg emissions for two primary reasons. First, as demonstrated in section VI below, the level of utility Hg emissions remaining after implementation of CAIR will not result in hazards to public health. Similarly, as shown in section VI below, the CAMR, which requires even greater Hg reductions than CAIR, will, once implemented, result in a level of utility Hg emissions that does not cause hazards to public health.

In addition, controlling Hg emissions through a cap-and-trade system—whether that control is through direct regulation under section 111 or indirect regulation under section 110(a)(2)(D)—is an efficient means of regulating Utility Units. See CAMR final rule (signed on March 15, 2005) (discussing basis and purpose of the regulations). As an initial matter, a cap-and-trade system, as opposed to the control regime imposed pursuant to section 112(d), provides Utility Units the flexibility to pursue a least-cost compliance option to achieve the required emissions reductions.

Sources have the choice of complying with the reductions in a variety of ways, such as fuel switching, installing different pollution control technologies, installing new or emerging control technologies and/or buying allowances to emit from another source that has controlled its emissions to a level below what the regulation requires. This compliance flexibility allows Utility Units to respond to changing electricity generation demands, economic market conditions or unanticipated weather situations (*e.g.*, extremely hot or cold periods) without jeopardizing their compliance status, or the stability of the overall cap. In addition, the certainty provided by the emissions cap and the timeline for declining emissions provide important information for industry to make strategic, long-range business decisions.

Moreover, under a cap-and-trade approach, most of the reductions are projected to result from larger units installing controls and selling excess allowances, due to economies of scale realized on the larger units versus the smaller units. Indeed, EPA's modeling of trading programs demonstrates that large coal-fired Utility Units, which tend to have higher levels of Hg emissions, will achieve the most cost-effective emission reductions. These units are more likely to over-control their emissions and sell allowances, than to not control and purchase allowances. This model prediction is consistent with principles of capital investment in the utility industry. Under a trading system where the firm's access to capital is limited, where the up-front capital costs of control equipment are significant, and where emission-removal effectiveness (measured in percentage of removal) is unrelated to plant size, from an economics standpoint, the utility company is more likely to allocate pollution-prevention capital to its larger facilities than to the smaller plants (since more allowances will be earned from the larger facilities). Economies of scale of pollution control investment will also favor investment at the larger plants. Further, insofar as large coal-fired Utility Units tend to be newer and/or better maintained than medium-sized and small facilities, it can be expected that companies will favor investments in plants with a longer expected lifetime. These modeled predictions are consistent with the pattern of behavior that EPA has observed over the past decade through implementation of the SO_2 emissions trading program under Title IV of the CAA. Thus, under a cap-and-trade program, Hg reductions result from units that are most cost effective to control, which enables those units that are not considered to have cost effective control alternatives to use other mechanisms for compliance, such as buying allowances. By contrast, regulating pursuant to a control regime like section 112(d) does not result in the cost efficiencies that are attendant a cap-and-trade program. For example, under section 112(d), each facility must meet a specific level of emission control, which can result in increased compliance costs, particularly for the smaller Utility Units given economies of scale.

Finally, trading provides greater incentives for the development and adoption of new technologies, which could lead to a greater level of emissions control. See generally 69 FR 4686–87. An additional benefit of the cap-and-trade programs under sections 110(a)(2)(D) and 111 is that they dovetail well with each other. In particular, the coordinated regulation of SO_2, NO_X, and Hg through CAIR and CAMR improves the cost effective manner of regulation because the reductions are being achieved simultaneously using in some cases the same technology to control more than one pollutant. In addition, the cap-and-trade programs under sections 110(a)(2)(D) complement other cap-and-trade programs that directly affect Utility Units, such as the NO_X SIP-call final rule and the regulations implementing Title IV, which only further enhances the efficiencies of emission control from such units.

In light of CAA sections 110(a)(2)(D) and 111, we believe that we should not have concluded in December 2000 that it "is necessary" to regulate Utility Units under section 112 and therefore our "necessary" finding was in error. Moreover, even setting aside the error that we made in December 2000, we now recognize the availability of these other statutory provisions and we further conclude today that it is not necessary to regulate coal-fired Utility Units under section 112 on the basis of the remaining Hg emissions. CAA section 110(a)(2)(D), as implemented through CAIR, and independently section 111, as implemented through CAMR, will effectively address the Hg emissions remaining from coal-fired Utility Units "after imposition of the requirements of th[e] Act."

In sections V and VII below, we address sections 110(a)(2)(D) and 111 and provide a thorough discussion of the legal authority under each provision. We also explain in Section VI that after implementation of CAIR, and independently, CAMR, we do not anticipate hazards to public health resulting from Hg emissions from coal-fired Utility Units.

[32] In January 2004, the proposed section 111 rule was premised, in part, on the reductions in Hg emissions that EPA anticipated would be achieved through CAIR. In response to comments received on the CAMR, we conducted additional modeling that confirmed that CAIR alone, once implemented, would result in levels of utility Hg emissions that do not cause hazards to public health. (See Section VI below). Accordingly, we now believe that CAA section 110()(2)(D) constitutes yet another viable authority under the CAA that, once implemented, will effectively address the remaining utility Hg emissions.

[33] In the Utility Study, we considered section 111 of the CAA, noting that "new source performance standards currently provide the major regulatory authority for the control of air emissions from utilities." Utility Study 1–6. We recognized that we had issued NSPS for PM for Utility Units and we noted that such requirements would result indirectly in the control of certain HAP, including Hg. EPA did not, however, address in the Utility Study the question of whether HAP from utilities could be regulated under the authority of section 111 [Utility Study 1–5–6]. As explained in the proposed rule, we conducted a thorough re-evaluation of the provisions of the CAA and have concluded that section 111 provides authority to regulate HAP from new and existing Utility Units. See Section VII below (discussing legal authority under section 111).

2. It Is Not Appropriate and Necessary to Regulate Coal-Fired Units on the Basis of Non-Hg Emissions

In the study required by section 112(n)(1)(A), and detailed in the Utility Study, EPA identified 67 HAP as potentially being emitted by Utility Units. (Utility Study, ES–4). Based on a screening assessment designed to prioritize HAP for further evaluation, EPA identified 14 HAP as a priority for further evaluation. (Id.). Of the 14 HAP identified for further evaluation, 12 HAP (arsenic, beryllium, cadmium, chromium, manganese, nickel, hydrogen chloride, hydrogen fluoride, acrolein, dioxins, formaldehyde and radionuclides) were identified for further study based on potential for inhalation exposure and risks. (Utility Study, ES–6). Four of those 12 HAP (arsenic, cadmium, dioxins and radionuclides) plus Hg and lead were considered priority for multipathway exposure. (*Id.*). Of those six HAP, four (arsenic, Hg, dioxins and radionuclides) were identified as the highest priority to assess for multipathway exposure and risks. (Utility Study, ES–6, 7). The other 53 HAP were not evaluated beyond the screening assessment. (Utility Study, ES–7).

In evaluating the potential for inhalation exposure and risks for the 12 HAP identified through the screening assessment as priority for that purpose, EPA estimated the high-end inhalation cancer risk for each HAP identified as a carcinogen and the high-end inhalation noncancer risks for the remaining HAP for both coal- and oil-fired Utility Units in 2010. (Utility Study, 6–16, tables 6–8 and 6–9). That evaluation indicated that there was no maximum individual risk (MIR) for cancer greater than 1×10^{-6} for beryllium, cadmium, dioxin and nickel emissions from coal-fired Utility Units and for beryllium, cadmium and dioxin emissions from oil-fired Utility Units. (*Id.*) With regard to dioxins, the Utility Study specifically concluded that the quantitative exposure and risk results did not conclusively demonstrate the existence of health risks of concern associated with inhalation exposures to utility emissions on a national scale or from any actual individual utility. (Utility Study, 11–5). The Utility Study thus indicates that inhalation of beryllium, cadmium and dioxin emissions from coal and oil-fired Utility Units and emissions of nickel from oil-fired Utility Units are not of significant concern from a public health standpoint because such exposure does not present a maximum individual risk (MIR) for cancer greater than 1×10^{-6}. With regard to lead emissions, EPA found that emission quantities and inhalation risks were relatively low and, therefore, decided not to conduct future evaluations of multipathway exposures to lead resulting from Utility Unit emissions. (Utility Study, ES–24). For arsenic, EPA concluded that there were several uncertainties associated with both the cancer risk estimates and the health effects data such that further analyses were needed to characterize the inhalation risks posed by arsenic emissions from Utility Units. (Utility Study, ES–21). The inhalation exposure assessment did not identify any exceedances of the health benchmarks (*e.g.*, RfCs) for hydrogen chloride or hydrogen fluoride, thus indicating that Utility Unit emissions of those HAP did not pose a significant public health concern. (Utility Study chapters 6 and 9.)

a. It Is Not Appropriate to Regulate Coal-fired Units on the Basis of Non-mercury HAP Emissions. The EPA erred in the December 2000 Regulatory Determination to the extent that its "appropriate" finding for coal-fired Utility Units was based, in any way, on hazards to public health or the environment arising from emissions of non-mercury HAP from coal-fired Utility Units. Based on the information before it at the time, EPA could not have reasonably concluded that coal-fired Utility Unit non-mercury HAP emissions presented a hazard to public health. In addition, as stated above, EPA should not have considered environmental effects in the December 2000 Regulatory Determination's consideration of whether it was appropriate to regulate HAP emissions from coal-fired Utility Units under section 112.

(i) Non-Mercury Metallic HAP. In the December 2000 Regulatory Determination, EPA indicated that there were a few metallic HAP (*e.g.*, chromium and cadmium) which were of potential concern for carcinogenic effects, but stated that "the results of the risk assessment (performed in conjunction with the Utility Study) indicate that cancer risks are not high". (*See* 65 FR 79825, 79827.) The EPA acknowledged, however, that the cancer risks were not low enough to eliminate those metals as a potential concern for public health (*Id.*). This latter statement, at least as it pertains to cadmium, is at odds with the results of the risk assessment set forth in the Utility Study and discussed above. In the Utility Study, EPA determined that there was no maximum individual risk (MIR) for cancer greater than 1×10^{-6} due to inhalation of cadmium emissions from Utility Units. In the Proposed Rule, EPA stated that although it recognized the existence of uncertainties with regard to the data and information obtained prior to the December 2000 Regulatory Determination regarding potential hazards to public health resulting from Utility Unit emissions of non-mercury metallic HAP, the Agency believed that the uncertainties associated with those emissions were so great that it was not appropriate to regulate them at that time because they do not pose a hazard to public health that warrants regulation. (69 FR 4652, 4688, January 30, 2004). The EPA continues to believe that had it properly accounted for the uncertainties regarding the data and information on potential hazards to public health resulting from Utility Unit emissions of non-mercury metallic HAP in making the December 2000 appropriate finding it would have concluded that it was not appropriate to regulate such emissions because they do not cause a hazard to public health. The EPA has not discovered any new information on hazards to public health arising from such emissions that invalidates this conclusion, either through its own efforts or in response to the Proposed Rule.

(ii) Dioxins. In the December 2000 Regulatory Determination, EPA also identified dioxins as being of potential concern and indicated that they may be evaluated further during the regulatory development process. (*See* 65 FR 79825, 79827.) The EPA did not, however, indicate that those concerns rose to a level that warranted regulation of dioxins. Thus, EPA did not conclude, and could not have concluded, based on the record before it at the time of the December 2000 Regulatory Determination that it was appropriate to regulate coal-fired Utility Unit HAP emissions under section 112 of the CAA on the basis of dioxin emissions. In the Proposed Rule EPA stated that while it intended to continue to study dioxins in the future, the Utility Study and the information EPA had obtained since finalizing the Utility Study revealed no public health hazards reasonably anticipated to occur as a result of emissions of dioxins by Utility Units. (*See* 69 FR 4652, 4688). As is the case with non-mercury metallic HAP, EPA has neither discovered information on hazards to public health arising from Utility Unit emissions of dioxins based on its own efforts, nor received such information in response to the Proposed Rule. The EPA therefore concludes that its appropriate finding in December 2000 lacked foundation because it could not have reasonably concluded that the

level of remaining utility dioxin emissions results in hazards to public health.

(iii) Acid Gases. In the December 2000 Regulatory Determination, EPA identified emissions of hydrogen chloride and hydrogen fluoride as being of potential concern and indicated that such emissions may be evaluated further during the regulatory development process. (See 65 FR 79825, 79827.) The EPA did not, however, indicate that it believed that it was appropriate to regulate such emissions, under section 112 or otherwise. As indicated in the Proposed Rule, EPA did in fact further evaluate Utility Unit emissions of hydrogen chloride and hydrogen fluoride. (See 69 FR 4652, 4688, fn. 10; "Modeling results for hydrogen chloride, hydrogen fluoride and chlorine emissions from coal-fired utility boilers", December 12, 2003, OAR–2002–0056–0015). That modeling indicates that individuals are not exposed to acid gas emissions from Utility Units at concentrations which pose hazards to public health. EPA has neither discovered information on hazards to public health arising from Utility Unit emissions of acid gases based on its own efforts, nor received such information in response to the Proposed Rule. EPA therefore concludes that its appropriate finding in December 2000 lacked foundation because the level of remaining utility acid gas emissions does not result in hazards to public health.

For the reasons stated above, EPA finds that it could not reasonably have concluded that it was appropriate to regulate coal-fired Utility Units under section 112 due to emissions of non-mercury HAP based on the record before it at the time of the December 2000 Regulatory Determination. The EPA further finds that it has not itself discovered any information which would support the conclusion that it is appropriate to regulate non-mercury HAP emissions by coal-fired Utility Units under section 112 subsequent to the December 2000 Regulatory Determination, nor has it received any such information in response to the January 2004 Proposed Rule, the March 2004 Supplemental Notice or the December 2004 Notice of Data Availability. Further, EPA has concluded that it did not, and should not, rely on potential environmental effects alone in determining whether it was appropriate to regulate coal-fired Utility Units under section 112. The EPA, therefore, finds that, based on the record before it at the time, it was in error in determining that it was appropriate to regulate coal-fired Utility Unit HAP emissions under section 112 to the extent that the determination was based in any way on the hazards to public health of non-mercury HAP emissions or on environmental effects resulting from such emissions.

b. It Is Not Necessary to Regulate Coal-fired Units on the Basis of Non-Mercury HAP Emissions. In determining whether it is appropriate and necessary to regulate Utility Unit HAP emissions under section 112, the threshold question is whether it is appropriate to regulate such emissions at all. Where, as here, EPA cannot reasonably conclude that it is appropriate to regulate such emissions, the Agency does not need to resolve the question of whether it is necessary to regulate such emissions under section 112, or elsewhere. In any event, even if EPA could have reasonably concluded that it was appropriate to regulate non-mercury HAP emissions from coal-fired Utility Units, it would not have been reasonable for the Agency to find that it was necessary to regulate such emissions under section 112 since, as discussed above, it should have realized that there was an available alternative mechanism, such as section 111, for regulating such emissions had it been appropriate to do so. See also Section VII below.

B. Revision of the December 2000 Appropriate and Necessary Finding for Oil-fired Units

1. It Is Not Appropriate and Necessary To Regulate Oil-Fired Units on the Basis of Nickel Emission

a. It Is Not Appropriate to Regulate Oil-fired Units on the Basis of Nickel Emissions. In finding that the regulation of HAP emissions from oil-fired Utility Units was appropriate and necessary in its December 2000 Regulatory Determination, EPA did not clearly identify the basis for this finding beyond stating that there remained uncertainties regarding the extent of the public health impact from HAP emissions from oil-fired units and that those uncertainties led the Administrator to find that regulation of HAP emission from such units under section 112 is appropriate and necessary. (See 65 FR 79825, 79830). Table 1 in the 2000 determination does, however, indicate that nickel is the metallic HAP emitted in the largest quantities by oil-fired Utility Units and that some nickel compounds are carcinogenic. (See 65 FR 79825, 79828). It therefore appears that EPA's finding was based at least in part on its concerns regarding perceived hazards to public health arising from inhalation exposure to nickel emissions from oil-fired Utility Units. This is consistent with the Utility Study which, based on very conservative assumptions regarding the carcinogenicity of the nickel emitted by such units, identifies nickel as the HAP emitted by oil-fired Utility Units which poses the highest cancer maximum individual risk. (Utility Study, Table 6–3, p. 6–8). The Utility Study identifies 11 oil-fired utility plants as having emissions causing maximum individual risk of cancer greater than 10^{-6} based on nickel emissions (*Id.*)

In the Proposed Rule, EPA stated that it continued to believe that the record supports a distinction between the treatment of nickel emissions from oil-fired Utility Units and other non-nickel HAP emissions from such units. EPA proposed to conclude that it was not appropriate to regulate the non-Ni HAP. EPA also proposed to treat nickel from oil-fired units differently based on the amount of nickel emitted annually and the scope of adverse health effects (See 69 FR 4652, 4688). Based on its analysis of new information obtained in response to the Proposed Rule, EPA has determined that the distinction between nickel and the remaining HAP from oil-fired units cannot be supported. EPA finds that it is not appropriate to regulate nickel emissions from oil-fired Utility Units and that it is, therefore, not appropriate to regulate oil-fired Utility Units. This finding is based on the following: (1) The significant reductions in the total nationwide inventory of oil-fired Utility Units; and (2) the changing fuel mixtures being used at the remaining units.

Nickel emissions from oil-fired Utility Units have been substantially reduced since the 1998 Utility Report to Congress through a combination of unit closures and fuel switching. The 11 oil-fired plants identified in the Utility Study as having emissions causing a maximum individual risk of cancer greater than 10^{-6} based on nickel emissions were comprised of 42 individual units. Of those 42 units, 12 units have permanently ceased operation or are out of service. (OAR–2002–0056–2046 at pp. 12–13; OAR–2002–0056–5998). In addition, 6 of the original 42 units have reported to the U.S. Department of Energy (DOE) that their fuel mix now includes natural gas. Earlier reports did not show these units as using natural gas as a fuel. (OAR–2002–0056–5998). The use of natural gas as a part of their fuel mix would decrease the nickel emissions from these 6 units. Similarly, another 5 units report using a mix of natural gas and distillate oil (rather than residual oil) in

2003. (OAR–2002–0056–5998). Since distillate oil contains less nickel than the residual oil previously burned by these units, it is reasonable to assume that these units currently emit less nickel than was previously the case. Another 2 units now fire a residual oil/natural gas mixture and have limited their residual oil use through permit restrictions to no greater than 10 percent of the fuel consumption between April 1 and November 15, with natural gas being used for at least 90 percent of total fuel consumption. (OAR–2002–0056–2046 at p. 13). Finally, five units have effectively eliminated their nickel emissions since the Utility Study by switching to burning natural gas exclusively. (OAR–2002–0056–2046 at pp. 12–13; OAR–2002–0056–5998). Taken as a whole, these changes mean that 30 of the original 42 units identified in the Utility Study have taken steps to reduce or actually eliminate their nickel emissions. Of the original 11 plants identified in the Utility Study, only 2, both in Hawaii, have units for which actions that will result in reduced nickel emissions do not appear to have been taken. (OAR–2002–0056–6871) In addition to the closure of the 12 units identified as being of potential concern in the Utility Study, there has been a steady decrease in the number of oil-fired Utility Units generally over the past decade and this trend is likely to continue. In fact, the latest DOE/EIA projections (OAR–2002–0056–5999) estimate no new utility oil-fired generating capacity and decreasing existing oil-fired generating capacity through 2025, with an additional 29.2 gigawatts of combined oil- and natural gas-fired existing capacity being retired by 2025.

Based on the foregoing, EPA concludes that it is not appropriate to regulate oil-fired Utility Units under section 112 because we do not anticipate that the remaining level of utility nickel emissions will result in hazards to public health.

b. It Is Not Necessary to Regulate Oil-fired Units on the Basis of Nickel Emissions. Because EPA could not have reasonably found that it was appropriate to regulate nickel emissions from oil-fired Utility Units based on the record before it at the time of the December 2000 Regulatory Determination, it should not have made a finding that it was necessary to regulate such emissions. Information obtained in the course of the rulemaking since the Proposed Rule has confirmed this conclusion. In any event, even if EPA could have reasonably concluded that it was appropriate to regulate nickel emissions from oil-fired Utility Units, it would not have been reasonable for the Agency to find that it was necessary to regulate such emissions under section 112 since, as discussed above, it should have realized that there was an available alternative mechanism, section 111, for regulating such emissions had it been appropriate to do so. See also Section VII below.

2. It Is Not Appropriate and Necessary To Regulate Oil-Fired Units on the Basis of Non-Nickel HAP Emissions

a. It Is Not Appropriate to Regulate Oil-fired Units on the Basis of Non-nickel HAP Emissions. As is the case with emissions of nickel, the record before EPA at the time of the December 2000 Regulatory Determination does not reasonably support a finding that it is appropriate to regulate emissions of any other HAP from oil-fired Utility Units. In the December 2000 Regulatory Determination, EPA stated that there remain uncertainties regarding the extent of the public health impact from HAP emissions from oil-fired Utility Units and, on that basis, found that it was appropriate and necessary to regulate oil-fired Utility Units under section 112. (See 65 FR 79825, 79830.) The EPA neither identified the HAP concerning which there were uncertainties nor identified what those uncertainties were. EPA has neither discovered information on hazards to public health arising from the remaining non-nickel emissions of oil-fired Utility Units, nor received such information in response to the Proposed Rule. EPA therefore concludes that its appropriate finding in December 2000 lacked foundation because, given the level of remaining non-nickel HAP emissions from Utility Units, the Agency did not and does not have any information on the hazards to public health reasonably anticipated to occur. Indeed, the uncertainties that exist with regard to the data and information on these emissions are so great that the Agency has not identified any hazards to public health.

b. It Is Not Necessary to Regulate Oil-fired Units on the Basis of Non-nickel HAP Emissions. Because EPA finds that it is not appropriate to regulate oil-fired Utility Units on the basis of non-nickel HAP emissions, it also finds that it is not necessary to regulate oil-fired Utility Units on the basis of such emissions. In any event, even if EPA could have reasonably concluded that it was appropriate to regulate non-nickel HAP emissions from oil-fired Utility Units, it would not have been reasonable for the Agency to find that it was necessary to regulate such emissions under section 112 since, as discussed above, it should have realized that there was an available alternative mechanism, section 111, for regulating such emissions had it been appropriate to do so. See also Section VII below.

V. Statutory and Regulatory Overview of CAA Section 110(a)(2)(D) and Summary of EPA's Clean Air Interstate Rule, Which Implements Section 110(a)(2)(D)

A. The Clean Air Interstate Rule and Clean Air Act Section 110(a)(2)(D)

1. Background for Promulgation of the Clean Air Interstate Rule

The Administrator signed the notice of final rulemaking for the Clean Air Interstate Rule (CAIR) on March 10, 2005. The background for CAIR is fully described in the preambles to the final rule, the notice of proposed rulemaking, 69 FR 4565 (January 30, 2004) and the notice of supplemental rulemaking, 69 FR 12398 (March 16, 2004), and is briefly summarized below.

a. PM 2.5 NAAQS, 8-hour Ozone NAAQS, and the Nonattainment Problems. By notice dated July 18, 1997, we revised the NAAQS for particulate matter to add new standards for fine particles, using as the indicator particles with aerodynamic diameters smaller than a nominal 2.5 micrometers, termed PM 2.5. 62 FR 38652. We established health- and welfare-based (primary and secondary) annual and 24-hour standards for PM 2.5. The annual standard is 15 micrograms per cubic meter, based on the 3-year average of annual mean PM 2.5 concentrations. The 24-hour standard is a level of 65 micrograms per cubic meter, based on the 3-year average of the annual 98th percentile of 24-hour concentrations.

By a separate notice dated July 18, 1997, EPA also promulgated a revised primary NAAQS for ozone (and an identical secondary ozone NAAQS). This revised NAAQS, termed the 8-hour NAAQS, specified that the 3-year average of the fourth highest daily maximum 8-hour average ozone concentration could not exceed 0.08 ppm. (*See* 40 CFR 50.10) In general, the revised 8-hour standard is more protective of public health and the environment and more stringent than the pre-existing 1-hour ozone standard. Following promulgation of the 8-hour ozone and the PM 2.5 NAAQS, EPA anticipated that many areas of the country, particularly in the eastern half of the country, would have air quality violating one or both of those NAAQS.[34]

[34] Environmental Protection Agency, 1996. Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment

b. SO_2 and NO_X as Precursors for PM 2.5 and 8-hour Ozone. Fine particles are emitted directly from emissions sources and also can be formed in the atmosphere through the reaction of gaseous precursors. Sulfur dioxide and nitrogen oxides are among the primary precursors to the "secondary" formation of PM 2.5.

Eight-hour ozone is exclusively a secondary pollutant. Ozone is formed by natural processes at high altitudes, in the stratosphere, where it serves as an effective shield against penetration of harmful solar UV–B radiation to the ground. The ozone present at ground level as a principal component of photochemical smog is formed in sunlit conditions through atmospheric reactions of two main classes of precursor compounds: VOCs and NO_X (mainly NO and NO_2). Nitrogen oxides are emitted by motor vehicles, power plants, and other combustion sources, with lesser amounts from natural processes including lightning and soils.

Both PM 2.5 and 8-hour ozone are regional phenomena; that is each is caused by emissions over a broad geographic area. As a result, attainment of the PM 2.5 NAAQS requires reductions in SO_2 and NO_X over a widespread area, and attainment of the 8-hour ozone NAAQS requires reductions in NO_X over a widespread area. In the CAIR proposal, EPA described the photochemistry and need for regionwide reductions of precursors of both pollutants in detail. *See* 69 FR at 4572.

After promulgation of the PM 2.5 NAAQS, EPA was generally aware of the role of SO_2 and NO_X emissions in the PM 2.5 nonattainment problem, and, therefore, of the need for widespread reductions. Similarly, after promulgation of the 8-hour ozone NAAQS, EPA was aware of widespread nonattainment, due to nonattainment of the pre-existing, one-hour ozone standard, and therefore of the need for widespread NO_X reductions.

c. Coal-fired Utility Units Emit A Large Portion of SO_2 and NO_X Emissions. Utility Units emit a large portion of both the SO_2 and NO_X inventory. Congress clearly recognized that the utility industry emits a large portion of the nation's inventory of SO_2 and NO_X emissions when Congress enacted the acid deposition provisions in the 1990 Clean Air Act Amendments. EPA noted in the CAIR proposal that Utility Units—

> are the most significant source of SO_2 emissions and a very substantial source of NO_X in the * * * region [proposed to be affected by CAIR]. For example, EGUs [Utility Units] emissions are projected to represent approximately one-quarter (23 percent) of the total NO_X emissions in 2010 and over two-thirds (67 percent) of the total emissions in 2010 in the 28-State plus DC region that [EPA proposed for] being controlled for both SO_2 and NO_X after application of current CAA controls.

(*See* 69 FR 4565, 4609–10 January 30, 2004.)

Beginning in the mid-1990s, EPA has considered regional and national strategies to reduce interstate transport of SO_2 and NO_X. EPA described these efforts in the CAIR notice of final rulemaking.

3. Legal Authority

As noted above, in 1997, EPA revised the NAAQS for PM to add new annual average and 24-hour standards for fine particles, using PM 2.5 as the indicator (62 FR 38652). At the same time, EPA issued its final action to revise the NAAQS for ozone to establish new 8-hour standards (62 FR 38856.) Following promulgation of new NAAQS, the CAA requires all areas, regardless of their designation as attainment, nonattainment, or unclassifiable, to submit SIPs containing provisions specified under section 110(a)(2). SIPs for nonattainment areas are generally required to include additional emissions controls providing for attainment of the NAAQS. In addition, under the authority of section 110(a)(2)(D) and other provisions of section 110, EPA promulgated the NO_X SIP-Call in 1998. In that rulemaking, EPA determined that 22 States and the District of Columbia in the eastern half of the country significantly contribute to 1-hour and 8-hour ozone nonattainment problems in downwind States.[35] This rule required those jurisdictions to revise their SIPs to include NO_X control measures to mitigate the significant ozone transport. The EPA determined the emissions reductions requirements by projecting NO_X emissions to 2007 for all source categories and then reducing those emissions through controls that EPA determined to be highly cost-effective. The affected States were required to submit SIPs providing the resulting amounts of emissions reductions.

Under the NO_X SIP-Call, States had the flexibility to determine the mix of controls to meet their emissions reductions requirements. However, the rule provided that if the SIP controls Utility Units, then the SIP must establish a budget, or cap, for Utility Units. The EPA recommended that each State authorize a trading program for NO_X emissions from Utility Units. We developed a model cap and trade program that States could voluntarily choose to adopt, and all did so.

4. CAIR

In CAIR, EPA established SIP requirements for the affected upwind States under the authority of CAA section 110(a)(2)(D) and other provisions of section 110.[36] Based on air quality modeling analyses and cost analyses, EPA concluded that SO_2 and NO_X emissions in certain States in the eastern part of the country, through the phenomenon of air pollution transport, contribute significantly to downwind nonattainment of the PM 2.5 and 8-hour ozone NAAQS. In CAIR, EPA required SIP revisions in 28 States and the District of Columbia to reduce SO_2 and/or NO_X emissions, which are important precursors of PM 2.5 (NO_X and SO_2) and ozone (NO_X). The affected States and the District of Columbia are required to adopt and submit the required SIP revision with the necessary control measures by 18 months from date of signature of CAIR.

The 23 States along with the District of Columbia that must reduce annual NO_X emissions for the purposes of the PM 2.5 NAAQS are: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

The 25 States along with the District of Columbia that must reduce NO_X emissions for the purposes of the 8-hour ozone NAAQS are: Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina,

of Scientific and Technical Information. OAQPS Staff Paper. Research Triangle Park, NC: Office of Air Quality Planning and Standards; Report No. EPA–45/R–96–013.

[35] *See* "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Final Rule," 63 FR 57356 (October 27, 1998). The EPA also published two Technical Amendments revising the NO_X SIP Call emission reduction requirements. (64 FR 26298; May 14, 1999 and 65 FR 11222; March 2, 2000).

[36] *See* "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule," 69 FR 4566 (January 30, 2004); "Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule," 69 FR 32684 (June 10, 2004); and the final rule "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)," which was recently issued.

Tennessee, Virginia, West Virginia, and Wisconsin.

The emissions reductions requirements are based on controls that EPA determined to be highly cost-effective for Utility Units. However, States have the flexibility to choose the measures to adopt to achieve the specified emissions reductions. If the State chooses to control Utility Units, then it must establish a budget—that is, an emissions cap—for those sources. CAIR defines the Utility Units budgets for each affected State. Due to feasibility constraints, EPA is requiring that emissions reductions be implemented in two phases, with the first phase in 2009 (for NO_X) and 2010 (for SO_2), and the second phase in 2015.

As noted above, under the CAIR, each State may independently determine which emissions sources to subject to controls, and which control measures to adopt. The EPA's analysis indicates that emissions reductions from Utility Units are highly cost-effective, and in the CAIR, EPA encouraged States to adopt controls for Utility Units. States that do so must place an enforceable limit, or cap, on Utility Unit's emissions. The EPA calculated the amount of each State's Utility Unit emissions cap, or budget, based on reductions that EPA determined are highly cost-effective. States may allow their Utility Units to participate in an EPA-administered cap-and-trade program as a way to reduce the cost of compliance, and to provide compliance flexibility. The EPA will administer these programs, which will be governed by rules provided by EPA that States may adopt or incorporate by reference.

EPA estimated that the CAIR would reduce annual SO_2 emissions by 3.6 million tons by 2010 and by 4.0 million tons by 2015; and would reduce annual NO_X emissions by 1.3 million tons by 2010 and by 1.5 million tons by 2015. If all the affected States choose to achieve these reductions through Utility Unit controls, then Utility Unit emissions in the affected States would be capped at 3.7 million tons in 2010 and 2.6 million tons in 2015; and Utility Unit annual NO_X emissions would be capped at 1.5 million tons in 2010 and 1.3 million tons in 2015. The EPA estimated that the required SO_2 and NO_X emissions reductions would, by themselves, bring into attainment 52 of the 80 counties that are otherwise expected to be in nonattainment for PM 2.5 in 2010, and 57 of the 75 counties that are otherwise expected to be in nonattainment for PM 2.5 in 2015. The EPA further estimated that the required NO_X emissions reductions would, by themselves, bring into attainment 3 of the 40 counties that are otherwise expected to be in nonattainment for 8-hour ozone in 2010, and 6 of the 22 counties that are expected to be in nonattainment for 8-hour ozone in 2015. In addition, the CAIR would improve PM 2.5 and 8-hour ozone air quality in the areas that would remain nonattainment for those two NAAQS after implementation of CAIR. Because of the CAIR, the States with those remaining nonattainment areas will find it less burdensome and less expensive to reach attainment by adopting additional local controls. The CAIR would also reduce PM 2.5 and 8-hour ozone levels in attainment areas.

C. Utility Mercury Emission Reductions Expected as Co-Benefits From CAIR

The final CAIR requires annual SO_2 and NO_X reductions in 23 States and the District of Columbia, and also requires ozone season NO_X reductions in 25 States and the District of Columbia. Many of the CAIR States are affected by both the annual SO_2 and NO_X reduction requirements and the ozone season NO_X requirements. CAIR was designed to achieve significant emissions reductions in a highly cost-effective manner to reduce the transport of fine particles that have been found to contribute to nonattainment. EPA analysis has found that the most efficient method to achieve the emissions reduction targets is through a cap-and-trade system on the power sector that States have the option of adopting. In fact, States may choose not to participate in the optional cap-and-trade program and may choose to obtain equivalent emissions reductions from other sectors. However, EPA believes that a region-wide cap-and-trade system for the power sector is the best approach for reducing emissions. The power sector accounted for 67 percent of nationwide SO_2 emissions and 22 percent of nationwide NO_X emissions in 2002.

EPA expects that States will choose to implement the final CAIR program in much the same way they chose to implement their requirements under the NO_X SIP Call. As noted above, under the NO_X SIP Call, EPA gave States ozone season NO_X reduction requirements and the option of participating in a cap-and-trade program. In the final rulemaking, EPA analysis indicated that the most efficient method to achieve reductions targets would be through a cap-and-trade program. Each affected State, in its approved SIP, chose to control emissions from Utility Units and to participate in the cap-and-trade program.

Therefore, EPA anticipates that States will comply with CAIR by controlling Utility Unit SO_2 and NO_X emissions. Further, EPA anticipates that States will implement those reductions through the cap-and-trade approach, since the power sector represents the majority of national SO_2 emissions and the majority of stationary NO_X emissions, and represent highly cost-effective SO_2 and NO_X sources to reduce. For further discussion of cost-effectiveness, see section IV of CAIR notice of final rulemaking. EPA modeled a region-wide cap and trade system on the power sector for the States covered by CAIR, and this modeling projected that most reductions in NO_X and SO_2 would come through the installation of scrubbers, for SO_2 control, and selective catalytic reduction for NO_X control (see Regulatory Impact Assessment for CAIR and CAMR in docket). Scrubbers and SCR are proven technologies for controlling SO_2 and NO_X emissions and sources installed them to comply with the Acid Rain trading program and the NO_X SIP Call trading program. EPA's modeling also projected that the installation of these controls would achieve Hg emission reductions as a co-benefit.

EPA projections of Hg co-benefits are based on 1999 Hg ICR emission test data and other more recent testing conducted by EPA, DOE, and industry participants. (For further discussion see Control of Emissions from Coal-Fired Electric Utility Boilers: An Update, EPA/Office of Research and Development, March 2005, in the docket). That emission testing has provided a better understanding of Hg emissions and their capture in pollution control devices. Mercury speciates into three basic forms, ionic, elemental, and particulate (particulate represents a small portion of total emissions). In general, ionic Hg compounds are more readily absorbed than elemental Hg and the presence of chlorine compounds (which tend to be higher for bituminous coals) results in increased ionic Hg. Overall the 1999 Hg ICR data revealed higher levels of Hg capture for bituminous coal-fired plants as compared to subbituminous and lignite coal-fired plants and a significant capture of ionic Hg in wet SO_2 scrubbers. Additional Hg testing indicates that for bituminous coals SCR has the ability to convert elemental Hg to ionic Hg and thus allow easier capture in a wet scrubber. This understanding of Hg capture was incorporated into EPA modeling assumptions and is the basis for our projections of Hg co-benefits from installation of scrubbers and SCR under CAIR.

The final CAIR requires annual SO_2 and NO_X reductions in two phases, the

first phase in 2010 and the second phase in 2015. EPA modeling of CAIR projected that most reductions in NO_X and SO_2 would come through the installation of scrubbers and SCR, and that the installation of these controls would also achieve Hg emission reductions as a co-benefit. Given the history of the Acid Rain and NO_X SIP Call trading programs, and our experience with those programs, we anticipate that reductions in SO_2 emissions will begin to occur before 2010 because of the ability to bank SO_2 emission allowances, though to some degree this is limited by the time and resources needed to install control technologies. Companies have an incentive to achieve greater SO_2 reductions than needed to meet the current Acid Rain cap because the excess allowances they generate can be "banked" and either later sold on the market or used to demonstrate compliance in 2010 and beyond at the facility that generated the excess allowances. Based on the analysis of CAIR, EPA's modeling projects that Hg emissions would be 38.0 tons (12 tons of non-elemental Hg) in 2010, 34.4 tons in 2015 (10 tons of non-elemental Hg), and 34.0 tons in 2020 (9 tons of non-elemental Hg), about a 20 and 30 percent reduction (in 2010 and 2015, respectively) from a 1999 baseline of 48 tons.[37] For further discussion of EPA modeling results and projected emissions see Chapter 8 of the Regulatory Impact Assessment.[38]

VI. Scientific and Technical Background and EPA'S Conclusions Concerning the Level of Utility Attributable Mercury Emissions After CAIR and CAMR

In this section, we explain why we believe the level of utility attributable Hg emissions remaining after imposition of CAIR, and independently, CAMR, will not result in hazards to public health. The issue of whether utility Hg emissions remaining after CAIR, and independently CAMR, result in hazards to public health is directly related to our conclusion, stated above in Section IV.A, that we cannot find it appropriate and necessary to regulate coal-fired Utility Units under section 112 on the basis of Hg emissions. This section includes an overview of the scientific and technical information relevant to evaluating utility Hg emissions and the public health impacts associated with such emissions. Below, we provide general background concerning the health impacts of methylmercury; the predominant exposure pathway by which humans are affected by methylmercury, which is by ingestion of fish containing methylmercury; and EPA's methodology for determining the impacts of utility Hg emissions on the amount of methylmercury found in fish tissue. This section also includes a summary of our conclusions, including that utility Hg emissions remaining after implementation of CAIR, and independently CAMR, are not reasonably anticipated to result in hazards to public health.

A. Human Health Impacts of Methylmercury Exposure and Amounts of Hg Emissions

Hg is a persistent, bioaccumulative toxic metal that is emitted from power plants in three forms: Elemental mercury (Hg\0\), oxidized mercury (Hg\++\) compounds, as well as particle-bound mercury. Methylmercury is formed by microbial action in the top layers of sediment and soils, after Hg has precipitated from the air and deposited into water bodies or land. Once formed, methylmercury is taken up by aquatic organisms and bioaccumulates up the aquatic food web. Larger predatory fish may have methylmercury concentrations many times that of the water body in which they live.

While Hg is toxic to humans when it is inhaled or ingested, we focus on oral exposure of methylmercury in this rulemaking, as it is the route of primary interest for human exposures in the U.S. Methylmercury is a well-established human neurotoxicant. Methylmercury that is ingested by humans is readily absorbed from the gastrointestinal tract and can cause effects in several organ systems. The best studied effect of low level exposure is the ability of methylmercury to cause subtle, yet potentially important neurodevelopmental effects. Of particular concern is the effect of methylmercury on the developing fetal nervous system exposed in utero from maternal fish ingestion. Large prospective epidemiological studies have reported that prenatal methylmercury from environmental exposures has been associated with poor performance on neurobehavioral tests in children. These include tests that measure attention, visual-spatial ability, verbal memory, language skills, and fine motor function. These studies have been thoroughly reviewed, singly and as part of review groups, by many expert scientists, including a panel of the National Research Council (NRC) of the National Academy of Sciences (NAS).[39] While important, the weight of evidence for cardiovascular effects is not as strong as it is for childhood neurological effects and the state of the science is still being evaluated. However, some recent epidemiological studies in men suggest that methylmercury is associated with a higher risk of acute myocardial infaraction, coronary heart disease and cardiovascular disease in some populations. Other recent studies have not observed this association. The findings to date and the plausible biological mechanisms warrant additional research in this area (Stern 2005; Chan and Egeland 2004). There is some recent evidence that methylmercury may result in genotoxic or immunotoxic effects. Overall, there is a relatively small body of evidence from human studies that suggests exposure to methylmercury can result in immunotoxic effects and the NRC concluded that evidence that human exposure caused genetic damage is inconclusive. There are insufficient human data to evaluate whether these effects are consistent with levels in the U.S. population. Because the developing fetus may be the most sensitive to the effects from methylmercury, women of

[37] As discussed in the TSD, the emissions of reactive gaseous Hg and particle-bound Hg are most important for local and regional Hg deposition purposes, since they are substantially more likely to be deposited than elemental Hg. CAIR and CAMR will significantly reduce reactive gaseous Hg and particle bound Hg from 2001 levels. CAIR will reduce the levels from approximately 22 tons to 9 tons. CAMR will reduce this level further to between 7 and 9 tons, for a total reduction (with CAIR) of roughly 70 percent.

[38] In addition to CAIR, EPA recently promulgated another rule for Utility Units. Specifically, on March 15, 2005, the Administrator signed a final rulemaking called the Clean Air Mercury Rule ("CAMR") pursuant to CAA section 111. This rule sets standards of performance for Hg emitted from both new and existing coal-fired Utility Units. Like CAIR, the rule establishes a cap-and-trade mechanism by which Hg emissions from new and existing coal-fired Utility Units are capped at specified, nation-wide levels. The first phase cap of 38 tons per year ("tpy") becomes effective in 2010 and the second phase cap of 15 tpy becomes effective in 2018. Facilities must demonstrate compliance with the standards of performance by holding one "allowance" for each ounce (oz) of Hg emitted in any given year. Allowances are readily transferrable among all regulated units. As explained in section VI below, the level of Hg emissions remaining after implementation of CAMR do not result in hazards to public health.

[39] Studies investigating the relationship between methylmercury and cardiovascular effects have reached different conclusions. Some recent epidemiological studies of men suggest that methylmercury is associated with a higher risk of acute myocardial infarction, coronary heart disease and cardiovascular disease in some populations. Other research with less corroboration suggest that reproductive, renal, and hematological impacts may be of concern. There are insufficient human data to evalaute whether these effects are consistent with levels in the U.S. population. *See* RIA for CAMR chapter 2.

child-bearing age are regarded as the population of greatest interest when assessing methylmercury exposure.

The predominant pathway of Hg exposure to both humans and wildlife is consumption of fish. Critical elements in estimating methylmercury exposure and risk from fish consumption include the concentrations of methylmercury in the fish consumed, the quantity of fish consumed,[40] and how frequently the fish is consumed. There is a great deal of variability among individuals in fish consumption rates. However, our analysis indicates that the typical U.S. consumer eating moderate amounts of a wide variety of low-mercury fish from restaurants and grocery stores is not expected to ingest harmful levels of methylmercury from fish. Those who regularly and frequently consume large amounts of fish, or fish with higher levels of methylmercury, are more exposed. The EPA and Food and Drug Administration jointly, as well as states, have issued fish consumption advisories to inform people of ways to reduce exposure to methylmercury from fish.

As part of its long term U.S. population surveillance, the U.S. Centers for Disease Control (CDC) assessed Hg concentrations in blood of over 3,600 women of child-bearing age under the National Health and Nutrition Examination Survey (NHANES). A recent analysis of these data reported that about 6 percent of these women of child-bearing age have levels of Hg in their blood that are at or above the U.S. EPA's RfD, described below. The CDC also surveyed the same group of women about their eating habits. An analysis of 1500 of these women showed that Hg blood levels were higher in the women who reported eating three or more servings of fish in the month before they were tested. It is reasonable to conclude that methylmercury contained in seafood may be responsible for elevated levels of Hg in U.S. women of child-bearing age.[41]

As described below, the analysis supporting today's action focuses on assessing exposure from freshwater fish caught and consumed by recreational and subsistence anglers because available information indicate that U.S. utility Hg emissions may affect the methylmercury concentrations in these fish. EPA also considered the following fish consumption pathways: Consumption from commercial sources (including saltwater and freshwater fish from domestic and foreign producers); consumption of recreationally caught marine fish, consumption of recreationally caught estuarine fish; and consumption of commercial fish raised at fish farms (aquaculture). For a number of reasons, as explained in the TSD, current information does not suggest that these latter pathways present meaningful risks of ingestion of utility-attributable methylmercury.

The EPA's 1997 Mercury Study Report to Congress suggests a plausible link between anthropogenic releases of Hg from industrial and combustion sources in the U.S. and methylmercury in fish in the U.S. However, other sources of Hg emissions, including Hg from natural sources (such as volcanos) and anthropogenic emissions in other countries, contribute to the levels of methylmercury observed in fish in the U.S.[42] Our current understanding of the global Hg cycle and the impact of the anthropogenic sources allow us to make estimates on a global, continental, or regional scale of their relative importance. It is more difficult to make accurate predictions of the fluxes on a local scale given our current understanding.

We recognize that it is also difficult to quantify with precision how a specific change in air deposition of Hg leads to a change in fish tissue levels. We further recognize that the relationship between the amount of Hg emissions reduced and the attendant reduction in methylmercury fish concentrations depends upon the specific characteristics of the waterbody at issue. Nevertheless, science continues to evolve and EPA has made substantial progress in developing methods for assessing the amount of methylmercury in fish tissues that may be traced to emissions from coal-fired U.S. Utility Units. We describe our methodology below and why this methodology is sufficient to support today's action.

As discussed above, we are focusing on consumption of self-caught, freshwater fish. We estimate that there are approximately 27.9 million recreational freshwater fishers in the U.S. population, including fishers who do not eat (*e.g.*, release) their catch. Based on application of a "consuming" factor and a "sharing" factor to the estimate of recreational fishers, as discussed further in the RIA to CAMR, we estimate that approximately 58.6 million individuals in the U.S. population consume recreationally-caught freshwater fish. Of these individuals, we estimate that approximately 7.5 to 10.5 million are women of child-bearing age (that is, 15–44 years old), about 500,000 of whom are expected to give birth in any one year. We estimate that the mean recreational freshwater fish consumption rate for these women is 8 grams/day, and the 95th percentile recreational freshwater fish consumption rate is 25 grams/day. A subset of recreational freshwater fish consumers may consume at higher levels, as discussed below. In addition, subsistence fishers and fishers in certain ethnic groups are expected to have generally higher fish consumption rates than consumers of recreational freshwater fish. These sub-populations are discussed below.

B. The Methylmercury Reference Dose

EPA generally quantifies risk of adverse health effects other than cancer by calculating a reference value (RfV). In general, an RfV is an estimation of an exposure that is likely to be without an appreciable risk of adverse effects over a lifetime. See *http://www.epa.gov/iris/gloss8.htm.* RfVs for exposure by ingestion are called reference doses (RfD).

The EPA defines an RfD as "an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral 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 a NOAEL (no observed adverse effect level), LOAEL (lowest observed adverse effect level), or benchmark dose, with uncertainty factors generally applied to reflect limitations of the data used." *See http://www.epa.gov/iris/gloss8.htm.*

As stated above, an RfD is derived by choosing a point of departure from animal or human data. This can be a NOAEL or LOAEL, either of which may be defined by applying statistical tests and scientific judgment to the data. When the data are sufficient, one can apply a mathematical model to obtain a benchmark dose (BMD). The BMD is the dose at which a particular level of response (*i.e.*, the benchmark response,

[40] A precise estimate of methylmercury exposure depends on quantity of fish consumed as a function of an individual's body weight.

[41] 289 JAMA 1667 (April 2, 2003).

[42] Recent Hg estimates (which are highly uncertain) of annual total global emissions from all sources (natural and anthropogenic) are about 5,000 to 5,500 tons per year (tpy). Of this total, about 1,000 tpy are estimated to be natural emissions and about 2,000 tpy are estimated to be contributions through the natural global cycle of re-emissions of Hg associated with past natural releases and anthropogenic activity. Current anthropogenic emissions account for the remaining 2,000 tpy. Given the global estimates noted above, U.S. anthropogenic Hg emissions are estimated to account for roughly 3 percent of the global total, and U.S. utilities are estimated to account for about 1 percent of total global emissions. Deposition from U.S. utilities is described in greater detail below. Utility RTC at 7–1 to 7–2; Mercury NPR, 69 FR 4657–58 (January 20, 2004); RIA for CAMR chapters 5–6.

or BMR) for some outcome of concern is found to occur. One can then derive a BMD lower confidence limit (BMDL), which is a statistical lower bound on the chosen BMD, an exposure expected to produce a specified effect in some defined percentage of a test population.

The point of departure (again, NOAEL, LOAEL, or BMDL) is divided by uncertainty/variability factors to arrive at the RfD. The uncertainty factors are intended to account for variability and uncertainty in the data. The size of an uncertainty/variability factor is determined by the adequacy or limitations of the data and is typically either 10 or 3 for each type of variabilty. For example, uncertainty factors may be employed for extrapolating from animals to humans, variability in human susceptibility (sensitive populations), and extrapolating from subchronic to chronic exposures. The resulting RfD is believed to be the amount of a chemical which, when ingested daily over a lifetime, is likely to be without an appreciable risk of deleterious effects to humans, including sensitive subpopulations.

In 2001, EPA published an RfD for methylmercury that is based on a BMD approach. This quantitative risk estimate was based on data from developmental neurotoxicity studies mentioned above; specifically, deficits in tests associated with ability to learn and process information. EPA applied an uncertainty/variability factor of 10 to the point of departure (BMDL) to derive the RfD. EPA's RfD for methylmercury is 0.1 μg/kg bw/day, which is 0.1 micrograms of Hg per day for each kilogram of a person's body weight.

As noted in the Hg Proposal, at the direction of Congress, EPA funded the NAS to perform an independent evaluation of the available data related to the health impacts of methylmercury and provide recommendations for EPA's RfD. The NAS/National Research Council (NRC) conducted an 18-month study of the available data on the health effects of methylmercury. The review by the NAS, published in July 2000, concluded that the neuro-developmental effects are the most sensitive and well-documented effects of methylmercury exposure. The NRC advised revising the basis of the RfD, which used data from a short-term exposure in Iraq, to incorporate new studies on children exposed in utero when their mothers ate seafood containing Hg. EPA subsequently established a reference dose of 0.0001 mg/kg bw/day. NAS determined that EPA's RfD "is a scientifically justified level for the protection of public health."

The methylmercury RfD is further described in the RIA, chapter 2 and in other EPA documents (IRIS, U.S. EPA 2001; Water Quality Criteria for the Protection of Human Health: Methylmercury, EPA–823–R–01–001). Briefly, EPA used as the point of departure BMDLs for multiple endpoints from the three studies of in utero methylmercury exposure and effects. These were conducted in the Faroes and Seychelles Islands and in New Zealand.[43] All of the endpoints were children's scores on neuropsychological tests. Consistent with NRC recommendations, an uncertainty/variability factor of 10 was used to account for pharmacokinetic and pharmacodynamic variability in the human population. In the EPA documents, one data set from the Faroes (Boston Naming Test, full cohort) is displayed for all calculations as an example of the multiple BMDLs which serve as the basis for the RfD.

In determining the RfD for methylmercury, EPA said that the "RfD can be considered a threshold for a population at which it is unlikely that adverse effects will be observed" (Water Quality Criteria for the Protection of Human Health: Methylmercury, EPA–823–R–01–001). The RfD was calculated to be a level "likely to be without an appreciable risk," of "deleterious effects" for all populations, including sensitive subgroups. EPA does not further quantify the degree of risk which would be expected for exposures at or above the methylmercury RfD. This is the case for all of EPA's RfDs. Additional regulatory values support a similar threshold approach for describing risks to methylmercury exposure. For example, the World Health Organization sets the level at 0.23 μg/kg/day; Health Canada sets the level at 0.2 μg/kg/day; and the Agency for Toxic Substances and Disease Registry (ATSDR) sets a value of 0.3 μg/kg/day.

EPA has established the RfD at a level such that exposures at or below the RfD are unlikely to be associated with appreciable risk of deleterious effects. It is important to note, however, that the RfD does not define an exposure level corresponding to zero risk; exposure near or below the RfD could pose a very low level of risk which EPA deems to be non-appreciable. It is also important to note that the RfD does not define a bright line, above which individuals are at risk of adverse effects.

Further, in EPA's 1989 Residual Risk Report to Congress, we stated:

> It should be noted that exposures above an RfD or RfC do not necessarily imply unacceptable risk or that adverse health effects are expected. Because of the inherent conservatism of the RfC/RfD methodology, the significance of exceedances must be evaluated on a case-by-case basis, considering such factors as the confidence level of the assessment, the size of UF used, the slope of the dose-response curve, the magnitude of the exceedance, and the number or types of people exposed at various levels above the RfD or RfC.[44]

[43] More specifically, the subjects of the Seychelles longitudinal prospective study were 779 mother-infant pairs from a fish-eating population (Myers *et al.*, 1995a–c, 1997; Davidson *et al.*, 1995, 1998). Infants were followed from birth to 5.5 years of age, and assessed at various ages on a number of standardized neuropsychological endpoints. The independent variable was maternal-hair Hg levels. The Faroe Islands study was a longitudinal study of about 900 mother-infant pairs (Grandjean *et al.*, 1997). The main independent variable was cord-blood Hg; maternal-hair Hg was also measured. At 7 years of age, children were tested on a variety of tasks designed to assess function in specific behavioral domains. The New Zealand study was a prospective study in which 38 children of mothers with hair Hg levels during pregnancy greater than 6 ppm were matched with children whose mothers had lower hair Hg levels (Kjellstrom *et al.*, 1989, 1986). At 6 years of age, a total of 237 children were assessed on a number of neuropsychological endpoints similar to those used in the Seychelles study (Kjellstrom *et al.*, 1989). The Seychelles study yielded no statistically significant evidence of impairment related to in utero methylmercury exposure, whereas the other two studies found dose-related effects on a number of neuropsychological endpoints. In the assessment described here, an integrative analysis of all three studies was relied upon in setting the point of departure for derivation of the RfD. As noted by NRC in reference to data from the Seychelles, Faroe Islands, and New Zealand, "because those data are epidemiological, and exposure is measured on a continuous scale, there is no generally accepted procedure for determining a dose at which no adverse effects occur." (NRC 2000)

[44] U.S. Environmental Protection Agency. 1989. Risk Assessment Guidance for Superfund: Volume I. Human Health Evaluation Manual (Part A). Office of Emergency and Remedial Response. Washington, DC, EPA/541/1–89/002, at 52–53 *http://www.epa.gov/oswer/riskassessment/ragsa/pdf/ch8.pdf* (Residual Risk Report). The Residual Risk Report further stated:

> It is expected that an HI (*i.e.*, hazard index (HI)), which is the sum of more than one hazard quotient for multiple substances and/or multiple exposure pathways) less than 1 that is derived using target organ specific hazard quotients would ordinarily be considered acceptable. If the HI is greater than 1, then the amount by which the HI is greater than 1, the uncertainty in the HI, the slope of the dose-response curve, and a consideration of the number of people exposed would be considered in determining whether the risk is acceptable. Evaluation of the acceptable value for an HQ (*i.e.*, hazard quotient (HQ), which is the ratio of the exposure level to a reference exposure level (*e.g.*, RfD)) or an HI of 1 also would consider the values of UFs (*i.e.*, uncertainty/variability factor (UF)), which is a default factor—generally 10-fold—used in operationally deriving the RfD or RfC from experimental data) and the confidence in the RfC that are used in the calculation of the HI. In general, it is considered that each UF is somewhat conservative; because all factors are not likely to simultaneously be at their most extreme (highest) value, a combination of several factors can lead to substantial conservatism in the final value. Larger

Continued

C. Methylmercury Levels in Fish and the Methylmercury Water Quality Criterion

As noted above, the most important pathway of exposure to Hg for humans is through the consumption of fish and seafood. These include saltwater fish such as tile fish, shark, and swordfish, which are most often caught commercially. They also include freshwater fish such as bass, perch, and walleye, which are often caught recreationally, commercially, or for personal consumption or distribution. Generally shellfish have lower levels of methylmercury than do finfish. The levels of Hg in fish and shellfish are variable, with mean levels ranging from non-detectable to 1.45 mg/kg, depending on species. See FDA Mercury Levels in Commercial Fish and Shellfish (*http://www.cfsan.fda.gov/~frf/sea-mehg.html*).

Methylmercury exposure is a function of how much fish is eaten (on a bodyweight basis), how frequently fish is eaten, and the methylmercury concentration in the fish. As a result, estimates of the amount and type of fish consumption are important to assessing the impacts of methylmercury attributed to coal-fired Utility Units on public health.

Hg is emitted from powerplants in three forms: Elemental Hg, reactive (oxidized) Hg, and particulate Hg. Most of the local and regional Hg deposition is associated with the emissions of reactive Hg. For this reason, the magnitude of reactive Hg emission from powerplants is critical to Hg deposition in the United States. As noted above, FGD and SCR control technologies are most effective in controlling reactive Hg emissions. As indicated by Table VI–2, roughly 90 percent of the Hg reductions under CAIR in 2020 are reactive Hg. As a result, the SO_2 and NO_X limits established by CAIR yield significant reductions (roughly 70 percent) in reactive Hg emissions from powerplants.

Americans eat fish from a variety of sources. An individual's fish diet can be composed of commercial fish and shellfish (both imported and domestic), fish from aquaculture (or farm raised fish for commercial sale), and fish from non-commercial sources (*e.g.*, recreationally caught fish, fish caught to meet dietary needs, and/or fish caught for cultural or traditional reasons). These fish may come from marine, estuarine, or freshwater sources.

Using the 2001 RfD and information on Hg exposure routes, EPA published a recommended ambient water quality criterion for the states' and tribes' use in setting water quality standards for U.S. waters (freshwater and estuarine) that are designed to protect human health. EPA issued the methylmercury water quality criterion in 2001. Water Quality Criterion for the Protection of Human Health: Methylmercury. EPA–823–R–01–001. Office of Science and Technology, Office of Water, USEPA, Washington, DC, USEPA 2001) Because of the wide variability in methylmercury bioaccumulation among waterbodies, EPA set the criterion as a fish tissue level rather than as an ambient water concentration. The criterion is 0.3 mg/kg (milligram methylmercury per kilogram of wet-weight fish tissue). The criterion is a risk assessment number that states and authorized tribes may use in their programs for protection of designated uses.

The Clean Water Act (CWA) and EPA's regulations specify requirements for adoption of water quality criteria. States and authorized tribes must adopt water quality criteria that protect designated uses. See CWA section 303(c)(2)(A). Water quality criteria must be based on a sound scientific rationale and must contain sufficient parameters or components to protect the designated uses. See 40 CFR 131.11. States and authorized tribes must adopt criteria for all toxic pollutants where EPA has established ambient water quality criteria where the discharge or presence of these pollutants could reasonably interfere with the designated uses. See CWA Section 303(c)(2)(B). EPA issued guidance on how states and authorized tribes may comply with section 303(c)(2)(B) which is now contained in the *Water Quality Standards Handbook: Second Edition* (EPA, 1994). States and authorized tribes that decide to use the recommended methylmercury criterion as the basis for new or revised methylmercury water quality standards have the option of adopting the criterion as a fish tissue concentration into their water quality standards, adjusting the criterion to account for state or local exposure, or adopting it as a traditional water column concentration. States and authorized tribes remain free not to use EPA's current recommendations, provided that their new or revised water quality criteria for methylmercury protect the designated uses and are based on a scientifically defensible methodology.

The methylmercury water quality criterion incorporated the RfD, data on freshwater and estuarine finfish and shellfish consumption for the target population (the adult general population), and information on exposure to methylmercury as a result of consumption of marine fish (for methylmercury, exposure from any route other than eating fish is negligible). Specifically, EPA assumed a default intake of freshwater and estuarine and marine finfish and shellfish of 17.5 grams per day (or two 8-ounce meals a month) conforming to EPA's methodology. (EPA; "Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)," EPA–822–B–00–004 (October 2000) ("2000 Water Quality Criteria Methodology")). This default (to be used by EPA for national criteria or others in the absence of data specific to a waterbody) is the 90th percentile total (commercial and non-commercial) freshwater and estuarine finfish and shellfish consumption reported by adults, both consumers and non-consumers. The source of this data is the 1994–1996 Continuing Study of Food Intake by Individuals (CSFII). This is a large ongoing U.S. food consumption survey conducted by USDA.

In addition, in accordance with EPA's published methodology, in developing the criterion, EPA used a relative source contribution (RSC) approach to apportion the RfD to ensure that the water quality criterion is protective, given other sources of exposure. The RSC approach apportions the RfD according to routes of exposures; for methylmercury this adjustment was done to account for marine fish consumption, as the criterion is for freshwater and estuarine finfish and shellfish. In deriving the methylmercury water quality criterion, EPA assumed an exposure to methylmercury in marine fish that is equivalent to 27 percent of RfD. That is, EPA developed the criterion so that it would be protective even if an individual is consuming typical amounts of fish from other sources (*i.e.*, marine fish).

D. EPA's Methodology for Assessing Methylmercury Levels in Fish Tissues

To estimate methylmercury levels, including methylmercury attributable to Utility Units, in consumed freshwater fish, EPA's analysis relied primarily on monitoring data (*i.e.*, fish tissue samples collected from freshwater sites across the study area). EPA used sources of national-level monitored Hg data. The

composite UF lead to more conservative RfC. Conversely, lower composite UF are less conservative and usually indicate a higher level of confidence in the RfC. Intermediate UF values or a mixture of high and low UF would require an examination of the relative contribution of various chemicals to the HI. Thus, an HI or HQ greater than 1 may be considered acceptable based on consideration of other factors.

Id. at 125.

National Listing of Fish and Wildlife Advisories (NLFA), which is maintained by EPA, contains data from over 80,000 fish tissue samples across the U.S. In addition to the NLFA, EPA's National Fish Tissue Survey (NFTS) provides useful data. Conducted in 2000–2003, this dataset includes fish tissue samples from 500 randomly selected lakes and reservoirs across the U.S. EPA considers these combined two data sets to be sufficiently comprehensive and sufficiently inclusive of the waterbodies of highest exposure for use in EPA's regional analysis, although, as discussed in the TSD, for certain areas of the country, gaps in the datasets have led EPA to rely on overall regional trends to draw conclusions for local areas.

The NLFA is the most extensive available source of fish tissue sampling data for Hg. It currently includes fish tissue contaminant data collected by states (and submitted to EPA) from over 10,000 locations nationwide, with most of the locations in the eastern half of the U.S. In general, the States historically sampled waterbodies in areas of suspected contamination. More recently, states have also focused sampling efforts on areas of elevated fishing pressure. Almost all of the tissue samples include tests for Hg. The NLFA includes roughly 83,000 Hg samples collected in the U.S. between 1967 and 2002. In the dataset, most samples are described according to the sample location, sample date, measured Hg concentration, species and size of fish, and the part of the fish sampled.

Based on the geographic coordinates provided in the NLFA database, EPA also defined two additional fields for each Hg sample:

—The eight-digit watershed (hydrological unit code (HUC) (discussed below)) in which the sample was located; and

—The type of waterbody (*i.e.*, lake or river/stream) from which the sample was taken.

The HUC, developed by the USGS, spatially delineates watersheds throughout the United States. Hydrologic units are available at four levels of aggregation, ranging from a two-digit regional level (21 units nationwide) to the eight-digit HUC (2,150 distinct units). The eight-digit HUC-level designation is useful for this analysis because it provides a nationally consistent approach for grouping waterbodies on a "local" scale (the average HUC area is 1,631 sq mi).[45]

We made the water body type assignments using proximity analysis in ArcINFO. Each sampling site was assigned to either a flowing (*e.g.*, river, stream) or a stationary (*e.g.*, lake, reservoir) waterbody, according the type of waterbody most closely located to the site's lat/long coordinates. We used National Hydrology Dataset (NHD) in the proximity analysis.

For purposes of the modeling described below, we restricted the samples selected from the NLFA data to those that met the following criteria:

- Collected after 1999;
- Sampled from freshwater species (*i.e.*, saltwater species are excluded from the analysis); and
- Sampled from freshwater (rather than estuarine or coastal) waterbodies.

These NLFA Hg sampling data were supplemented with additional observations from EPA's National Fish Tissue Survey (NFTS). Compiled in 2000–2003, this dataset includes fish tissue samples from 500 randomly selected lakes and reservoirs across the U.S. Combining data from NLFA and NFTS, samples from 1633 lake and river sampling sites were selected for the analysis.

Although the NLFA and NFTS provide rich sources of data on Hg levels in freshwater fish for the study area, the fish tissue samples in these databases vary in several respects. For example, they vary according to the size and species of fish sampled and according to the sampling method used (*e.g.*, the cut of fish sampled). We limited the samples we used for this analysis to fish likely to be caught and consumed, defined for this analysis as fish greater than or equal to seven inches in length.

The TSD describes in more detail how we used the data available in the NLFA and NFTS datasets.

E. Air Quality Modeling of the Impacts of Utility Unit Hg on Fish Tissue Levels

EPA conducted computerized modeling that indicates the effects of various scenarios for Utility Unit Hg emissions on fish tissue at the NLFA–NFTS sites across the country, in both a 2001 base case and in projected control cases for the year 2020. This section summarizes the emissions inventories used in those modeling scenarios, and the air quality modeling, that serve as the basis for determining the fish tissue impacts of Hg from Utility Units at various levels of emissions.

EPA used a sophisticated air quality model to estimate baseline and post-control annual total Hg deposition for each scenario. EPA then combined the estimated changes in Hg depositions with fish tissue data to determine estimated changes in methylmercury levels in fish tissues. EPA then combined those changes in fish tissue methylmercury levels with estimates of fish consumption, for use in estimating exposure levels.

1. Air Quality Modeling for Hg Deposition From Utility Mercury Emissions

This section summarizes the methods for estimating Hg deposition for 2001 and 2020 base cases and control scenarios. EPA estimated the Hg deposition changes using national-scale applications of the Community Multi-Scale Air Quality (CMAQ) model in the contiguous United States.

a. CMAQ Model and Hg Deposition Estimates. CMAQ is a three-dimensional grid-based Eulerian air quality model designed to estimate annual particulate concentrations and Hg deposition over large spatial scales (*e.g.*, over the contiguous United States). Because it accounts for spatial and temporal variations as well as differences in the reactivity of emissions, CMAQ is useful for evaluating the impacts of changes in utility Hg emissions, under various scenarios, on U.S. Hg deposition. Our analysis applies the modeling system to the entire United States for the following emissions scenarios:

(1) A 2001 base year;

(2) A 2001 base year of utility Hg emissions only;

(3) A 2020 projection that includes utility Hg emissions as reduced through implementation of CAIR;

(4) A 2020 projection with utility Hg emissions zeroed-out;[46]

(5) A 2020 projection that includes utility Hg emissions as reduced through implementation of CAMR (which, in turn, reflects both CAIR reductions and the reductions from the additional, 2018 controls); and

(6) A 2020 projection that includes utility Hg emissions as reduced through a second CAMR option (this second CAMR option reflects both CAIR reductions and a set of additional reductions that are tighter than the ones adopted in CAMR).

The CMAQ version 4.3 was employed for this CAMR modeling analysis. This version reflects updates in a number of areas to improve performance and address comments from the peer review. CMAQ simulates every hour of every day of the year and, thus, requires a

[45] More information regarding these hydrological units can be found through the USGS Web site *http://water.usgs.gov/GIS/huc.html.*

[46] The reference to "zeroed out" means that the modeled inventory did not include any amount of Hg emissions from utilities. This "zero-out" technique allows focus on the impact of the utilities alone.

variety of input files that contain information pertaining to the modeling domain and simulation period. These include hourly emissions estimates and meteorological data in every grid cell, as well as a set of pollutant concentrations to initialize the model and to specify concentrations along the modeling domain boundaries. These initial and boundary concentrations were obtained from output of a global chemistry model. We use the model predictions in a relative sense by first determining the ratio of Hg deposition predictions. The calculated relative change is then combined with the corresponding fish tissue concentration data to project fish tissue concentrations for the future case scenarios.

b. Modeling Domain and Simulation Periods. The modeling domain encompasses the lower 48 States and extends from 126 degrees to 66 degrees west longitude and from 24 degrees north latitude to 52 degrees north latitude. The modeling domain is segmented into rectangular blocks referred to as grid cells. The model actually predicts pollutant concentrations for each of these grid cells. For this application, the horizontal grid cells are roughly 36 km by 36 km. In addition, the modeling domain contains 14 vertical layers with the top of the modeling domain at about 16,200 meters. Within the domain each vertical layer has 16,576 grid cells.

The simulation periods modeled by CMAQ included separate full-year application for each of the emissions scenarios modeled.

c. Model Inputs. CMAQ requires a variety of input files that contain information pertaining to the modeling domain and simulation period. These include gridded, hourly emissions estimates and meteorological data and initial and boundary conditions. Separate emissions inventories were prepared for the 2001 base year and each of the future-year base cases and control scenarios. All other inputs were specified for the 2001 base year model application and remained unchanged for each future-year modeling scenario.

CMAQ requires detailed emissions inventories containing temporally allocated emissions for each grid cell in the modeling domain for each species being simulated. The previously described annual emission inventories were preprocessed into model-ready inputs through the emissions preprocessing system. Details of the preprocessing of emissions are provided in the Clean Air Interstate Rule Emissions Inventory Technical Support Document (Emissions Inventory TSD). Meteorological inputs reflecting 2001 conditions across the contiguous United States were derived from version 5 of the Mesoscale Model (MM5). These inputs include horizontal wind components (*i.e.*, speed and direction), temperature, moisture, vertical diffusion rates, and rainfall rates for each grid cell in each vertical layer.

The lateral boundary and initial species concentrations are provided by a three-dimensional global atmospheric chemistry and transport model (GEOS-CHEM). The lateral boundary species concentrations varied with height and time (every 3 hours). Terrain elevations and land use information were obtained from the U.S. Geological Survey database at 10 km resolution and aggregated to the roughly 36 km horizontal resolution used for this CMAQ application.

d. CMAQ Model Evaluation. An operational model performance evaluation for Hg wet deposition for 2001 was performed to estimate the ability of the CMAQ modeling system to replicate base-year wet deposition of Hg. Because measurements for the dry deposition of Hg do not currently exist, the modeled dry deposition performance could not be evaluated. The wet deposition evaluation principally comprises statistical assessments of model versus observed pairs that were paired in time and space on a weekly basis. This evaluation includes comparisons of model predictions to the corresponding weekly measurements from the Mercury Deposition Network (MDN).

As discussed in the TSD, in EPA's view, CMAQ model performance for wet deposition shows very good agreement with the MDN monitoring sites with an underprediction bias well within accepted performance criteria. It should be noted that the application of a sophisticated photochemical grid model like CMAQ has been demonstrated to be appropriate to support national and regional assessments of control strategies on atmospheric concentrations such as today's rule. Therefore, for purposes of assessing impacts on regional patterns of Hg deposition, we aggregate individual CMAQ grids to watersheds.

2. Emission Inventories and Estimated EGU (Utility Unit) Emission Reductions

As discussed in the Clean Air Mercury Rule Emission Inventory Technical Memorandum, EPA developed 2001 and 2020 Hg emission inventories for the air quality modeling. EPA relied on the 2001 Hg emission inventory as the base case. The base case consists of the level of Hg emissions, including Utility Unit emissions reduced by controls implemented for purposes of the acid deposition provisions and for other purposes, before reductions under CAIR (required under CAA section 110(a)(2)(D)) or CAMR (required under section 111). For comparison purposes, EPA also conducted an air quality modeling run of the 2001 Hg emissions inventories with Utility Units' Hg emissions "zeroed out." EPA relied on the Integrated Planning Model (IPM), discussed below, to develop projections of EGU emissions for 2020. The 2020 utility Hg emission inventories reflect reductions under various control scenarios.

a. Use of IPM for Estimating Utility Unit Emissions. EPA projected future Hg emissions from the power generation sector using the IPM. The EPA uses IPM to analyze the projected impact of environmental policies on the electric power sector in the 48 contiguous states and the District of Columbia.

IPM is a multi-regional, dynamic, deterministic linear programming model of the U.S. electric power sector. The EPA used IPM to project both the national level and the unit level of Utility Unit Hg emissions under different control scenarios. The EPA also used IPM to project the costs of those controls.

As noted elsewhere, the CAIR SO_2 and NO_X controls provide the basis for reducing Hg to the CAIR co-benefit levels in 2010 and 2020. EPA assumed that states would choose to implement the CAIR-required SO_2 and NO_X reductions by controlling Utility Units, and by doing so through the EPA-administered cap-and-trade program. This assumption is reasonable, for present purposes, because of the cost-savings associated with the cap-and-trade program.

EPA used IPM to project the distribution within the utility industry of the emission controls to comply with CAIR. EPA then was able to use IPM to project the amount, and geographic distribution, of Hg emissions that would result from implementation of those CAIR-required emissions controls. In addition, EPA used IPM to project the geographic distribution of the additional emissions controls under section 111, and the associated costs.

In these IPM runs, EPA assumed that states would implement the Hg requirements through the Hg cap-and-trade program that EPA is establishing. EPA further assumed that the States would implement the additional reductions under section 111, beginning in 2010, through the same cap-and-trade program. The cap-and-trade program is implemented in two phases, with a cap

of 38 tons in 2010 (set at the co-benefits reduction under CAIR) and a lower cap of 15 tons in 2018. EPA modeling of section 111 projects banking of excess Hg reductions in the 2010 to 2017 timeframe for compliance with the cap in 2018 and beyond timeframe. Although states are not required to adopt the EPA-administered trading program, this program assures that those reductions will be achieved with the least cost. For that reason, EPA believes it reasonable to assume that States will adopt the program.

The National Electric Energy Data System (NEEDS) contains the generation unit records used to construct model plants that represent existing and planned/committed units in EPA modeling applications of IPM. The NEEDS includes basic geographic, operating, air emissions requirements, and other data on all the generation units that are represented by model plants in EPA's v.2.1.9 update of IPM.

The IPM uses model run years to represent the full planning horizon being modeled. That is, several years in the planning horizon are mapped into a representative model run year, enabling IPM to perform multiple year analyses while keeping the model size manageable. Although IPM reports results only for model run years, it takes into account the costs in all years in the planning horizon. In EPA's v.2.1.9 update of IPM, the years 2008 through 2012 are mapped to run year 2010, and the years 2013 through 2017 are mapped to run year 2015, and the years 2018 through 2022 are mapped to 2020.[47] Model outputs for 2009 and 2010 are from the 2010 run year. More detail on IPM can be found in the model documentation in the docket or at *http://www.epa.gov/airmarkets/epa-ipm* and more discussion of modeled scenarios can be found in the Regulatory Impact Assessment for CAIR and CAMR in the docket.

IPM has been used for evaluating the economic and emission impacts of environmental policies for over a decade. The model's base case incorporates title IV of the Clean Air Act (the Acid Rain Program), the NO_X SIP Call, various New Source Review (NSR) settlements, and several state rules affecting emissions of SO_2 and NO_X that were finalized prior to April of 2004. The NSR settlements include agreements between EPA and certain utilities. IPM also includes various current and future state programs in Connecticut, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, New York, Oregon, Texas, and Wisconsin. IPM includes state rules that have been finalized and/or approved by a state's legislature or environmental agency. The base case is used to provide a reference point to compare environmental policies and assess their impacts and does not reflect a future scenario that EPA predicts will occur.

EPA's modeling is based on various input assumptions that are uncertain, particularly assumptions for Hg control technology, future fuel prices and electricity demand growth. While IPM contains an assumption of 90% Hg removal for ACI and, for modeling convenience, does not constrain the timeframe for the availability of technology, this should not be interpreted as implying any assessment of the availability of technology. For further discussion of the availability of Hg technology, see EPA's Office of Research and Development (ORD) Control of Emissions from Coal-Fired Electric Utility Boilers: An Update, EPA/Office of Research and Development, March 2005, in CAMR docket. There may also be technologies available for SO_2 and NO_X control that are not accounted for in IPM. Therefore the technologies that plants may use to comply with this program may not be accurately projected by IPM in all cases. These and other assumptions and uncertainties are discussed further in the RIA for CAIR and CAMR in the docket. More detail on IPM can be found in the model documentation, which provides additional information on the assumptions discussed here as well as all other assumptions and inputs to the model (see docket or *http://www.epa.gov/airmarkets/epa-ipm*).

b. Emission Estimates. The emission sources and the basis for current and future-year inventories are listed in Table VI–1. Table VI–2 summarizes the Hg emissions and the change in the emissions from EGUs (Utility Units) that we expect to result under the various EGU control scenarios (under CAIR and CAMR) that we used in modeling deposition changes.

TABLE VI—1. EMISSION SOURCES AND BASIS FOR CURRENT AND FUTURE-YEAR MERCURY INVENTORIES

Sector	Emissions source	2001 Base year	Future-year base case projections
EGU	Power industry electric generating units (EGUs).	1999 National Emission Inventory (NEI) data.	Integrated Planning Model (IPM).
Non-EGU point sources	Non-Utility Point	1999 NEI, with medical waste incinerator sources replaced with draft 2002 NEI.	(1) Department of Energy (DOE) fuel use projections, (2) Regional Economic Model, Inc. (REMI) Policy Insight® model, (3) decreases to REMI results based on trade associations, Bureau of Labor Statistics (BLS) projections and Bureau of Economic Analysis (BEA) historical growth from 1987 to 2002, (4) Maximum Achievable Control Technology category growth and control assumptions.
Non-point	All other stationary sources inventoried at the county level.	1999 NEI, with medical waste incinerator sources replaced with draft 2002 NEI.	Same as above.

This table documents only the sources of data for the U.S. inventory. The sources of data used for Canada and Mexico are explained in the technical support memorandum and were held constant from the base year to the future years.

[47] An exception was made to the run year mapping for an IPM sensitivity run that examined the impact of a NO_X Early Reduction Pool (ERP). In that run the years 2009 through 2012 were mapped to 2010 and 2008 was mapped to 2008.

TABLE VI—2. SUMMARY OF MODELED MERCURY EMISSIONS FOR CLEAN AIR MERCURY RULE

	Elemental mercury	Reactive gaseous mercury	Particulate mercury	Total mercury
2001 Base Case Emissions (tons)				
EGU Sources	26.26	20.58	1.73	48.57
Non-EGU Point Sources	37.85	13.33	7.60	58.78
Area Sources	5.05	1.53	0.96	7.54
All Sources	69.16	35.44	10.29	114.89
2001 Utility Mercury Emissions Zero-Out (tons)				
EGU Sources	0.00	0.00	0.00	0.00
Non-EGU Point Sources	37.85	13.33	7.60	58.78
Area Sources	5.05	1.53	0.96	7.54
All Sources	42.90	14.86	8.56	66.32
2020 With CAIR Emissions (tons)				
EGU Sources	25.72	7.87	0.83	34.42
Non-EGU Point Sources	28.03	10.37	6.61	45.01
Area Sources	5.69	1.30	0.77	7.76
All Sources	59.44	19.54	8.21	87.19
2020 With CAIR Utility Mercury Emissions Zero-Out				
EGU Sources	0.00	0.00	0.00	0.00
Non-EGU Point Sources	28.03	10.37	6.61	45.01
Area Sources	5.69	1.30	0.77	7.76
All Sources	33.72	11.67	7.38	52.77
2020 With CAIR and CAMR				
EGU Sources	17.65	6.57	0.83	25.05
Non-EGU Point Sources	28.03	10.37	6.61	45.01
Area Sources	5.69	1.30	0.77	7.76
All Sources	51.37	18.24	8.21	77.82
2020 With CAIR and Alternative CAMR Control Option				
EGU Sources	14.33	5.71	0.79	20.83
Non-EGU Point Sources	28.03	10.37	6.61	45.01
Area Sources	5.69	1.30	0.77	7.76
All Sources	48.05	17.38	8.17	73.60

(**Note:** "Reactive Gaseous Mercury" refers to oxidized mercury).

(**Note:** Table IV–2 includes projections for all EGUs, including other fossil-fired units, and coal-fired units that are less than 25 MW.)

c. Projected Hg Emissions. Table VI–3 provides projected total Hg emissions levels in 2010, 2015, and 2020. Because of the banking of excess emissions reductions under the first phase of the Hg program, emissions in the second phase will be initially higher than the caps that are required under CAMR.

TABLE VI—3. PROJECTED EMISSIONS OF HG WITH THE BASE CASE [a] (NO FURTHER CONTROLS), WITH CAIR, AND WITH SECTION 111 CONTROLS

[Tons]

	2010	2015	2020
Base Case	46.6	45.0	46.2
CAIR	38.0	34.4	34.0
CAMR	31.3	27.9	24.3
Alternative CAMR Control Option	30.9	25.7	20.1

[a] Base case includes Title IV Acid Rain Program, NO_X SIP Call, and state rules finalized before March 2004.
Source: Integrated Planning Model run by EPA.

Emissions projections are presented for affected coal-fired units.

(Note: Table VI–3 includes projections for all affected units, *i.e.*, coal-fired units greater than 25 MW.)

3. Effect of Reductions in Utility Unit Hg Emissions on Regional Patterns of Mercury Deposition and Fish Tissue Methylmercury Concentrations

EPA uses CMAQ to predict the effect of the various control scenarios on Hg deposition attributable to Utility Units within the 48 contiguous states. By averaging the 36 km CMAQ gridded deposition estimates to the watershed (*i.e.*, HUC–8) level, EPA is able to estimate the effectiveness of reductions in utility Hg emissions in achieving reductions in deposition attributable solely to Utility Units. In addition, by comparing changes in Hg deposition before and after implementation of rule requirements at the geographic location of the fish tissue sample points, EPA is able to estimate the effect of reductions in Hg deposition on fish tissue methylmercury concentrations at the sample points.

EPA generates these changes in Hg deposition by comparing two air modeling scenarios (*e.g.*, a control scenario versus a baseline scenario for a particular simulation year). EPA then translates these changes in Hg deposition into changes in methylmercury fish tissue concentrations based on a proportionality assumption: *i.e.*, an incremental percent change in deposition produces a matching percentage change in Hg fish tissue concentrations.[48]

EPA is able to use these modeled changes in methylmercury fish tissue concentrations, together with information about fish consumption, to predict changes in population-level Hg exposure. These exposure changes reveal the extent to which reductions in Utility Unit Hg emissions, and the extent to which remaining Utility Unit Hg emissions, affect public health.

F. Fish Tissue Levels of Methylmercury Modeled To Result After Implementation of CAIR and CAMR

This section describes the amounts of Utility Unit attributable Hg deposition onto watersheds (termed HUC), as well as the Utility-attributable methylmercury in fish tissue, all under the various control scenarios modeled.

1. Utility-Attributable Hg Deposition Patterns

The air quality modeling shows that total Hg deposition is not highly impacted by utility deposition. The small size of this impact is evident when utility emissions are, in effect, zeroed out in the 2001 base case. The following tables summarize impacts on total Hg deposition and Hg deposition attributable to Utility Units.

TABLE VI–4.—SUMMARY STATISTICS FOR TOTAL HG DEPOSITION

[Aggregated to the HUC–8 level]

	2001 Base case	2001 Utility zero out	2020 Base case (with CAIR)	2020 Utility zero out	2020 CAMR requirements	2020 CAMR alternative
Minimum	6.94	6.94	6.08	5.90	6.08	6.07
Maximum	54.54	54.38	62.76	62.72	62.76	62.75
50th percentile	15.92	14.60	14.59	13.92	14.44	14.39
90th percentile	22.16	19.48	19.46	19.04	19.37	19.33
99th percentile	32.35	27.20	29.15	28.93	28.96	28.95

(All units are expressed in micrograms per square meters.)

TABLE VI–5. SUMMARY STATISTICS FOR UTILITY ATTRIBUTABLE HG DEPOSITION

[aggregated to the HUC–8 level]

	2001 Base case	2020 Base case (with CAMR)	2020 CAMR Requirements	2020 CAMR Alternative
Minimum	0.00	0.00	0.00	0.00
Maximum	19.71	4.03	3.85	3.80
50th percentile	0.39	0.3	10.26	0.22
90th percentile	4.08	1.38	1.16	0.99
99th percentile	10.15	2.56	2.17	2.04

(All units are expressed in micrograms per square meters.)

The median deposition level is reduced by only 8 percent when utilities emissions are zeroed out in 2001, suggesting that utilities are not a major source of Hg deposition in most HUCs. Even so, at HUCs with the highest deposition levels, zeroing out utilities reduces the 99th percentile deposition level by 16 percent, suggesting that there are relatively larger impacts of utilities in high deposition areas.

By 2020, after implementation of CAIR, significant reductions in deposition attributable to utilities occurs. HUCs with high levels of utility deposition receive a larger reduction in Utility-attributable Hg deposition relative to HUCs with a relatively small level of Utility-attributable deposition. Specifically, CAIR results in a 75 percent reduction in the 99th percentile of Utility-attributable deposition, and a 20 percent reduction in the 50th percentile. CAIR also shifts the distribution of utility-attributable deposition. In the 2001 base case, 10 percent of HUCs had greater than 20 percent of deposition attributable to utilities. In the 2020 post-CAIR base case, no HUCs had greater than 20 percent of deposition attributable to utilities, and 90 percent had less than 9 percent of deposition attributable to utilities.

[48] US EPA, 2001. Mercury Maps: A Quantitative Spatial Link Between Air Deposition and Fish Tissue: Peer Reviewed Final Report. EPA–823–R–01–009. Mercury Maps is discussed at length in the TSD.

Additional reductions in Hg emissions due to the CAMR requirements result in relatively small additional shifts in the distribution of deposition. Additional emissions reductions due to the CAMR requirements result in a small additional reduction in the number of HUCs with a high percentage of utility-attributable emissions. (The incremental impact of the CAMR alternative relative to the promulgated CAMR requirements is very small.)

2. EGU-Attributable Methylmercury Fish Tissue Levels

The following tables summarize the methylmercury fish tissue levels associated with the various Utility Unit Hg emissions scenarios. All units refer to mg (of methylmercury) per kg (fish tissue), or parts per million (ppm). As a frame of reference, it should be noted that EPA's default water quality criterion is 0.3 mg/kg.

TABLE VI—6. SUMMARY STATISTICS FOR TOTAL FISH TISSUE METHYLMERCURY

[Sample locations]

	2001 Base case	2001 Utility zero out	2020 Base case CAIR	2020 Zero out	2020 CAMR requirements	2020 CAMR alternative
Minimum	0.00	0.00	0.00	0.00	0.00	0.00
Maximum	4.49	3.64	3.65	3.46	3.63	3.61
50th percentile	0.25	0.21	0.21	0.20	0.21	0.21
90th percentile	0.90	0.81	0.79	0.77	0.79	0.78
99th percentile	1.80	1.65	1.64	1.57	1.63	1.63

(All units are in mg methylmercury per kg fish tissue.)

TABLE VI—7. SUMMARY STATISTICS FOR UTILITY ATTRIBUTABLE FISH TISSUE METHYLMERCURY

[Across sampling locations]

	2001 Base	2020 (with CAIR)	2020 CAMR Requirements	2020 CAMR Alternative
Minimum	0.00	0.00	0.00	0.00
Maximum	0.85	0.25	0.19	0.18
50th percentile	0.03	0.01	0.01	0.01
90th percentile	0.11	0.03	0.03	0.03
99th percentile	0.26	0.10	0.09	0.08

(All units are in mg methylmercury per kg fish tissue.)

a. 2001 Base case and 2001 Utility Zero-out. In the 2001 base case, as a result of all international and U.S. emissions, and before U.S. utilities implement reductions from CAIR or CAMR, the 50th percentile of the sample points had an estimated methylmercury fish tissue concentration of 0.25 mg/kg. The 90th percentile water body had an estimated methylmercury fish tissue concentration of 0.90 mg/kg, and the 99th percentile had 1.80 mg/kg.

The amount of methylmercury attributable solely to utilities in the 2001 base case, which becomes evident when utilities are zeroed out, is of course much smaller. The 50th percentile of the sample points had an estimated methylmercury fish tissue concentration. attributable solely to utilities, of 0.03 mg/kg. The 90th percentile had 0.11 mg/kg, the 99th percentile had 0.26 mg/kg, and the maximum individual sample point had 0.85 mg/kg.

It should be recalled that EPA recommends the water quality criterion of 0.3 mg/kg as a level that, given fish consumption at the 90th percentile level, would result in exposure levels below the RfD. For present purposes, EPA does not consider the water quality criterion of 0.3 mg/kg as a bright-line test for evaluating fish tissue methylmercury levels attributable to U.S. Utility Units. Rather, the criterion serves as establishing a broad frame of reference, that serves to place into context both the overall methylmercury fish tissue levels (which are attributable to methylmercury from all sources) and the methylmercury levels attributable to Utility Units.

These results indicate the relatively small percentage of U.S. utility contribution to U.S. fish tissue methylmercury levels.

b. 2020: Utilities With CAIR Reductions. EPA's modeling shows that in 2020, as a result of all international and U.S. emissions, and with U.S. utilities implementing reductions from CAIR (but not CAMR), the 50th percentile of the sample points is projected to have a methylmercury fish tissue concentration of 0.21 mg/kg. The 90th percentile is projected to have 0.79 mg/kg, and the 99th percentile is projected to have 1.64 mg/kg.

The amount of methylmercury in fish attributable solely to utilities in 2020, after implementation of the CAIR reductions (but, again, before CAMR), of course is smaller. The 50th percentile of the sample points is projected to have fish tissue concentration, attributable solely to utilities of 0.01 mg/kg. The 90th percentile is projected to have 0.03 mg/kg, the 99th percentile is projected to have 0.10 mg/kg, and the maximum individual sample point (*i.e.*, the one with the highest methylmercury levels) is projected to have 0.25 mg/kg.

Again, using the 0.3 mg/kg methylmercury water quality criterion as a broad frame of reference serving to place in context both the overall methylmercury fish tissue levels (attributable to methylmercury from all sources) and the methylmercury fish tissue levels attributable to Utility Units, it is clear that the latter levels, following implementation of CAIR, are low.

c. 2020: Utilities with CAMR Controls. The CAMR level of controls achieve further, albeit small, reductions in methylmercury fish tissue concentrations. Compared to the CAIR controls, the CAMR controls would further reduce, in 2020, methylmercury fish tissue concentrations by, in the 99th percentile, 0.01 mg/kg.

d. 2020: Utilities with Alternative CAMR Controls. EPA evaluated, but did not adopt, a slightly tighter level of CAMR controls. These alternative

CAMR controls would have achieved still further, albeit, again small, reductions in Hg deposition and in fish tissue methylmercury levels. Compared to the CAIR controls, these alternative CAMR controls would reduce methylmercury fish tissue levels in 2020 by, in the 99th percentile, 0.02 mg/kg.[49]

5. Overall Impact of CAIR and CAMR Controls on Utility Unit Hg Emissions

As described in the CAIR rule, CAIR reduces EGU Hg emissions from pre-CAIR levels by a substantial percentage. CAMR reduces Utility Unit Hg emissions, from CAIR levels, by 27 percent. CAMR reduces ionic Hg emissions, those that are most likely to result in local and regional deposition, by 17 percent relative to CAIR levels.

These reductions tend to occur from the largest sources. That is, the larger the source of Hg emissions, the more likely it is to implement CAIR or CAMR controls, and therefore the more likely it is to reduce its Hg emissions. More specifically, under the cap-and-trade system, the marketplace tends to direct controls to the largest emitters because those emitters can achieve the most cost-effective reductions. Compared to smaller emitters, these larger emitters have an incentive to implement more stringent controls, thereby reducing their emissions further below the level of their allowances, and thereby generating a larger number of allowances for sale to defray control costs. See "Proposed National Emissions Standards for Hazardous Air Pollutants; and in the Alternative, Proposed Standards of Performance for New and Existing Sources: Electric Utility Steam Generating Units," 9 FR 4652, 4702–03 (Jan. 30, 2004).

G. Exposure to Utility-Attributable Methylmercury Levels in Fish Tissue

CAIR reduces median Utility-attributable fish tissue methylmercury levels, from pre-CAIR levels, by 67 percent. CAIR reduces the 99th percentile Utility-attributable fish tissue methylmercury levels, from pre-CAIR levels, by 60 percent. CAMR reduces median Utility-attributable fish tissue methylmercury levels, from CAIR levels, by 12 percent. CAMR reduces the 99th percentile Utility-attributable fish tissue methylmercury levels, from CAIR levels, by 9 percent.

As a result of these reductions, after CAIR or CAMR, no sample site remains in which Utility-attributable, emissions cause methylmercury fish tissue levels to exceed 0.3 mg/kg (EPA's water quality criterion).

Even with these reductions, although the levels of methylmercury in fish tissues attributable to Utility Units are small, the magnitude of methylmercury exposure depends on consumption levels and the sensitivity of the individual. For purposes of assessing whether utility Hg emissions are reasonably anticipated to result in hazards to public health, we focused on evaluating utility attributable methylmercury exposures for women of childbearing age in the general U.S. population who consume non-commercial (*e.g.*, recreational) freshwater fish in U.S. waterbodies.

This section describes available information as to the consumption levels of women of child-bearing age within the population of recreational fishers who consume at typical levels, and within high-consumption sub-populations; and discusses the amounts of methylmercury that may be ingested as a result of those consumption levels.

1. General Population

We believe that only those women of childbearing age who consume noncommercially caught U.S. freshwater fish have the potential for significant exposures to utility-attributable methylmercury. As a result, our assessment of the hazards to public health focuses on those women.

2. Recreational Fishers Who Consume Fish At Typical Levels.

a. Consumption Levels. For our analysis of recreational freshwater fish consumption, EPA has determined that the sport-caught fish consumption rates for recreational freshwater fishers specified as "recommended" in the EPA's Exposure Factors Handbook (mean of 8 gm/day and 95th percentile of 25 gm/day), represent the most appropriate values for present purposes. These recommended values were derived based on ingestion rates from four studies conducted in Maine, Michigan, and Lake Ontario (Ebert *et al.*, 1992; Connelly *et al.*, 1996; West *et al.*, 1989; West *et al.*, 1993). These studies are suitable because they included information for annual-averaged daily intake rates for self-caught freshwater fish by all recreational fishers including consumers and non-consumers. The mean values presented in these four studies ranged from 5 to 17 gm/day, while the 95th percentile values ranged from 13 to 39 gm/day.[50]

The EPA "recommended values" were developed by considering the range and spread of means and 95th percent values presented in the four studies. EPA recognizes that use of mean and 95th percentile consumption rates based on these four studies may not be representative of fishing behavior in every state and that there may be regional trends in consumption that differ from the values used in this analysis. However, EPA believes that these four studies represent the best available data for developing recreational fisher ingestion rates for present purposes.

As a result, for today's purposes of evaluating the potential for health effects for consumers of recreational freshwater fish resulting from exposure to utility-attributable methylmercury, we consider both the mean of 8 gm/day consumption and the 95th percentile amount of 25 gm/day.

b. Levels of Consumption Combined with Levels of Utility-Attributable Methylmercury in Fish Tissue. As described above, fish tissue levels of Utility-attributable methylmercury, for virtually all sample points, are only a fraction of the 0.3 mg/kg (fish tissue) water quality criterion. EPA evaluated recreational fish consumers' exposure to this Utility-Attributable methylmercury by calculating the level of exposure to this methylmercury and comparing it to the RfD when background exposures are not considered. For the purposes of assessing population exposure due solely to power plants, we create an index of daily intake (IDI).The IDI is defined as the ratio of exposure due solely to power plants to an exposure of 0.1 μug/kg bw/day. The IDI is defined so that an IDI of 1 is equal to an incremental exposure equal to the RfD level, recognizing that the RfD is an absolute level, while the IDI is based on incremental exposure without regard to absolute levels. Note that an IDI value of 1 would represent an absolute exposure greater than the RfD when background exposures are considered.

At either the mean fish consumption rate of 8 gm/day or the 95th percentile fish consumption rate of 25 gm/day for recreational fish consumers discussed above, and using the 99th percentile methylmercury fish tissue concentration attributable to Utility Unit (and a typical body weight of 64 kg for women of child-bearing age), the calculated Utility-attributable methylmercury exposures are 0.013 μug/kg body weight per day and 0.04 μug/kg body weight per day, respectively. Both calculated exposures are well below the RfD of 0.1 μug/kg body weight per day (an IDI value well below 1).

[49] A detailed discussion of the control alternatives we considered and the reason for our final selection is contained in the preamble to the final CAMR.

[50] The 39 gm/day value actually represents a 96th percentile value.

EPA uses the RfD to place ingestion levels in context. The RfD level of methylmercury ingestion—0.1 μug/kg body weight—should not be considered a bright line standard above which adverse health effects occur, but rather as an aid in establishing the context for evaluating both overall methylmercury ingestion (arising from methylmercury from all sources) as well as Utility-Attributable methylmercury ingestion in light of consumption rates. Our analysis concludes that Utility Unit Hg emissions do not cause hazards to the health of the general public or higher fish consuming recreational anglers.

3. High-Level Fish Consumption Sub-Populations

Although exposure to Utility-attributable methylmercury from freshwater fish tissue is quite low for recreational fishers generally, as just described, EPA recognizes that certain sub-populations consume higher levels of U.S. freshwater fish. These populations may include a subset of recreational fishers who consume large quantities of fish, individuals who are subsistence fishers, and individuals who are part of certain ethnic groups. EPA is aware that at very high consumption levels, even relatively small concentrations of methylmercury in fish may result in exposures that exceed the RfD.

However, as described in the TSD, characterization of fish consumption rates for the highest fish consuming subpopulations (*e.g.*, Native American and other ethnic populations exhibiting subsistence-like consumption) in the context of a larger regional or national analysis is technically challenging. Peer reviewed study data on these populations is relatively limited, especially when subjected to the criteria outlined in the TSD. Many of the high consumption groups that have been studied are located near the ocean and consequently have a significant fraction of their overall exposure comprised of saltwater fish. In addition, some of these studies provide details on seasonal consumption rates, but do not integrate these rates to provide an overall mean annual-averaged consumption rate relevant to an RfD-based analysis.

Although many of these studies provide mean consumption rates, few have identified specific high-end percentile values (*e.g.*, 90th, 95th or 99th percentile consumption rates). Instead, many studies, including a number of non-peer reviewed sources, cite non-specific high-end or bounding point estimates (*e.g.*, the range of consumption rates for the Ojibwe submitted for the CAMR NODA). While these point values can be used in developing high-end bounding scenarios for evaluating risk to these groups, they do not support population-level analysis of exposure since they cannot be used to fit distributions characterizing variability in fish consumption rates across these sub-populations (as noted above, modeling of population-level exposures requires that distributions characterizing fish consumption rates across a particular population be developed).

An additional challenge in characterizing high-level fish consumption is that care needs to be taken in extrapolating study results from one group to another. This reflects the fact that high-level fish consumption is often tied to socio-cultural practices and consequently consumption rates for a study population cannot be easily transferred to other groups which may have different practices (*e.g.*, practices for one Native American tribe may not be relevant to another and consequently behavior regarding fish consumption may not be generalized).

Despite these challenges in characterizing high-level consumption, EPA has developed recommended subsistence-level fish consumption rates of 60 g/day (mean) and 170 g/day (95th percentile) (EPA, 1997, Exposure Factors Handbook). These values are based on a study of several Native American Tribes located along the Columbia River in Washington State. Although these consumption rates are specific to the tribes included in the study and reflect their particular socio-cultural practices (including seasonality and target fish species), EPA believes that this study does provide a reasonable characterization of high-consuming subsistence-like freshwater fishing behavior (EPA, 1997, Exposure Factors Handbook). Therefore, in the absence of data on local practices, EPA recommends that these consumption rates be used to model high-consuming groups in other locations. It is important to note that, as explained above, application of these subsistence consumption rates outside of the original Columbia River study area could be problematic because it would be difficult to transfer these consumption rates to a different group that might exhibit different fishing behavior. However, these recommended rates can be used to model subsistence scenarios at different locations.

Although these subsistence consumption rates are recommended by EPA, commenters (including NODA comments obtained for this rule), have identified alternative consumption rates for specific high consuming groups that are in some instances, higher than these recommended values. For example, a survey by the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) (as referenced in comments to the CAMR NODA) indicates that consumption rates by members of Ojibwe Great Lakes tribes during fall spearing season may range from 155.8–240.7 g/day and may range from 189.6–292.8 g/day during the spring. EPA has reviewed these comments and does not believe that it would be appropriate to rely on them for purposes this rulemaking. First, the data has not been peer reviewed. Moreover, it is not clear from the comments how many people consume fish at those rates, to what extent those fish consumers are women of child-bearing years, and how to annualize these seasonal sales.[51]

For all the above reasons, and despite comments indicating that some subgroups may have larger short-term consumption rates, EPA believes that the Columbia River-based consumption rates of between 60 g/day (mean) and 170 g/day (95th percentile) are appropriate default values for subsistence fish consumers.

H. EPA Concludes That Utility Hg Emissions Remaining After Imposition of Other Requirements of the Act, in Particular CAA Sections 110(a)(2)(D) and 111, Do Not Result in Hazards to Public Health

As discussed above, Congress mandated that EPA assess hazards to public health reasonably anticipated to occur as a result of utility HAP emissions remaining after imposition of the requirements of the Act, and to regulate Utility Units under section 112 if EPA determines that such regulation is "appropriate" and "necessary." The issue of whether the level of Hg emissions from Utility Units remaining after implementation of CAA section 110(a)(2)(D), and independently section 111, cause hazards to public health is directly relevant to our conclusion set forth in section IV.A. above, namely, that it is not appropriate to regulate coal-fired Utility Units under section 112 on the basis of Hg emissions. For the reasons discussed below, EPA concludes that the level of Hg emissions remaining after implementation of CAIR, and, independently, CAMR, which implement sections 110(a)(2)(D) and 111, respectively, do not result in hazards to public health.

1. "Hazards to Public Health" Under Section 112(n)(1)(A)

[51] As discussed below, the Ojibwe Great Lakes tribes do not appear to be located in areas with high utility-attributable Hg deposition.

Section 112(n)(1)(A) establishes the backdrop against which our utility "appropriate and necessary" determination should be judged. Again, we must decide whether we reasonably anticipate utility Hg emissions remaining after imposition of the requirements of the Act to cause hazards to public health. If they do, then we must determine whether it is appropriate and necessary to regulate Utility Units under section 112. If utility Hg emissions do not cause public health hazards, however, which indeed is what we conclude today, then it is not appropriate to regulate such emissions under section 112, and there is no need to proceed to the "necessary" prong of the section 112(n)(1)(A) inquiry, as explained above.

Section 112(n)(1)(A) defines neither what constitutes a "hazard" to public health nor what EPA's obligations would be if such hazard were identified. Therefore, we believe that EPA has wide discretion, using its technical expertise, to define "hazards to public health," and to determine whether Hg emissions from utilities pose such a hazard. EPA's judgment should only be overturned if it is deemed unreasonable, not merely because other, reasonable alternatives exist. *Department of Treasury* v. *FLRA*, 494 U.S. 922, 933 (1990); *Texas Office of Public Utility Counsel* v. *FCC*, 265 F.3d 313, 320 (5th Cir. 2001).

Although section 112(n)(1)(A) does not define "hazards to public health," section 112(n)(1)(C) offers guidance with respect to determining whether Hg emissions result in hazards to public health. In that section, Congress asked the National Institute of Environmental Health Sciences to conduct a study to determine the "threshold level of mercury exposure below which adverse *human health* effects are not expected to occur." (Emphasis added) Congress further mandated that the study include a threshold for Hg concentrations in fish tissue which may be consumed, including consumption by *"sensitive populations"* without adverse effects on *public health*. Implicit in this direction, is that Congress was concerned, first about public health, not environmental effects. EPA has identified the exposure to Hg through consumption of contaminated fish as a pathway to human health effects, and EPA has also, in its discretion, looked at the health effects on sensitive populations.

In interpreting what "hazards to public health" might be reasonably anticipated under section 112(n)(1)(A), we think it is also useful to look at the DC Circuit's Vinyl Chloride decision, 824 F.2d 1146 (1987), and the analysis EPA articulated in its so-called "benzene" analysis, 54 FR 38044 (Sept. 14, 1989). Although the Vinyl Chloride decision and "benzene" analysis address the issue of how to protect public health "with an ample margin of safety," and are thus more stringent than the standard established in section 112(n)(1)(A), we nevertheless believe that the general principles articulated in Vinyl Chloride and the "benzene" analysis are relevant to our analysis of assessing hazards to public health pursuant to section 112(n)(1)(A). Some of those key principles include: (1) "Safe" does not mean "risk free," (Administrator is to determine what risks are acceptable in the world in which we live, where such activities as driving a car are considered generally safe notwithstanding the known risk involved), Vinyl Chloride, 824 F.2d at 1165; (2) something is " 'unsafe' only when it threatens humans with a significant risk of harm,' " *id.* at 1153; (3) EPA, not the courts, has the technical expertise to determine what risks are acceptable, *id.* at 1163; (4) EPA is permitted to account for uncertainty and to use "expert discretion to determine what action should be taken in light of that uncertainty," *id.;* and (5) in determining what is "safe" or "acceptable," EPA should consider a variety of factors, including: (a) Estimated risk to a maximally exposed individual (the so-called "maximum individual risk" or "MIR"); (b) overall incidence of cancer or other serious health effects within the exposed population; (c) the numbers of persons exposed within each individual lifetime risk range; (d) the science policy assumptions and uncertainties associated with the risk measures; (e) weight of the scientific evidence for human health effects; and (f) other quantified or unquantified health effects. (See 54 FR at 38045–46, 38057).

In assessing whether remaining utility HAP emissions pose hazards to public health, consistent with section 112(n)(1)(C) and the above identified factors, we looked at the public's, including sensitive populations' (*i.e.,* fish consumers), exposure to methylmercury through fish consumption attributable to utilities alone. Based on this assessment, and as explained further below, EPA concludes that remaining utility HAP emissions do not pose hazards to public health.

2. CAIR and CAMR Reduce the Public's Methylmercury Exposure Due to Fish Consumption to Below the Methylmercury RfD (Below an IDI Value of 1)

As discussed above, EPA has adopted a water quality criterion for methylmercury for states to use in establishing water quality standards to protect public health. The criterion, expressed as a fish tissue concentration, of 0.3 mg/kg was derived from the methylmercury RfD (taking into account the possibility that a person may be exposed to methylmercury via commercial fish to some degree, as expressed in the RSC described elsewhere). At this level, people consuming at a high-end fish consumption rate of 17.5 grams per day would not be exposed above the methylmercury RfD. As noted above, this value represents the 90th percentile fish consumption rate.

In the base year of 2001 (*i.e.,* prior to both CAIR and CAMR), fish-tissue methylmercury concentrations at the 90th percentile, 99th percentile, and maximum (that is, the single highest concentration) levels, attributable to utilities, are 0.11, 0.27, and 0.85 mg/kg, respectively. CAIR reduces the utility-attributable methylmercury fish-tissue concentrations at the 90th percentile, 99th percentile, and maximum level to 0.03, 0.10, and 0.25 mg/kg, respectively. CAMR reduces these concentrations even further to 0.03, 0.09, and 0.19 mg/kg, respectively. These post CAIR and CAMR levels are considerably below the methylmercury water quality criterion of 0.3 mg/kg.

At all of these post-control methylmercury levels, fish consumers at the water quality criterion 90th percentile consumption level of 17.5 grams per day are well below the RfD (below an IDI value of 1). Further, these concentration values when applied to the 95th percentile consumption rate for recreational freshwater anglers identified in EPA's Exposure Factors Handbook, *i.e.,* 25 grams per day, also result in exposures below the RfD (below an IDI value of 1). As a result, it is evident that the general population (which is expected to consume less U.S. freshwater fish than recreational anglers) does not confront hazards to public health from utility-attributable methylmercury.

At the methylmercury fish tissue concentrations attributable to utilities remaining after implementation of CAIR and CAMR, it is possible that consumers eating at the subsistence-level fish consumption rates of 60 g/day (mean) and 170 g/day (95th percentile), see Exposure Factors Handbook, could exceed the RfD (an IDI value greater than 1) as a result of utility-attributable emissions if they are in fact consuming fish from the most contaminated locations. In other words, for a fish consumer to exceed the RfD (an IDI value greater than 1) as a result of utility

Hg emissions, they have to both (1) consume fish at the highest consumption rates and (2) consume fish from waterbodies with the highest levels of utility-attributable Hg fish-tissue concentrations. As discussed in the TSD, the probability of these factors converging is quite low. For example, after CAIR, the probability that a recreational angler will exceed the RfD (an IDI value greater than 1) exclusively as a result of utility Hg emissions is only 0.01 percent. After CAMR, the probability drops even lower. Our analysis further shows that even if there were a convergence of the unlikely factors of consuming at the 99th percentile consumption rates and at the 99th percentile methylmecury fish tissue concentrations, exposure would exceed the RfD by only 10 percent (an IDI value of 1.1). Exceeding the RfD by this amount (an IDI value of 1.1) does not mean that an adverse effect will occur. Indeed, 10 percent above the RfD (an IDI value of 1.1), or 0.11 μg/kg-bw/day, is below the World Health Organization's level of 0.23 μg/kg-bw/day.[52]

Consumption rates for subsistence fishers are much higher than recreational anglers. As such, these populations have a greater probability of exceeding the RfD (an IDI value greater than 1). For this to happen, the subsistence fisher still must be at the high-end of the distribution for both consumption and utility-attributable methylmercury fish tissue concentrations. Our statistical data suggest that subsistence anglers at the 99th percentile consumption rate and the 99th percentile concentration level could exceed the RfD (an IDI value greater than 1). Holding consumption rates at the 99th percentile, the subsistence angler will likely exceed the RfD (an IDI value greater than 1) at or above the 72nd percentile fish tissue concentration.

Again, the likelihood of this occurring is very small. Specific data on concentrations in fish at waterbodies frequented by subsistence fishing populations has not been generated. To get a sense of tribal location in relation to utility-attributable Hg deposition post-CAIR, we overlaid the 2000 Census data on the location of Native American populations (by census tract) on our CMAQ models. Visual inspection of the resulting map shows that the overwhelming majority of tribal populations live outside of areas most impacted by utility-attributable Hg deposition. *See* TSD. This suggests that the 99th percentile of the utility attributable methylmercury concentrations is likely inappropriate as an upper bound for Native American exposures, further reducing the probability that, post CAIR, and even more so, post CAMR, an individual Native American (who comprise a significant percent of upper-bound subsistence anglers) will exceed the RfD (an IDI value greater than 1).

As discussed above, EPA received comments on the consumption rates of certain ethnic groups that are higher than the subsistence angler consumption rate that EPA relied on for purposes of this analysis. Specifically, members of the Ojibwe Great Lakes Tribes commented that during their fall spearing season they may consume between 156 and 241 grams of fish per day, and during their spring spearing season, they may consume as much as 293 grams/day. For a number of reasons, EPA found the data to be of limited value. First, the data have not been peer reviewed and thus EPA is reluctant to rely on them for regulatory purposes. Second, commenters did not include information on annual average consumption rates or the percentage of those fish consumers that are women of childbearing age. Third, based on EPA's information, the Tribes do not reside in an area that appears to be significantly impacted by utility Hg emissions. Thus, despite having extremely high consumption rates, there are no data in the record that suggest that members of the Tribe would be exposed above the RfD (an IDI value greater than 1) as a result of utility emissions. And again, as discussed in greater detail below, exposure above the RfD does not necessarily equate to adverse effects.

3. The RfD Is An Appropriate Health Benchmark

As described in section VII.B., in general, the RfD is "an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime." [53] EPA's RfD for Methylmercury is 0.1 μg/kg bw/day, which is 0.1 microgram of Hg per day for each kilogram of a person's body weight. Since the most sensitive subpopulations are factored into the RfD, its use is thought to be protective of all life stages without additional uncertainty factors or adjustments. The National Academy of Sciences (NAS) reviewed the toxicological effects of Methylmercury and concluded that "[o]n the basis of its evaluation, the committee's consensus is that the value of EPA's current RfD for Methylmercury, 0.1 μg/kg per day, is a *scientifically justifiable level for the protection of public health.*" [54]

EPA views the level of the RfD as establishing the overall context for assessing the health effects of ingesting utility-attributable Methylmercury. As noted above, in regulating HAPs that constitute threshold pollutants, EPA has stated that the risks associated with exposures below the RfD generally should be considered to be acceptable, and that the emissions associated with those exposures need not be regulated further under section 112.

However, the RfD should not be considered a bright line. At exposures above the RfD, "adverse health effects are possible," but such exposures "[do] not necessarily mean that adverse effects will occur." Indeed, the World Health Organization has concluded that a level equal to 2.3 times EPA's Methylmercury RfD is protective of human health.

4. Risks Remaining After Implementation of CAIR, and Even More So After CAMR, Are Acceptable

Applying the risk factors identified above to utility Hg emissions in the 112(n)(1)(A) context, EPA concludes that utility Hg emissions remaining after implementation of CAIR, and even more so after CAMR, do not pose unacceptable hazards to public health. The overwhelming majority of the general public and high-end fish consumers (at least through the 99th percentile of recreational anglers) are not expected to be exposed above the methylmercury RfD (an IDI value greater than 1). While the possibility exists that a very small group of people may be exposed above the RfD (an IDI value greater than 1), significant uncertainties exist with respect to the existence and

[52] The choice of an "acceptable" risk level is one of policy informed by science. The RfD does not represent a "bright line" above which individuals are at risk of significant adverse effects. Rather, it reflects a level where EPA can state with reasonable certainty that risks are not appreciable. The Agency further notes that a number of other national and international scientific bodies have assessed the health effects of Hg and have adopted levels greater than EPA's RfD. As exposure levels increase beyond the RfD, the possibility of deleterious effects increases, but the point at which they become "unacceptable" must be determined on a case-by-case basis. In making this determination, the Agency considers a number of factors including: (1) Confidence in the risk estimate: How certain is the scientific information supporting the link between possible health effects and exposures?; (2) the effects of concern: How serious are the health effects?; (3) the size of the population at risk, as well as the distribution of risk within the population. The Agency has considered these factors in the case of Hg and has concluded that the exposures above the IDI described elsewhere in this chapter do not constitute an unacceptable risk.

[53] *See http://www.epa.gov/iris/subst/0073.htm.*

[54] *See* NAS at page 11 (emphasis added).

actual size of such a group. There are also significant uncertainties concerning the extent to which such exposure might exceed the RfD (an IDI value greater than 1) and whether exposure at such levels would cause adverse effects. *See* TSD. EPA intends to continue to investigate the size and extent to which certain groups might be exposed above the RfD (an IDI value greater than 1), and reserves the right to revisit its risk acceptability determination if future information warrants.

In the meantime, however, given the size of the population, including sensitive subpopulations, that after implementation of CAIR and, independently, CAMR, will be below the RfD (an IDI value of less than 1); the uncertainty of the size and the level to which certain groups may be exposed above the RfD (an IDI value greater than 1); the uncertainties that adverse effects will be experienced by such groups even at levels significantly above the methylmercury RfD (an IDI value greater than 1); and the nature of those potential adverse effects (see TSD), EPA, in its expert judgment, concludes that utility Hg emissions do not pose hazards to public health, and therefore that it is not appropriate to regulate such emissions under section 112.

5. Section 112(f) "Residual Risk" Analysis

Some commenters have argued that, in determining whether utility HAPs pose a hazard to public health, EPA is bound to the mandates of section 112(f). In other words, some have argued that unless we can conclude that the imposition of the CAA requirements on utility HAP emissions "provide[s] an ample margin of safety to protect public health," we must regulate utilities under section 112. We disagree. Section 112(n)(1)(A) governs our decision whether to regulate utilities under section 112, not 112(f). Had Congress intended us to apply the same standard, it could have used identical words to those found in section 112(f) or referenced it directly. It did not. Instead, Congress instructed EPA to assess whether utility HAP emissions cause "hazards to public health."

Nevertheless, as explained above, in assessing whether remaining utility HAP emissions cause "hazards to public health," EPA used essentially the same analysis that it would use in assessing the human health prong of a 112(f) determination.[55] The factors laid out in the "benzene" analysis for assessing acceptable risk to public health under 112(f) are generally relevant to assessing hazard under 112(n)(1)(A). Thus, even if EPA were required to do a 112(f) analysis in determining whether utility Hg emissions pose public health hazards, it is very likely that the conclusion would have been the same, even if the methodology might have been slightly different.

As noted above, section 112(f) expressly incorporates EPA's pre-1990 two-part inquiry for evaluating what level of emission reduction is needed to provide an ample margin of safety to protect public health. See CAA section 112(f)(2)(B) (incorporating EPA's two-part ample margin of safety inquiry, set forth at 54 FR 38044 (Sept. 14, 1989), which implemented the requirements of section 112 of the 1977 CAA). Under this approach, we must first determine what level is "acceptable" based exclusively upon the Administrator's determination of the risk to health at a particular emission level. Vinyl Chloride, 824 F.2d at 1164.[56] The Court stressed, however, that "safe" in this context does not mean "risk-free." Rather, the Agency must make a determination about what is safe "based upon an expert judgment with regard to the level of emission that will result in an "acceptable" risk to health," taking into account the many every day activities that entail health risks but are not considered to be unsafe. *Id.* at 1165.

In this regard, we also note that section 112(f) makes a distinction between pollutants classified as "known, probable or possible carcinogens" and other hazardous air pollutants such as Hg. For possible carcinogens, the Agency must set a residual risk standard if "the individual most exposed to emissions from a source" is subject to a risk above a certain level. This additional requirement does not apply to other hazardous air pollutants. Therefore, in determining whether any level of Hg emission is 'acceptable' under 112(f), we would use the same basic approach we have used in this case. Although we would evaluate the risk to the maximum exposed individual, which we essentially did for purposes of assessing the hazards posed by utility emissions under section 112(n)(1)(A), we believe that "the distribution of risks in the exposed population, incidence, the science policy assumption and uncertainties associated with the risk measures, and the weight of evidence that a pollutant is harmful to health are [also] important factors to be considered" in making a decision as to whether a given level of emissions is acceptable. 54 FR at 38044.

Then, "[i]n the ample margin decision [the second step], the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors." 54 FR 38046.

As explained in section H.3. above, applying the general principles articulated in the Vinyl Chloride decision and the benzene rule, the Agency has concluded that power plant Hg emissions remaining after CAIR, and even more so after CAMR, do not pose hazards to public health. This determination was based on health considerations alone, as would be the case under the first step of a 112(f) analysis. Under the second step of a 112(f) analysis, we would then consider both the benefits and costs of further emission reductions. Based on what we know about the uncertainties and nature of the potential adverse effects associated with Hg exposure, the extent to which the public, including sensitive subpopulations, is exposed to Hg, and the extent to which such exposure could be reduced by further reducing Hg emissions from U.S. power plants, we have concluded that the cost of requiring further reductions in Hg emissions from power plants would significantly outweigh any benefits. Therefore, if we were proceeding under section 112(f), we would likely conclude that CAIR, and even more so CAMR, not only protects public health, but does so with an "ample margin of safety."

I. The Final CAMR Will Not Lead to Localized "Utility Hot Spots"

1. What Is a "Utility Hot Spot"?

As we said in the preamble to the proposed rule, Hg emissions from power plants sometimes are deposited locally near the plant (*i.e.*, within 25 km),

[55] It should be noted that section 112(f) requires consideration of effects on the environment in addition to human health. In contrast, 112(n) requires a narrower assessment.

[56] The Vinyl Chloride court did note, however, that under certain circumstances it might be appropriate to combine the two steps into one. Specifically, the court stated that "[i]f the Administrator finds that some statistical methodology removes sufficiently the scientific uncertainty present in this case, then the Administrator could conceivably find that a certain statistically determined level of emissions will provide an ample margin of safety. If the Administrator uses this methodology, he cannot consider cost and technological feasibility: these factors are no longer relevant because the Administrator has found another method to provide an 'ample margin' of safety." 824 F.2d at 1165, fn 11.

specifically emissions of oxidized and particulate Hg. Nearby waterbodies may be a source of fish consumption for recreational and/or subsistence fishers, and thus local Hg deposition in nearby waterbodies could be a source of what some refer to as "hot spots." In the proposed rule, we suggested that a "power plant may lead to a hot spot if the contribution of the plant's emissions of Hg to local deposition is sufficient to cause blood Hg levels of highly exposed individuals near the plant to exceed the RfD." (*See* 69 FR 4702.)

Based on additional analysis and consideration of the "hot spot" issue and to ensure that stakeholders have a common understanding of how EPA uses the term, we define a "utility hot spot" as "a waterbody that is a source of consumable fish with Methylmercury tissue concentrations, attributable solely to utilities, greater than the EPA's Methylmercury water quality criterion of 0.3 mg/kg." We believe that the water quality criterion is an appropriate indicator of a "hot spot," given that the Methylmercury exposure pathway of greatest concern is fish consumption and that the water quality criterion was back calculated from the Methylmercury RfD using a high-end fish consumption rate.

2. EPA Does Not Believe That There Will Be Any Hot Spots After Implementation of CAIR and CAMR

As explained elsewhere in this preamble and in the TSD, for purposes of today's notice, EPA modeled utility Hg deposition, before and after implementation of CAIR and CAMR, using the Community Multi-Scale Air Quality ("CMAQ") model, a three-dimensional eulerian grid model. CMAQ is the most sophisticated Hg dispersion model in existence. It uses a "one-atmosphere" approach and addresses the complex physical and chemical interactions known to occur among multiple pollutants in the free atmosphere.[57] The spatial resolution (*i.e.*, the ability to observe concentration or depositional gradients/differences) of the gridded output information from CMAQ for purposes of this analysis is 36 km.

We believe that this an appropriate scale given the exposure pathway. First, because much of the Hg deposited on the watershed of different ecosystems will eventually enter waterbodies through subsurface inflow and runoff, we consider a watershed scale analysis to be more appropriate than finer scale resolution that may only describe direct inputs to surface waters. Second, in larger waterbodies (*i.e.*, the Great Lakes) where there is substantial fishing activity, the higher trophic level fish species consumed by humans are likely migratory and the accumulation of Hg by these species will represent an aggregated signal from deposition over a wider area (*e.g.*, the entire waterbody within a watershed.) Since we are concerned about the cumulative dose over weeks and months from repetitive consumption of fish containing methylmercury, this fishing behavior should be considered in the exposure pathway. Based on the above considerations, we conclude that the HUC–8 watershed is the appropriate unit of measure for analysis. While this analysis covers the vast majority of the U.S. population that may be exposed to emissions from U.S. power plants, we acknowledge that there are inherent uncertainties at the extreme tails of the exposure distribution. We continue to advance the state of the science and the associated models to better understand the tail of this exposure distribution.

As discussed in section VII.D. of today's notice, EPA used fish tissue data from the National Listing of Fish and Wildlife Advisories and the National Fish Tissue Survey to determine Methylmercury fish tissue concentrations for numerous sample sites throughout the country. We then used CMAQ to determine the amount of utility Hg deposition, in conjunction with Mercury Maps (which associates an increment of change in Hg deposition with an equal change in Methylmercury fish tissue concentrations) to predict what fish concentrations at those sample sites would be after implementation of CAIR and CAMR. As discussed in section VII.E., those analyses conclude that none of the sample sites will exceed, as a result of utility emissions, the water quality criterion of 0.3 mg/kg. In fact, our analysis shows that fish tissue Methylmercury concentrations attributable to utility Hg emissions will be significantly below the water quality criterion. By 2020, after CAIR, levels at the 50th, 90th, 99th percentiles and maximum value sample site are predicted to be 0.01, 0.03, 0.10, and 0.25 mg/kg, respectively. After CAMR, levels at the 50th, 90th, 99th percentiles and maximum value sample site are predicted to be 0.01, 0.03, 0.09, and 0.19 mg/kg, respectively. Therefore, based on the information available to us at this time, our analyses indicate utility Hg emissions, after implementation of either CAIR or CAMR, will not result in "hot spots."

EPA conducted a similar analysis in its 1998 Utility Report to Congress ("Utility Study") using the Industrial Source Complex Version 3 ("ISC3") model. (See TSD) EPA analyzed four model plants representing four utility boilers: Large coal-fired, medium coal-fired, small coal-fired, and medium oil-fired. Each of these plants was also modeled at two generic sites: A humid site east of the 90 degrees west longitude, and a more arid site west of the 90 degree west longitude. (See Utility Study at 7–29). Hg deposition was modeled at a hypothetical lake located at three distances for each model site: 2.5, 10, and 25 km. The results of that analysis showed that under only one modeled scenario was the Methylmercury water quality criterion exceeded. Specifically, the model predicted that a hypothetical lake located 2.5 km from a large eastern coal-fired utility would experience Methylmercury fish tissue concentration of 0.43 mg/kg. None of the other 23 model facilities/lake combinations exceeded the water criterion. (See Utility Study at 7–37).

For a number of reasons more fully explained in our TSD, even though only one facility/lake combination exceeded the water quality criterion, we believe that the analysis done for the 1998 Utility Study was conservative and, hence, over predicted near-field Hg deposition and corresponding fish tissue concentrations in almost all situations. That analysis was a screening analysis and thus was conservative by design. For example, it did not incorporate a sophisticated treatment of the atmospheric chemistry and phase-transition behavior of Hg, as we have included in our CMAQ analysis, and our understanding of wet and dry deposition processes for Hg has improved significantly since then. As a result, we judge that the CMAQ model results represent a more accurate representation of near-field Hg impacts than can be obtained using the ISC3 modeling approach. See the discussion above about why the CMAQ model appropriately represents near-field deposition.

There are other factors that lead EPA to conclude that the Utility Study analysis overstated fish-tissue methylmercury concentrations in most situations. Based on the BAFs considered, the hypothetical ecosystem described in the RTC is more sensitive

[57] In simulating the transport, transformation, and deposition of pollutants, CMAQ resolves 14 vertical layers in the atmosphere, and employs finer-scale resolution near the surface of the boundary layer to simulate deposition to both terrestrial and aquatic ecosystems. CMAQ atmospheric transport is defined using a higher-order meteorological model, commonly the Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research mesoscale model (MM5).

than three out of four ecosystems chosen for the case studies (see Table 4–6, page 25 of Ecosystem Scale Modeling for Mercury Benefits Analysis) and is less sensitive than one (Lake Barco). Comparing these case studies to empirically derived BAFs characterized by the Office of Water indicates that modeled fish tissue responses in three of four case studies had empirically derived BAFs that fell between the 5th and 50th percentiles of the geometric mean of field-measured BAFs for trophic level 4 species obtained from the published literature (EPA 2000). The model ecosystem described in the RTC fell between the 50th and 95th percentile for BAFs, and one of the case studies (Lake Barco) exceeded the 95th percentile.

Some limitations to the BAF approach deserve mention. Because Methylmercury concentrations in the water column are highly variable, empirically-derived BAFs are inherently underdetermined and have limited predictive power. A more credible approach based on our current knowledge is to forecast changes in fish Hg concentrations using information on the food-web dynamics ("bioenergetics") of different ecosystems. Such a model (BASS) was applied in one of the case studies described in Chapter 3 of the RIA for CAMR, and showed that while the BAFs calculated from the outputs of the bioenergetics-based bioaccumulation model were within a factor of 2 of the empirically derived BAF used in the SERAFM model, the empirically derived fish Hg concentrations were more conservative than the BASS model for this one ecosystem. (See TSD). Thus, the above information suggests that our RTC analysis may have over predicted fish-tissue methylmercury concentrations in many ecosystems that could be impacted by Hg deposition from U.S. power plants. However, it is important to note that fish tissue methylmercury concentrations due to power plants may be higher in some ecosystems (for example, ecosystems similar to Lake Barco described in Ch. 3 of the CAMR RIA).

For all the above described reasons, we think our current modeling approach as described in the TSD provides for a more advanced, state-of-the-science assessment of the atmospheric fate, transport, deposition, and cycling of Hg through the environment than the modeling approach used in the Utility Study. For these reasons, we have no evidence that utility Hg emissions after CAIR (and even more so after CAMR) will result in hot spots.

Based on our experience with the Title IV acid rain program and our modeling using IPM, we believe that the cap-and-trade approaches adopted under CAIR and CAMR will reduce Hg exposure in most areas and create strong economic incentives for the reduction of Hg emissions in the future.

First, modeling runs suggest that large coal-fired utilities contribute more to local Hg deposition than medium-sized and smaller coal-fired utilities.[58] However, under a cap-and-trade system, large utilities are more likely to over-control their emissions and sell resulting emission allowances than smaller utilities, which are less likely to be the source of a local hot spot. Under basic utility economics of capital investment, when capital is limited, up-front capital costs of control equipment are significant, and where emission-removal effectiveness (measured in percentage of removal) is unrelated to plant size, it makes more economic sense for a company to allocate pollution-prevention capital to its larger facilities where more allowances can be earned, than to its smaller ones. In other words, we would expect economies of scale of pollution control investment to be made at larger plants. Moreover, newer plants tend to be larger. Since newer plants have longer expected lifetimes, providing a longer return on investment, we would expect this to be an incentive for these larger facilities to choose to control and sell credits.

Indeed, as part of its analysis of the President's 2003 Clear Skies initiative, EPA analyzed Hg emissions reductions under a cap-and-trade mechanism. In the Clear Skies example, the greatest emissions reductions were projected to occur at the electric generating sources with the highest Hg emissions. This pattern is similar to that observed in the SO_2 emissions trading program under the Acid Rain Program. Under Clear Skies, compared to a base case of existing programs, Hg^{2+} emissions (which tend to be deposited locally, *i.e.*, within 25 kilometers) from power plants located up to 10 kilometers from a water body were projected to decrease by over 60 percent by 2020.

Second, the types of Hg that are deposited locally—Hg^{2+} and Hg_p—are controlled by the same equipment that controls PM, SO_2, and NO_X. Thus, as utilities invest in equipment to comply with EPA's new PM and ozone standards (*e.g.*, the CAIR rule that was signed on March 10, 2005 and new State Implementation Plans (SIPs) for PM and ozone), the Agency expects "co-benefit" Hg reductions.

Moreover, EPA's IPM modeling for today's action predicts that larger emitters generally are expected to reduce the most, as was our experience with the Acid Rain Program. Through our CMAQ modeling, we further predict utility-attributable deposition reductions in areas where hotspots would otherwise potentially occur. As described in section VII.E., the median deposition level is reduced by only 8 percent when utilities emissions are zeroed out in 2001, but in areas with the highest deposition levels, zeroing out utilities reduces the 99th percentile deposition level by 15 percent. After implementation of CAIR in 2020, areas with high levels of utility deposition receive a larger reduction in utility-attributable Hg deposition relative to areas with a relatively small level of utility-attributable deposition.

For all these reasons, we do not anticipate that our final CAMR rule will result in local Hg hot spots; to the contrary, we anticipate that our cap-and-trade CAMR will actually eliminate hot spots that may have previously existed.

In addition to reductions required by the CAIR and CAMR caps, states have the authority to address local health-based concerns separate from these programs. Although more stringent state regulations would reduce the flexibility of a cap-and-trade system, states nevertheless have such authority.

3. Continued Evaluation of Utility Hg Emissions

For all the reasons discussed above and elsewhere in this preamble, EPA does not believe that CAIR or CAMR will result in utility-attributable hot spots. That said, we recognize that even our state-of-the-art models and inputs have certain limitations that make it impossible for us to definitively conclude that there are no circumstances under which a hot spot could result even after full implementation of CAIR and CAMR. However, in order for a hot spot to occur, there would have to be an alignment of key environmental factors, such as meteorology, deposition, and ecosystem processes in conjunction with a large uncontrolled near-field utility unit or a collection of such units. The likelihood of these factors converging is remote. Nevertheless, we intend to monitor this situation closely and continue to advance the state of the science of Hg transport and fate. In that

[58] Indeed, the one model utility in the Utility Study analysis that exceeded the water quality criterion at a hypothetical lake within 2.5 km was an eastern large coal-fired utility. Given the tendencies for larger facilities to control under a cap-and-trade system, we do not anticipate that larger plants will cause localized hot spots.

regard, if we receive new information that raises the possibility of utility-attributable hotspots, we will evaluate the situation and take appropriate action.

We believe that we have the authority under the Act to address future hotspots appropriately. Indeed, today we have identified other authorities under the CAA through which we can obtain Hg reductions from coal-fired Utility Units—either by regulating Hg directly, or indirectly as the result of co-benefits. The 1998 Utility Study also identifies other requirements of the Act with which Utility Units must comply that can result in HAP reductions, including Hg. Because we do not currently have any facts before us that would lead us to conclude that utility-attributable hotspots exist, we do not at this time reach any conclusion as to which statutory authority we would use to address such a fact-specific situation because it necessarily depends on the facts.

For example, if in the future we determine that utility-attributable hotspots exist and that those hotspots occur as the result of Hg emissions from coal-fired Utility Units, we may promulgate a tighter section 111 standard of performance, provided we determine the technology can achieve the contemplated reductions. We could revise the standard of performance by adjusting the cap-and-trade program to limit trading by high-emitting Utility Units. As the DC Circuit has recognized, we have discretion to weigh the statutory factors identified in section 111(a), which include cost, in setting a standard of performance. *Lignite Energy Council* v. *EPA*, 198 F.3d 930 (DC Cir. 1999). We therefore believe that under section 111, we can evaluate the cost of emission reduction in the context of the identified hotspots, and we may reasonably conclude that the additional cost of a more stringent standard is appropriate in light of the health concern associated with the hotspots. Alternatively, we may in the future identify utility-attributable hotspots and determine that such hotspots can be addressed by virtue of Hg co-benefits control achieved through the promulgation of other requirements. Thus, although we cannot conclude today which statutory authority we would implement to address utility-attributable hotspots because that determination necessarily hinges on the facts associated with the identified hotspots, we do conclude that were such a situation to occur, we believe that EPA has adequate authority to address any such situation that may arise in the future.

J. The Global Pool of Hg Emissions

1. Background

As explained above, Hg is emitted into the environment in different ways. About one-third of the Hg in the atmosphere is from human-caused activities ("anthropogenic"), one-third is from natural processes (such as volcanic eruption, groundwater seepage and evaporation from the oceans), and one-third constitutes re-emitted emissions, which is Hg from human-caused activities or natural processes that is emitted into the atmosphere, deposited and then re-emitted into the atmosphere. United States anthropogenic Hg emissions are estimated to account for about three percent of the global pool of Hg emissions, and United States ("domestic") utilities are estimated to account for about one percent of that total global pool. See Utility Study at 7–1 to 7–2, 69 FR at 4657–58 (January 20, 2004). The global pool therefore includes all human-caused activities that occur both within the United States and abroad, all emissions that result from natural processes anywhere in the world, and re-emitted Hg.

To place the Hg emissions from domestic Utility Units in context, EPA modeled different scenarios that analyze the effect of domestic utility Hg emissions in the context of the global pool. We describe that modeling in detail above.

Our modeling shows that in virtually all instances, the utility-attributable methylmercury levels are a very small fraction of the overall methylmercury levels. For 16 percent of the modeled sites, overall levels of methylmercury in fish tissue in 2020 are projected to be above the 0.3 mg/kg water quality criterion. At the 90th percentile, in 2020, after implementation of CAIR, overall levels are projected at 0.79 mg/kg, and at the 99th percentile, at 1.64. The greatest fraction of these methylmercury levels are attributable to non-air sources, including mines and chloralkali plants, and uncontrollable air sources, including international emissions from industrial and utility sources. In virtually all of these instances, the Utility-attributable methylmercury levels are a very small fraction of the overall methylmercury levels. For the highest 10 percent of utility-attributable methylmercury fish tissue levels, utility-attributable methylmercury accounted for a maximum of 9 percent of total methylmercury concentrations, and an average of only 4 percent. Clearly, even at locations with high levels of utility Hg deposition, other sources of Hg contribute most of the methylmercury.

2. Even Examining Utility Hg Emissions in the Context of the Global Pool, We Cannot Conclude That It Is Appropriate to Regulate Coal-Fired Utility Units Under CAA Section 112

Our conclusions in sections VI.J and VI.K above are based solely on our analysis of Hg emissions from coal-fired Utility Units. See generally 65 FR 79,826–29 (explaining that Hg from coal-fired units is the HAP of greatest concern); Utility Study, ES–27 (same). We focused our analysis in this regard because EPA has interpreted section 112(n)(1)(A) to examine the hazards to public health that are "a result of" Utility Units. See CAA section 112(n)(1)(A). As explained in section III above, the focus in section 112(n)(1)(A) on emissions "result[ing]" from Utility Units is significant, particularly when contrasted against other provisions of the Act, such as section 110(a)(2)(D). In section 110(a)(2)(D), Congress sought to regulate any air pollutant that will "contribute to" nonattainment. Thus, under section 110(a)(2)(D), we can regulate a pollutant if it "contributes" to a nonattainment problem, but does not itself cause the problem. EPA has concluded that section 112(n)(1)(A) is different, where Congress directed EPA to study the hazards to public health "reasonably anticipated *to occur as a result of emissions of*" Utility Units. (emphasis added)

Moreover, Congress' focus on the hazards to public health resulting from Utility Units may reflect Congress' recognition of the unique situation posed by Hg, which is that Hg emissions from domestic utilities represent less than one percent of the global pool. Indeed, Congress specifically addressed Hg in other provisions of section 112(n). For example, under section 112(n)(1)(B), Congress required EPA to complete a study addressing Hg emissions from Utility Units and other sources of Hg. See CAA section 112(n)(1)(B); see also CAA Section 112(n)(1)(C) (requiring National Institute of Environmental Health Sciences to determine the threshold level of Hg exposure below which adverse human health effects are not expected to occur).

Nevertheless, even were we to examine hazards to public health on a broader scale by focusing on the global Hg pool, our conclusion (discussed above in Section IV.A.) that it is not appropriate to regulate coal-fired Utility Units under section 112 on the basis of Hg emissions would be the same. Our analyses in support of that conclusion would differ, however, because we

would be assessing whether it is appropriate to regulate Utility Units under section 112 by reference to a different level of Hg emissions. As explained in section III of this notice, we have discretion, in determining whether regulation under section 112 is appropriate, to consider other factors and, in particular, any unique facts and circumstances associated with the HAP emissions at issue. Here, the unique circumstance is that domestic Utility Units represent only one percent of the global pool. Our modeling shows that were we to prohibit all Hg emissions from domestic utilities in this country, such regulation would result in only a very small improvement in methylmercury levels in the waterbodies that exceed the methylmercury water quality criteria. Therefore, precluding all Hg emissions from coal-fired powerplants would, in effect, force such plants out of business, yet reduce virtually none of the risks to public health stemming from the global Hg pool.

In these circumstances, we find that it is not appropriate to regulate coal-fired Utility Units under section 112 on the basis of the global Hg pool because the health benefits associated with such regulation would be nominal and the costs extreme. It is also not appropriate to regulate Hg emissions from coal-fired utility units remaining after imposition of the requirements of the Act because the global sources contributing most significantly to the remaining public health hazards are not domestic utilities and the sole question before us under section 112(n)(1)(A) is whether it is appropriate to regulate Utility Units under section 112 of the Act.[59]

K. Further Study

The behavior of Hg in the atmosphere and in aquatic systems, and the human health effects of Hg are areas of much interest and activity within the scientific and health research communities. In addition, our ability to quantify and value the effects that changes in Hg releases may have to human health is continuing to evolve. Furthermore, technologies and techniques for limiting Hg emissions from power plants are also rapidly advancing. EPA will continue to monitor developments in all these areas, as well as continuing its own efforts to advance the state of the science. One of the benefits of today's approach is that it provides a flexible structure that could be modified to accommodate new information should it become available.

VII. EPA'S Authority to Regulate HAP From Utility Units Under CAA Section 111

As explained in sections IV and VI above, we conclude today, among other things, that EPA's December 2000 appropriate and necessary finding lacked foundation because it failed to consider the HAP reductions that could be obtained through implementation of section 111, and therefore whether it was "necessary" to regulate under section 112. We decide today that it is not "necessary" to regulate utility HAPs under section 112, in particular because of our authorities to effectively reduce utility HAPs under CAA sections 110(a)(2)(D) and 111.[60]

We describe below the regulatory scheme under section 111 and EPA's authority to regulate HAP emissions under that section. We also describe the recently issued Clean Air Mercury Rule ("CAMR"), which implements CAA section 111. Finally, we demonstrate that the CAMR rule, once implemented, will result in levels of Hg emissions from coal-fired Utility Units that pose no hazards to public health.

A. Overview of the Requirements of Section 111

CAA section 111 creates a program for the establishment of "standards of performance." A "standard of performance" is "a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, which (taking into account the cost of achieving such reduction, any nonair quality health and environmental impacts and energy requirements), the Administrator determines has been adequately demonstrated." CAA section 111(a)(1).

For new sources, EPA must first establish a list of stationary source categories, which, the Administrator has determined "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." CAA section 111(b)(1)(A)). EPA must then set federal standards of performance for new sources within each listed source category. (CAA section 111(b)(1)(B)). Like section 112(d) standards, the standards for new sources under section 111(b) apply nationally and are effective upon promulgation. (CAA section 111(b)(1)(B)).

Existing sources are addressed under section 111(d) of the CAA. EPA can issue standards of performance for existing sources in a source category only if it has established standards of performance for new sources in that same category under section 111(b), and only for certain pollutants. (CAA section 111(d)(1)). Section 111(d) authorizes EPA to promulgate standards of performance that states must adopt through a SIP-like process, which requires state rulemaking action followed by review and approval of state plans by EPA. If a state fails to submit a satisfactory plan, EPA has the authority to prescribe a plan for the state. (CAA section 111(d)(2)(A)).

B. EPA's Authority to Regulate HAP Under Section 111

Section 111(b) covers any category of sources that causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare and provides EPA authority to regulate new sources of such air pollution. EPA included Utility Units on the section 111(b) list of stationary sources in 1979 and has issued final standards of performance for new Utility Units for pollutants, such as NO_X, PM, and SO_2. See 44 FR 33580; June 11, 1979; Subpart Da of 40 CFR Part 60. Nothing in the language of section 111(b) precludes EPA from issuing additional standards of performance for other pollutants, including HAP, emitted from new Utility Units. Moreover, nothing in section 112(n)(1)(A) suggests that Congress sought to preclude EPA from regulating Utility Units under section 111(b). Indeed, section 112(n)(1)(A)

[59] *See* 36 Cong. Rec. S16895, S16899 (daily ed. Oct. 27, 1990) (Statement of Senator Burdick, member of the Conference Committee and Chairman of the Committee on Environment and Public Works) ("Under section 112(n) utility emissions are exempt from air toxics regulation until studies are completed and the Administrator determines, based on the studies, that air toxics regulation is warranted. The hazardous substance of greatest concern here is Hg. The Senate bill required Hg reductions from coal-fired units. The Senate provision could not be sustained by the scientific facts. What little is known of Hg movement in the biosphere, suggests that its long residence time makes it a long-range transport problem of international or worldwide dimensions. Thus, a full control program in the United States requiring dry scrubbers and baghouses to control Hg emissions from coal-fired power plants would double the costs of acid rain control with no expectation of perceptible improvement in public health in the United States. I am pleased the conferees adopted the House provision on hazardous air pollutants with respect to Utility Units.")

[60] We also conclude today, as discussed in detail above, that Hg emissions from coal-fired Utility Units remaining after implementation of section 110(a)(2)(D) do not result in hazards to public health. See Sections V and VI. Section 111, which is the focus of this section of the preamble, constitutes an independent basis for our actions today, because that provision, once implemented, will effectively address any Hg emissions from coal-fired Utility Units, and for that reason, Hg emissions from coal-fired Utility Units that remain "after imposition of the requirements of th[e] Act do not result in hazards to public health." CAA Section 112(n)(1)(A).

provides to the contrary, in that it calls for an analysis of utility HAP emissions "after imposition of the requirements of th[e] Act," which we have reasonably interpreted to mean those authorities that EPA reasonably anticipated at the time of the Study would have reduced utility HAP emissions.

EPA received numerous comments concerning its authority under section 111 to regulate HAP from Utility Units. Those comments focused largely on EPA's authority to regulate existing units under section 111(d). As explained below, EPA has reasonably interpreted section 111(d) as providing authority to regulate HAP from existing Utility Units.

Unlike section 111(b), section 111(d) specifically references CAA section 112. The import of that reference is not clear on the face of Public Law 101–549, which is the 1990 amendments to the CAA, because the House and Senate each enacted a different amendment to section 111(d). The Conference Committee never resolved the differences between the two amendments and both were enacted into law as part of section 111(d). EPA is therefore confronted with the highly unusual situation of an enacted bill signed by the President that contains two different and inconsistent amendments to the same statutory provision.

1. Overview of the Two Amendments in Section 111(d)

An important starting point for evaluating the two amendments to section 111(d) in 1990 is the 1977 Act. Section 111(d) of the 1977 CAA provides, in pertinent part:

> The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) or 7412(b)(1)(A) of this title, but (ii) to which a standard of performance under this section would apply if such existing source were a new source. * * *

42 U.S.C.A. 7411(d) (West 1977); Public Law 95–95. The above language provides that standards of performance under section 111(d) cannot be established for any pollutant that is listed as a "hazardous air pollutant" under section 112(b)(1)(A) of the 1977 CAA.

In 1990, Congress significantly amended the CAA. Among other things, it significantly amended section 112, it enacted Title IV of the CAA, which includes numerous provisions that are directly applicable to Utility Units, and it amended section 111(d). Both the House and the Senate bills included different amendments to section 111(d), and both of those amendments were enacted into law.

The first amendment, which is the House amendment, is contained in section 108(g) of Public Law 101–549. That section amends section 111(d)(1)(A)(i) of the 1977 CAA by striking the words "or 112(b)(1)(A)" from the 1977 CAA and inserting in its place the following phrase: "or emitted from a source category which is regulated under section 112." The second amendment to section 111(d), which is the Senate amendment, is labeled a "conforming amendment" and is set forth in section 302 of Public Law 101–549. That section amends CAA section 111(d)(1) of the 1977 CAA by striking the reference to "112(b)(1)(A)" and inserting in its place "112(b)." The two amendments are reflected in parentheses in the Statutes at Large as follows:

> The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) *(or emitted from a source category which is regulated under section 112)* [House amendment,] *(or 112(b))* [Senate Amendment,] but (ii) to which a standard of performance under this section would apply if such existing source were a new source. * * *

The United States Code does not contain the parenthetical reference to the Senate amendment, as set forth in section 302 of Public Law 101–549. The codifier's notes to this section of the Official Committee Print of the executed law state that the Senate amendment "could not be executed" because of the other amendment to section 111(d) contained in the same Act. The United States Code does not control here, however. The Statutes at Large constitute the legal evidence of the laws, where, as here, Title 42 of the United States Code, which contains the CAA, has not been enacted into positive law. *See* 1 U.S.C. 204(a); *United States* v. *Welden,* 377 U.S. 95, 98 n.4 (1964); *Washington-Dulles Transportation Ltd.* v. *Metropolitan Washington Airports Auth.,* 263 F.3d 371, 378 (4th Cir. 2001). We did not receive any comments disputing either that the Statutes of Large constitute the legal evidence of the laws in this case, or that the 1990 Act contains two different amendments to the same statutory provision.[61]

2. Overview of Legislative History

As we indicated in the proposal, there is scant legislative history concerning the two amendments to section 111(d). The most persuasive legislative history that is relevant to our task of interpreting and reconciling the House and Senate amendments to section 111(d) is the final Senate and House bills. Those bills reflect significantly different treatment of Utility Units under section 112, as well as different amendments to section 111(d).

We begin our analysis with Senate bill 1630, as passed by the Senate on April 3, 1990. That bill included a provision concerning Utility Units. See generally Section 301 (hazardous air pollutants), A Legislative History of the Clean Air Act Amendments of 1990 ("Legislative History"), Vol III, at 4431–33 (Nov. 1993). Under that provision, EPA was to conduct a study on the health and environmental effects of utility HAP emissions within three years of enactment of the statute. The Senate Bill also required EPA to promulgate section 112(d) emissions standards for Utility Units within five years of enactment of the statute. The Senate bill further required EPA to place the study on utility HAP emissions in the docket for the section 112(d) rulemaking for Utility Units. Finally, the Senate bill, in a section labeled "conforming amendments," amended section 111(d) by striking the reference to "112(b)(1)(A)" in the 1977 Act and replacing it with "112(b)." *See generally* Section 305 (conforming amendments), Legislative History, Vol III, at 4534.

The final bill that passed the House in May 1990 stands in stark contrast to the Senate Bill. The House Bill included section 112(l), entitled "Electric Utilities." *See generally* Section 301 (hazardous air pollutants), Legislative History, Vol II, at 2148–49. That provision is identical to section 112(n)(1)(A). See 104 Stat. 2558. The House bill also amended section 111(d) by replacing the words "or 112(b)(1)(A)" with "or emitted from a source category which is regulated under section 112." See Legislative History, Vol. II, at 179.

Finally, the House provision concerning Utility Units is the provision that was enacted into law as section 112(n)(1)(A). The Senate approach to

[61] Although the notes accompanying the Official Committee Print do not interpret with the force of law, their conclusion about the appropriate effect to give these conflicting amendments is evidence that EPA's conclusion is reasonable.

regulating Utility Units under section 112 did not prevail. *See* Legislative History, Vol. I at 1451.

3. EPA's Interpretation of the Two Amendments to Section 111(d)

Neither we, nor commenters, have identified a canon of statutory construction that addresses the specific situation with which we are now faced, which is how to interpret two different amendments to the exact same statutory provision in a final bill that has been signed by the President. The canon of statutory construction that calls for harmonizing conflicting statutory provisions, where possible, and adopting a reading that gives some effect to both provisions is not controlling here because that canon applies where two provisions of a statute are in conflict, not where two amendments to the same statutory provision are in conflict. Nevertheless, we have attempted to follow the general principles underlying this canon of construction. We also rely on the legislative history noted above as support for our interpretation of the two amendments to section 111(d).

Turning first to the House amendment, we noted at proposal that a literal reading of that amendment is that a standard of performance under section 111(d) cannot be established for any air pollutant—HAP and non-HAP—emitted from a source category regulated under section 112. See 69 FR 4685. Certain commenters disagreed with our reading. They argue instead that a literal reading of the House amendment is that EPA cannot regulate under section 111(d) any HAP that is emitted from any source category regulated under section 112. This reading modifies the plain language of section 111(d), as amended by the House in 1990, in significant respects. First, it changes the terms "any pollutant" to "HAP," and second, it changes the phrase "a source category," to "any source category" and therefore commenters' reading of the amendment cannot be characterized as a "literal' reading.

Section 111(d), as amended by the House, specifically provides:

> Each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source *for any air pollutant * * * which is not emitted from a source category which is regulated under section 112.*

We interpret this language to mean that EPA cannot establish a standard of performance under CAA section 111(d) for any "air pollutant"—including both HAP and non-HAP—that is emitted from a particular source category regulated under section 112. Thus, under our interpretation, if source category X is "a source category" regulated under section 112, EPA could not regulate HAP or non-HAP from that source category under section 111(d). This interpretation reflects the distinction drawn in section 111(d), as amended by the House, between "any pollutant" and "a source category." The phrase "any pollutant" existed prior to the 1990 amendments and therefore it can be reasonably assumed that when the House amended section 111(d) in 1990, it intentionally chose the words "a source category," as opposed to "any source category. Although we recognize that the phrase "a source category" is susceptible to different interpretations, in that it could conceivably mean one or many source categories, we believe that our interpretation is a permissible construction given the juxtaposition of the phrases "any pollutant" and "a source category" in section 111(d), as amended by the House.

Moreover, consistent with our interpretation of the House amendment, we believe that the House sought to change the focus of section 111(d) by seeking to preclude regulation of those pollutants that are emitted from a particular source category that is actually regulated under section 112. The legislative history described above is instructive in this regard. At the same time the House substantively amended section 111(d), it passed a bill containing a provision (section 112(l)) that is identical to section 112(n)(1)(A) of the current act. Section 112(l) of the House bill calls for EPA to examine how the "imposition of the requirements of th[e] Act" would affect utility HAP emissions. This provision suggests that the House did not want to subject Utility Units to duplicative or overlapping regulation. In this regard, the House's amendment to section 111(d) could reasonably reflect its effort to expand EPA's authority under section 111(d) for regulating pollutants emitted from particular source categories that are not being regulated under section 112. Such a reading of the House language would authorize EPA to regulate under section 111(d) existing area sources which EPA determined did not meet the statutory criterion set forth in section 112(c)(3), as well as existing Utility Units (in the event EPA did not decide to regulate such units under section 112).

The Senate amendment provides that a section 111(d) standard of performance cannot be established for any HAP that is listed in section 112(b)(1), regardless of whether the source categories that emit such HAP are actually regulated under section 112. The Senate amendment reflects the Senate's intent to retain the pre-1990 approach of precluding regulation under CAA section 111(d) of any HAP listed under section 112(b). The Senate's intent in this regard is confirmed by the fact that its amendment is labeled a "conforming amendment," which is generally a non-substantive amendment. By contrast, the House amendment is not a conforming amendment.[62]

Moreover, the Senate's conforming amendment is consistent with the Senate's treatment of Utility Units in the final Senate Bill. Unlike the House bill, the Senate bill did not call for an examination of the other requirements of the CAA. Nor did it provide EPA discretion to determine whether Utility Units should be regulated under section 112. Instead, the Senate bill included a provision that would have required EPA to establish section 112(d) emission standards for Utility Units by a date certain. This provision, which was never enacted into law, is consistent with the Senate's conforming amendment which provides that HAP listed under section 112(b) cannot be regulated under section 111(d).

Based on the legislative history described above, we believe that the House amendment, as we have interpreted it, is wholly consistent with section 112(l) of the House bill, which the conference committee adopted as the provision governing Utility Units (section 112(n)(1)(A). It is hard to conceive that Congress would have adopted section 112(n)(1)(A), yet retained the Senate amendment to section 111(d). While it appears that the Senate amendment to section 111(d) is a drafting error and therefore should not be considered, we must attempt to give effect to both the House and Senate amendments, as they are both part of the current law.

The House and Senate amendments conflict in that they provide different standards as to the scope of EPA's authority to regulate under section 111(d). As we explained at proposal, in an effort to give some effect to both amendments, we reasonably interpret the amendments as follows: Where a source category is being regulated under section 112, a section 111(d) standard of performance cannot be established to address any HAP listed under section 112(b) that may be emitted from that particular source category. Thus, if EPA is regulating source category X under section 112, section 111(d) could not be

[62] There is a section of the final House bill that includes conforming amendments. The House amendment to section 111(d) does not appear in that sectiono of the bill, however. *See* Legislative History, Vol. II, at 179, 1986.

used to regulate any HAP emissions from that particular source category. This is a reasonable interpretation of the amendments to section 111(d) because it gives some effect to both amendments. First, it gives effect to the Senate's desire to focus on HAP listed under section 112(b), rather than applying the section 111(d) exclusion to non-HAP emitted from a source category regulated under section 112, which a literal reading of the House amendment would do. Second, it gives effect to the House's desire to increase the scope of EPA's authority under section 111(d) and to avoid duplicative regulation of HAP for a particular source category. *See* 136 Cong. Rec. H12911, 12934 (daily ed. Oct. 26, 1990) (the conferees adopted section 112(n)(1)(A) "because of the logic of basing any decision to regulate on the results of scientific study and because of the emission reductions that will be achieved and the extremely high costs that electric utilities will face under other provisions of the new Clean Air Act amendments.").

We recognize that our proposed reconciliation of the two conflicting amendments does not give full effect to the House's language, because a literal reading of the House language would mean that EPA could not regulate HAP or non-HAP emitted from a source category regulated under section 112. Such a reading would be inconsistent with the general thrust of the 1990 amendments, which, on balance, reflects Congress' desire to require EPA to regulate more substances, not to eliminate EPA's ability to regulate large categories of pollutants like non-HAP. Furthermore, EPA has historically regulated non-HAP under section 111(d), even where those non-HAP were emitted from a source category actually regulated under section 112. *See, e.g.,* 40 CFR 62.1100 (California State Plan for Control of Fluoride Emissions from Existing Facilities at Phosphate Fertilizer Plants). We do not believe that Congress sought to eliminate regulation for a large category of sources in the 1990 Amendments and our proposed interpretation of the two amendments to section 111(d) avoids this result.[63]

Finally, in assessing whether to revise the December 2000 "necessary" finding, it is reasonable to look to whether CAA section 111 constituted a viable alternative authority for regulating utility HAP emissions prior to the December 2000 finding. The answer is yes and therefore under our proposed interpretation of the conflicting amendments, we could have regulated HAP from Utility Units under section 111(d). We listed coal- and oil-fired Utility Units under section 112(c) in December 2000 based solely on our appropriate and necessary finding. As explained above, that finding lacks foundation and recent information confirms that it is neither appropriate nor necessary to regulate Utility Units under CAA section 112. We should have recognized prior to the December 2000 finding that section 111 constituted a viable authority for regulating utility HAP emissions and therefore should have never listed Utility Units on the Section 112(c) list. In addition, as explained below, the December 2000 finding and associated listing is not a final agency action and EPA can therefore make revisions to that finding at any point prior to taking final action. Such revisions are particularly appropriate here, because the prior finding is incorrect and new information confirms this fact.

Some commenters argue that their reading of the House amendment and reconciliation of the amendments is reasonable, but the question is not whether commenters have identified a reasonable construction of section 112(d). Rather, the issue is whether our construction is a permissible one, and for the reasons set forth above, we believe that it is. *See Smiley* v. *Citibank,* N.A. 517 U.S. 735, 744–45 (1996) (a "permissible" interpretation is one that is "reasonable"). Other commenters effectively ask us to ignore the House amendment because the Senate amendment reflects the law as of 1977. We cannot ignore the House amendment, as it is part of current law, and Congress substantially amended the law in 1990, by including, among other things, section 112(n)(1)(A).[64]

VIII. Removal of Coal- and Oil-Fired Utility Units From the Section 112(C) List

Section 112(n)(1)(A) sets forth the criteria for regulating Utility Units under section 112. The criteria are: Whether regulation of Utility Units under section 112 of the CAA is "appropriate" and "necessary." In December 2000, EPA added coal- and oil-fired Utility Units to the section 112(c) list in light of its positive appropriate and necessary finding for such units. *See* 65 FR 79831.

In the January 2004 proposed rule, EPA proposed removing coal- and oil-fired Utility Units from the section 112(c) list based on our proposed reversal of the December 2000 finding. Today, we conclude that the December 2000 finding lacked foundation and that regulation of coal- and oil-fired Utility Units under section 112 is not appropriate and necessary. Based on those decisions and our revision of the December 2000 finding, we remove coal- and oil-fired Utility Units from the section 112(c) list. We disagree with those commenters that argue that EPA cannot remove coal and oil-fired Utility Units from the section 112(c) list without satisfying the delisting criteria in section 112(c)(9).

EPA reasonably interprets section 112(n)(1)(A) as providing it authority to remove coal- and oil-fired units from the section 112(c) list at any time that it makes a negative appropriate and necessary finding under the section. Congress set up an entirely different structure and predicate for assessing whether Utility Units should be listed for regulation under section 112. Compare 112(c)(1) and (c)(3), with 112(n)(1)(A). Section 112(n)(1)(A)

[63] The first instance in which the Agency proposed an interpretation of the conflicting House and Senate amendments to CAA section 111(d) was in the January 2004 proposed rule. We recognize that we may have made statements concerning section 111(d), since the 1990 Amendments, but those statements did not recognize or account for the two different amendments to section 111(d), as enacted in 1990. We are also amending 40 CFR 60.21, as part of the final CAMR. That regulation, which was promulgated in 1975, interprets the 1970 CAA and defines a "designated pollutant" for purposes of section 111(d), as excluding any pollutant that is listed on the section 112(b)(1)(A) list. There is no section 112(b)(1)(A) in the current act, as amended in 1990. We are therefore revising 40 CFR 60.21 because it does not reflect the current language of section 111(d), as amended in 1990.

[64] Finally, some commenters argue that EPA's interpretation of the conflicting amendments was unreasonable, because it would give EPA discretion to regulate area sources, under section 111, as opposed to section 112. These commenters fail to recognize the listing criteria for area sources under section 112(c)(3). That section, for example, provides that EPA shall list a category or subcategory of area sources under section 112 if it finds that the category or subcategory presents a threat of adverse effects to human health or the environment in a manner "that warrants regulation under section 112." Thus, EPA must determine whether the category or subcategory presents a threat that warrants regulation under section 112. If EPA determined that the listing criteria for a category of area sources were not met, nothing would preclude EPA from regulating HAP from that category under section 111(d), which contains different requirements for regulation. See General Overview of section 111 above.

Another commenter argued that EPA's interpretation of the two amendments is contrary to a canon of statutory construction that provides that where a conflict exists between two provisions of an act, the last provision in point of arrangement controls. This commenter argues that because the Senate conforming amendment is found in section 302 of Public Law 101–549, and the House amendment in section 108(g), the Senate amendment should control. As explained above, this canon of statutory construction is not directly relevant to situations where the conflict at issue is between two different amendments to the same statutory provision. Furthermore, application of this canon of construction would be contrary to the legislative history described above.

therefore occupies the field in section 112 with regard to Utility Units. Section 112(n)(1)(A) provides EPA significant discretion in making the appropriate and necessary finding and nothing in section 112(n)(1)(A) suggests that EPA cannot revise its finding, where, as here, it has both identified errors in its prior finding and determined that the finding lacked foundation, and where EPA has received new information that confirms that it is not appropriate or necessary to regulate coal- and oil-fired Utility Units under section 112.[65]

The section 112(c)(9) criteria also do not apply in two situations that are directly relevant here. First, the December 2000 appropriate and necessary finding and associated listing are not final agency actions. *UARG* v. *EPA*, 2001 WL 936363, No. 01–1074 (DC Cir. July 26, 2001). EPA therefore has inherent authority under the CAA to revise those actions at any time based on either identified errors in the December 2000 finding or on new information that bears upon that finding. Second, as explained in the proposed rule, the section 112(c)(9) criteria do not apply where, as here, the source category at issue did not meet the statutory criteria for listing at the time of listing. See 68 FR 28197, 28200 June 4, 1996; see also 69 FR 4689 (citing additional examples where EPA has removed a source category from the section 112(c) list without following the criteria in section 112(c)(9) due to an error at the time of listing). For all of the reasons noted above, EPA did not meet the statutory listing criteria at the time of listing for coal- and oil-fired Utility Units. Accordingly, coal- and oil-fired Utility Units should never have been listed under section 112(c) and therefore the criteria of section 112(c)(9) do not apply to today's action.

IX. 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 Office of Management and Budget (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, 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. However, EPA has determined that this rulemaking will not have a significant economic impact. Changes made in response to OMB suggestions or recommendations will be documented in the public record. All written comments from OMB to EPA and any written EPA response to any of those comments are included in the docket listed at the beginning of this notice under **ADDRESSES.**

B. Paperwork Reduction Act

This action does not contain any information collection requirements and therefore is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) (SBREFA), provides that whenever an agency is required to publish a general notice of rulemaking, it must prepare a regulatory flexibility analysis, unless it certifies that the rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). Small entities include small businesses, small organizations, and small governmental jurisdictions.

As was discussed in the January 30, 2004 NPR, EPA determined that it was not necessary to prepare a regulatory flexibility analysis in conjunction with this rulemaking. We certify that this action will not have a significant impact on a substantial number of small entities because it imposes no regulatory requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final 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 * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

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, or tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the final rule 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, the final rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the EO to include regulations that have

[65] Although not critical to our analysis, we do note that it is questionable whether we even had a legal obligation in December 2000 to list Utility Units under section 112(c) after making the positive appropriate and necessary finding. Section 112(n)(1)(A) makes no reference to CAA section 112(c) and the framework of section 112(c)(1) and (c)(3) does not expressly provide for the listing of Utility Units. Rather, those provisions speak to major and area sources, which Congress treated differently from Utility Units.

"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 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 EO 13132. The CAA establishes the relationship between the Federal government and the States, and this rule does not impact that relationship. Thus, EO 13132 does not apply to this rule. However, in the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this rule from State and local officials.

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

EO 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 rule does not have Tribal implications as defined by EO 13175. It does not have a substantial direct effect on one or more Indian Tribes, in that it is a determination not to regulate utilities under section 112, and therefore imposes no burdens on tribes. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Authority Rule (TAR) establish the relationship of the Federal government and Tribes in implementing the Clean Air Act. Because this rule does not have Tribal implications, EO 13175 does not apply.

Although EO 13175 does not apply to this rule, EPA took several steps to consult with Tribal officials in developing this rule. EPA gave a presentation to a national meeting of the Tribal Environmental Council (NTEC) in April 2001, and encouraged Tribal input at an early stage. EPA then worked with NTEC to find a Tribal representative to participate in the workgroup developing the rule, and included a representative from the Navajo Nation as a member the official workgroup, with a representative from the Campo Band later added as an alternate. In March 2004, EPA provided a briefing for Tribal representatives and the newly formed National Tribal Air Association and NTEC. EPA received comments on this rule from a number of tribes, and has taken those comments and other input from Tribal representatives into consideration in development of this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (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, section 5–501 of the EO directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulations. The final rule is not subject to Executive Order 13045 because it does not include regulatory requirements based on health or safety risks.

Nonetheless, in making its determination as to whether it is "appropriate and necessary" to regulate Utility Units under section 112, EPA considered the effects of utility HAP emissions on both the general population and sensitive subpopulations, including children.

H. Executive Order 13211: Actions Concerning Regulations 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 Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of EO 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 final rulemaking, and notices of final rulemaking: (1) (i) That is a significant regulatory action under EO 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." Although this final rule is a significant regulatory action under EO 12866, it will not 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; Section 12(d), 15 U.S.C. 272 note) directs 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 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. NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

This action does not involve technical standards and therefore the NTTAA does not apply.

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," provides for Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations, including tribes.

As described above, in making its determination as to whether it is "appropriate and necessary" to regulate Utility Units under section 112, EPA considered the effects of utility HAP emissions on both the general population and sensitive subpopulations, including subsistence fish-eaters. EPA's analysis considered such subpopulations as the Chippewa in Minnesota, Wisconsin, and Michigan; and the Hmong in Minnesota and

Wisconsin. As explained above, the Agency has concluded that it is not "appropriate and necessary" to regulate Utility Units under section 112, in light of all available information, including information on subsistence fish-eaters. The Agency believes that implementation of the CAIR and, independently, the CAMR will remove the hazards to public health resulting from utility HAP emissions.

This action, however, does not actually regulate HAP emissions from utilities. The CAMR does regulate Hg emissions from utilities, and it is in the CAMR rulemaking that EPA has addressed the impacts of that regulation on the populations addressed by Executive Order 12898.

K. Congressional Review Act

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 rule 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 the rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on March 29, 2005.

Dated: March 15, 2005.

Stephen Johnson,

Acting Administrator.

[FR Doc. 05–6037 Filed 3–28–05; 8:45 am]

BILLING CODE 6560–50–P

■ 3. Section 199.15 is amended by revising paragraphs (b)(4)(i)(B) and (b)(4)(ii)(D) to read as follows:

§ 199.15 Quality and utilization review peer review organization program.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(B) For healthcare services provided under TRICARE contracts entered into by the Department of Defense after October 30, 2000, medical necessity preauthorization will not be required for referrals for specialty consultation appointment services requested by primary care providers or specialty providers when referring TRICARE Prime beneficiaries for specialty consultation appointment services within the TRICARE contractor's network. However, the lack of medical necessity preauthorization requirements for consultative appointment services does not mean that non-emergent admissions or invasive diagnostic or therapeutic procedures which in and of themselves constitute categories of health care services related to, but beyond the level of the consultation appointment service, are not subject to medical necessity prior authorization. In fact many such health care services may continue to require medical necessity prior authorization as determined by the Director, TRICARE Management Activity, or a designee. TRICARE Prime beneficiaries are also required to obtain preauthorization before seeking health care services from a non-network provider.

(ii) * * *

(D) For healthcare services provided under TRICARE contracts entered into by the Department of Defense after October 30, 2000, medical necessity preauthorization for specialty consultation appointment services within the TRICARE contractor's network will not be required. However, the Director, TRICARE Management Activity, or designee, may continue to require or waive medical necessity prior (or pre) authorization for other categories of other health care services based on best business practice.

* * * * *

■ 4. Section 199.17 is amended by revising paragraph (n)(2)(ii)(B) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(n) * * *

(2) * * *

(ii) * * *

(B) For healthcare services provided under TRICARE contracts entered into by the Department of Defense on or after October 30, 2000, referral requests (consultation requests) for specialty care consultation appointment services for TRICARE Prime beneficiaries must be submitted by primary care managers. Such referrals will be authorized by Health Care Finders (authorization numbers will be assigned so as to facilitate claims processing) but medical necessity preauthorization will not be required for referral consultation appointment services within the TRICARE contractor's network. Some health care services subsequent to consultation appointments (invasive procedures, nonemergent admissions and other health care services as determined by the Director, TRICARE Management Activity, or a designee) will require medical necessity preauthorization. Though referrals for specialty care are generally the responsibility of the primary care managers, subject to discretion exercised by the TRICARE Regional Directors, and established in regional policy or memoranda of understanding, specialist providers may be permitted to refer patients for additional specialty consultation appointment services within the TRICARE contractor's network without prior authorization by primary care managers or subject to medical necessity preauthorization.

* * * * *

Dated: April 7, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–7361 Filed 4–12–05; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0411; AD–FRL–7899–1]

RIN 2060–AK80

National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards; and National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rules; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the National Emissions Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Control Technology Standards which were promulgated in June 1999 (64 FR 34863), and the National Emission Standards for Ethylene Manufacturing Units: Heat Exchange Systems and Waste Operations which were promulgated in July 2002 (67 FR 46258). The direct final rule amendments clarify the compliance requirements for benzene waste streams, clarify the requirements for heat exchangers and heat exchanger systems, and stipulate the provisions for offsite waste transfer in the national emission standards for ethylene manufacturing process units. The direct final rule amendments also correct the regulatory language that make emissions from ethylene cracking furnaces during decoking operations an exception to the provisions and delineate overlapping requirements for storage vessels and transfer racks.

In addition, the direct final rule amendments also correct errors in the proposed rule for the Acrylic and Modacrylic Fiber Production source category which were not corrected as indicated in the preamble to the June 1999 final rule (64 FR 34863).

We are issuing the amendments as direct final rules, 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**, we are publishing a separate document that will serve as the proposal to amend the National Emissions Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Control Technology Standards and the National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

DATES: The direct final rule amendments are effective on June 13, 2005 without further notice, unless EPA receives adverse written comment by May 31, 2005. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** indicating which of the amendments will become effective, and which are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0411, 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.*
- *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–2004–0411. 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. Warren Johnson, Organic Chemicals Group, Emission Standards Division (C504–04), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5124; facsimile number (919) 541–3470; electronic mail (e-mail) address *johnson.warren@epa.gov.* For information concerning corrections to the Acrylic/Modacrylic Fiber Production source category of the Generic MACT, contact Ms. Ellen Wildermann, Policy, Planning and Standards Group, Emission Standards Division (C439–04), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, (919) 541–5408, e-mail address *wildermann.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The entities potentially affected by this action include the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industrial	325110	2869	Producers of ethylene from refined petroleum or liquid hydrocarbons.
	3252	2824	Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Not all facilities listed classified under the NAICS code or SIC code are affected. To determine whether your facility is affected by this action, you should examine the applicability criteria in § 63.1100 of the generic MACT standards (40 CFR part 63). If you have any questions regarding the applicability of these technical corrections 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, electronic copies of recently proposed and final rules are also available on the WWW through EPA's Technology Transfer Network (TTN). Following signature, a copy of the direct final rules 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.

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 today's **Federal Register,** we are publishing a separate document that will serve as the proposal to the amendments in the rules 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 comments. We will address all public comments in subsequent final rules based on the proposed rules. Any of the distinct amendments in today's final rules 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

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 these direct final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 13, 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 the EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading the direct final rule amendments:

I. Background
II. Amendments to the NESHAP for Ethylene Manufacturing Process Units and the Generic MACT
III. Rule Language Clarifications
IV. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paper 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

We are amending two rules. One rule is the National Emissions Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Control Technology Standards which were promulgated in June 1999 (64 FR 34863) and also referred to as the Generic Maximum Achievable Control Technology or "GMACT" rule, provide a structural framework that allows source categories with similar emission types and control requirements to be covered under common subparts; thus, promoting regulatory consistency in the development of national emission standards for hazardous air pollutants (NESHAP). The other rule is the National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations which were promulgated in July 2002 (67 FR 46258) in the same notice that added by amendment the Ethylene Production source category to the GMACT rule applicability.

The amendments in today's action clarify the compliance requirements for benzene waste streams, clarify the requirements for heat exchangers and heat exchanger systems, and stipulate the provisions for offsite waste transfer in the national emission standards for ethylene manufacturing process units (40 CFR part 63, subpart XX).

The amendments in today's action will also correct the regulatory language that make emissions from ethylene cracking furnaces during decoking operations an exception to the provisions, delineate overlapping requirements for storage vessels and transfer racks, and correct typographical errors in Table 7 to 40 CFR 63.1103(e), "What are my requirements if I own or operate an ethylene production existing or new affected source?"

In addition, we are correcting errors to Table 3 to 40 CFR 63.1103(b)(3)(ii), "What are my requirements if I own or operate an acrylic and modacrylic fiber production existing or new affected source and am complying with paragraph (b)(3)(ii) of this section?" in the proposed rule for the Acrylic and Modacrylic Fiber Production source category which were not corrected as indicated in the preamble to the June 1999 final rule (64 FR 34863).

II. Amendments to the NESHAP for Ethylene Manufacturing Process Units and the Generic MACT

Today's actions include amendments to the NESHAP for ethylene manufacturing process units to clarify compliance requirements for benzene waste streams, to clarify the requirements for heat exchangers and heat exchanger systems, and to stipulate the provisions for offsite waste transfer. We are also amending the generic MACT standards to correct the regulatory language to state that emissions from furnaces during decoking operations are an exception to the provisions, and we are delineating overlapping requirements for storage vessels and transfer racks. Another source in the generic MACT is acrylic and modacrylic fiber production for which we are amending the Compliance Requirements Table.

We are amending 40 CFR 63.1086(b)(4) and 63.1095(a) to change units from parts per million by volume (ppmv) to parts per million by weight (ppmw) so that the units of measure accurately reflect the units of measure of the tests used by affected sources.

We are amending 40 CFR 63.1086(a)(5) to clarify the interpretation of the heat exchanger leak calculation requirements. While not explicitly stated, our intent in § 63.1086(a) was to define heat exchange systems in such a way as to ensure that leaks of 3.06 kilogram per hour (kg/hr) (the intended low end threshold of what would constitute a leak) or greater of hazardous air pollutants (HAP) into the cooling water stream are detectable and to specify that a leak is detected if the exit mean concentration is at least 10 percent greater than the entrance mean.

We are amending 40 CFR 63.1086(a)(2)(ii)(B) and (b)(1)(ii) to include performance-based monitoring frequencies.

We are amending 40 CFR 63.1095(b) to reword the type of waste stream to "waste streams that contain benzene," which is consistent with the wording in 40 CFR 61.342(c). The change clarifies that this section specifically applies to "waste streams" containing benzene, not benzene containing streams in general, since there are product streams that also contain benzene. We are also amending 40 CFR 63.1095(b) to clarify an option for an owner or operator to transfer waste off-site to another facility for treatment, according to 40 CFR 63.1096.

We are amending 40 CFR 63.1100(g)(1) to address overlapping storage vessel requirements in 40 CFR part 63, subpart YY, with the requirements in 40 CFR part 63, subparts G and CC.

We are amending 40 CFR 63.1103(e)(1)(ii)(J) by removing the term "furnace stack," because decoking emissions do not exit through the furnace stack. We are amending 40 CFR 63.1103(e)(2) to include a definition of "organic HAP" that identifies organic HAP as those compounds listed in Table 1 to 40 CFR part 63, subpart XX.

We are amending 40 CFR 63.1103(g)(3) to clarify our intent that transfer racks at an ethylene affected source that are also subject to either 40 CFR part 63, subpart G, or 40 CFR part 61, subpart BB, are only required to comply with the requirements of 40 CFR part 63, subpart YY.

III. Rule Language Clarifications

Paragraphs (b) and (e) of 40 CFR 63.1084 contain provisions that exempt heat exchange systems that contain less than 5 percent HAP by weight in either an intervening fluid or process fluid. We have been asked to clarify the frequency intended for determining the HAP content for the purpose of establishing or maintaining the exempt status of a heat exchange system. The HAP content must be determined prior to claiming the exemption. Thereafter, the HAP

content must be determined whenever you are relying on the exemption and have reason to believe that the HAP content may be in excess of 5 percent. In general, if you make a process or operating change that would nullify the exemption and would, therefore, need to be identified as part of the affected source subject to 40 CFR part 63, subpart XX, you would make a determination shortly after the change is made and report the determination in the next semiannual report. Likewise, any determinations necessary to document continued exempt status following any process or operational changes that could affect the HAP content of the process fluid or intervening fluid should follow the same schedule. Along these same lines, if you do not make a process or operating change that could increase the HAP content of the process or intervening fluid, and you reasonably believe that the initial demonstration of exempt status is valid, you do not need to perform another determination. The periodic reporting requirements and schedule are specified in 40 CFR 63.1110(e) and (f).

In response to stakeholder questions, we are clarifying that at facilities with total annual benzene (TAB) quantities less than the 10 megagrams per year (Mg/yr) (the applicability threshold of the Benzene Waste Operations NESHAP in 40 CFR part 61, subpart FF), the provisions of 40 CFR part 63, subpart XX, require control of two benzene waste streams as specified in § 63.1095(b)(1), and require control of continuous butadiene waste streams meeting the concentration and flow rate criteria at any benzene level (under 40 CFR 63.1095(a)(3)). Section 63.1095(b)(1) requires facilities whose TAB quantity from waste is less than 10 Mg/yr to manage and treat the two named benzene waste streams—spent caustic waste streams and dilution steam blowdown waste streams—according to 40 CFR 61.342(c)(1) through (c)(3)(i). Facilities with a TAB quantity from waste of 10 Mg/yr or greater must comply with the requirements of 40 CFR 63.1095(b)(2). These requirements are explained in the July 12, 2002, preamble to the final rule (67 FR 46265). Section 112 of the CAA requires standards for control of HAP, not only benzene; hence, all facilities subject to the Ethylene Production NESHAP (regardless of TAB quantity) are required to control continuous butadiene waste streams, as required in 40 CFR 63.1095(a).

We are clarifying the intent of provisions regarding overlapping provisions for leak detection and repair requirements for ethylene manufacturing process units (EMPU) as established by 40 CFR part 63, subpart UU. Equipment within an EMPU may potentially be regulated by several other equipment leak regulations, such as 40 CFR part 61, subparts J and V; 40 CFR part 60, subpart VV; and 40 CFR part 63, subpart H. To address this overlap, the regulations provide that in cases where 40 CFR part 63, subpart UU, overlaps the other requirements, the equipment need only comply with the subpart UU requirements, since subpart UU is at least as stringent as the overlapping regulations. For ease in compliance, we understand that some affected sources may wish to comply with subpart UU requirements for equipment leaks for the entire EMPU, even for equipment not in HAP service. In these cases, the owner or operator should specify the use of 40 CFR part 63, subpart UU, for the entire EMPU in the Notification of Compliance Status report required by 40 CFR 63.1110(a)(4).

We are clarifying the intent of the exclusions contained in 40 CFR 63.1100(e)(1)(iii) and how they relate to the overlap requirements. For process units that are currently regulated under other subparts of 40 CFR part 63, § 63.1100(g) provides provisions when applicability of 40 CFR part 63, subpart YY, and other subparts of 40 CFR parts 60, 61 and 63 overlap, allowing sources to elect which subpart to comply with in some cases. In respect to facilities that produce ethylene, these exclusions and overlap provisions were intended for facilities that have collocated process units currently subject to other 40 CFR part 63 subparts in addition to their ethylene production units. For example, a facility could have a refinery subject to 40 CFR part 63, subpart CC (Petroleum Refinery NESHAP), in addition to an ethylene production unit, and within the refinery operations there is equipment that separates propylene from the refinery gas stream, but the product propylene is not intended for, or used in, ethylene production. The equipment in question, while performing a function that is common to ethylene manufacturing, is already regulated under the Petroleum Refinery NESHAP (40 CFR part 63, subpart CC) and may be excluded from the Ethylene Production NESHAP (40 CFR part 63, subpart YY) applicability on that basis. Our overall intent is to avoid duplication and confusion in monitoring, recordkeeping and reporting requirements by requiring that process equipment that is potentially subject to more than one 40 CFR part 63 subpart must be in compliance with one subpart, but (pursuant to these exclusion and overlap provisions) need not comply with multiple subparts. These provisions and exclusions do not authorize noncompliance with any of the 40 CFR part 63 requirements for a source that would otherwise be subject to one or more 40 CFR part 63 subparts.

We are clarifying that small containers, portable bins and portable tanks are not included in the definition of "storage vessel or tank" found in 40 CFR 63.1101 since the definition applies to "* * * a stationary unit * * *." It was not our intent to regulate the small containers, portable bins and portable tanks, and we believe that by distinguishing that the vessels must be stationary is adequate for determining regulated vessels.

Section 63.1105(h)(1) of 40 CFR part 63 requires "the pressure test procedures specified in Method 27 of appendix A to 40 CFR part 60" to test for vapor tightness. Vapor tight, as defined in 40 CFR 63.1105(d)(2), means that the pressure in the tank will not drop more than 750 pascals within 5 minutes after it is pressurized to a minimum of 4,500 pascals. This regulatory wording clearly requires you to test for vapor tightness using the pressure test procedures described in Method 27 and does not require a vacuum test. We confirm that it is our intent to require only pressure testing. The appropriate pressure test is described in 40 CFR part 60, appendix A, section 8.2.2 of Method 27, and the vacuum test described in section 8.2.3 of Method 27 is not required.

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 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 the direct final rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, are not subject to review by OMB.

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 direct final rule amendments result in no changes to the information collection requirements of the standards or guidelines and will have no impact on the information collection estimate of project cost and hour burden made at the time these rule were promulgated. Therefore, the information collection requests have not been revised. The OMB has previously approved the information collection requirements contained in 40 CFR part 63, subpart YY under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, and assigned OMB control number 2060–0420 (EPA ICR 1871.02) for Acrylic and Modacrylic Fiber Production, and OMB control number 2060–0489 for Ethylene Production (EPA ICR 1983.02).

Copies of the Information Collection Request (ICR) document(s) may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (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*.

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

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR 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 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 direct final rule amendments on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule amendments will not impose any requirements on small entities. The direct final rule amendments provide clarifications and corrections to previously issued rules. Before promulgating the rule on acrylic and modacrylic fiber production in 1999 (64 FR 34863), we concluded that each standard applied to five or fewer major sources. In addition, we conducted a limited assessment of the economic effect of the proposed standards on small entities that showed no adverse economic effect for any small entities within any of these source categories. Similarly, before promulgating the rules on ethylene production in 2002 (67 FR 46258), we determined that there were no small entities affected by those rules.

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, 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 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 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 we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. 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.

We have 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. Thus, the direct final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, we have determined that the direct final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to small governments or impose obligations on them.

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 will not impose substantial direct compliance costs on State or local governments and will not preempt State law. 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 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."

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. 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 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.

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 and safety risks. Also, the direct final rule amendments are not "economically significant."

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 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act (NTTAA)

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 us to use voluntary consensus standards in our 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 methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The direct final rule amendments do not involve modifications to the technical standards specified in the final rules for Acrylic and Modacrylic Fiber Production and Ethylene Production. Therefore, we 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 Congress and to the Comptroller General of the United States. We 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 amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These direct final rule amendments are 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: April 7, 2005.

Stephen L. Johnson,

Acting 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 XX—[Amended]

■ 2. Section 63.1086 is amended by:
■ a. Revising paragraph (a)(2)(ii);
■ b. Revising paragraph (a)(5);
■ c. Revising paragraph (b)(1)(ii); and
■ d. Revising paragraph (b)(4).

The revisions read as follows:

§ 63.1086 How must I monitor for leaks to cooling water?

* * * * *

(a) * * *

(2) * * *

(ii) Monitor weekly for 6 months, both initially and following completion of a leak repair. Then monitor as provided in paragraph (a)(2)(ii)(A) or (B) of this section, as appropriate.

(A) If no leaks are detected by monitoring weekly for a 6-month period, monitor monthly thereafter until a leak is detected.

(B) If a leak is detected, monitor weekly until the leak has been repaired. Upon completion of the repair, monitor according to the specifications in paragraph (a)(2)(ii) of this section.

* * * * *

(5) Calculate the average entrance and exit concentrations, correcting for the addition of make-up water and evaporative losses, if applicable. Using a one-sided statistical procedure at the 0.05 level of significance, if the exit mean concentration is at least 10 percent greater than the entrance mean of the HAP (total or speciated) in Table 1 to this subpart or other representative substance, and the leak is at least 3.06 kg/hr, you have detected a leak.

(b) * * *

(1) * * *

(ii) Monitor weekly for 6 months, both initially and following completion of a leak repair. Then monitor as provided in paragraph (b)(1)(ii)(A) or (B) of this section, as appropriate.

(A) If no leaks are detected by monitoring weekly for a 6-month period, monitor monthly thereafter until a leak is detected.

(B) If a leak is detected, monitor weekly until the leak has been repaired. Upon completion of the repair, monitor according to the specifications in paragraph (b)(1)(ii) of this section.

* * * * *

(4) Calculate the average entrance and exit concentrations, correcting for the addition of make-up water and evaporative losses, if applicable. Using a one-sided statistical procedure at the 0.05 level of significance, if the exit mean concentration is at least 1 ppmw or 10 percent greater than the entrance mean, whichever is greater, you have detected a leak.

* * * * *

■ 3. Section 63.1095 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (b) introductory text; and

■ c. Revising paragraph (b)(2).

The revisions read as follows:

§ 63.1095 What specific requirements must I comply with?

* * * * *

(a) *Continuous butadiene waste streams.* Manage and treat continuous butadiene waste streams that contain greater than or equal to 10 ppmw 1,3-butadiene and have a flow rate greater than or equal to 0.02 liters per minute, according to either paragraph (a)(1) or (2) of this section. If the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), the requirements of paragraph (a)(3) of this section apply also.

* * * * *

(b) *Waste streams that contain benzene.* For waste streams that contain benzene, you must comply with the requirements of 40 CFR part 61, subpart FF, except as specified in Table 2 to this subpart. You must manage and treat waste streams that contain benzene as specified in either paragraph (b)(1) or (2) of this section.

* * * * *

(2) If the total annual benzene quantity from waste at your facility is greater than or equal to 10 Mg/yr, as determined according to 40 CFR 61.342(a), you must manage and treat waste streams according to any of the options in 40 CFR 61.342(c)(1) through (e) or transfer waste off-site. If you elect to transfer waste off-site, then you must comply with the requirements of § 63.1096.

Subpart YY—[Amended]

■ 4. Section 63.1100 is amended by:

■ a. Revising paragraph (g)(1)(i); and

■ b. Revising paragraph (g)(3) to read as follows:

§ 63.1100 Applicability.

* * * * *

(g) * * *

(1) * * *

(i) After the compliance dates specified in § 63.1102, a storage vessel subject to this subpart YY that is also subject to subpart G or CC of this part is required to comply only with the provisions of this subpart YY.

* * * * *

(3) *Overlap of this subpart YY with other regulations for transfer racks.* After the compliance dates specified in § 63.1102, a transfer rack that must be controlled according to the requirements of this subpart YY and either subpart G of this part or subpart BB of 40 CFR part 61 is required to comply only with the transfer rack requirements of this subpart YY.

* * * * *

■ 5. Section 63.1103 is amended by:

■ a. Revising paragraph (e)(1)(ii)(J); and

■ b. Adding the term "Organic HAP" in alphabetical order to paragraph (e)(2) to read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(J) Air emissions from all ethylene cracking furnaces, including emissions during decoking operations.

* * * * *

(2) * * *

Organic HAP means the compounds listed in Table 1 to subpart XX of this part.

* * * * *

■ 6. Table 3 to § 63.1103(B)(3)(ii) is amended by revising the title and entries (1)(a) and (2)(a) to read as follows:

TABLE 3 TO SECTION 63.1103(b)(3)(ii)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (b)(3)(ii) OF THIS SECTION?

If you own or operate . . .	Then you must control total organic HAP emissions from the affected source by . . .
(1) * * *	Meeting all of the following requirements: a. Reduce total acrylonitrile emissions from all affected storage vessels, process vents, wastewater streams associated with the acrylic and modacrylic fibers production process unit as defined in paragraph (b)(2) of this section, and fiber spinning lines operated in your acrylic and modacrylic fibers production facility to less than or equal to 0.5 kilograms (kg) of acrylonitrile per megagram (Mg) of fiber produced. b. * * *
(2) * * *	Meeting all of the following requirements: a. Reduce total acrylonitrile emissions from all affected storage vessels, process vents, wastewater streams associated with the acrylic and modacrylic fibers production process unit as defined in paragraph (b)(2) of this section, and fiber spinning lines operated in your acrylic and modacrylic fibers production facility to less than or equal to 0.25 kilograms (kg) of acrylonitrile per megagram (Mg) of fiber produced. b. * * *
* * * * * * *	

* * * * *

■ 7. Table 7 to § 63.1103(e) is amended by revising the title and entries (b)(1) and (g)(1) to read as follows:

TABLE 7 TO § 63.1103(e).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
* * *	* * *	* * *
(b) * * *	(1) The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥95 cubic meters.	(i) * * * (ii) * * *
* * *	* * *	* * *
(g) * * *	(1) The waste stream contains any of the following HAP: benzene, cumene, ethyl benzene, hexane, naphthalene, styrene, toluene, o-xylene, m-xylene, p-xylene, or 1,3-butadiene.	(i) * * *
* * *	* * *	* * *

* * * * *

[FR Doc. 05–7404 Filed 4–12–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7899–3]

RIN 2060–AM51

Protection of Stratospheric Ozone: Substitute Refrigerant Recycling; Amendment to the Definition of Refrigerant

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this direct final rule to correct the final rule published in the **Federal Register** on March 12, 2004. Specifically, EPA is amending the regulatory text for the definitions of refrigerant and technician. EPA is also amending the prohibition against venting substitute refrigerants to reflect the changes in the definitions. These changes are being finalized to make certain that the regulations promulgated on March 12, 2004 cannot be construed as a restriction on the sales of substitutes that do not consist of an ozone-depleting substance (ODS), such as pure hydrofluorocarbon (HFC) and perfluorocarbon (PFC) substitutes.

DATES: This direct rule is effective on June 13, 2005, without further notice, unless EPA receives adverse comment by May 13, 2005. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0070 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;
- Fax comments to (202) 566–1741; or
- Mail/hand delivery: Submit comments to Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460, phone: (202) 566–1742.

Instructions: Direct your comments to Docket ID No. OAR–2004–0070. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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: Julius Banks; (202) 343–9870; Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J); 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The Stratospheric Ozone Information Hotline, 800–296–1996, and the Ozone Web page, *http://www.epa.gov/ozone/title6/608/regulations/index.html,* can also be contacted for further information concerning this correction.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. EPA



Federal Register

Friday,
April 15, 2005

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Coke Oven Batteries; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0051; FRL–7895–8]

RIN 2060–AJ96

National Emission Standards for Coke Oven Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On October 27, 1993 (58 FR 57898), pursuant to section 112 of the Clean Air Act (CAA), the EPA issued technology-based national emission standards to control hazardous air pollutants (HAP) emitted by coke oven batteries. This action amends the standards to address residual risks under section 112(f) and the 8-year review requirements of section 112(d)(6).

DATES: The final rule amendments will be effective on April 15, 2005. Existing sources will be required to comply with the final rule as amended on July 14, 2005. The incorporation by reference of certain publications listed in the final rule amendments is approved by the Director of the Federal Register as of April 15, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0051. 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–2003–0051, 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. Bob Schell, Emission Standards Division (C439–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, 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	Existing by-product coke oven batteries subject to emission limitations in 40 CFR 63.302(a)(2) and nonrecovery coke oven batteries subject to new source emission limitations in 40 CFR 63.303(b). These batteries are subject to maximum achievable control technology (MACT) requirements and are known as "MACT track" batteries.
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 § 63.300 of the national emission standards for coke oven batteries. 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 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 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 14, 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 section 307(b)(2) of the CAA, the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the 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
A. What Are the Affected Sources and Emissions Points?
B. What Are the Requirements?
III. Response to Major Comments
A. Comments on the Overall Risk Program and Policy
B. Risk Comments Specific to Coke Ovens
C. Comments on Section 112(d)(6) Review Policy
D. Specific Comments on Section 112(d)(6) Review of Coke Ovens
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

I. Background

EPA promulgated national emission standards for charging, door leaks, and topside leaks from coke ovens batteries at 58 FR 57898, October 27, 1993 (40 CFR part 63, subpart L) under section 112(d) of the CAA. Section 112(f)(2) of the CAA requires EPA to determine for each section 112(d) source category if the promulgation of additional standards is required "in order to provide an ample margin of safety to protect public health." We also have

discretion to impose a more stringent emissions standard to prevent adverse environmental effect if such action is justified in light of costs, energy, safety, and other relevant factors. On August 9, 2004 (69 FR 48338), we proposed amendments to the national emission standards for coke oven batteries that included more stringent requirements for certain by-product coke oven batteries to address health risks remaining after implementation of the 1993 national emission standards. The proposed amendments also included provisions pursuant to the 8-year review requirements of CAA section 112(d)(6).

In our proposal preamble, we presented the maximum individual risk (MIR) estimate for coke oven emissions from those emission points subject to the 1993 national emission standards. The MIR estimate was 200 in a million (69 FR 48346). We also explained at proposal that, as required under the Benzene NESHAP [1] decision framework (codified in section 112(f)(2)(A) and (B)), we considered the level of risk from the limits in the 1993 national emission standards (*i.e.*, 200 in a million) to be acceptable after considering several factors (69 FR 48347–48350). These factors included the number of exposed people with cancer risk level estimates greater than 1 in a million (approximately 300,000 people or 7 percent of the exposed population), the number of people for whom cancer risk levels are greater than 100 in a million (less than 10 people), the estimate of annual incidence of cancer (0.04), and the projected absence of adverse noncancer effects.[2] Also considered in the evaluation in the proposal was the protective nature of many of the assumptions leading to these estimates of potential residual risk.

Under section 112(o)(7) of the CAA, we are required to issue revised cancer guidelines prior to the promulgation of the first residual risk rule under section 112(f) (an implication being that we should consider these revisions in the various residual risk rules). Since our August 2004 proposal, we have issued revised cancer guidelines and also supplemental guidance which deal specifically with assessing the potential added susceptibility from early-life exposure to carcinogens. We have considered our decisions in these final rule amendments in light of the revised cancer guidelines and supplemental guidance. 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 thought 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 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. In light of this guidance, EPA has evaluated the available scientific information associated with pollutants emitted by coke ovens and believes it is appropriate to apply the default factors in the risk assessment supporting today's final rule amendments. The chief HAP emitted by coke ovens, coke oven emissions, is specifically enumerated in CAA section 112(b)(1). Coke oven emissions are likely to cause cancer through a mutagenic mode of action. We base this conclusion on the data on coke oven emissions mutagenicity which has been summarized by EPA[3] [4] and the International Agency for Research on Cancer,[5] and reported in numerous, more recent studies available in the peer-reviewed literature. The result of that determination is that our individual and population cancer risk estimates for lifetime exposures that begin at birth and extend through adulthood will increase from proposal by a factor of 1.6, [6] a factor that considers the assumption of constant exposure over the 70-year exposure duration (birth to adulthood) we used in estimating individual and population risk. These further assumptions of increased cancer potency and birth to 70-year residence of the entire population in the area assessed were not part of the proposed rule amendments.

Based on the supplemental guidance, we have revised our risk estimates by applying the default adjustment factors to account for increased susceptibility that might occur due to exposures that occur from birth to 16 years of age. The increased risk due to consideration of the exposures assumed to occur from birth to 16 years of age (included in the 70-year total exposure duration) results in a revised upper-bound estimate. For the source category associated with the 1993 national emission standards, the revised MIR estimate is 300 in a million. We have chosen to also apply the default adjustment to other analyses used to support the determination that the MIR of 200 in a million was acceptable. However, we acknowledge that more refined modeling of exposure would be necessary to adequately express the effect of early life susceptibility to overall estimates of population risk. For example, not all individuals are expected to be born in the area assessed. Nonetheless, after application of the default adjustment factor, our conclusions in the proposed rule amendments do not change and further refinement of the assessment was not warranted. The assumptions of exposure initiation (at birth for all) and cancer risk for coke oven emissions based on the application of the supplemental guidance would affect the number of exposed people with cancer risk levels greater than 1 in a million (500,000 people or 12 percent of the exposed population), the number of people exposed to risk levels greater than 100 in a million (approximately 70 people), the annual incidence of cancer (0.06), and the uncertainty associated

[1] National Emission Standard 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 (54 FR 38044, September 14, 1989).

[2] All estimates of population risk and estimated annual incidence in these final rule amendments are based on an upper-bound cancer unit risk estimate, a 70-year exposure duration, and our best estimates of exposure concentrations; cancer risk estimates using best estimates for exposure duration and unit cancer risk would yield lower risk estimates.

[3] Carcinogen Assessment of Coke Oven Emissions: Final Report. U.S. Environmental Protection Agency, Office of Health and Environmental Assessment. EPA–600/6–82–003F. February 1984.

[4] "Coke Oven Emissions." U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS). 1989. Available at: *http://www.epa.gov/irissubst/0395.htm.*

[5] IARC Monographs Supplement 7. International Agency for Research on Cancer. 1987, page 176. Available at: *http://www-cie.iarc.fr/htdocs/monographs/suppl7/coke production.html.*

[6] 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. In applying this factor to population risk, risk bins shown in appendix I of the risk assessment document were multiplied by 1.6, and the populations associated with those new risk bins were recounted depending on whether the bin risks were greater than 1 in a million, 10 in a million, or 100 in a million. The cancer incidence value was directly multiplied by the 1.6 factor. The analysis and more detailed calculations may be found in the docket for this rulemaking.

with the estimates of risk. The remaining factors we considered (*e.g.*, actual emissions versus allowable emissions and the projected absence of adverse noncancer effects) are unaffected.

Although we are adjusting risk estimates upward to reflect the new supplemental guidance, these estimated risk increases must also be tempered by consideration of other factors that were discussed at proposal and in the risk assessment document, and the further protective assumption added to the risk assessment that all individuals are born in the assessed area. For example, the coke oven battery sources are consistently controlling emissions below the level allowed by the 1993 national emission standards, which results in a 30 percent reduction in the estimated MIR. Our 70-year exposure assumption includes exposures from birth to 70 years. 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. In addition, 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 a factor of six (69 FR 48347). Our 1984 unit risk estimate (URE) for coke oven emissions is considered a plausible upper-bound estimate; actual potency is likely to be lower. After considering all of these factors, we continue to consider the MIR due to emissions at the limits in the 1993 national emission standards to be an acceptable level of risk (within the meaning of the Benzene NESHAP decision framework discussed at 69 FR 48339–48340, 48347–48348). 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.

We also re-examined our decision as to what level of control is necessary to provide an ample margin of safety to protect human health in light of applying the early-life exposure default adjustment factors. The 2010 lowest achievable emission rate (LAER) levels (which we are adopting as residual risk standards in today's action) will reduce the MIR from exposure to coke oven emissions to 270 in a million. In addition, the reductions will result in approximately 200,000 fewer people having excess lifetime cancer risks of greater than 1 in a million from exposure to these emissions. After considering these estimates and the other factors explained in detail in the preamble to the proposed rule amendments, we continue to believe that the 2010 LAER levels provide an ample margin of safety to protect public health.

The proposal allowed a 60-day comment period ending October 8, 2004. The EPA's EDOCKET system logged a total of 16 public comments in Docket Number OAR–2003–0051. Commenters included one state association, two state agencies, a coalition of three major environmental groups, 9 industry trade associations, one steel company, and two individual commenters. Each of their comments is summarized in our response to comments document contained in the rulemaking docket.

II. Summary of the Final Rule Amendments

A. What Are the Affected Sources and Emission Points?

The affected sources are each coke oven battery subject to the emission limitations in 40 CFR 63.302 or 40 CFR 63.303 (the 1993 national emission standards). There are five affected sources in this category: Four existing by-product recovery batteries and one nonrecovery battery. The final rule amendments apply to emissions from doors, topside port lids, offtake systems, and charging on existing by-product coke oven batteries. Provisions are also included for emissions from doors on new and existing nonrecovery batteries and charging on new nonrecovery batteries.

B. What Are the Requirements?

For existing by-product batteries, the final rule amendments limit visible emissions from coke oven doors to 4 percent leaking doors for tall batteries and for batteries owned or operated by a foundry coke producer. Short batteries are limited to 3.3 percent leaking doors. Visible emissions from other emission points are limited to 0.4 percent leaking topside port lids and 2.5 percent leaking offtake systems. No change has been made to the limit for charging—emissions must not exceed 12 seconds of visible emissions per charge. Each of these visible emission limits is based on a 30-day rolling average. The final rule amendments replace the less stringent limits that became effective on January 1, 2003, for MACT track batteries and are equivalent to the limits that will become effective on January 1, 2010, for batteries subject to LAER track requirements. We have not changed the standards for new by-product batteries.

The monitoring, reporting, and recordkeeping requirements in the existing national emission standards continue to apply to existing by-product coke oven batteries on the MACT track. These requirements include daily performance tests to determine compliance with the visible emission limits. Each performance test must be conducted by a visible emissions observer certified according to the test method requirements. A daily inspection of the collecting main for leaks is also required. Specific work practice standards must also be implemented if required by the provisions in 40 CFR 63.306(c). Under the existing standards, companies must make semiannual compliance certifications; report any uncontrolled venting episodes or startup, shutdown, or malfunction events; and keep records of information needed to demonstrate compliance.

We are also issuing amendments for the improved control of charging emissions from a new nonrecovery battery (*i.e.*, constructed or reconstructed on or after August 9, 2004). Fugitive charging emissions are subject to an opacity limit of 20 percent. A weekly performance test is required to determine the average opacity of five consecutive charges for each charging emissions capture system. The certified observer must determine and record the highest 3-minute average opacity for each charge; compliance is based on the average of the highest 3-minute averages for five consecutive charges. Emissions of particulate matter (PM), a surrogate for particulate HAP in coke oven emissions, from a charging emissions control device are limited to 0.0081 pounds per ton (lb/ton) of dry coal charged. A performance test using EPA Method 5 (40 CFR part 60, appendix A) is required to demonstrate initial compliance with subsequent performance tests at least once during each title V permit term. If any visible emissions are observed from a charging emissions control device, the owner or operator is required to take corrective action and follow up with a visible emissions observation by EPA Method 9 (40 CFR part 60, appendix A) to ensure that the corrective action had been successful. Any Method 9 observation of the charging emissions control device greater than 10 percent opacity must be reported as a deviation in the semiannual compliance report. The final rule amendments also require the owner or operator to implement a work practice standard designed to ensure

that the draft on the oven is maximized during charging.

We are also promulgating a work practice standard for the control of door leaks from all nonrecovery coke oven batteries on the MACT track. The owner or operator is required to observe each coke oven door after each charge and record the oven number of any door from which visible emissions occur. If a coke oven door leak is observed at any time during the coking cycle, the owner or operator must take corrective action and stop the leak within 15 minutes from the time the leak is first observed. After a door leak has been stopped, no additional leaks are allowed from doors on that oven for the remainder of that oven's coking cycle.

We are allowing an exception to the 15-minute limit period for stopping a door leak. The owner or operator may have up to 45 minutes to stop a door leak no more than twice per battery during any semiannual reporting period. The limit of two occurrences does not apply if a worker must enter a cokeside shed to stop a leaking door under a cokeside shed. In that case, the owner or operator may have up to 45 minutes to take corrective action and stop the leak. The owner or operator also must operate the evacuation system and control device for the cokeside shed at all times that there is a leaking door under the cokeside shed.

The owner or operator of a nonrecovery battery is also required to identify malfunctions that might cause a door to leak, establish preventative measures, and specify types of corrective actions for such events in its startup, shutdown, and malfunction plan. The final rule amendments also include recordkeeping and reporting requirements necessary to demonstrate initial and continuous compliance.

We are also amending the provision in 40 CFR 63.303(a)(2) for existing nonrecovery batteries to state that the work practice standard for charging also applies to new nonrecovery batteries. These work practices are described in 40 CFR 63.306(b)(6).

We are requiring that the owner or operator of existing by-product coke oven batteries on the MACT track comply by July 14, 2005. See CAA section 112(f)(4)(A), which states that existing sources must comply with section 112(f) residual risk standards within 90 days of the standard's effective date. We are also requiring that nonrecovery coke oven batteries on the MACT track comply by July 14, 2005 (or upon startup for a new nonrecovery battery for which construction commenced after August 9, 2004).

The basis for the final rule amendments is set out in the preamble to the proposed rule amendments (69 FR 48338) unless otherwise explained in our responses to the major comments in this preamble. Our responses to all the comments are included in the docket.

III. Response to Major Comments

A. Comments on the Overall Risk Program and Policy

1. Ample Margin of Safety

Comment: One commenter argued that CAA section 112(f)(2) makes clear that EPA's residual risk standards must reduce the lifetime risk to the single individual most exposed to emissions from any one of these sources to less than 1 in a million. In contrast, another commenter stated that EPA has properly construed the statute as establishing a trigger under which EPA must undertake a residual risk determination but not as establishing the level of risk reduction that must be achieved and further stated that EPA is not required to provide protection that achieves the 1 in a million excess cancer risk level.

Response: The commenter's argument that the statute requires section 112(f) residual risk standards to reduce cancer risk to a most exposed individual to less than 1 in a million lacks a basis in the statutory text or in policy. Section 112(f)(2)(A) does indeed require us to promulgate standards 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 a million. It does not establish what the level of the standard might be. See "A Legislative History of the Clean Air Act Amendments of 1990," page 1789 (Conference Report), stating that "[s]ection 112(f) contains a trigger for standards for non-threshold pollutants. * * *" Rather, the level of the standard is to "provide an ample margin of safety" to protect public health. "Ample margin of safety" is to be interpreted under the two-step formulation established by the Benzene NESHAP and CAA section 112(f)(2)(B).

Under that formulation, there is no single risk level establishing what constitutes an ample margin of safety (69 FR 48348). Rather, the Benzene NESHAP approach codified in section 112(f)(2) 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). Determination of ample margin of safety, the second step of the process, requires further consideration of these factors, plus consideration of technical feasibility, cost, economic impact, and other factors (54 FR 38046). As we stated in our "Residual Risk Report to Congress"[7] issued under CAA section 112(f)(1), we do not consider the 1 in a million individual additional 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 interpretive language in the preamble to the Benzene NESHAP, which was incorporated by Congress in section 112(f)(2)(B).

We consequently believe that the commenter's bright line approach is not supported by the statute. Indeed, it is likely incorrect as a matter of law.[8] 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 desirable in light of the complex judgments EPA will make under section 112(f). The commenter's rigid approach lacks a basis in sound policy as well.

Comment: Two commenters contended that EPA rejected a more stringent standard because the control technologies were not available at a reasonable cost. The commenters maintained that the more stringent standard would reduce risks to an acceptable level, and that the EPA does not have statutory authority to consider costs. According to one commenter, section 112(f) clearly calls for costs to be considered only in the area of adverse environmental effects.

In contrast, a third commenter stated that EPA should not require any further reductions unless those reductions will produce discernible results stating that EPA justified the proposed additional reductions based on costs, yet noted that the reduction in cancer risk was so

[7] Residual Risk Report to Congress. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. EPA–453/R–99–001. March 1999.

[8] 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. The EPA believes that the (rejected) Senate version of section 112(f) shows that Congress was capable of mandating a level of risk reduction had it wished to do so.

small that it was within the noise level of EPA's ability to estimate. The commenter did not believe it was good policy to require additional reductions if EPA cannot be sure they will result in any benefit.

Response: The first two commenters are mistaken regarding the consideration of costs in determining "ample margin of safety." While it is correct that EPA does not consider costs in the first step (the "acceptability" determination) of the ample margin of safety determination, costs are a factor which must be considered in the second step of the process (54 FR 38046).[9] We have considered costs here in the authorized and required manner in assessing ample margin of safety after determining if baseline risk (level of risk remaining after imposition of MACT) is acceptable (54 FR 38045; 69 FR 48348–48349).

In establishing an ample margin of safety, we weigh a range of factors, allowing flexibility on what constitutes an ample margin of safety (69 FR 48348). Some of the factors that can be considered are estimates of individual risk, incidence, numbers of exposed persons within various risk ranges, scientific uncertainties, weight of evidence, as well as potential standards' technical feasibility, cost, and economic impact. Balancing the above factors with the ability to achieve meaningful risk reductions is a critical component of the residual risk rulemaking process.

We do not agree with the other commenter that the standards fail to produce discernible results. The emission limits are more stringent than the current MACT standards. The emissions reductions can be achieved at a nominal cost, they are technically feasible, and we estimate that the reductions will ensure that approximately 200,000 fewer people having excess lifetime cancer risks of greater than 1 in a million.

2. Co-Located Sources and Facilitywide Risk

Comment: One commenter said that many coke plants are part of a larger steel production complex; consequently, EPA should have considered the combined risk of all emission sources at the facility, including pushing, quenching, and battery stacks. The commenter also asserted that EPA should have considered the impact on residents near plants that are located in the same area (*e.g.*, East Chicago and Gary, IN) and that the legislative history shows Congress' intent that EPA consider the combined risks of all sources of HAP emissions, regardless of source category, that are co-located. Specifically, Congress intended that the residual risk standards be stringent enough:

> so that when all residual risk standards have been set, the public will be protected with an ample margin of safety from the combined emissions of all sources within a major source.[10]

The commenter disagreed with EPA's statement that delaying a full assessment of risk was a practical necessity because of the lack of information on actual emissions from pushing, quenching, and battery stacks. The commenter argued, essentially, that we are obligated to develop standards for the totality of risks simultaneously.

Another commenter also stated that EPA should consider the facility as a whole and requested stringent controls on each source category to ensure the goals of the residual risk provisions are met in an expeditious manner. The commenter also asked that EPA ensure health protection in cases where there are multiple facilities in close proximity.

Three commenters voiced opposition to consideration of emissions other than those from the specific source category at issue. One commenter indicated that the initial trigger for determining whether a residual risk standard was required at all must be applied only to a particular "category or subcategory of sources" (quoting CAA section 112(f)(2)(A)). The commenter argued that the provision in section 112(f)(2)(A) requiring us to develop residual risk standards if risks from the source category exceed a certain level also serves as a limitation in that "residual risk determinations are to be done on a category or subcategory basis, not on a source or facilitywide basis." The commenter concluded that facilitywide risk could not be considered at all when establishing residual risk standards. According to this commenter, the only exception to a source category approach would be a voluntary request for a facilitywide determination so that they could use the most cost-effective set of reductions.

Another commenter maintained that residual risk determinations for facilities as a whole would be acceptable only if EPA were to do so on a source category-by-source category basis. This commenter continued that if EPA were to adopt that approach, then the Agency cannot impose more risk reduction requirements on one source category to compensate for risks posed by another (co-located) source category.

Another commenter argued that statutory language prevents consideration of risks posed by anything but the source category at issue, and further argued that any other approach would be difficult and confusing to implement. The commenter asserted that although EPA can consider facilitywide risk, residual risk standards should not be applied disproportionately to the first of the co-located sources evaluated in the residual risk process.

Three commenters disagreed with EPA's use of Senator Durenburger's statement as the basis for the Agency's "facilitywide" interpretation of the statute. One commenter contended that the statement of one Senator cannot overcome the statutory language of section 112(f)(2) or the congressional directive to follow the Benzene NESHAP, particularly when the Senator noted that his remarks were not providing EPA specific new direction. Another commenter added that it was inappropriate to rely on the Senator's statements because the Conference Committee Joint Explanatory Statement suggests that the Senate and House Managers did not agree to much with respect to the Senate bill, and the Conference Report contains no explanation of section 112(f) on which EPA can rely for support.

One commenter stated that a facilitywide approach would be bad policy because it would constrain the ample margin of safety for individual source categories beyond the level intended in the Benzene NESHAP framework. Trying to reconcile aggregated risk from dissimilar sources that may be geographically far apart may be difficult to accomplish and may not identify better opportunities for emission reductions (than would serial analyses for individual source categories). The commenter also stated that Congress directed EPA to establish a list of source categories and was well aware that many plants would have emission units falling into more than one category. Congress also anticipated that standards under section 112(d) and (f) would be staggered over time. The commenter contended that a facilitywide analysis could be too complex, speculative, and costly for other residual risk standards; therefore, EPA cannot and should not mandate facilitywide analyses in standards under section 112(f).

Response: First, we should clarify the scope of the issue. Some discussion of

[9] See also the *Vinyl Chloride* opinion at 824 F.2d 1146.

[10] Floor Statement of Senator Durenberger in "A Legislative History of the Clean Air Act Amendments of 1990", vol. 1, page 868 (Senate Debate on Conference Report).

this issue has used loose terminology (*i.e.*, "facilitywide," "co-located," "background") as an imprecise shorthand for the various pollutant sources to which an individual could be exposed. In fact, there is a continuum of possible sources of exposure to consider. One could consider, in the initial assessment of residual risk from a source category, exposure from: (1) The individual emission points regulated under the standards being evaluated—here, charging, doors, lids, and offtakes—excluding all other sources, including nearby sources in the same category; (2) emissions from the source category only, but including co-located sources in the same category; (3) emission points at a facility that are necessarily co-located because they are part of an integrated common activity (*e.g.* pushing, quenching, and battery stacks for coke ovens); (4) all emissions at a facility (*i.e.*, a stationary source or group of sources in any source category in a contiguous area under common control); (5) emissions from similar (or all) nearby facilities ("closely-located" sources) whose emissions affect all or some of the same individuals; or (6) all ambient HAP, regardless of their source (*e.g.*, automobiles, HAP originating from global sources).[11]

After considering the statute and the divergent views of commenters on these topics, EPA agrees with those commenters who stated that the natural reading of section 112(f) is that EPA should evaluate risks posed by the emissions only from the category or subcategory. Section 112(f)(2)(A) instructs EPA to promulgate standards for "each category or subcategory" for which it has adopted MACT standards, if such standards are needed in order to provide an ample margin of safety to protect public health. The statutory "trigger" provision at the end of section 112(f)(2)(A), which mandates that EPA promulgate residual risk standards when "cancer risks to the individual most exposed to emissions from a source in the category" exceed a designated level, clearly is directed exclusively at emissions from the source category alone, and thus supports a reading that the ultimate requirement of the provision likewise applies only to emissions from the source category.[12]

We further agree, that while this is the first determination under section 112(f) since the adoption of the Clean Air Act Amendments of 1990, Congress intended that EPA continue to apply the same test for determining when public health is protected with an ample margin of safety that was in effect before those amendments. Section 112(f)(2)(B) instructs EPA to use the ample margin of safety decision framework adopted in the Benzene NESHAP to make section 112(f) residual risk determinations, and indeed states that:

> [n]othing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as * * * set forth in the **Federal Register** of September 14, 1989.

In the Benzene NESHAP, EPA interpreted and applied the two-step test drawn from the D.C. Circuit's *Vinyl Chloride* opinion. Under that approach, EPA must first determine what level is "safe" "based exclusively upon the Administrator's determination of the risk to health from a particular emission level." (*See* 54 FR 38055 (quoting *Nat'l Res. Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (en banc)). The Court made clear, however, that "safe" does not mean "risk free." *Id.* Rather, the EPA must "determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." *Id.* In the second step under *Vinyl Chloride* and the Benzene NESHAP, once an "acceptable risk" level is determined, EPA must decide whether additional reductions are necessary to provide "an ample margin of safety" (54 FR 38049). As part of this second decision, EPA may consider the costs of additional reductions, technological feasibility, uncertainties about available information or other relevant factors. *Id.*

After examining the statutory scheme, the Benzene NESHAP, and sound policy concerns, EPA has concluded that, in its assessment of "acceptable risk" for purposes of section 112(f), the agency will only consider the risk from emissions from that source category. This was the approach in the Benzene NESHAP, wherein EPA limited consideration of acceptability of risk to the specific sources under consideration (coke byproduct recovery plants, benzene storage vessels, benzene equipment leaks, ethylbenzene/styrene process vents, and maleic anhydride process vents) rather than to the accumulation of these and other sources of benzene emissions that may occur at an entire facility.[13] See, *e.g.*, 54 FR 38061 (stating in regard to consideration of natural background levels of a pollutant that "considering other sources of risk from benzene exposure and determining the acceptable risk level for all exposures to benzene, EPA considers this inappropriate because only the risks associated with the emissions under consideration are relevant to the regulation being established and, consequently, the decision being made.") The Agency also rejected approaches that would have mandated consideration of background levels of benzene in assessing acceptability of risk.[14]

EPA has concluded that the sound policy embodied in the Benzene NESHAP remains the approach that EPA should follow in determinations under section 112(f). At the first step, when determining "acceptable risk," EPA will consider public health risks that result from emissions from the source category only. Not only is this interpretation supported by the text of the statute and prior regulatory practice, but we are impressed and daunted at the practical problems of implementing a compulsory facilitywide examination. For example, as commenters pointed out, in future rules, the myriad combinations of source categories present at different facilities could create situations where nationwide consideration of residual risk becomes a practical impossibility because every facility would present a different fact pattern of source categories. Yet section 112(f) contemplates national determinations, not case-by-case evaluations and standards.

[11] Of course, in all of these cases, EPA would limit consideration to HAP emissions that are either the same as those emitted by the sources under evaluation or that have the same health effect or affect the same target organ.

[12] Further, section 112(c)(9) authorizes EPA to delist a category or subcategory on the basis of specified risk criteria. This section does not require EPA to look beyond the relevant category or subcategory in making delisting decisions. It would be inconsistent for Congress to allow categories or subcategories to be delisted entirely from the section 112 regulatory program using a category specific analysis, yet require EPA to look beyond the same specific category when making similar risk assessments under section 112(f).

[13] EPA will consider, consistent with the Benzene NESHAP decision, whether co-location of entities within the same source category "significantly influences the magnitude of the MIR or other risk levels" (54 FR 38051). In this rulemaking, EPA has concluded that the health risks from the emissions at issue in this rulemaking are not affected (let alone significantly affected) by co-location with other entities in the same source category.

[14] EPA concluded that "comparison of acceptable risk should not be associated with levels in polluted urban air" (54 FR 38061). Background levels of certain HAPs can be relatively high, perhaps even above a level that might be considered "safe." These background levels (including natural background) are not barred from EPA's analysis, but EPA will consider them along with other factors, such as cost and technical feasibility, in the second step of its 112(f) analysis. To decide otherwise, EPA would have to conclude—inconsistent with the Benzene NESHAP and sound policy—that 112(f) requires EPA to shut down any source that emits a HAP in an area with high background pollution, even if the emissions from that source are extremely small and do not appreciably affect overall risk.

At proposal, EPA cited a portion of a floor statement by Senator Durenberger as support for the position that EPA must assess the risk from an entire facility. EPA agrees with the commenters who stated that this statement is not sufficient evidence of Congressional intent to justify a different response than that adopted in the Benzene NESHAP, especially when, later in the same statement, the Senator states that section 112(f) is intended to be a "return to current law" under the Benzene NESHAP. (See Legislative History, Vol. 1 at 875–76.) As noted above, EPA did not adopt standards covering entire facilities in the Benzene NESHAP.

This said, EPA disagrees that section 112(f) precludes EPA from considering emissions other than those from the source category or subcategory entirely. EPA must still determine whether additional reductions should be required to protect public health with "an ample margin of safety." EPA believes 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. The Benzene NESHAP does not explicitly identify this as a relevant factor under step two, but the decision does acknowledge that "multiple exposures to chemicals are important to understand and consider in the EPA's overall implementation of its public health mandates' despite the fact that EPA has concluded that these risks should not be "routinely evaluated and considered in selecting" the level of acceptable risk (the first step of the Benzene analysis) (54 FR 38059).

The decision today is an example of a situation in which EPA has determined such a relevant factor merits evaluation. Each of the facilities subject to today's rulemaking is also subject to MACT emission standards on coke oven emissions from pushing, quenching, and battery stacks. These sources are *necessarily* co-located—they are integral parts of the same industrial activity. In this instance, EPA has the authority, in establishing "an ample margin of safety," to impose greater reductions on a particular source category when the agency concludes that several of these co-located sources categories have elevated the overall public health risk to unacceptable levels.[15] While this evaluation could be performed during the development of an individual residual risk standard for any particular source category that is part of a larger facility with multiple source categories, such an analysis would necessarily require sufficient data regarding the total facility emissions and the costs and risk impacts of reducing those emissions. Such information may conceivably be available when EPA does the first residual risk rule applicable to a facility, but it is much more likely that an early evaluation of cross-category risks will be inconclusive due to a lack of complete information regarding other emission points. (In this rule, for example, EPA does not yet have an accurate quantification of pushing and quenching battery emissions reflecting these sources' operations under MACT standards; such information is needed to reasonably assess risks, costs, and further technologically feasible emission reductions.) EPA expects to develop better information about what cost-effective emission and risk reduction opportunities are available as more source categories are assessed. EPA believes, in the future, it may be able to identify potential emission reduction trade-offs between co-located source categories that result in more efficient risk reductions for less economic cost at a facility.

3. Actual Versus Allowable Emission Rates

We explained at proposal that we modeled emissions at the rates allowed by the 1993 national emission standards because they represent the source's potential emissions and risks and is, therefore, consistent with the language in CAA section 112(f)(2).

Comment: We received some comments that agreed with the use of allowable rather than actual emission rates while other comments stated that we should use actual emissions. According to one commenter, Congress meant for EPA to make realistic estimates of residual risk. In support, the commenter pointed to the language of section 112(f)(2) which refers to a different measure of risk (*i.e.*, risk to the "individual most exposed to emissions from a source" rather than "maximum exposed individual" or "maximum individual risk" used in the Benzene NESHAP) and associated passages in the legislative history. The commenter stated that EPA has data on actual emissions and should use this information as the basis for the risk assessment for coke ovens. Another commenter agreed with the decision to assume that sources are complying with the 1993 national emission standards when estimating emissions. The commenter also agreed with efforts to evaluate actual versus "worst case" potential emissions when estimating population risks and encouraged appropriate adjustments in future risk assessments. Another commenter stated that the use of maximum allowable emissions is particularly inappropriate for industrial source categories with batch operations because they consistently operate at levels well below the allowable rate.

One commenter stated that EPA should not assume perfect compliance with allowable emission limits since several of these facilities are out of compliance. The commenter believed that we must account for noncompliance in the emission estimates.

Response: EPA believes it may evaluate potential risk based on consideration of both actual and allowable emissions. This approach is both reasonable and consistent with the flexibility inherent in the Benzene NESHAP framework for assessing ample margin of safety. As a general matter, allowable emissions are the maximum level sources could actually emit and still comply with the national emission standards, so modeling this level of emissions is inherently reasonable for evaluating potential risks associated with current standards. As discussed in other sections of this preamble, coke oven battery sources are consistently controlling emissions below the level allowed by the 1993 national emission standards, which results in a 30 percent reduction in the estimated MIR.

It is also reasonable that we consider actual emissions, when available, as a factor in both steps of the determination (*i.e.*, determining both risk acceptability and ample margin of safety). See 54 FR 38047, 38050–38051, 38053 (we acknowledge a probable overestimate of emission levels in determining that risk and overall incidence is probably less than the maximum estimated levels). For the final rule amendments adopted today, years of monitoring data show that actual emissions have been consistently lower than allowable levels (69 FR 48346–48347). Moreover, there is a sound empirical basis for coke oven emissions to be lower than theoretically allowable levels. To allow for process variability, sources typically strive to perform better than required by emission standards so that the emission

[15] This is not to say that the EPA may impose significant reductions across an entire source category to alleviate health risks posed by co-location at a subset of facilities. In these circumstances, EPA believes it should further parse its emissions standards so as to impose greater reductions only on those facilities with significant co-location of other emissions. Put another way, EPA may permissibly develop section 112(f) standards that could result in different controls for co-located source categories at a facility than for the same source category which is not co-located.

increases which occur on individual days due to process variability remain below emission standards. Failure to consider these data in risk estimates would unrealistically inflate risk levels.

It is incorrect that a large number of these coke batteries are out of compliance. The batteries are inspected every day to determine compliance with the emission limits for doors, lids, offtakes and charging. We have compiled the results of these compliance inspections, and the details are in the rulemaking docket. The inspection results show that the coke batteries are operating consistently below the established emission limits and have shown essentially continuous compliance.

4. Exposure Duration

Comment: Two commenters disagreed with the use of a 24-hour per day exposure over a 70-year lifetime to estimate individual and population cancer risks for refined risk assessments. According to one commenter, this exposure assumption is inconsistent with the recommendations by the National Research Council and the Commission on Risk Assessment and Risk Management. In their Reports to Congress, these organizations support development of distributional approaches to exposure characterization based on knowledge of the characteristics of a population's variability. This commenter asked EPA to develop a refined exposure methodology that incorporates information available on population residency times that will more accurately reflect population risk estimates. The development of this exposure methodology should also include a probabilistic analysis of estimated exposures. The other commenter stated that the use of such an unrealistic assumption makes the results overly conservative and will lead to additional and unnecessarily stringent standards more frequently than necessary.

Response: We agree that our assumption that people may be present at their homes for 24 hours per day over a 70-year lifetime represents a scenario that likely overestimates the actual exposures received by people living near the facilities. Most people have daily activities that take them to areas where exposure concentrations are different and move to new residences periodically. Both of these behaviors will tend to lower lifetime exposures and, therefore, risk. The most significant risk reductions would occur for the group of people who are the most exposed. For these reasons, we are currently developing a methodology that will allow us to consider a variety of parameters (*e.g.*, residency time, socio-economic conditions, age distribution, demographics, size of the census block) that could affect exposure and risk to individuals and populations that live in the vicinity of facilities. Other factors (*e.g.*, emigration out of and immigration into the "exposure area," social factors that affect population mobility, and census block size) may also influence the mobility of populations and, therefore, affect estimates of exposure and risk. As part of this effort, we are also investigating whether similar probabilistic techniques can be applied to the MIR to develop meaningful alternative metrics of individual risk. While this methodology is currently under development, we did not have sufficient information to apply any of these factors to these coke oven facilities.

Finally, regarding recommendations of the Commission on Risk Assessment and Risk Management, we note that our overall approach is consistent with some of those recommendations. For example, the Risk Commission recommended that "exposure assessments should not be based on a hypothetical MEI * * * should rely on more representative estimates or a maximally exposed actual person* * *." Our approach was based on identifying the maximum concentration where the census data identified people as actually living, and we assumed, as discussed above, that exposure of this individual was for 70 years starting at birth. Where we varied from the Commission's recommendation in this area was in assuming a 70-year exposure duration for the population as well. As just noted, we are developing a methodology that will allow us to look at the exposure variability that might be seen in the exposed populations. See the "Residual Risk Report to Congress" (at pages 128–130) summarizing similarity in approaches.

5. Hazard Index

Comment: Five commenters disagreed with use of the hazard index (HI) of 1 as the safe or acceptable level for noncancer health effects. One commenter stated that the HI level of 1 should be the ample margin of safety level because the values which form the basis for calculating HI already contain sufficient layers of safety to represent the ample margin of safety. The commenter contended that the reference concentration (RfC) or reference dose (RfD) represents the most stringent ample margin of safety level EPA should adopt.

Three commenters recommended that EPA avoid establishing any bright line for a safe or acceptable level for non-carcinogens. One of these commenters explained that the HI of 1 would define both the acceptable risk level and the ample margin of safety level in one step, which is inconsistent with the two-step Benzene NESHAP framework. This commenter argued that an HI of 1 is too conservative because "the ample margin of safety would always be set at or below an HI of 1.0, which would have an effect equivalent to a cancer level of 10^{-4} within the Benzene framework." The Commission on Risk Assessment and Risk Management's report selected a threshold HI of 10 because the RfC on which the HI is based already includes many uncertainty factors that should not be compounded in the ample margin of safety decision.

Another commenter stated that EPA needs to clarify that the case-by-case flexibility in the Benzene NESHAP framework also applies when interpreting hazard quotients (HQ) and HI. Although the proposal preamble did not identify a bright line, EPA's risk assessment document stated that an HI of 1 for each facility should ordinarily represent the safe or acceptable level, and that the ample margin of safety level may be lower or equal to the acceptable level, but can never be higher. The commenter objected because EPA was talking about an HI for a facilitywide analysis (rather than a specific source category) and because a rigid adherence to an HI of 1 for determining acceptable risk is unwarranted. The EPA should reserve flexibility in interpreting and applying HI and HQ acceptability, even in the screening stage. The flexibility is needed because of the variability in uncertainty factors, quality and consistency of data content, and other underlying information and assumptions. The commenter provided additional specific observations:

- In some cases, an HI or HQ can represent negligible or zero risk. There is no means to translate an HI or HQ into a probability of an individual incurring the effect (as is done for carcinogen effects).
- The EPA should do the initial screening using a target organ specific HI and should not aggregate across target organs and HAP for either the initial screening or refined assessment. No health-based conclusion can be reached from aggregating across different organs. An HI "roll up" for multiple chemicals' HQ must be predicated on target organ end points that are the same and a common mechanism or mode of action.

• Neither a range of 0.2 to 0.8 for HI nor a conservative default of 0.2 is permissible under the CAA. The statute only refers to the emissions and risk posed by a source category.

Response: Five commenters pointed out that a statement in the risk assessment document indicated that an HI of 1 is the safe or acceptable level. Our statement in the risk assessment document was incorrect and has been revised. We did not use an HI of 1 as the acceptable level in our analysis. In the proposal preamble, we explained that "the maximum estimated target organ specific HI for the emissions of HAP that may cause effects other than cancer from all emission points at the facility is 0.4," and that "these emissions do not exceed a level which is adequate to protect public health with an ample margin of safety" (69 FR 48350). Furthermore, we disagree that the ample margin of safety should never be more stringent (or less stringent) than the RfC (essentially an HQ or HI of 1) since, like the cancer framework, we do not consider an HI of 1 to be a bright line. We will evaluate the magnitude of the HI on a case-by-case basis.

We disagree that an HI of 1 is equivalent to a cancer risk of 1 in 10,000 as claimed by one commenter. As stated above, statements in the risk document identifying an HI of 1 as a safe or acceptable level are not correct and have been revised. We also disagree with the commenter who felt that the HI of 1 was too health protective because it did not consider different target organs. As used in the proposal and as intended for use in future residual risk assessments, the HI limit does reflect target organ specificity.

The Commission on Risk Assessment and Risk Management's report does not say that an HI of 10 should be used as a level representing an ample margin of safety. The HI of 10 is used in that report in the context of screening (health-protective) risk assessments for residual risk. For sources with HI greater than 10, the Commission suggested an additional detailed risk assessment be performed. If the HI is still greater than 1, the facility is supposed to "examine options/choose actions to reduce risk." For sources with HI between 1 and 10, facilities are supposed to voluntarily reduce emissions to achieve a lower risk category. The Commission recommended that if an HI is less than 1, no further action is required.

We also note that most of these comments deal with conceptual issues not relevant to this rulemaking. We have not needed to make definitive determinations regarding appropriateness of any HI level because we have determined that exposures to emissions of threshold HAP from coke oven batteries (all emission points) are well within acceptable levels and require no further control to achieve an ample margin of safety.

B. Risk Comments Specific to Coke Ovens

1. Acceptable Risk

Comment: Two commenters contended that EPA considered factors that might lessen the concern for risks, but did not give equal weight to factors that increase concern. For example, the EPA's analysis ignored HAP for which the Agency lacks cancer potency values.

Response: We disagree with the commenters' concern that our analysis ignored HAP for which we lack cancer potency values. For those situations when cancer potency values are not in the Integrated Risk Information System (IRIS), we have established a prioritization process for accessing health assessment information from outside EPA (as described in our "Residual Risk Report to Congress" on pages 56 through 58). This hierarchy includes dose-response values from EPA as well as other agencies that conduct scientific peer reviews such as the California Environmental Protection Agency Air Resources Board (CARB) and the Agency for Toxic Substances and Disease Registry (ATSDR), which is part of the U.S. Department of Health and Human Services. These non-EPA values incorporate the best available science, are conceptually consistent with EPA's risk assessment guidelines, and have undergone a level of scientific peer review. Far from being ignored, many of the health assessment values used in the assessment were derived from non-EPA sources (see Table B–1 in the risk assessment document).

Comment: The risk is underestimated because EPA did not consider the risk from all carcinogenic HAP emitted from the facility.

Response: As stated in the risk assessment document, inhalation cancer risk from the sources covered by the 1993 national emission standards was estimated using the HAP "coke oven emissions," for which we have estimated a cancer URE. See CAA section 112(f)(6) which specifically acknowledges the possibility of considering risks of coke oven emissions as a whole; see also "Residual Risk Report to Congress" at page 108, noting that we may of necessity consider risks posed by the "unique chemical substances" enumerated in section 112(f)(6), rather than attempting to ascertain every element of these complex mixtures and ascertaining a risk associated with each component. It is not necessary to consider separately the presence of each constituent of the mixture, coke oven emissions, which are also known to be carcinogens since their contribution to cancer risk is subsumed into the risk from the mixture. We considered the risk due to individual constituents when assessing non-inhalation and noncancer risks, when assessing risk from emission points where the composition of the mixture may be different (*e.g.*, after the pushing emission control device), or when a screening level assessment was done. As described in the risk assessment document, we based our selection of HAP to be included in a screening level assessment on the availability of information on toxicity and emissions. Additional discussion of the HAP we considered is provided later in this preamble. The issue of HAP from co-located sources and facilitywide risk is discussed elsewhere in this preamble.

Comment: One commenter stated that we should not accept a risk greater than 1 in 10,000 because of the weight of evidence that coke oven emissions, arsenic, and benzene are "known" human carcinogens. In support, the commenter cited the Benzene NESHAP * * * "particular attention will also be accorded to the weight of evidence presented in the risk assessment of potential human carcinogenicity."

Response: While the commenter is correct that particular attention will be accorded to the weight of evidence presented in the risk assessment of potential human carcinogenicity, the weight of evidence is not the only health measure that must be considered. As stated in the Benzene NESHAP * * * "no specific factor in isolation could be identified as defining acceptability under all circumstances" (54 FR 38044). Therefore, the acceptability of risk depends on consideration of a variety of factors and conditions. This assessment considered all of those factors listed in the Benzene NESHAP.

2. Ample Margin of Safety

In the proposed rule, we said that even though emissions from pushing, quenching, and battery stacks are part of a different source category (because Congress singled out other emission points in section 112(d)(8) and 112(i)(8)), they "are an integral part of the same facilities covered by the national emission standards for charging, door leaks, and topside leaks (they not only are part of the same process but emit the same HAP)" and

could permissibly be considered in setting the emission standard today (69 FR 48340). Table 1 of the proposed rule amendments (69 FR 48346) provided estimates of the risks posed by emissions from all components of the coking process at the four facilities (*i.e.* door, lid, offtake, charging, pushing, quenching, battery stack, and by-product plant emissions).

As noted previously, EPA has not performed a complete residual risk determination for these other source categories, EPA has investigated the MIR and the population risk that result not only from the emissions being addressed by today's rulemaking but also from the other coke oven emission points located at the MACT track facilities. EPA's preliminary analysis has determined that emissions from the remaining coke oven facility emission points (pushing, quenching, battery stacks) do not cause risks appreciably greater in significance that those for the source category for which we are developing standards. Our risk estimates for pushing, quenching, and battery stacks are contained in the risk assessment document.

EPA has concluded that delaying any further reduction is unlikely to result in disproportionate controls on other parts of a coke plant should EPA ultimately determine that further controls are necessary to provide an ample margin of safety. We therefore have determined that current information does not justify the imposition of more stringent controls to provide an ample margin of safety.

Comment: One commenter suggested that EPA should also consider, in addition to the source category that is necessarily linked to the source category at issue, the risks from emissions from co-located iron and steel plants located within the same facility boundaries as the coking operations. Two of the four coke oven facilities affected by today's final rule amendments (AK Steel in Ashland, KY; and AK Steel in Middletown, OH) have integrated iron and steel plants co-located with their coking operations within their facility boundaries and under their control.

Response: EPA does not believe it is appropriate to impose a restriction on all sources within a source category (here, the coke oven emission points at issue in this rule) based on the fact that half of the sources are co-located with a distinct source. The risk to public health from integrated iron and steel plants—sources which are not necessarily co-located with coke ovens—should be addressed in the residual risk determination for that source category. Nevertheless, EPA did assess the impact that emissions from co-located integrated iron and steel plants have on their facilitywide risk estimates. The integrated iron and steel plants are located fairly far from the coking operations at the two facilities where these two source categories are present at a common site. At Middletown, the iron and steel plant is located approximately 0.5 miles northeast of the coking operations. At Ashland, the iron and steel plant is located approximately 0.9 miles south of the coking operations. EPA's screening analysis indicates that the contribution of iron and steel emissions to the MIR posed by the coke oven sources is negligible.[16] The MIR due to coking operations occurs to the west of the coking operation at the Middletown facility, and to the northwest of the coking operation at the Ashland facility. At both facilities the MIR is influenced by the proximity of the nearby population rather than by the primary wind direction, which is from the west/southwest. Stated simply, the iron and steel plants are located in such a way as to have only a very limited effect on those individuals who are most exposed to emissions from the coking operations. In fact, a reasonable rough estimate of the potential effect of integrated iron and steel plants on the MIR is less than 2 percent for both facilities.

Comment: Three commenters contended that the proposed amendments do not meet the requirements of section 112(f) or congressional intent because they do not protect the public health with an ample margin of safety. The proposed amendments would reduce risk from charging, doors, and topside leaks by only a small amount (from 200 in a million to 180 in a million) and leave 200,000 people still exposed to risks greater than 1 in a million. One commenter said these risk estimates are "in tension" with EPA's general goals to protect the greatest number of people possible to a risk no higher than 1 in a million and to limit the risk to a person living near a plant to a risk no higher than 1 in 10,000.

Response: As noted earlier, we do not consider the 1 in a million MIR level as a "bright line" mandated level of protection for establishing residual risk standards. The final rule amendments will reduce the excess lifetime cancer risks for an estimated additional 200,000 people to less than 1 in a million, a goal that is not "in tension" with our general goal of protecting the greatest number of people possible to risks no higher than 1 in a million. In determining the ample margin of safety (*i.e.*, the level of the standard), health risk is one factor that we must consider, along with other factors such as cost and technological feasibility. Balancing these and other factors with the ability to achieve meaningful risk reduction benefits is a critical component of the residual risk rulemaking process. We considered reducing risks further but concluded that the technology required would be cost prohibitive for this industry and therefore undesirable.

3. Scope of the Risk Analysis

Comment: The EPA's proposal did not contain any information on if or how the agency assessed the risks from acute exposure to coke oven emissions or how the proposed standards would protect public health with an ample margin of safety from such risks. The EPA ignored the recommendation from one peer reviewer on the need to justify no consideration of the health effects from acute exposure.

Response: Risks from acute exposure are of greatest concern when excess emissions occur and cause a peak or spike in ambient concentrations of a pollutant. Coking is a continuous operation (*i.e.*, the coke oven battery is operated continuously and is seldom shut down, other than for a major rebuild or extensive repairs, because the cooling during shutdown could damage oven walls). The ovens in a battery are in various stages of operation such that any emission fluctuations would be caught in the highly buoyant plume which rises continually above the batteries. From a toxicological perspective, references values derived for acute exposure assessment are higher concentrations than chronic reference values. Consequently, for situations, such as this, where there are not short periods of higher exposure levels, the chronic assessment will be controlling. In this assessment, no significant chronic non-cancer effects were identified, therefore, no acute effects would be expected.

Comment: The EPA must assess exposure through eating food in which toxics have accumulated or bioaccumulated, drinking contaminated water, and dermal exposure through contaminated soil. And, while EPA considered fish consumption at recreational levels, it did not consider

[16] Even if a screening analysis suggested an important contribution from these sources, EPA would still need to consider more detailed assessments of sources and facilities with the highest risks. For example, in this screening analysis, EPA has treated iron and steel emissions as emanating from a single point (at a specific stack height). In a more detailed analysis, EPA would represent the actual plant configuration reflecting the disparate location of emission points and stack heights.

risks to subsistence fishing population, including those on the Great Lakes and poor people in urban areas. Mercury, dioxins, lead, and PAH are examples of other toxics released from coke ovens whose primary risks are from non-inhalation pathways. The EPA must reassess the risk and include dietary pathways from all of the relevant pollutants. Another commenter recommended that EPA improve its multipathway risk assessment methods.

The commenter stated that EPA admitted that its generic environmental analysis was not intended to be used to predict specific types of effects to individuals, species, populations, or communities or to the structure and function of the ecosystem. According to one commenter, EPA's failure to consider any impact on any individual species contravenes the CAA. Another commenter recommended that EPA develop criteria for refined ecological assessments that meet the statutory specifications.

Response: The multipathway assessment used for this analysis was based on the multipathway assessment initially used for a secondary lead smelters case study and was refined through the use of EPA's most current multipathway guidance. These include, for example, EPA's Office of Solid Waste's peer-reviewed "Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities" [17] which provided overall guidance and chemical-specific values for bioaccumulative and persistent HAP.

The HAP included in the analysis were selected using the procedures described in the risk assessment document and parallels the selection methodology described in our recently released "Air Toxics Risk Assessment Reference Library." [18] Additionally, we only included the HAP for which we had sufficient information to suggest that the HAP were emitted from the sources which are the focus of these final rule amendments and for which emissions could be estimated. The air toxics included in this assessment were a group of PAH and lead. The final rule amendments will reduce the amount of these emissions from coke ovens. Mercury would ordinarily be included in the list of persistent, bioaccumulative, and toxic (PBT) HAP to be assessed, but as discussed in the risk assessment document and in section III.B.4 of this preamble, mercury emissions were very low for this source category, primarily because volatile compounds like mercury are captured and removed in the by-product recovery plant.

Multiple routes of exposure were assessed in the multipathway assessment including both inhalation and ingestion of contaminated food, soil, and drinking water. A mixture of best-estimate central tendency and health-protective assumptions were used in order to be health-protective for both adults and children, but also to estimate risks that were not beyond the level of plausibility. This assessment uses a "farmer/recreational fisher" scenario. In the scenario, the farmer/recreational fisher was located at the point of the maximum impact to agricultural land near each of the facilities, and our assessment included the consumption of all types of home-produced fruit, vegetables, beef, pork, and dairy products, as well as locally-caught fish. The pathways included in this assessment were inhalation, soil ingestion, produce ingestion, fish ingestion, drinking water ingestion, and breast milk ingestion for infants. The farmer was assumed to consume locally-caught fish at the rate of a recreational fisher, but both central-tendency and high-end consumption rates based on values from the "Exposure Factors Handbook" were included in the analysis to increase confidence that individuals that may have higher consumption would be protected. Risks were estimated using the health-protective assumption of lifetime continuous exposures.

The screening-level ecological risk assessment used for this analysis used the same methods as the secondary lead smelters case study to estimate HAP media concentrations and to develop protective screening-level ecological toxicological dose-response values. This screening-level assessment was designed to identify and further evaluate HAP that pose a potential ecological risk and to remove from the analysis those HAP that did not pose such risks. In order to feel confident that this assessment considered threatened and endangered species, this analysis intentionally used assumptions that, overall, tend to overestimate risks. These assumptions include the following:

Choice of ecologic receptor. This assessment evaluated the species from a broader list of species (sediment dwellers, including aquatic sediment dwellers), soil dwellers, aquatic life, air and soil dwelling plants, various representative types of mammals; see risk assessment document, Table 3–8) that are considered widely distributed and provide a representative range of body sizes and diets. In cases where multiple species from which to choose were available for a particular exposure scenario (*e.g.*, a terrestrial herbivore), EPA evaluated the species with the lowest benchmark (*i.e.*, the most sensitive species) for this assessment.

Choice of risk metric. All species in the assessment are evaluated against the No Observable Adverse Effect Level (NOAEL). As the name indicates, this is a level of exposure below which one would not expect to see any adverse effects. Since relatively few animal or plant studies have determined these safe levels of exposure over an entire lifetime or several generations, a NOAEL for chronic exposures to a particular chemical must be estimated from toxicity studies of the same chemical conducted on a different species of wildlife or on laboratory animals. In these cases, to ensure that species survival is accounted for and to be more health-protective, whenever possible we used the NOAEL from studies in which more sensitive endpoints such as reproductive and developmental toxicity and reduced survival were the outcome as opposed to direct mortality. To evaluate potential risk to aquatic life, we used as a comparison benchmark EPA's Water Quality Criteria (adopted pursuant to section 304(a) of the Clean Water Act) which are used by States (and authorized Tribes) in adopting water quality standards for the protection of human health, aquatic life, and aquatic-dependent wildlife.

Further protective assumptions related to exposure. We made the additional protective assumption that terrestrial and aquatic species reside and therefore forage and drink exclusively in the area where the maximum HAP concentration is estimated. We further assumed that any HAP to which they are exposed is 100 percent bioavailable.

Protective assumptions related to emission levels. The ambient concentrations estimated for each terrestrial wildlife exposure scenario were derived from the modeling done for the human health assessment, and so contains the same protective assumption that emissions are constantly at the level allowed under the 1993 national emission standards. We know that actual emissions are less (69 FR 48496–48497) and, therefore, exposure and risk would also be less.

[17] Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Vol. 1 (peer review draft), U.S. Environmental Protection Agency, Office of Solic Waste and Emergency Response. EPA 530–D–98–001A. 1998.

[18] Air Toxics Risk Assessment Reference Library. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. Vol. I: Technical Resource Manual, EPA 453–K–04–001A. Vol. II: Facility-Specific Assessment. EPA 453–K–04–001B. April 2004.

We also assumed that the emissions from the coke facility with the highest emissions were representative of the emissions that might be anticipated from the other coke facilities subject to these final rule amendments.

Even using these highly protective assumptions, modeled concentrations remain under the NOAEL for each species, in most instances by many orders of magnitude. For risks to aquatic life, modeled risks for each HAP again remained an order of magnitude lower than the Water Quality Criteria levels.

We recognize that there are data limitations for these analyses that indicate a need for further refinement and development of multipathway and ecological risk assessment tools. The multipathway and ecological reference methodology described in the "Air Toxics Risk Assessment Reference Library" (see footnote 18) will be revised. While these more complex tools were not needed in the coke oven residual risk assessment (because no screening-level ecological effects were seen even when the assessment included many protective assumptions), they are important and may play a larger role in future residual risk assessments, and we will be developing future guidance.

Comment: One commenter said that because HAP emitted by coke oven batteries is persistent and bioaccumulative, EPA was obliged to consult with the Fish and Wildlife Service as required by the Endangered Species Act. The commenter further stated that such consultation should consider information in EPA's Great Waters Report,[19] issued pursuant to CAA section 112(m), that species are affected by deposition of HAP emitted by sources located in areas near the Great Lakes.

Response: Given the many protective assumptions of this assessment, we remain confident that if an individual member of a species is protected, as shown in our assessment, then the population as a whole would be protected. EPA has not identified any evidence of effect on critical habitat, given that our analysis shows no adverse effect on the terrestrial or aquatic life evaluated. Since our results showed no screening-level ecological effects, we do not believe that there is an effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.14(a). Because of these results, EPA concluded a consultation with the Fish and Wildlife Service is not necessary. In this regard, we again reviewed the Great Waters Report mentioned in the public comment. There is no mention of threatened or endangered species in our "Great Waters Reports to Congress." The risk assessment conducted in this rulemaking is consistent with the recommendations in the report to conduct assessments of the potential impacts of the emissions and deposition of PBT HAP on ecological systems, including water bodies.

Comment: One commenter disagreed that there is no information that would allow EPA to assess the risk to children from coke oven emissions. All of the individual constituents in coke oven emissions have been studied in children, and children have been found to be more susceptible than adults to each of the toxic components. The commenter provided extensive information on why children's airways are more susceptible to airborne carcinogens and provided health effects information on PM, PAH, and mercury. The commenter stated that an adequate risk assessment must include the acute and chronic respiratory effects of PM; cancer, reproductive, and developmental effects of PAH; and the neurotoxic effects of mercury on children.

Response: The commenter is mistaken; we did not state in the proposal preamble or risk assessment document that we had no information to assess the risk to children. We acknowledge that population subgroups, including children, may have the potential for risk greater than the general population due to greater body burden and/or greater susceptibility to the toxicant. Our risk assessment accounts for these greater body burdens. For certain exposures (*e.g.*, lead), children were explicitly assessed, while in other cases (*e.g.*, inhalation pathway) lifetime (rather than simply childhood) exposure was assumed, which would tend to yield higher estimates of risks.

In the ingestion pathway assessment, risks to children from lead, a pollutant with known hazard to children from the ingestion pathway, were explicitly assessed and presented. As part of the multipathway screening analysis (see appendix A of the risk assessment document), blood lead concentrations were predicted for estimates of cumulative lead exposure of children aged less than or equal to 7 years old. As described in the risk assessment document, the predicted blood lead concentrations all fell below the Center for Disease Control level of 10 micrograms per deciliter (μg/dL), an indicator of elevated blood concentration. The maximum level estimated was 0.1 μg/dL.

While risks to children from other pollutants were not separately assessed for the ingestion pathway (only central tendency and high end adult values were estimated), we do not consider the ingestion pathway to be the driver or highest risk pathway. The amount by which exposure factors generally increase the resultant cancer risk of children (less than 18 years of age) over a similar exposure duration for adults is less than a factor of three. Review of the ingestion pathway cancer risk estimates for the adult exposures indicates that ingestion pathway cancer risk estimates for a similar duration of children's exposure would still fall below the inhalation pathway cancer risks. Given that the highest cumulative HI for the adult exposures was on the order of 0.001, a separate estimate for children's ingestion exposure while expected to be a slightly higher value, would still fall well below an HI of concern. Consequently, the major focus for the risk assessment was placed on the inhalation analysis.

In the inhalation pathway assessment, the exposure assessment described the maximum exposure of residents near coke oven emissions. The exposed population was presumed to be exposed to airborne concentrations at their residence continuously 24 hours per day for a full lifetime. No greater inhalation exposure to neighboring residents would be feasible.

With regard to children's potentially greater susceptibility to the toxicants present in coke oven emissions, the assessment relied on Agency dose-response values which have been developed for all subgroups of the general population, including children. For example, a recent review[20] of the chronic reference value process concluded that the Agency's RfC and RfD derivation processes adequately considered potential susceptibility of different subgroups with specific consideration of children, such that the resultant RfC/RfD values pertain to the full human population "including sensitive subgroups," a phrase which is inclusive of childhood.

With regard to 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

[19] Deposition of Air Pollutants to the Great Waters: Third Report to Congress. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. EPA–453/R–00–005. June 2000.

[20] A Review of the Reference Dose and Reference Concentration Process. U.S. Environmental Protection Agency. Risk Assessment Forum. EPA/630/P–02/002F. December 2002.

those chemicals thought to cause cancer via a mutagenic mode of action. The effect of these guidelines on the risk assessment is discussed in detail in section I of this preamble.

In summary, our dose-response values have been developed via methodology that is intended to provide either a plausible upper-bound potency factor or an exposure with which there is likely no appreciable risk of adverse effects during a lifetime considering all population subgroups, including children.

Comment: One commenter asked EPA to faithfully apply the standards for "influential scientific risk assessment information" to the risk assessments that underlie residual risk rules. The commenter also asked EPA to implement and fully adhere to the Agency's Information Quality Guidelines so that the data and analysis will be sound and well represented to decision makers and the public. The commenter stated that EPA should aggressively pursue reform of its risk assessment practices in response to the advice of its key advisors, should take steps to eliminate conservative assumptions embedded in its risk estimation procedures, and should begin work on a recommended alternative approach that will produce more accurate and realistic estimates.

Response: In compliance with the Agency's Information Quality Guidelines, specifically as they apply to influential scientific risk assessments, we have taken significant steps to ensure that the substance of the information in our risk assessments supporting the coke ovens residual risk rule is accurate, reliable, and unbiased. To this end, we have used the best available science and supporting studies as well as data collected by the best available methods. For example, many of the components of our risk assessments (air quality and exposure models, toxicity values, methods for estimating emissions, etc.) have undergone independent scientific peer review on their own or as applied in specific case studies. In addition, we have subjected the final report on the coke ovens risk assessments to a peer review by experts external to the Agency through a letter review process administered by a third party. Through this peer review, we have endeavored to ensure that the presentation of information on human health and environmental risks is comprehensive, informative, and understandable. The final risk assessment document, revised per the peer review, as well as the peer reviewers' comments and our responses to them, have been made available to the public in the docket for this rulemaking.

Comment: Two commenters stated that the risk assessment was inconsistent with the Agency's Information Quality Guidelines because EPA did not use newer, peer-reviewed health effects data (*i.e.*, using the 1984 IRIS value for coke oven emissions instead of newer, peer-reviewed health effects data submitted by Sciences International).

Response: The commenters pointed to a single study [21] which interpreted only a portion of the health effects data available on coke oven emissions and was subjected to a scientific journal peer review. While such a study would not ordinarily be considered comprehensive enough or broadly-vetted enough to serve as a sole basis for risk estimates in this type of assessment (and indeed to do so could raise Data Quality Guideline issues), we did address the use of the alternately-derived cancer potency in our risk assessment (*i.e.*, compared risk estimates reported in the IRIS and the newer values). Since the use of this value did not substantially affect the level of estimated risks or the associated risk-based decision, EPA undertook no further evaluation of these health effects data. In the future, however, newer assessments of health effects can be readily considered in the residual risk program if they are sufficiently comprehensive and vetted through an appropriate scientific peer review process.

Comment: One commenter said the risk assessment was inconsistent with the Agency's Information Quality Guidelines because EPA did not provide central tendency estimates (*i.e.*, results were restricted primarily to upper bound estimates).

Response: As pointed out by the commenter, we addressed the central tendency requirements of the Information Quality Guidelines in a limited way in the risk assessment that supports this rule. As noted above, the upper-bound potency value that is presented in IRIS is routinely characterized using the standard descriptor for the cancer potency ("upper bound"), by saying that the upper bound is not likely to underestimate risks, that true risks are likely to be less, and that, for some individuals, risk may be zero. As described in the Information Quality Guidelines and reiterated 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.

We also understand that most people have daily activities that take them to areas where exposure concentrations are different and move to new residences periodically. Both of these behaviors may tend to lower lifetime exposures to coke oven emissions (*i.e.*, lower than our current assumption of 70-year exposure duration), and therefore lower individual risk attributable to coke ovens. In the proposal preamble (69 FR 48347), we presented an alternative estimate of an individual risk level adjusted to reflect the national average residency time of 12 years for comparison with the results from our 70-year exposure assumption. This change in assumption would result in a lowering of risk by approximately six-fold. It is important to note that if the cancer dose-response is reasonably linear with dose at environmental exposure levels, estimated individual risk attributable coke oven emission is lower for those living fewer years in the affected area, but estimates of total population incidence are not affected if the overall population remains stable (assuming people moving out are replaced by people moving in). Taking this into consideration and to provide better metrics by which to assess population risks in the future, we are currently developing a methodology that may allow us to consider a variety of parameters that could affect risk to populations, not just to the individual, that live in the vicinity of facilities. Other factors (*e.g.*, emigration out of and immigration into the "exposure area," social factors that affect population mobility, and census block size) may also influence the mobility of populations and therefore, affect estimates of exposure and risk. As part of this effort, we are also investigating whether similar probabilistic techniques can be applied to the MIR to develop meaningful alternative metrics of individual risk. While this methodology is currently under development with subsequent evaluation and peer review to follow, we did not have sufficient information to apply any of these factors to these coke oven facilities.

Comment: One commenter said that the risk assessment was inconsistent with the Agency's Information Quality Guidelines because EPA's reasoning for not conducting a more complete probability analysis was not sufficient.

Response: We stated in our proposal that we "considered the needs and

[21] Moolgavkar, S., *et al.* "Estimation of Unit Risk for Coke Oven Emissions." *Risk Analysis*, vol. 18, no. 6, pages 813–825. 1998.

scope of the assessment" before deciding whether to do a more refined population analysis and concluded that this "level of refinement was not necessary * * * because the results of a probabilistic analysis are unlikely to affect the proposed risk management decisions." Our decision was that risks to the population at the level of the standard we proposed met the required ample margin of safety determination. Refining the population risk distribution by considering factors such as population mobility in the analysis would not change that decision, only refine the underlying results on which that determination was made. Therefore, we did not believe that the additional expenditure of time and resources to do that analysis was warranted. Also, in making this decision, we believe we are meeting the requirements of the Information Quality Guidelines by providing information that is accurate, clear, complete, and unbiased.

4. Mercury Standards

Comment: One commenter contended that EPA's proposal was unlawful because it excluded controls for mercury. The commenter argued that EPA is required to establish emission standards for each HAP and that section 112(f)(2) requires EPA to consider every HAP that a category emits to ensure that the residual risk standards adequately protect public health and the environment. The commenter cited 2002 Toxic Release Inventory (TRI) data that show AK Steel (Ashland, KY) emits 27 pounds of mercury and that Indiana Harbor Coke reported 650 pounds of mercury emissions.

Another commenter questioned why mercury and other metals were excluded from door leak emission estimates. According to the commenter, mercury is highly volatile and would be expected to occur in emissions or leaks from any part of the process. The commenter also requested that EPA explain why mercury is missing from the list of metals that were monitored in appendix C of the risk assessment document. While mercury is listed as a component of coke oven emissions in one table in appendix C, it is unclear if or how EPA used this mercury emission factor in its analyses.

Response: Our research indicates that most of the mercury that is volatilized from the coal during the coking process at by-product coke batteries is concentrated in the tar when the gas is processed in the by-product recovery plant.[22] The vast majority of the volatiles distilled from the coal are collected and processed to recover by-products. However, the commenter is correct in that emission tests have detected mercury emissions from coke ovens. For example, small quantities of coke oven gas may escape through leaks on doors, lids, and offtakes. The emission factor for mercury in Table C–23 of the risk assessment document shows that trace amounts of mercury have been detected in raw coke oven gas with a ratio to benzene soluble organics (BSO) of 2×10^{-7}. Applying this ratio to the by-product coke plant with the highest BSO emissions (AK Steel in Ashland, Kentucky in Table C–5) gives an estimate of 0.002 lb/yr of mercury emissions from leaks. These low levels of mercury emissions show that mercury emissions from charging, doors, lids, and offtakes do not contribute significantly to the health effects posed by coke oven emissions from by-product coke oven batteries.

The estimate of 27 lb/yr for the AK Steel by-product coke plant was not based on measurements. The company used an emission factor that was developed from a 1991 paper published in Germany. However, it is not in EPA's AP–42 compilation of emission factors, we have been unable to determine its basis and the type of coke battery it was developed for, and we cannot assess its applicability to U.S. coke batteries. We expect more and better data to become available in the future, and these data will be considered when the residual risk is assessed within 8 years of the promulgation of the 2003 NESHAP for pushing, quenching, and battery stacks.

We investigated the TRI reporting and found that most mercury emissions from nonrecovery batteries come from the battery stack rather than leaks on the battery, which are the subject of these final rule amendments. In addition, our examination of the TRI data reveals that the emissions reported by the nonrecovery coke plant (Indiana Harbor Coke) were overestimated and are being corrected. The plant had used an emission factor developed from testing an uncontrolled battery stack at another nonrecovery coke plant. Subsequently the company performed sampling of its own stack and found that its actual mercury emissions from the battery stack were 182 pounds per year (lb/yr). Mercury is emitted from the battery stack on nonrecovery batteries because there is no recovery of the by-products distilled from the coal; however, some mercury in the particulate phase is captured by the baghouse that is used to control emissions. These test data will be considered by EPA when the residual risk is evaluated for the 2003 NESHAP for pushing, quenching, and battery stacks.

Finally, the commenter's assumption that mercury emissions from batteries are not controlled by the standard is not correct. Mercury emissions from leaks on the battery are controlled and regulated the same way as the many other volatile pollutants in raw coke oven gas. The ovens are inspected for leaks, and work practices are used to stop leaks and contain potential emissions within the gas collection system. Standards are in place to limit emissions from charging, doors, lids, and offtakes, and these standards also effectively limit emissions of mercury (as a volatile) and other pollutants that might otherwise occur if these standards were not in place.

5. Consider Other HAP

Comment: Three commenters contended that the risk assessment is deficient because it did not adequately consider the risks associated with emissions of all HAP. One commenter stated that the 13 PBT constituents chosen for cancer and noncancer risk analysis inexplicably excluded both mercury and arsenic and that chromium and mercury were left out of the inhalation risk analysis. Other commenters state that the risk assessment must cover the carcinogenic effects of naphthalene and 1, 3-butadiene; coke and coal dust emissions from uncovered sources; and hydrogen chloride (HCl) emissions.

Response: As stated in the risk assessment document and discussed in an earlier response, inhalation cancer risk from the sources covered by this rule was estimated using the HAP "coke oven emissions," for which we have developed a cancer URE. It is not necessary to consider the presence of each constituent of the mixture of coke oven emissions thought to be carcinogens since their contribution to cancer risk is subsumed into the risk from the mixture. Section 112(f)(6) contemplates such an approach, as we noted in our "Residual Risk Report to Congress". In conducting the non-cancer inhalation risk assessment, we did use information (toxicity and emissions) for each constituent because there are inadequate data for a non-cancer assessment of "coke oven emissions". In general, we considered the risk due to individual constituents when assessing non-cancer or non-inhalation risks, when assessing risk

[22] Fisher, R. "Progress in Pollution Abatement in European Cokemaking Industry". *Ironmaking and Steelmaking.* vol. 19, no. 6., 1992. Pages 449–456.

from emission points where the composition of the mixture may be different, (*e.g.*, after the pushing emission control device), or when the screening level risk assessment was done. The URE for coke oven emissions was used for all identified process operations covered under the 1993 national emission standards for charging, doors, lids, and offtakes and for two emission sources (pushing and quenching) covered by the 2003 NESHAP for pushing, quenching, and battery stacks. For the remaining emission sources which do not emit coke oven emissions (*e.g.*, the battery stack and the pushing emission control device), we selected constituents that had toxicity values and emissions information from these emission points in order to conduct an inhalation risk assessment or a non-inhalation, multipathway assessment. Results for the cancer and non-cancer risk assessment may be found in Tables A–2 through A–9 of the risk assessment document. Multipathway results for those HAP selected based on our selection criteria may be found in Tables A–31 through A–34.

The risk assessment did not include estimates of risk for pollutants such as ammonia, hydrogen sulfide, coal dust, and coke dust because they are not listed as HAP under section 112(b). We do not read section 112(f) as requiring consideration of criteria pollutants and other pollutants which are not HAP. Section 112(f) is the corollary of section 112(d), which of course is directed to control of HAP. It also essentially adopts the pre-1990 standard for control of HAP (*see; e.g.*, Legislative History page 876), which dealt exclusively with control of air toxics. We believe that given this linkage and prior history, Congress would have been explicit had it intended for us to dramatically change course and address risks posed by non-HAP pollutants under section 112(f).

At the time the risk assessment was performed, the cancer URE for naphthalene was not available from the CARB, a source of toxicity information we use if IRIS does not have a benchmark value. Based on the emissions information for this HAP described in the risk assessment document (*i.e.*, depending on the source, emissions of about 10 to 30 times less than the coke oven emission estimates and a cancer URE that is 18 times less potent than the URE for coke oven emissions), naphthalene is not likely to add significantly to the cancer risk estimated for this source or to have an effect on the decision.

The commenters also asked why we did not include chromium, a carcinogen, in the mix of carcinogens we assessed. Unlike naphthalene, hexavalent chromium does have a URE on IRIS, but information we received indicated that hexavalent chromium emissions from this process are unlikely due to the atomic state for this pollutant being highly oxidized and not conducive for forming in a chemical reducing atmosphere such as a coke oven. Thus, the emissions would likely be the trivalent chromium, which has not been shown to be carcinogenic. Another way to look at this issue is to assume a fixed percentage of total chromium is hexavalent. For example, applying the health-protective assumption we used in our Report to Congress on Electric Utilities [23] (that hexavalent chromium comprised 11 percent of the total chromium emissions) would result in a MIR level of approximately 1 in a million. Therefore, it is unlikely that any chromium emissions from the sources considered in this source category would have any significant impact on the estimated total cancer risk.

The URE for arsenic was applied to the battery stack and the pushing emission control device. These emission points are the only ones for which we would use arsenic's specific URE in the risk calculations because the URE for coke oven emissions accounts for the cancer risk from other emission points. The highest MIR for arsenic from these sources was less than 1 in a million.

Table 3–2 in the risk assessment document provides a detailed listing of non-cancer risks at the facility level, which includes estimates for arsenic and hydrogen chloride. The table shows that the maximum HQ for arsenic was 0.3 and was 0.00002 for hydrogen chloride. The non-cancer risks for chromium assuming all emissions are hexavalent would provide a HQ value equal to 0.01, still significantly below a value of 1. We believe, moreover, that this significantly overestimates the risk.

6. Emission Estimates

Comment: One commenter contended that the emission estimates overstated HAP emissions and discussed problems with EPA's emission factors and calculations:

- Emissions from coke oven door leaks were overstated because EPA did not use the exponential model developed in the early 1980s, overestimated the number of leaks visible from the bench and not the yard, and included emissions from doors with no visible leaks.
- The EPA did not adequately justify estimates of the frequency and severity of green pushes and understated the capture efficiency of pushing emission control devices. Benzene emissions from pushing are also overestimated.
- Emissions from battery stacks were overstated because of the extrapolation to higher opacities and the use of questionable test data for benzene.
- Emissions from by-product recovery plant process equipment were overstated because of the use of default values rather than a site-specific approach.

Response: The issue of the exponential model developed in the early 1980s has been discussed in great detail in the background document for AP–42. Relevant excerpts are summarized below:

- The theoretical model was based solely on the self-sealing mechanism and does not account for the current widespread use of supplementary sealants, new door designs, and adjusting the door seal to stop leaks.
- The exponential model is not applicable below 10 percent leaking doors, and current control levels are well below 10 percent.
- The exponential model underestimates emissions when using an arithmetic annual average for percent leaking doors (an exponential averaging of percent leaking doors must be used).
- The exponential model estimates zero emissions when no door leaks are visible from the yard, but we now know there are door leaks that cannot be seen from the yard.
- More recent sampling and analysis of door leaks of various sizes have provided real data on mass emission rates (as opposed to a theoretical and unvalidated model) and form the basis for current estimates.

We used a value of 6 percent leaking doors for doors visible from the bench but not visible from the yard, and the commenter recommended a value of 3 percent based on more recent data. The value of 6 percent is the value recommended in AP–42 and is codified in the 1993 national emission standards (doors inspected from the bench under a cokeside shed are given a correction factor of 6 percent leaking to estimate the "yard" equivalent). We acknowledge that the difference between the number of door leaks observed from the bench and from the yard probably varies from battery to battery and at the same battery

[23] Table 6–1, Summary of High-End Risk Estimates from Chronic Inhalation Exposure of HAP for 424 U.S. Coal-Fired Utilities Based on the Baseline Inhalation Risk Assessment. Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. Vol. 1. EPA 453/R–98–004a, February 1998, page 6–3.

over time. The commenter also thought the leak rate assigned to the small leaks visible only from the bench was too high. However, this rate was based on the smallest visible leak grade (a grade of 0.5, which is described as a leak that is barely visible and may not be seen from the yard), and we cannot arbitrarily reduce it by 75 percent as the commenter suggested. We included the variability associated with leaks visible only from the bench and the variability in leak rates in our uncertainty analysis. We think that analysis places reasonable bounds on our emission estimates.

We did not include emissions from leaks that were not visible in the emission estimates used in the risk assessment. The potential for emissions from leaks that are not visible was factored into the uncertainty analysis and indicated that actual emissions could be higher than we estimated. However, we also acknowledged that emissions could be lower than we estimated.

The frequency and severity of green pushes used in the risk analysis (not part of the source category at issue) are explained in detail in the background information document for pushing, quenching, and battery stacks (Docket Item OAR–2003–0051–0085). The document estimates the frequency of green pushes once the 2003 NESHAP for pushing, quenching, and battery stacks is fully implemented. Admittedly, better estimates can be made in the future based on actual performance data generated after the compliance date of the final rule amendments. The projections of methylene chloride soluble organics (MCSO) emissions are based on the performance of the best-performing batteries that were used to develop the MACT floor. Data for 3,700 observations from 15 batteries that were the best performers had only one severely green push with an opacity exceeding 50 percent. Two other batteries that will have to improve their performance to meet the standard had 2 percent green pushes. A best estimate of 0.5 percent severely green pushes was judged likely to be an overestimate once all batteries were subject to the standard. For moderately green pushes in the range of 30 to 50 percent opacity, the best-controlled batteries averaged 0 percent to 5 percent of the pushes in this range (13 out of 3,700 observations). An upper-bound estimate of 5 percent was used for moderately green pushes.

A capture efficiency of 10 percent for a severely green push is based on observations that most of the emissions escape capture during pushing and the fact that heavy emissions (some observed at 90 to 100 percent opacity) continue during travel to the quench tower when there is no hood to capture any of the emissions. During a push that is not green, some emissions escape capture and again none of the emissions during travel are captured; consequently, an estimate of 90 percent capture seems reasonable for that case. A best estimate of 40 percent capture was used for moderately green pushes.

The benzene emission factor used for pushing is 2.4×10^{-4} lb/ton of coke based on three runs at one plant producing blast furnace coke. The commenter submitted data from a plant producing foundry coke that showed benzene emissions were less than 9×10^{-5} lb/ton, a factor of about two lower. The amount of benzene emitted from pushing will depend on how green the coke is, and a push that is fully coked would have very little benzene. It is difficult to determine which test is most representative, and the benzene emissions can be expected to be quite variable from push to push. However, even with the higher emission factor, benzene emissions from pushing were not significant in the risk analysis (*e.g.*, less than 100 lb/yr).

The commenter stated that the extrapolation of test results for battery stacks based on opacity is unsupportable because there is no established relationship between opacity and HAP. As explained in the background document, the battery stack that was tested had a very low opacity (1.7 percent), but the 2003 NESHAP are expected to achieve an average opacity of 5 percent for battery stacks. Consequently, applying the test results for this one battery to all other batteries to estimate the emissions once the 2003 NESHAP become effective could underestimate emissions. Although no correlation has been firmly established between opacity and HAP, there is an established relationship between opacity and mass concentration of particles. In addition, sampling and analysis has shown that the PM in battery stack emissions contains HAP, including organic PM and PAH. (These PAH are a primary constituent of coke oven emissions, the primary HAP evaluated in the risk assessment.) Consequently, battery stack emissions were scaled from 1.7 to 5 percent opacity to avoid underestimating emissions from other batteries once the standard is implemented.

The commenter stated that EPA used the results from the two highest of four tests to estimate benzene emissions from battery stacks and that using the average of all four tests would have resulted in emissions that were 40 percent lower. The results for benzene in parts per million (ppm) for the four tests were 0.1 to 0.2, 0.6 to 1.6, 1.8 to 4.1, and 2.6 to 3.2. One of the four tests is an order of magnitude less than the others and appears to be an outlier. The average values of the other three tests are 1, 3, and 3 ppm. We used a value of 3 ppm because it is the statistical mode (most frequently occurring test average), it is representative of two of the four tests, and this value would not tend to underestimate emissions. Using the average value for all four tests would have resulted in an emissions estimate 40 percent lower than our original estimate. However, even if our original estimate overestimates emissions, there were no significant adverse health effects estimated for this source for benzene. In addition, EPA will re-evaluate the emissions and risks from battery stacks within 8 years after the promulgation date of the MACT standard for pushing, quenching, and battery stacks. At that time, the emission estimate will be revised based on additional test data that become available.

Benzene emissions from process equipment in the by-product recovery plant were estimated from AP–42 emission factors, site-specific information on the processes, and their capacities. The commenter recommended using EPA's TANKS model with detailed site-specific information to estimate emissions because it would be more accurate and emissions would be lower. However, the AP–42 emission factors that we used have been widely accepted and used in other contexts, and they account for sources that have controls in place. We did not have detailed and verifiable information for the numerous site-specific factors that would be needed to use the TANKS model. We agree with the commenter that the use of TANKS is an acceptable alternative when such details are available and the model is applicable to the emission point of interest. However, there are some process vessels in the by-product plant where the model is not applicable because it does not fully account for the emission mechanism, such as tanks that are heated or purged and have a vapor flow other than from working and breathing losses, uncovered tanks, those for which there is no good estimate of the vapor phase concentration, and condensers.

The commenter pointed out that we used site-specific monitoring data to estimate benzene emissions from equipment leaks for all plants except one (Tonawanda Coke) and that the emission factors applied to this plant overestimated emissions. We requested

site-specific monitoring data from all plants to estimate emissions, but we did not receive such information from Tonawanda Coke. We agree that generally the site-specific approach provides emission estimates lower than those from the default emission factors. Our emission estimates were health protective, and even with a tendency to overestimate benzene emissions from Tonawanda Coke, the estimated risk from these benzene emissions is low.

C. Comments on Section 112(d)(6) Review Policy

1. Approach for Existing Sources

Comment: Eight commenters agreed that a new analysis of MACT floors for existing sources is not part of the 8-year review requirement. As EPA concluded, such periodic re-determination of the MACT floor would effectively convert existing source requirements into new source requirements. In support, one commenter pointed to the plain language of CAA section 112(d)(6), the legislative history, similar review requirements under sections 109 and 111, and the absence of Congressional intent for new floor analyses.

Two commenters disagreed with EPA's conclusions. One commenter explained that the MACT floor provisions in section 112(d)(3) give meaning to the phrase "emission standards promulgated under this section" in section 112(d)(6) so that EPA is obligated to do a new floor analysis when revising the standards for existing sources. In addition, EPA's argument (that omission of the term "emission limitation achieved" suggests that no additional floor determination is required) ignores the statutory text. There is no need to include the floor language in section 112(d)(6) since section 112(d)(3) already ensured that any existing source standard would meet the floor requirements. The EPA's other argument (that additional floor analyses would effectively convert existing source standards into new source standards) is unreasonable and not necessarily true because EPA could find that sources do not perform better than the floor level of control. If facilities developed methods to reduce HAP emissions in the previous 8 years, requiring all sources in the category to achieve similar control would be consistent with Congressional intent under section 112 and the specific direction given in section 112(d)(6).

Response: Section 112(d)(6) requires us to "* * * review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section." The provision does not mandate that this review be conducted in a single, unvarying manner, other than having to take into account "developments in practices, processes, and control technologies."

The commenter maintained that because of the reference to "emission standards promulgated under this section," we are necessarily required to repeat the section 112(d) standard development process which includes re-determining MACT floors. A more natural reading of the provision is that we are to review the section 112(d) standards considering developments in practices, processes, and control technologies. EPA may then, in its discretion, amend the standards if the agency concludes such action is necessary. Indeed, we believe that this is the meaning Congress intended, since section 112(d)(6) originated in House and Senate Committee provisions that predated introduction of the MACT floor language, and mirrors routine periodic reevaluation requirements found in other statutory provisions requiring technology-based standards. Moreover, we reiterate that there is no indication that Congress intended for section 112(d)(6) to inexorably force existing source standards progressively lower and lower in each successive review cycle, the likely result of requiring successive floor determinations (69 FR 48351).

We note that with respect to revision of standards for new sources, the section 112(d)(6) analysis of practices, processes, and control technologies, and costs and emission reductions associated with those technologies (conducted as part of the determination of whether different standards are necessary), may indicate that revised standards for new sources are warranted. The final rule amendments do not adopt different standards for new by-product batteries. New by-product batteries would be required to meet zero leak standards for doors, lid, and offtakes unless a new by-product technology (such as operation of the ovens under negative pressure) is developed. The by-product battery technology currently in use cannot achieve zero leaks; consequently, new coke batteries would likely be nonrecovery batteries, which have been the only type of new battery constructed in the past 20 years. We are amending the charging limit for new nonrecovery batteries to reflect new technical developments (69 FR 48351). These changes can be readily incorporated at new sources with minimal cost.

2. Relationship Between Residual Risk Standards and Review Requirements

Comment: Six commenters stated that once EPA promulgates a standard that provides an ample margin of safety, the review requirement under section 112(d)(6) is satisfied. One commenter stated that Congress intended the section 112(d)(6) review to update the underlying technology-based standards irrespective of residual risk.

Response: We begin by noting ambiguity in the text and placement of section 112(d)(6). The obligation to periodically review (and possibly update) emissions standards applies to standards promulgated under "this section." A possible reading of the word "section" is that the periodic review obligation applies not only to emissions standards adopted under section 112(d), but also to emissions standards adopted under any other provision of section 112, including section 112(f) (note that section 112(f)(2) is entitled "emissions standards"). On the other hand, section 112(d)(6) is placed in the context of section 112(d) generally, which deals only with technology based "MACT" standards. This placement could be construed as requiring the periodic review obligation to only apply to emissions standards adopted under section 112(d).

We resolve this ambiguity by concluding that section 112(d)(6) should be interpreted as applying only to standards adopted under section 112(d). This conclusion is based on several factors. First, all of the other provisions of section 112(d) are specific to the obligation to adopt technology standards. It would be inconsistent with the structure of section 112(d) as a whole to conclude that section 112(d)(6) should be construed to apply more broadly than all of the other companion provisions in section 112(d).

Second, it is natural to assume that the technology on which a particular section 112(d) standard is based could evolve over time and allow EPA, as appropriate, to update the standard to reflect the evolving technology. Other text in section 112(d)(6) is clearly focused on this possibility of technological innovation ("* * * taking into account developments in practices, processes, and control technologies * * *"). In contrast, the basic obligation under section 112(f) is to make sure that public health risks due to emissions from a category or subcategory provide an ample margin of safety. Technology (and the possibility that technology will improve over time) remains relevant under section 112(f), but only for the purpose of determining an appropriate

ample margin of safety. Notably, technology is only one of many factors that may be relevant in determining the ample margin of safety. Thus, evolving technology—which is the clear focus of section 112(d)(6)—is central to the purposes of section 112(d), while it is only one consideration among many that may be relevant under section 112(f). If Congress had intended section 112(d)(6) to encompass section 112(f), a broader range of considerations would logically have been mandated for the periodic review.

Finally, we believe our interpretation is supported by legislative history. The genesis of section 112(d)(6) can be traced to earlier bills passed by the Senate and the House, all of which made it clear that the periodic review applied to section 112(d) MACT standards.[24] Of particular weight is the Report of the Senate Committee on Environment and Public Works on the Clean Air Act Amendments of 1989 that clarifies that the section 112(d)(6) review provisions were intended to apply to MACT standards: "The Administrator is to review and revise emission standards promulgated under section 112(d) no less than every seven years."

Having said that, 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 for the related section 112(d) standard. For example, if the ample margin of safety analysis for the section 112(f) standard was 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. Similarly, 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 a million and for threshold pollutants falls below a similar threshold of safety, then no further revision would be needed because an ample margin of safety has already been assured.

D. Specific Comments on Section 112(d)(6) Review of Coke Ovens

1. Nonrecovery Technology

Comment: One commenter stated that EPA admitted that risk levels could be reduced substantially with nonrecovery technology. However, EPA decided not to require this technology because the costs of replacing existing batteries with nonrecovery batteries would be financially crippling to the industry. Although EPA provided some cost estimates, the Agency did not say why that cost would be crippling to the industry or even to the individual companies involved. Rather, EPA explained that the industry is currently depressed and plants might choose to shut down. The EPA must substantiate its claims.

Response: We explained at proposal that replacing existing batteries with nonrecovery batteries would be financially crippling because the construction of a nonrecovery battery requires a capital investment on the order of hundreds of millions of dollars (about $300 per ton of coke capacity). For example, the estimated capital cost to replace batteries on the MACT track ranges from $50 to $290 million per plant based on the existing coke capacity at these plants. Based on recent trends that show a continuing decline in domestic coke capacity due to shutdowns, these coke facilities would be more likely to permanently close rather than construct new nonrecovery batteries. For example, 12 of the 30 coke plants operating in 1993 have permanently shut down, and five of these plants were on the MACT track. Consequently, we determined that requiring the replacement of existing batteries with nonrecovery batteries was not a reasonable or economically feasible option.

We also examined the ability of the companies involved to recoup their investment if they were to replace existing batteries with nonrecovery batteries. The four existing by-product coke plants on the MACT track are owned by two companies: AK Steel, which produces furnace coke for internal consumption, and Tonawanda Coke Corporation, which produces 15 to 20 percent of the foundry coke sold in the U.S. Based on the Quarterly Financial Report from the U.S. Bureau of the Census,[25] the average return on sales for all reporting companies within the iron and steel industries from 2nd Quarter 2003 to 2nd Quarter 2004 ranged from negative 5.9 percent to 9.8 percent. The weighted average price of coke is approximately $120 per short ton. Using the highest profit rate in 2004 (which is optimistic), the implied profit per short ton is approximately $12 per short ton. Our conclusion is that with a 7 percent discount rate, companies would not able to recoup investment for a nonrecovery battery (approximately $300 per ton). Even a 50-year time profile at this profit level would not be sufficient to offset the investment. Therefore these coke facilities would be more likely to permanently close rather than construct new nonrecovery batteries. These closures could have industry wide implications, particularly for the foundry coke market, since Tonawanda accounts for a significant share of foundry coke production in the U.S.

2. Lack of New Requirements

Comment: One commenter believed that the proposed amendments were deficient because they contained no new requirements despite the remaining risk from facilities.

Response: The commenter is incorrect—the final rule amendments are new and provide more stringent requirements for the MACT track batteries. The limit for leaking doors decreases from 5 percent to 4 percent for foundry coke batteries and to 3.3 percent for other batteries, the limit for lid leaks decreases from 0.6 percent to 0.4 percent, and the limit for offtake leaks decreases from 3 percent to 2.5 percent. The standard for new batteries and for reconstructed batteries if there is an increase in capacity is already quite stringent. Except for batteries utilizing a new by-product recovery technology (such as by-product ovens operated under negative pressure), the standard is 0 percent leaking doors, lids, and offtakes. The current by-product battery technology cannot achieve this level of control; consequently, new batteries are likely to use the nonrecovery technology. In fact, the only new batteries constructed over the past 20 years have been nonrecovery batteries.

3. Charging Limit for Nonrecovery Batteries

Comment: One commenter requested that the proposed limit for charging (20 percent opacity for five consecutive charges) in 40 CFR 63.303(d) also apply to existing nonrecovery batteries, not just new batteries as proposed. As proposed, the charging limit would not apply to nonrecovery batteries in the commenter's state (including one existing plant and a new plant for which construction began before the date of proposal).

Response: We based our proposal for more stringent standards for new sources on the performance of the best-controlled source, and this plant was developing an improved capture system

[24] *See* S. 1894, Clean Air Standards Attainment Act of 1987; S. 1630, Clean Air Act Amendments of 1989; and H.R. 3030, Clean Air Act Amendments of 1990.

[25] Table 4, Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations. U.S. Bureau of the Census, Second Quarter, Series QFR 04–2Q. 2004.

for charging emissions. We concluded that it was not appropriate to increase the stringency of the current NESHAP for already-operating nonrecovery batteries. This limit is appropriate for new sources, which are those constructed after the date of proposal of these final rule amendments, because it allows the new requirements to be incorporated into the considerations of design and operation of the new source. Further, we believe that the quantified limits on PM which two of the already-operating nonrecovery batteries are achieving (69 FR 48351–48352) can be readily (and appropriately) incorporated in these batteries' operating permits as part of the State implementation plan process. The suggestion by the commenter that we use this rulemaking to amend the standard for these batteries to lock in their level of performance thus appears to be unnecessary.

4. Costs

Comment: Two commenters asked EPA to avoid characterizing the costs of $4,500/yr as "small," "minimal" and "very little." The additional reduction that would be achieved is the last increment in a series of reductions made by a distressed industry. The commenters stated that, in their opinion, the incremental cost effectiveness is actually high ($45,000 per ton), and the costs should be presented in this format. They stated that the EPA should also recognize the industry's success and overall cost in reducing emissions to meet the stringent level of control.

Response: The original 1993 national emission standards resulted in oven repairs, increased maintenance, and better work practices that have reduced emissions to allow batteries to meet a more stringent level of control. All of these activities have resulted in increased costs for the control of emissions, although the emission reduction benefits are substantial. In addition, the 1993 national emission standards require daily monitoring to identify leaks, and the data show the industry's success in reducing emissions.

We believe the cost of complying is reasonable considering that an estimated 200,000 fewer people will be exposed to risks greater than 1 in a million, and the annual cancer incidence would be reduced by 0.03. We agree with the commenters that the estimate of $4,500/yr is the most recent increment in a series of reductions, but remain steadfast in our belief that this number is minimal.

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 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.

Under the terms of Executive Order 12866, it has been determined that this regulatory action is a "significant regulatory action" because it raises novel legal or policy issues. As such, this action was submitted to OMB for Executive Order 12866 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 amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection request (ICR) prepared by EPA has been assigned EPA ICR No. 1362.07. 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.

The final rule amendments establish work practice requirements designed to improve control of door leaks applicable to all nonrecovery coke oven batteries. The owner or operator also is required to add certain information on malfunctions associated with door leaks to the startup, shutdown, and malfunction plan. New nonrecovery batteries also are required to implement the same work practice standards that already apply to existing nonrecovery batteries. Plant owners or operators are required to submit an initial notification of compliance status and semiannual compliance reports. Records are required to demonstrate compliance with applicable emission limitations and work practice requirements. Additional requirements apply to a new nonrecovery coke oven battery, but none are expected during the 3-year period of this ICR. This action does not impose any new or revised information collection burden on by-product coke oven batteries subject to the final rule amendments. These batteries are currently meeting the monitoring, recordkeeping, and reporting requirements in the 1993 national emission standards.

The increased annual average monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years of the ICR) is estimated to total 448 labor hours per year at a cost of $28,338. This includes an increase of three responses per year from one respondent for an average of about 148 hours per response. No capital/startup costs or operation and maintenance costs are associated with the monitoring requirements.

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 EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. For the purposes of assessing the impacts of today's 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 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. We have determined that of the five companies subject to the requirements of the final rule amendments, one company (operating a total of three batteries) is considered a small entity but it will experience no significant additional regulatory costs because it is already meeting the stricter emissions limitations for by-product coke oven batteries included in the final rule amendments, as well as the monitoring, recordkeeping, and reporting requirements.

Although the final rule amendments will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the final rule amendments on small entities. Prior to proposal, we held meetings with industry trade associations and company representatives to discuss the amendments and have included provisions that address their concerns.

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 significant 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." "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 Indian tribes."

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. No tribal governments own plants subject to the MACT standards for coke oven batteries. Thus, Executive Order 13175 does not apply to the final rule amendments.

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, 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.

While these final rule amendments are not subject to the Executive Order because they are not economically significant as defined in Executive Order 12866, this rule is relevant under Executive Order 13045 because it represents the first application of the Agency's "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens." In particular, the Supplemental Guidance addresses the potential of an increased susceptibility to developing cancers that may occur later in life associated with exposure to compounds with a mutagenic mode of action in the early-life years. Following the Agency's Supplemental Guidance for compounds that act through a mutagenic mode of action, we have applied a default adjustment factor in developing estimates of lifetime cancer risks in this rulemaking to account for any potential susceptibility that may be due to early-life or childhood exposure. The results of this assessment are contained in section I of this preamble.

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

The final rule amendments are not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the final rule amendments are not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Section 112(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 (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.

The final rule amendments involve technical standards. The final rule amendments use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D (PM) and 9 (opacity) of 40 CFR part 60, appendix A.

Consistent with the NTTAA, we conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 2F, 2G, 5D, and 9. One VCS was identified as an acceptable alternative to EPA test methods for the purposes of the final rule amendments. The ASME PTC 19–10–1981—Part 10, "Flue and Exhaust Gas Analyses," (incorporated by reference) is cited in the final rule amendments for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981—Part 10 is an acceptable alternative to Method 3B.

Our search for emissions monitoring procedures identified fourteen VCS applicable to the final rule amendments. The EPA determined that twelve of the VCS identified for measuring PM were impractical alternatives to EPA test methods due to lack of equivalency, detail, specific equipment requirements, or quality assurance/quality control requirements. The two remaining VCS identified in the search were not available at the time the review was conducted because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly Method 1) and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2. Therefore, EPA did not adopt those VCS for this purpose. Detailed information on the EPA's search and review results is included in the docket.

Sections 63.309(j) through (l) of the final rule amendments list the EPA test methods that are required. Under 40 CFR 63.7(f) and 40 CFR 63.8(f), a source may apply to EPA for permission to use alternative test methods or monitoring requirements in place of any of the EPA test 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 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 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 will be effective on April 15, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: March 31, 2005.

Stephen L. Johnson,

Acting Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (i)(3) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

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

* * * * *

Subpart L—[Amended]

■ 3. Section 63.300 is amended as follows:

■ a. Redesignating existing paragraphs (a)(3) through (a)(5) as (a)(5) through (a)(7); and

■ b. Adding new paragraphs (a)(3), and (a)(4).

§ 63.300 Applicability.

(a) * * *

(3) July 14, 2005, for existing by-product coke oven batteries subject to emission limitations in § 63.302(a)(3) and for nonrecovery coke oven batteries subject to the emission limitations and requirements in § 63.303(b)(3) or (c);

(4) Upon startup for a new nonrecovery coke oven battery subject to the emission limitations and

requirements in § 63.303(b), (c), and (d). A new nonrecovery coke oven battery subject to the requirements in § 63.303(d) is one for which construction or reconstruction commenced on or after August 9, 2004;

* * * * *

■ 4. Section 63.302 is amended by adding new paragraph (a)(3) to read as follows:

§ 63.302 Standards for by-product coke oven batteries.

(a) * * *

(3) On and after July 14, 2005;

(i) 4.0 percent leaking coke oven doors for each tall by-product coke oven battery and for each by-product coke oven battery owned or operated by a foundry coke producer, as determined by the procedures in § 63.309(d)(1);

(ii) 3.3 percent leaking coke oven doors for each by-product coke oven battery not subject to the emission limitation in paragraph (a)(3)(i) of this section, as determined by the procedures in § 63.309(d)(1);

(iii) 0.4 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1);

(iv) 2.5 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1); and

(v) 12 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

* * * * *

■ 5. Section 63.303 is amended as follows:

■ a. Redesignating paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5);

■ b. Adding new paragraph (b)(3); and

■ c. Adding new paragraphs (c) and (d).

§ 63.303 Standards for nonrecovery coke oven batteries.

* * * * *

(b) * * *

(3) For charging operations, the owner or operator shall implement, for each day of operation, the work practices specified in § 63.306(b)(6) and record the performance of the work practices as required in § 63.306(b)(7).

* * * * *

(c) Except as provided in § 63.304, the owner or operator of any nonrecovery coke oven battery shall meet the work practice standards in paragraphs (c)(1) and (2) of this section.

(1) The owner or operator shall observe each coke oven door after charging and record the oven number of any door from which visible emissions occur. Emissions from coal spilled during charging or from material trapped within the seal area of the door are not considered to be a door leak if the owner or operator demonstrates that the oven is under negative pressure, and that no emissions are visible from the top of the door or from dampers on the door.

(2) Except as provided in paragraphs (c)(2)(i) and (ii) of this section, if a coke oven door leak is observed at any time during the coking cycle, the owner or operator shall take corrective action and stop the leak within 15 minutes from the time the leak is first observed. No additional leaks are allowed from doors on that oven for the remainder of that oven's coking cycle.

(i) Except as provided in paragraph (c)(2)(ii) of this section, the owner or operator may take corrective action and stop the leak within 45 minutes (instead of 15 minutes) from the time the leak is first observed for a maximum of two times per battery in any semiannual reporting period.

(ii) If a worker must enter a cokeside shed to stop a leaking door under the cokeside shed, the owner or operator shall take corrective action and stop the door leak within 45 minutes (instead of 15 minutes) from the time the leak is first observed. The evacuation system and control device for the cokeside shed must be operated at all times there is a leaking door under the cokeside shed.

(d) The owner or operator of a new nonrecovery coke oven battery shall meet the emission limitations and work practice standards in paragraphs (d)(1) through (4) of this section.

(1) The owner or operator shall not discharge or cause to be discharged to the atmosphere from charging operations any fugitive emissions that exhibit an opacity greater than 20 percent, as determined by the procedures in § 63.309(j).

(2) The owner or operator shall not discharge or cause to be discharged to the atmosphere any emissions of particulate matter (PM) from a charging emissions control device that exceed 0.0081 pounds per ton (lbs/ton) of dry coal charged, as determined by the procedures in § 63.309(k).

(3) The owner or operator shall observe the exhaust stack of each charging emissions control device at least once each day of operation during charging to determine if visible emissions are present and shall record the results of each daily observation or the reason why conditions did not permit a daily observation. If any visible emissions are observed, the owner or operator must:

(i) Take corrective action to eliminate the presence of visible emissions;

(ii) Record the cause of the problem creating the visible emissions and the corrective action taken;

(iii) Conduct visible emission observations according to the procedures in § 63.309(m) within 24 hours after detecting the visible emissions; and

(iv) Report any 6-minute average, as determined according to the procedures in § 63.309(m), that exceeds 10 percent opacity as a deviation in the semiannual compliance report required by § 63.311(d).

(4) The owner or operator shall develop and implement written procedures for adjusting the oven uptake damper to maximize oven draft during charging and for monitoring the oven damper setting during each charge to ensure that the damper is fully open.

■ 6. Section 63.309 is amended by adding new paragraphs (j) through (m) to read as follows:

§ 63.309 Performance tests and procedures.

* * * * *

(j) The owner or operator of a new nonrecovery coke oven battery shall conduct a performance test once each week to demonstrate compliance with the opacity limit in § 63.303(d)(1). The owner or operator shall conduct each performance test according to the procedures and requirements in paragraphs (j)(1) through (3) of this section.

(1) Using a certified observer, determine the average opacity of five consecutive charges per week for each charging emissions capture system if charges can be observed according to the requirements of Method 9 (40 CFR part 60, appendix A), except as specified in paragraphs (j)(1)(i) and (ii) of this section.

(i) Instead of the procedures in section 2.4 of Method 9 (40 CFR part 60, appendix A), record observations to the nearest 5 percent at 15-second intervals for at least five consecutive charges.

(ii) Instead of the procedures in section 2.5 of Method 9 (40 CFR part 60, appendix A), determine and record the highest 3-minute average opacity for each charge from the consecutive observations recorded at 15-second intervals.

(2) Opacity observations are to start when the door is removed for charging and end when the door is replaced.

(3) Using the observations recorded from each performance test, the certified observer shall compute and record the average of the highest 3-minute averages for five consecutive charges.

(k) The owner or operator of a new nonrecovery coke oven battery shall conduct a performance test to demonstrate initial compliance with the emission limitations for a charging

emissions control device in § 63.303(d)(2) within 180 days of the compliance date that is specified for the affected source in § 63.300(a)(4) and report the results in the notification of compliance status. The owner or operator shall prepare a site-specific test plan according to the requirements in § 63.7(c) and shall conduct each performance test according to the requirements in § 63.7(e)(1) and paragraphs (k)(1) through (4) of this section.

(1) Determine the concentration of PM according to the following test methods in appendix A to 40 CFR part 60.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas, ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference, see § 63.14).

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable, to determine the concentration of front half PM in the stack gas.

(2) During each PM test run, sample only during periods of actual charging when the capture system fan and control device are engaged. Collect a minimum sample volume of 30 dry standard cubic feet (dscf) during each test run. Three valid test runs are needed to comprise a performance test. Each run must start at the beginning of a charge and finish at the end of a charge (*i.e.*, sample for an integral number of charges).

(3) Determine and record the total combined weight of tons of dry coal charged during the duration of each test run.

(4) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q \times T}{P \times K} \quad \text{(Eq. 1)}$$

Where:

E_p = Process weighted mass emissions of PM, lb/ton;

C = Concentration of PM, grains per dry standard cubic foot (gr/dscf);

Q = Volumetric flow rate of stack gas, dscf/hr;

T = Total time during a run that a sample is withdrawn from the stack during charging, hr;

P = Total amount of dry coal charged during the test run, tons; and

K = Conversion factor, 7,000 grains per pound (gr/lb).

(l) The owner or operator of a new nonrecovery coke oven battery shall conduct subsequent performance tests for each charging emissions control device subject to the PM emissions limit in § 63.303(d)(2) at least once during each term of their title V operating permit.

(m) Visible emission observations of a charging emissions control device required by § 63.303(d)(3)(iii) must be performed by a certified observer according to Method 9 (40 CFR part 60, appendix A) for one 6-minute period.

■ 7. Section 63.310 is amended by adding new paragraph (j) to read as follows:

§ 63.310 Requirements for startups, shutdowns, and malfunctions.

* * * * *

(j) The owner or operator of a nonrecovery coke oven battery subject to the work practice standards for door leaks in § 63.303(c) shall include the information specified in paragraphs (j)(1) and (2) of this section in the startup, shutdown, and malfunction plan.

(1) Identification of potential malfunctions that will cause a door to leak, preventative maintenance procedures to minimize their occurrence, and corrective action procedures to stop the door leak.

(2) Identification of potential malfunctions that affect charging emissions, preventative maintenance procedures to minimize their occurrence, and corrective action procedures.

■ 8. Section 63.311 is amended as follows:

■ a. Revising paragraph (b)(1) and adding new paragraphs (b)(3) through (7);

■ b. Revising paragraph (c)(1) and adding new paragraph (c)(3);

■ c. Revising paragraphs (d)(1) through (3) and adding new paragraphs (d)(4) through (9); and

■ d. Revising paragraphs (f)(1)(i) and (ii) and adding new paragraphs (f)(1)(iv) through (ix).

§ 63.311 Reporting and recordkeeping requirements.

* * * * *

(b) * * *

(1) Statement signed by the owner or operator, certifying that a bypass/bleeder stack flare system or an approved alternative control device or system has been installed as required in § 63.307.

(2) * * *

(3) Statement, signed by the owner or operator, certifying that all work practice standards for charging operations have been met as required in § 63.303(b)(3).

(4) Statement, signed by the owner or operator, certifying that all work practice standards for door leaks have been met as required in § 63.303(c).

(5) Statement, signed by the owner or operator, certifying that the information on potential malfunctions has been added to the startup, shutdown and malfunction plan as required in § 63.310(j).

(6) Statement, signed by the owner or operator, that all applicable emission limitations in § 63.303(d)(1) and (2) for a new nonrecovery coke oven battery have been met. The owner or operator shall also include the results of the PM performance test required in § 63.309(k).

(7) Statement, signed by the owner or operator, certifying that all work practice standards in § 63.303(d)(3) and (4) for a new nonrecovery coke oven battery have been met.

(c) * * *

(1) Intention to construct a new coke oven battery (including reconstruction of an existing coke oven battery and construction of a greenfield coke oven battery), a brownfield coke oven battery, or a padup rebuild coke oven battery, including the anticipated date of startup.

(2) * * *

(3) Intention to conduct a PM performance test for a new nonrecovery coke oven battery subject to the requirements in § 63.303(d)(2). The owner or operator shall provide written notification according to the requirements in § 63.7(b).

(d) * * *

(1) Certification, signed by the owner or operator, that no coke oven gas was vented, except through the bypass/bleeder stack flare system of a by-product coke oven battery during the reporting period or that a venting report has been submitted according to the requirements in paragraph (e) of this section.

(2) Certification, signed by the owner or operator, that a startup, shutdown, or malfunction event did not occur for a coke oven battery during the reporting period or that a startup, shutdown, and malfunction event did occur and a report was submitted according to the requirements in § 63.310(e).

(3) Certification, signed by the owner or operator, that work practices were implemented if applicable under § 63.306.

(4) Certification, signed by the owner or operator, that all work practices for nonrecovery coke oven batteries were implemented as required in § 63.303(b)(3).

(5) Certification, signed by the owner or operator, that all coke oven door leaks on a nonrecovery battery were stopped according to the requirements in § 63.303(c)(2) and (3). If a coke oven door leak was not stopped according to the requirements in § 63.303(c)(2) and (3), or if the door leak occurred again during the coking cycle, the owner or operator must report the information in paragraphs (d)(5)(i) through (iii) of this section.

(i) The oven number of each coke oven door for which a leak was not stopped according to the requirements in § 63.303(c)(2) and (3) or for a door leak that occurred again during the coking cycle.

(ii) The total duration of the leak from the time the leak was first observed.

(iii) The cause of the leak (including unknown cause, if applicable) and the corrective action taken to stop the leak.

(6) Certification, signed by the owner or operator, that the opacity of emissions from charging operations for a new nonrecovery coke oven battery did not exceed 20 percent. If the opacity limit in § 63.303(d)(1) was exceeded, the owner or operator must report the number, duration, and cause of the deviation (including unknown cause, if applicable), and the corrective action taken.

(7) Results of any PM performance test for a charging emissions control device for a new nonrecovery coke oven battery conducted during the reporting period as required in § 63.309(l).

(8) Certification, signed by the owner or operator, that all work practices for a charging emissions control device for a new nonrecovery coke oven battery were implemented as required in § 63.303(d)(3). If a Method 9 (40 CFR part 60, appendix A) visible emissions observation exceeds 10 percent, the owner or operator must report the duration and cause of the deviation (including unknown cause, if applicable), and the corrective action taken.

(9) Certification, signed by the owner or operator, that all work practices for oven dampers on a new nonrecovery coke oven battery were implemented as required in § 63.303(d)(4).

* * * * *

(f) * * *

(1) * * *

(i) Records of daily pressure monitoring, if applicable according to § 63.303(a)(1)(ii) or § 63.303(b)(1)(ii).

(ii) Records demonstrating the performance of work practice requirements according to § 63.306(b)(7). This requirement applies to nonrecovery coke oven batteries subject to the work practice requirements in § 63.303(a)(2) or § 63.303(b)(3).

(iii) * * *

(iv) Records to demonstrate compliance with the work practice requirement for door leaks in § 63.303(c). These records must include the oven number of each leaking door, total duration of the leak from the time the leak was first observed, the cause of the leak (including unknown cause, if applicable), the corrective action taken, and the amount of time taken to stop the leak from the time the leak was first observed.

(v) Records to demonstrate compliance with the work practice requirements for oven uptake damper monitoring and adjustments in § 63.303(c)(1)(iv).

(vi) Records of weekly performance tests to demonstrate compliance with the opacity limit for charging operations in § 63.303(d)(1). These records must include calculations of the highest 3-minute averages for each charge, the average opacity of five charges, and, if applicable, records demonstrating why five consecutive charges were not observed (*e.g.*, the battery was charged only at night).

(vii) Records of all PM performance tests for a charging emissions control device to demonstrate compliance with the limit in § 63.303(d)(2).

(viii) Records of all daily visible emission observations for a charging emission control device to demonstrate compliance with the requirements limit in § 63.303(d)(3).

(ix) Records to demonstrate compliance with the work practice requirements for oven uptake damper monitoring and adjustments in § 63.303(d)(4).

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[FR Doc. 05–6942 Filed 4–14–05; 8:45 am]
BILLING CODE 6560–50–P

Misc. Coating Mfg.



Federal Register

Friday,
May 13, 2005

Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0178; FRL–7911–1]

RIN 2060–AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On December 11, 2003, EPA published national emission standards for hazardous air pollutants (NESHAP) for Miscellaneous Coating Manufacturing. The direct final rule amends the NESHAP by providing additional compliance options and clarifications. Specifically, the direct final rule amendments specify that compliance with a percent reduction emission limit may be demonstrated by measuring total organic compounds (TOC), compliance with the weight percent hazardous air pollutant (HAP) limit in coatings products may be demonstrated based on formulation data, and the cover or lid on a process vessel may be opened for material additions and sampling. The direct final rule amendments also clarify the requirements for cleaning operations, the compliance date for equipment that is added to an existing source, the conditions under which you must determine whether an emission stream is a halogenated vent stream, and the terminology used to describe the emission limits for process vessels. The direct final rule amendments also revise the definition of Group 2 transfer operations to clarify that all product loading operations are part of the miscellaneous coating manufacturing affected source and, thus, are not subject to the organic liquid distribution (OLD) NESHAP. We are making the amendments by direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

DATES: The direct final rule amendments are effective on July 12, 2005 without further notice, unless EPA receives adverse written comment by June 13, 2005 or if a public hearing is requested by May 23, 2005. If EPA receives such comments, it 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–2003–0178, 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–2003–0178. 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 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, U.S. 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	Manufacturers of coatings, including inks, paints, or adhesives.

*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 amendments to the applicability 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 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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

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. 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 Clean Air Act (CAA), judicial review of the direct 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 12, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct 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 direct final rule may not be challenged separately in any civil or criminal proceedings brought by the 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 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. Why Are We Amending the Rule?

On December 11, 2003, we published NESHAP for Miscellaneous Coating Manufacturing as subpart HHHHH in 40 CFR part 63 (68 FR 69164). Since publication of the final rule, we concluded that additional means of demonstrating compliance with the percent reduction emission limits and the weight percent HAP limit in coating products would be as effective as the options specified in the final rule. We also realized that the standards for process vessels needed to allow opening of covers and lids for material addition and sampling, or significantly more complex and costly processing equipment than we intended would be needed to comply with the final rule. Finally, we determined that several minor amendments to regulatory provisions were necessary to clearly convey our intent.

II. What Amendments Are We Making to the Rule?

Amendments to Requirements for Cleaning Operations. The direct final rule revises § 63.8005(a) to clarify that you must meet the emission limits and work practice standards in Table 1 to subpart HHHHH for cleaning operations only if the cleaning operations are performed automatically; no control is required for cleaning operations that are performed manually. This amendment is needed to make the final rule consistent with our intent as stated in the preamble to the final rule (68 FR 69164, 69172) that control is required for automatic cleaning operations, but not required for manual cleaning operations.

Amendments to Compliance Date for Equipment Added to an Existing Source. Section 63.7995(c) was intended to clarify that equipment added to an existing affected source would be subject to existing source requirements immediately upon startup, if installed after the compliance date. However, the final rule mistakenly referred to the publication date rather than the compliance date. We have also determined that this statement is not needed in the final rule because it is redundant with §§ 63.5(b)(6) and 63.6(c) of the General Provisions to 40 CFR part 63. Therefore, this direct final rule removes and reserves § 63.7995(c). To be clear, under §§ 63.5(b)(6) and 63.6(c), and Table 10 to subpart HHHHH, any equipment added to an existing affected source between December 11, 2003 and the compliance date does not have to comply until the compliance date.

Amendments to Requirements for Performance Tests. The final rule (see § 63.8000(c)) specifies that the performance testing procedures in § 63.997 of 40 CFR part 63, subpart SS, are to be used to demonstrate compliance with the emission limits. However, the option in § 63.997(e)(2)(iv) of demonstrating compliance with a percent reduction emission limit by measuring TOC is prohibited by § 63.8000(d)(1)(v) of the final rule. Since promulgation, we have determined that this restriction is unwarranted because § 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. Therefore, the direct final rule removes § 63.8000(d)(1)(v). As a result of this change, the amended rule allows compliance with a percent reduction emission limit to be demonstrated by measuring either total organic HAP or TOC as specified in § 63.997(e)(2)(iv).

Amendments to Procedures for Demonstrating Compliance with the Weight Percent HAP Limit in Coatings. The direct final rule allows formulation data of the ingredients used to manufacture a coating to be used as an alternative to test data for demonstrating compliance with the 5 weight percent HAP limit in § 63.8055. This provision states that as an alternative to complying with the requirements in Table 1 to subpart HHHHH for each individual stationary process vessel at an existing source, you may comply with a 5 weight percent HAP limit for process vessels at your affected source that are used to manufacture coatings with a HAP content of less than 0.05 kg per kg product, as specified in § 63.8055(b). We are issuing this amendment to make the compliance options for subpart HHHHH consistent with options for 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 manufacturer (*i.e.*, the source that is subject to subpart HHHHH). Including the formulation data option in subpart HHHHH also provides a less burdensome alternative to testing. However, if the formulation data and test data are inconsistent, there is a rebuttal presumption that the test data are accurate unless you can demonstrate that they are not, and that the formulation data are more appropriate for your unit(s). Also note that, unlike the option in the surface coating rules, the formulation data option in this direct final rule does not have mass cutoffs of 0.1 percent for OSHA-defined carcinogens or 1 percent for other HAP because subpart HHHHH does not establish cutoffs for trace materials or impurities.

Amendments to the Standards for Process Vessels. The direct final rule makes several amendments to the standards for portable and stationary process vessels in Table 1 to subpart HHHHH. One amendment in Table 1 is to allow the cover or lid to be opened for material additions and sampling. Sampling includes quality assurance inspections. Without this amendment, owners and operators would have to install costly materials handling equipment for solids that are added to the batch. Such equipment was not observed in the industry and not considered in our cost analysis, and we did not intend to require it. A second amendment was to clarify that the percent reduction in Table 1 applies to the collective HAP, not each individual HAP. In our database, the reported control efficiencies were not speciated. Thus, this amendment makes the final rule consistent with our analysis of the MACT floor and the regulatory alternative. A third amendment was to clarify that the emission limits in Table 1 apply to organic HAP, not total HAP. This clarification makes these items consistent with the other items in the table that already refer to total organic HAP.

Amendments to Definition of Group 2 Transfer Operations. The direct final rule expands the definition of Group 2 transfer operations to include filling of containers such as cans, drums, and totes. This amendment is needed to clarify that filling of these containers is part of the miscellaneous coating manufacturing affected source and, thus, is not subject to the OLD MACT.

Section 63.7985(b)(4) of subpart HHHHH specifies that transfer racks are part of the miscellaneous coating operations, and § 63.7990(b) specifies that the miscellaneous coating manufacturing operations are the affected source under subpart HHHHH. The definitions of "Group 1 transfer operations" and "Group 2 transfer operations" in the final rule make it clear that bulk loading (*i.e.*, filling tank trucks and railcars) is performed using transfer racks, but it is not clear if these definitions include transfer operations that involve filling of containers such as cans, drums, and totes. Thus, the final rule's silence might be interpreted to mean that filling of containers is not a transfer operation and is not part of the affected source under subpart HHHHH. Under this interpretation, filling of containers would then be subject to the OLD NESHAP because § 63.2338(c)(1) of the OLD NESHAP exempts transfer racks that transfer organic liquids only if they are part of an affected source under another NESHAP in 40 CFR part 63. We did not intend to regulate filling of containers with coating products under the OLD NESHAP.

The final rule defines Group 2 transfer operations as bulk loading (*i.e.*, filling of tank trucks or railcars) that does not meet the definition of Group 1 transfer operations. In our analysis of the MACT floor for transfer operations, we considered the filling of small containers as well as bulk loading. We determined the MACT floor for all loading was no emissions reduction. We then developed a regulatory alternative consisting of control for bulk loading when the coating products contain more than 3.0 million gallons per year of HAP with a weighted average HAP partial pressure greater than or equal to 1.5 psia. These were the only conditions under which the total impacts of control were considered reasonable. However, since we examined all product filling operations, those operations should be part of the affected source. Thus, this direct final rule revises the definition of Group 2 transfer operations to mean "bulk loading of coating products that does not meet the definition of Group 1 transfer operations, and all loading of coating products from a loading rack to other types of containers such as cans, drums, and totes." This change makes it clear that containers are filled at a transfer rack. Since all transfer racks (both Group 1 and Group 2) are part of the affected source under subpart HHHHH, this change also clarifies that filling of containers with coating products will be exempt from the requirements of the OLD NESHAP.

Clarification of Requirement to Determine Halogenated Vent Streams. The direct final rule revises the language in § 63.8000(b)(1) to clarify the conditions under which you must determine if an emission stream is a halogenated vent stream. This clarification is needed to make the language in § 63.8000(b)(1) consistent with the language in Table 1 to subpart HHHHH.

To minimize combustion control device-generated emissions of hydrogen halide and halogen HAP, Table 1 to subpart HHHHH requires a halogen reduction device either before or after a combustion device that is used to control a halogenated vent stream (*i.e.*, an emission stream that contains halogen atoms in organic compounds at concentrations greater than or equal to 20 parts per million by volume (ppmv)). Section 63.8000(b)(1), however, currently requires you to determine if each vent stream is a halogenated vent stream. This is unnecessary because no hydrogen halide or halogen HAP would be formed if the halogenated organic compound is controlled using a noncombustion control device. Thus, this direct final rule revises the language in § 63.8000(b)(1) to specify that you must determine if an emission stream meets the definition of a halogenated vent stream if it contains halogen atoms, and the organic compounds in the emission stream are controlled using a combustion control device (excluding flares).

Clarification of Equipment Leak Inspection Requirements. One of the compliance options for equipment leaks is to inspect the equipment in accordance with the procedures described in 40 CFR part 63, subpart R (National Emission Standards for Gasoline Distribution Facilities), except as specified in § 63.8015(b). The intent of § 63.8015(b) is to clarify how language in § 63.424(a) that is specific to gasoline distribution operations should be interpreted for application to miscellaneous coating manufacturing operations. Since publication of the final rule, we realized that the language did not clearly describe when the inspections must be performed. Therefore, this direct final rule revises § 63.8015(b) to further clarify the language in § 63.424(a) to make it applicable to miscellaneous coating manufacturing sources.

Clarification of overlapping standards. EPA is taking this opportunity to clarify its discussion in the preamble to the final rule regarding how to determine whether 40 CFR part 63, subpart FFFF or subpart HHHHH, applies when equipment is used to produce both subpart FFFF and HHHHH products. In the preamble to the final rule, we stated:

In the event that equipment used to manufacture products in processes that are subject to 40 CFR part 63, subpart FFFF is also used for coating manufacturing operations that are subject to subpart HHHHH, then the primary use of the equipment determines applicability.

This explanation, however, is partially inconsistent with subpart FFFF. Pursuant to subpart FFFF, the primary use of nondedicated multipurpose equipment only dictates which regulation governs where a process unit group (PUG) has been developed under 40 CFR part 63, subpart FFFF, § 63.2535(l), and the primary product is a subpart FFFF, a subpart GGG, or a subpart MMM product. Where one of these products is the primary product, the primary product determines which regulation applies to each miscellaneous organic chemical process unit (MCPU). Where a subpart FFFF product is the primary product of the PUG, subpart FFFF may be complied with for all process units in the PUG in lieu of other 40 CFR part 63 rules.

Where the primary product of the PUG is subject to regulation under any 40 CFR part 63 regulation, other than subpart FFFF, MMM or GGG, then § 63.2535(l)(3)(ii)(C) dictates that subpart FFFF applies to "each MCPU in the PUG." Otherwise, the regulation applicable to the other product (this would be the primary product if there are only two products) applies to the PUG. Accordingly, if a PUG has been developed, any process unit that is used to produce both a subpart FFFF and subpart HHHHH product must comply with subpart FFFF for the MCPU. Where a PUG has not been developed, the product of the process generally determines applicability, not primary use.

Miscellaneous Technical Corrections. The direct final rule includes several changes to correct references and typesetting errors. These changes are described in Table 1 in this preamble.

TABLE 1.—TECHNICAL CORRECTIONS TO SUBPART HHHHH

Section in subpart HHHHH	Description of correction
§ 63.8000(c)	Adds underlining to section heading.
§ 63.8000(d)(1)(iii)	Replaces reference to "Tables 1 through 7" with reference to "Tables 1 through 6".
§ 63.8050(c)(1)(ii)	Clarifies that the saturation factors must be calculated for condensable compounds, not noncondensable compounds.
§ 63.8050(c)(3) introductory text	Replaces the reference to paragraph (c)(2)(i) with a reference to paragraph (c)(3)(i).
Table 7 to subpart HHHHH	Replaces the incorrect CAS number with the correct CAS number for tetrachloroethylene.
Table 8 to subpart HHHHH	Revises the title to refer to subpart HHHHH rather than subpart FFFF, and replaces the incorrect CAS number with the correct CAS number for 1,1-dimethyl hydrazine.

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 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 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. The direct final rule amendments will not impose any requirements on small entities. The 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 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 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 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 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 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 the EPA and 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 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 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 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 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 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 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 direct final rule amendments. Therefore, the 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 amendments are 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: May 6, 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 63.7995 is amended by removing and reserving paragraph (c).

■ 3. Section 63.8000 is amended by:

■ a. Revising paragraph (b)(1);

■ b. Revising paragraph (c) heading; and

■ c. Revising paragraph (d)(1).

The revisions read as follows:

§ 63.8000 What are my general requirements for complying with this subpart?

* * * * *

(b) * * *

(1) If an emission stream contains halogen atoms, and you use a combustion-based control device (excluding a flare) to meet an organic HAP emission limit, you must determine whether the emission stream meets the definition of a halogenated stream by calculating the concentration of each organic compound that contains halogen atoms using the procedures specified in § 63.115(d)(2)(v), multiplying each concentration by the number of halogen atoms in the organic compound, and summing the resulting halogen atom concentrations for all of the organic compounds in the emission stream. Alternatively, you may elect to designate the emission stream as halogenated.

* * * * *

(c) *Compliance requirements for closed vent systems and control devices.* * * *

* * * * *

(d) *Exceptions to the requirements specified in other subparts of this part 63.* (1) *Requirements for performance tests.* The requirements specified in paragraphs (d)(1)(i) through (v) of this section apply instead of or in addition to the requirements for performance testing of control devices as specified in subpart SS of 40 CFR part 63.

(i) Conduct gas molecular weight analysis using Method 3, 3A, or 3B in appendix A to 40 CFR part 60.

(ii) Measure moisture content of the stack gas using Method 4 in appendix A to 40 CFR part 60.

(iii) As an alternative to using Method 18, Method 25/25A, or Method 26/26A of 40 CFR part 60, appendix A, to comply with any of the emission limits specified in Tables 1 through 6 to this subpart, you may use Method 320 of 40 CFR part 60, appendix A. When using Method 320, you must follow the analyte spiking procedures of section 13 of Method 320, unless you demonstrate that the complete spiking procedure has been conducted at a similar source.

(iv) Section 63.997(c)(1) does not apply. For the purposes of this subpart, results of all initial compliance demonstrations must be included in the notification of compliance status report, which is due 150 days after the compliance date, as specified in § 63.8075(d)(1).

(v) If you do not have a closed-vent system as defined in § 63.981, you must determine capture efficiency using Method 204 of appendix M to 40 CFR part 51 for all stationary process vessels subject to requirements of Table 1 to this subpart.

* * * * *

■ 4. Section 63.8005 is amended by revising paragraph (a) to read as follows:

§ 63.8005 What requirements apply to my process vessels?

(a) *General.* (1) You must meet each emission limit and work practice standard in Table 1 to this subpart that applies to you, and you must meet each applicable requirement specified in § 63.8000(b), except as specified in paragraphs (a)(1)(i) and (ii) of this section.

(i) You are not required to meet the emission limits and work practice standards in Table 1 to this subpart if you comply with § 63.8050 or § 63.8055.

(ii) You must meet the emission limits and work practice standards in Table 1 to this subpart for emissions from automatic cleaning operations. You are not required to meet the emission limits and work practice standards in Table 1 to this subpart for emissions from cleaning operations that are conducted manually.

(2) For each control device used to comply with Table 1 to this subpart, you must comply with subpart SS of this part 63 as specified in § 63.8000(c), except as specified in § 63.8000(d) and paragraphs (b) through (g) of this section.

* * * * *

■ 5. Section 63.8015 is amended by revising paragraph (b) to read as follows:

§ 63.8015 What requirements apply to my equipment leaks?

* * * * *

(b) *Exceptions to requirements in § 63.424(a).* (1) When § 63.424(a) refers to "a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart," the phrase "a miscellaneous coating manufacturing affected source subject to 40 CFR part 63, subpart HHHHH" shall apply for the purposes of this subpart.

(2) When § 63.424(a) refers to "equipment in gasoline service," the phrase "equipment in organic HAP service" shall apply for the purposes of this subpart.

(3) When § 63.424(a) specifies that "each piece of equipment shall be inspected during loading of a gasoline cargo tank," the phrase "each piece of equipment must be inspected when it is operating in organic HAP service" shall apply for the purposes of this subpart.

(4) Equipment in service less than 300 hours per year, equipment in vacuum

service, or equipment contacting non-process fluids is excluded from this section.

* * * * *

■ 6. Section 63.8050 is amended by:

■ a. Revising the fifth sentence in paragraph (c)(1)(ii); and

■ b. Revising paragraph (c)(3) introductory text.

The revisions read as follows:

§ 63.8050 How do I comply with emissions averaging for stationary process vessels at existing sources?

* * * * *

(c) * * *

(1) * * *

(ii) * * * Note that for multi-component emission streams, saturation factors must be calculated for all condensable compounds, not just the HAP. * * *

* * * * *

(3) Determine actual emissions in pounds per batch for each vessel in accordance with paragraph (c)(3)(i), (ii), or (iii) of this section, as applicable.

* * * * *

■ 7. Section 63.8055 is amended by revising paragraph (b) to read as follows:

§ 63.8055 How do I comply with a weight percent HAP limit in coating products?

* * * * *

(b) You may only comply with the alternative during the production of coatings that contain less than 5 weight percent HAP, as determined using any of the procedures specified in paragraphs (b)(1) through (4) of this section.

(1) Method 311 (appendix A to 40 CFR part 63).

(2) Method 24 (appendix A to 40 CFR part 60). You may use Method 24 to determine the mass fraction of volatile matter and use that value as a substitute for the mass fraction of HAP.

(3) You may use an alternative test method for determining mass fraction of HAP if you obtain prior approval by the Administrator. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) You may rely on formulation data. 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.

* * * * *

■ 8. Section 63.8105 is amended by revising the definition in paragraph (g) for *Group 2 transfer operations* to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Group 2 transfer operations means bulk loading of coating products that does not meet the definition of Group 1 transfer operations, and all loading of coating products from a loading rack to other types of containers such as cans, drums, and totes.

* * * * *

■ 9. Table 1 to subpart HHHHH is amended by revising entries "1," "2," and "3" to read as follows:

TABLE 1 TO SUBPART HHHHH OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS

* * * * * * *

For each . . .	You must . . .	And you must . . .
1. Portable process vessel at an existing source.	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP, except for material additions and sampling.	Nonapplicable.
2. Stationary process vessel at an existing source.	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP, except for material additions and sampling; or	i. Considering both capture and any combination of control (except a flare), reduce emissions of organic HAP with a vapor existing pressure ≥0.6 kPa by ≥75 percent by weight, and reduce emissions of organic HAP with a vapor pressure <0.6 kPa by ≥60 percent by weight.
	b. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP, except for material additions and sampling.	i. Reduce emissions of organic HAP with a vapor pressure ≥0.6 kPa by ≥75 percent by weight, and reduce emissions of organic HAP with a vapor pressure <0.6 kPa by ≥60 percent by weight, by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: <−10 °C if the process vessel contains HAP with a partial pressure <0.6 kPa, or <−2 °C if the process vessel contains HAP with a partial pressure ≥0.6 kPa and <17.2 kPa, or <−5 °C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.

TABLE 1 TO SUBPART HHHHH OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS—Continued

For each . . .	You must . . .	And you must . . .
3. Portable and stationary process vessel at a new source.	a. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP, except for material additions and sampling.	i. Reduce emissions of total organic HAP by ≥95 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: <−4 °C if the process vessel contains HAP with a partial pressure <0.7 kPa, or <−20 °C if the process vessel contains HAP with a partial pressure ≥0.7 kPa and <17.2 kPa, or <−30 °C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.

■ 10. Table 7 to subpart HHHHH is amended by revising entry "51" to read as follows:

TABLE 7 TO SUBPART HHHHH OF PART 63.—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
51. Tetrachloroethylene (perchloroethylene)	127184

TABLE 7 TO SUBPART HHHHH OF PART 63.—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.

■ 11. Table 8 to subpart HHHHH is amended by revising the heading and entry "4" to read as follows:

TABLE 8 TO SUBPART HHHHH OF PART 63.—SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
4. Dimethyl hydrazine (1,1)	57147

[FR Doc. 05–9485 Filed 5–12–05; 8:45 am]
BILLING CODE 6560–50–P

Pharmaceuticals



Federal Register

Friday,
May 13, 2005

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Pharmaceuticals Production; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0023; FRL–7911–3]

RIN 2060–AM52

National Emission Standards for Pharmaceuticals Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: EPA is taking direct final action to amend the national emission standards for pharmaceuticals production. The direct final rule amendments include provisions for planned routine maintenance of wastewater tanks, alternative monitoring provisions for caustic scrubbers and condensers, and references general standards for containers. We are making the amendments by direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

DATES: The direct final rule amendments are effective on July 12, 2005, without further notice, unless EPA receives adverse written comment by June 13, 2005, or if a public hearing is requested by May 23, 2005. If EPA receives such comments, it 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–2004–0023, 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–2004–0023. 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 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: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	325411 and 325412 Typically 325199	2833 and 2834 Typically 2869	• Producers of finished dosage forms of drugs (*e.g.,* tablets, capsules, and solutions), active ingredients, or precursors. • Producers of material whose primary use is as an active ingredient of precursor.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation 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 63.1250. If you have questions regarding the applicability of the direct final rule 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 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. We consider the changes to be noncontroversial because the only effect is to provide alternative monitoring requirements and extend planned routine maintenance provisions for storage tanks to wastewater tanks. 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 Clean Air Act (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 July 12, 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 publishing the amendments as a direct final 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 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. Why Are We Publishing the Amendments as a Direct Final Rule?

We are publishing the amendments without prior proposal because we view the changes as noncontroversial and anticipate no adverse comment. The amendments to the final rule improve consistency with other standards by referencing generic type standards for containers; extending the planned routine maintenance provisions from storage tanks to wastewater tanks; and allowing alternative monitoring for scrubbers and condensers. The amendments do not alter the stringency of the standards, have no adverse health or environmental impacts, and will not increase costs.

II. What Amendments Are We Making to the Rule?

The direct final rule makes four amendments to the final rule. One amendment adds a reference to an existing generic standard as a compliance alternative for large wastewater containers. A second amendment applies the same planned routine maintenance provisions for storage tanks to wastewater tanks. A third amendment is to allow monitoring of the condenser product side temperature in lieu of the exit gas temperature. The fourth amendment is to allow monitoring of caustic strength of the scrubber effluent as an alternative to measuring pH. In addition to the amendments, we are correcting a citation error.

The National Emission Standards for Containers in subpart PP to 40 CFR part 63 were developed for administrative convenience and consistency and apply when other subparts reference subpart PP. The level of control required by subparts PP and GGG to 40 CFR part 63 are equivalent as both standards require vapor-tight containers. We are aware that there are some facilities subject to subpart GGG to 40 CFR part 63 that have containers subject to other maximum achievable control technology (MACT) standards that are permitted to meet subpart PP to 40 CFR part 63 with respect to those containers. Therefore, we are amending the wastewater provisions in the final rule to reference subpart PP to 40 CFR part 63 as a compliance option for large containers to allow such sources the option of complying with a single subpart for containers otherwise subject to different MACT standards.

The final rule allows for 240 hours per year for use of storage tanks during periods of planned routine maintenance when the requirements for control devices do not apply. This provision allows for maintenance of the control device without emptying and cleaning the storage tank. During the initial implementation phase of the final rule, we became aware that the same problems of material management apply to wastewater tanks as well as storage tanks. Applying the planned routine maintenance provisions to storage of wastewater eliminates the need to empty and clean wastewater tanks with each downtime. This also eliminates emissions associated with cleaning and degassing the wastewater tank. Therefore, we are extending the planned routine maintenance provisions for storage tanks to wastewater tanks. The same issue of material management for stored wastewater was addressed in subpart FFFF to 40 CFR part 63 by providing the same planned routine maintenance provisions.

Also, we are including provisions for alternative monitoring for condensers and scrubbers. The new provisions allow for monitoring of the product side temperature for condensers and provisions for monitoring the caustic strength of the effluent for scrubbers. Again, in the initial implementation phase of the final rule, we were informed by several affected sources that alternative monitoring for condensers and scrubbers should be allowed. Those alternative monitoring provisions have been approved in precompliance reports for the final rule and are also included in subpart FFFF to 40 CFR part 63.

Finally, we are clarifying that for the final rule, a process change means the startup of a new process. As clarification in the preamble to the proposed national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient Production (PAI) (67 FR 17503), we stated that a process change means the startup of a new operating scenario associated with a new process. As in the proposed PAI rule, the final rule requires the owner or operator to prepare operating scenarios that describe the equipment, emissions, controls, and monitoring for each process. A new operating scenario must

be prepared each time the owner or operator makes a change to produce a new product. A new operating scenario must also be prepared for any change to an existing process that is not within the scope of a current operating scenario. As in the proposed PAI rule, we are clarifying that for the final rule, a process change means the startup of a new process.

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 2060–0358 (EPA ICR No. 1781.01).

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 final rule.

For purposes of assessing the impacts of today's 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 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. 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 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 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. The final rule amendments provide a source owner or operator with additional options to comply with the standards. Therefore, the 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 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.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicits comment on the 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 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.

The EPA specifically solicits additional comment on the final rule amendments from tribal officials.

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 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 direct final rule amendments. Therefore, the 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 July 12, 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: May 6, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 63 of 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 GGG—[Amended]

■ 1. Section 63.1253 is amended by adding two sentences to the end of paragraph (e) to read as follows:

§ 63.1253 Standards: Storage tanks.

* * * * *

(e) * * * The owner or operator may submit an application to the Administrator requesting an extension of this time limit to a total of 360 hours in any 365-day period. The application must explain why the extension is needed, it must specify that no material will be added to the storage tank between the time the 240-hour limit is exceeded and the control device is again operational, and it must be submitted at least 60 days before the 240-hour limit will be exceeded.

* * * * *

■ 2. Section 63.1256 is amended by:
■ a. Adding paragraph (b)(10); and
■ b. Revising paragraph (d)(1)(i).

The revisions and addition read as follows:

§ 63.1256 Standards: Wastewater.

* * * * *

(b) * * *

(10) The emission limits specified in § 63.1256 (b)(2) and (h) for control devices used to control emissions from wastewater tanks do not apply during periods of planned routine maintenance of the control device(s) of no more than 240 hours in any 365-day period. The owner or operator may submit an application to the Administrator requesting an extension of this time limit to a total of 360 hours in any 365-day period. The application must explain why the extension is needed, it must specify that no affected wastewater will be added to the tank between the time the 240-hour limit is exceeded and the control device is again operational, and it must be submitted at least 60 days before the 240-hour limit will be exceeded. Wastewater tanks shall not be sparged with air or other gases without an operational control device.

* * * * *

(d) * * *

(1) * * *

(i) Except as provided in paragraph (d)(3)(iv) of this section, if the capacity of the container is greater than 0.42 m^3, the cover and all openings (*e.g.*, bungs, hatches, sampling points, and pressure relief valves) shall be controlled in accordance with the requirements of either paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section.

(A) The requirements specified in § 63.1258(h); or

(B) The requirements of subpart PP of this part for containers using level 2 controls that meet the definitions in § 63.923(b)(1) or (2).

* * * * *

■ 3. Section 63.1258 is amended by:
■ a. Amending paragraph (b)(1)(ii) introductory text to add a sentence before the last sentence; and
■ b. Revising paragraph (b)(1)(iii) introductory text.

The revisions read as follows:

§ 63.1258 Monitoring requirements.

* * * * *

(b) * * *

(1) * * *

(ii) * * * As an alternative to measuring pH, you may elect to continuously monitor the caustic strength of the scrubber effluent. * * *

* * * * *

(iii) *Condensers.* For each condenser, the owner or operator shall establish the maximum condenser outlet gas temperature or product side temperature as a site specific operating parameter which much be measured and recorded at least every 15 minutes during the period in which the condenser is functioning in achieving the HAP removal required by this subpart.

* * * * *

■ 4. Section 63.1259 is amended by revising the last two sentences in paragraph (a)(3) introductory text to read as follows:

§ 63.1259 Recordkeeping requirements.

(a) * * *

(3) * * * The owner or operator shall keep the startup, shutdown, and malfunction records specified in paragraphs (a)(3)(i) through (iii) of this section. Reports related to the plan shall be submitted as specified in § 63.1260(i).

* * * * *

[FR Doc. 05–9477 Filed 5–12–05; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Tuesday,
May 17, 2005

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0035; FRL–7911–6]

RIN 2060–AM10

National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing 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 asphalt processing and asphalt roofing manufacturing, which were issued on April 29, 2003 under section 112 of the Clean Air Act (CAA). These amendments correct minor errors and add a clarifying exemption inadvertently omitted in the final rule. We are issuing these amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant 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 asphalt processing and asphalt roofing manufacturing, if significant adverse comments are filed.

If we receive any adverse comments on a specific element of the direct final rule, 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 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 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 August 15, 2005 without further notice, unless EPA receives significant adverse written comments by June 16, 2005, or by July 1, 2005, if a public hearing is requested. If EPA receives such comments, it 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–2002–0035, 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*.
- 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–2002–0035. 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 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. Rick Colyer, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5262; facsimile number (919) 541–5600; electronic 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[a]		SIC[b]	
	Code	Description	Code	Description
Manufacturing	324122	Asphalt shingle and coating materials manufacturing.	2952	Asphalt felts and coatings.
Manufacturing	32411	Petroleum refineries	2911	Petroleum refining.
Federal Government	Not affected		Not affected	
State/Local/Tribal Government	Not affected		Not affected	

[a] North American Information Classification System.
[b] Standard Industrial Classification Code.

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 §§ 63.8681 and 63.8682 of the final rule. If you have any questions regarding the applicability of this action 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, 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 is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 18, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct 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 that are subject to today's 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
A. Technical Corrections
B. Nonapplicability Clarification
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

The EPA promulgated national emission standards for hazardous air pollutants for asphalt processing and asphalt roofing manufacturing on April 29, 2003 (68 FR 22975) (reprinted on May 7, 2003 at 68 FR 24562). Today's action includes amendments to correct errors in definitions and equations and adds language to one other provision (relating to applicability) so that the rule language conforms to the preamble discussion to the final rule. We are also adding an exemption to applicability to another rule inadvertently omitted from the final rule.

A. Technical Corrections

The promulgated rule contains definitions for Group 1 and Group 2 asphalt loading racks and asphalt storage tanks. A Group 1 loading rack currently is defined as one that loads asphalt with a maximum temperature of 260 °C (500 °F) or greater or with a maximum true vapor pressure of 10.4 kiloPascals (kPa)(1.5 pounds per square inch absolute (psia)) or greater. Similarly, a Group 1 asphalt storage tank currently is defined as one that stores asphalt with a maximum temperature of 260 °C (500 °F) or greater or with a maximum true vapor pressure of 10.4 kPa (1.5 pounds psia) or greater. Furthermore, in the final rule, we define a Group 2 asphalt loading rack as one that loads asphalt with a maximum temperature less than 260 °C (500 °F) or with a maximum true vapor pressure less than 10.4 kPa (1.5 psia). However, because the Group 2 definition also contains an "or," it creates the situation where a loading rack could fit both definitions. A Group 2 asphalt storage tank is defined in the promulgated rule as any tank that is not a Group 1 tank. The Group 2 asphalt loading rack should have had parallel language; that is, a Group 2 asphalt loading rack should have been defined simply as any asphalt loading rack that was not a Group 1 loading rack in order to make Group 1 and Group 2 mutually exclusive.

However, an additional wording problem exists with the definitions of Group 1 asphalt loading rack and storage tank. Both definitions in the promulgated rule specify that loading racks or storage tanks that load or store asphalt at or greater than a certain temperature or pressure are considered to be Group 1. This creates the unintended problem of having to determine both temperature and pressure of the asphalt being loaded or stored to determine whether the tank or loading rack is Group 1 or Group 2. As stated in the preamble to the final rule (68 FR 23471, May 7, 2003), because of the testing problems associated with determining vapor pressure, we specify in the final rule that owners or operators could monitor temperature "* * * instead of requiring facilities to physically measure asphalt vapor pressure." To achieve the intended consequence of measuring temperature instead of vapor pressure of the asphalt, the wording in the Group 1 definitions should have been that both the temperature and vapor pressure criteria must be met before the loading rack or storage tank can be designated as a Group 1 emission point, so that if either the temperature or vapor pressure did not exceed the maximum value, the emission point would not be a Group 1 point. Thus, the owner or operator could use temperature alone to determine if an emission point was not considered Group 1, as stated in the preamble. Accordingly, we are revising the definitions for the Group 1 asphalt storage tanks and loading racks as those that load/store asphalt with a maximum temperature of 260 °C (500 °F) or greater and with a maximum true vapor pressure of 10.4 kPa (1.5 pounds psia) or greater.

Table 2 provides a decision matrix for determining Group 1 and Group 2 storage tanks and loading racks.

TABLE 2.—DECISION MATRIX FOR DETERMINING STORAGE TANK AND LOADING RACK GROUP

	VP < 10.4 kPa	VP ≥ 10.4 kPa
Temp < 260 °C	Group 2	Group 2.
Temp ≥ 260 °C	Group 2	Group 1.

We are also revising the wording of the definition of Group 2 asphalt loading racks to parallel that of Group 2 asphalt storage tanks. These changes should have no effect other than to ease the measurement burden for owners and operators.

We are also making a correction to the unit conversion constant, K, in Equation 4. The promulgated rule establishes K as 3.00E–05 (parts per million volume (ppmv)) $^{-1}$ (gram-mole/standard cubic meter) (kilogram/gram) (minutes/hour). We have since determined that this is incorrect, both in value and in units. The correct value and units for K should be 1.10E–04 (ppmv) $^{-1}$ (kilogram/standard cubic meter) (minutes/hour).

We are correcting a cite in footnote "a" to table 5 to subpart LLLLL. The last sentence of footnote "a" references the data reduction requirements in "§ 63.9(g)." The reference should be "§ 63.8(g), Reduction of monitoring data."

Finally, we removed English units from several equations that were based on metric units.

B. Nonapplicability Clarification

Several commenters on the proposed rule (66 FR 58610, November 21, 2001) wanted to ensure that emissions from the blowing still combusted in a thermal oxidizer would not be considered a fuel gas and become potentially subject to the sulfur requirements of 40 CFR part 60, subpart J, Standards of Performance for Petroleum Refineries. Asphalt can contain some amounts of sulfur. Subpart J contains provisions that limit sulfur oxide emissions from the combustion of fuel gases at a refinery. We agree with the commenters that the addition of a combustion device to control blowing still emissions as required by the asphalt rule should not trigger the requirements of another rule. We also note that while asphalt blowing can occur at a refinery, it is not considered a refinery process subject to subpart J. In our background information document responding to comments on the proposed rule (National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing-Background Information Document for Promulgated Standards, EPA–453/R–03–005, section 2.11.1), we stated that we were going to clarify explicitly that blowing still emissions are not subject to the fuel gas requirements of subpart J. However, we failed to add that provision to the final rule. Today's amendments correct that inadvertent omission.

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 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.

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 (68 FR 22975, April 29, 2003) were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2060–0520. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 2029.02) 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 email 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 number for EPA's regulations in 40 CFR part 63 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 direct final rule amendments on small entities, a small entity is defined as: (1) A small business that is primarily engaged in the processing of asphalt or the manufacture of asphalt roofing materials according to Small Business Administration (SBA) size standards by NAICS code (in this case, less than 750 employees for affected businesses classified in NAICS code 324122, Asphalt Shingles and Coating Materials Manufacturing and less than

1,500 employees for businesses in NAICS code 32411, Petroleum Refineries); (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.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." (5 U.S.C. 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 amendments in today's direct final rule improve the emission standards by correcting errors and omissions. These changes should have no effect other than to ease the measurement burden for owners and operators. In addition, we are making a correction to the unit conversion constant, a cite in footnote "a" to table 5, and removed English units from several equations that were based on metric units. 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.

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, 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.

The EPA has determined that the direct final rule amendments contain no 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 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 in the development of regulatory policies on matters 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. No tribal governments own or operate facilities subject to the NESHAP. 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 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 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 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 (Pub. L. 104–113; 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The direct final rule amendments do not involve technical standards and, therefore, are not subject to the NTTAA.

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 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 the publication of the direct final rule amendments in today's **Federal Register**. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments will be effective August 15, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: May 6, 2005.

Stephen L. Johnson,

Acting 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 LLLLL—[AMENDED]

■ 2. Section 63.8681 is amended by redesignating paragraph (e) as (f) and adding a new paragraph (e) to read as follows:

§ 63.8681 Am I subject to this subpart?

* * * * *

(e) The provisions of subpart J of 40 CFR part 60 do not apply to emissions from asphalt processing facilities subject to this subpart.

* * * * *

■ 3. Section 63.8687 is amended by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 63.8687 What performance tests, design evaluations, and other procedures must I use?

* * * * *

(e) * * *

(1) To determine compliance with the particulate matter mass emission rate, you must use Equations 1 and 2 of this section as follows:

$$E = M_{PM}/P \qquad \text{(Eq. 1)}$$

Where:

E = Particulate matter emission rate, kilograms of particulate matter per megagram of roofing product manufactured.

M_{PM} = Particulate matter mass emission rate, kilograms per hour, determined using Equation 2.

P = The asphalt roofing product manufacturing rate during the emissions sampling period, including any material trimmed from the final product, megagram per hour.

$$M_{PM} = C * Q * K \qquad \text{(Eq. 2)}$$

Where:

M_{PM} = Particulate matter mass emission rate, kilograms per hour.

C = Concentration of particulate matter on a dry basis, grams per dry standard cubic meter (g/dscm), as measured by the test method specified in Table 3 to this subpart.

Q = Vent gas stream flow rate (dry standard cubic meters per minute) at a temperature of 20 °C as measured by the test method specified in Table 3 to this subpart.

K = Unit conversion constant (0.06 minute-kilogram/hour-gram).

(2) To determine compliance with the total hydrocarbon percent reduction standard, you must use Equations 3 and 4 of this section as follows:

$$RE = \left[\left(M_{THCi} - M_{THCo}\right)/\left(M_{THCi}\right)\right] * (100) \qquad \text{(Eq. 3)}$$

Where:

RE = Emission reduction efficiency, percent.

M_{THCi} = Mass flow rate of total hydrocarbons entering the control device, kilograms per hour, determined using Equation 4.

M_{THCo} = Mass flow rate of total hydrocarbons exiting the control device, kilograms per hour, determined using Equation 4.

$$M_{THC} = C * Q * K \qquad \text{(Eq. 4)}$$

Where:

M_{THC} = Total hydrocarbon mass flow rate, kilograms per hour.

C = Concentration of total hydrocarbons on a dry basis, parts per million by volume (ppmv), as measured by the test method specified in Table 3 to this subpart.

Q = Vent gas stream flow rate (dscm/minute) at a temperature of 20 °C as measured by the test method specified in Table 3 to this subpart.

K = Unit conversion constant (1.10E–04 $(ppmv)^{-1}$ (kilogram/dscm)(minute/hour)).

* * * * *

■ 4. Section 63.8698 is amended by revising the definitions of *Group 1 asphalt loading rack, Group 2 asphalt loading rack,* and *Group 1 asphalt storage tank* to read as follows:

§ 63.8698 What definitions apply to this subpart?

* * * * *

Group 1 asphalt loading rack means an asphalt loading rack that loads asphalt with a maximum temperature of 260° C (500° F) or greater and has a maximum true vapor pressure of 10.4

kiloPascals (kPa) (1.5 pounds per square inch absolute (psia)) or greater.

Group 2 asphalt loading rack means an asphalt loading rack that is not a Group 1 asphalt loading rack.

Group 1 asphalt storage tank means an asphalt storage tank that meets both of the following criteria:

(1) Has a capacity of 177 cubic meters (47,000 gallons) of asphalt or greater; and

(2) Stores asphalt at a maximum temperature of 260 °C (500 °F) or greater and has a maximum true vapor pressure of 10.4 kPa (1.5 psia) or greater.

* * * * *

■ 5. Footnote "a" to Table 5 to Subpart LLLLL is amended by revising the last sentence as follows:

Tables to Subpart LLLLL of Part 63

* * * * *

Table 5 to Subpart LLLLL of Part 63—Continuous Compliance With Operating Limits [a]

* * * * *

[a] * * * Data from the CEMS and COMS must be reduced as specified in § 63.8(g).

* * * * *

[FR Doc. 05–9594 Filed 5–16–05; 8:45 am]

BILLING CODE 6560–50–P



Federal Register

Friday,
May 20, 2005

Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0034; FRL–7911–8]

RIN 2060–AM85

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On April 22, 2004, the EPA issued national emission standards to control hazardous air pollutants emitted from iron and steel foundries. This action amends the work practice requirements for materials certification and scrap selection/inspection programs. The direct final amendments add clarification and flexibility but do not materially change the requirements of the rule.

DATES: The direct final rule amendments will be effective on August 18, 2005 without further notice, unless we receive adverse comments by June 20, 2005, or by July 5, 2005 if a public hearing is requested. If such comments are received, 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. Any distinct amendment, paragraph, or section of the direct final amendments for which we do not receive adverse comment will become effective on August 18, 2005. The incorporation by reference of certain publications listed in the direct final rule amendments is approved by the Director of the Federal Register as of August 18, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0034, 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*.
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket, Docket ID OAR–2002–0034, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA, 1301 Constitution Avenue, NW., Room B102, 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–2002–0034. 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. 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.

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 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–2002–0034, 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. Kevin Cavender, Emissions, Monitoring and Analysis Division (C339–02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2364, fax number (919) 541–1903, e-mail address: *cavender.kevin@epa.gov*.

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

Category	NAICS code [1]	Examples of regulated entities
Industry	331511	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512	Steel investment foundries.
	331513	Steel foundries (except investment).
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 would be regulated by this action, you should examine the applicability criteria in §§ 63.7681 and 63.7682 of the national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. 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

amendments will be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the direct 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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

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 U.S. Court of Appeals for the District of Columbia Circuit by July 19, 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 the EPA to enforce these requirements.

Comments. We are issuing the amendments as a direct final rule 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 for the amendments contained in the direct final rule in the event that 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 based on the proposed rule. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

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

I. Background
II. Summary of the Direct Final Rule Amendments
III. Summary of Environmental, Energy, and Economic Impacts
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

I. Background

On April 22, 2004 (69 FR 21906), we issued the NESHAP for iron and steel foundries (40 CFR part 63, subpart EEEEE). The NESHAP establish emissions limits and work practice standards for hazardous air pollutants (HAP) from foundry operations. The NESHAP implement section 112(d) of the CAA by requiring all iron and steel foundries that are major sources of HAP to meet standards reflecting the application of the maximum achievable control technology (MACT).

After publication of the NESHAP, the American Foundry Society, the Alliance of Automobile Manufacturers, and the Steel Founders' Society of America filed petitions for reconsideration of the final rule. One of the petitions requested clarification of certain aspects of the scrap certification and scrap selection/inspection work practice standards in 40 CFR 63.7700 concerning:

- Use of multiple scrap acquisition options;
- Requirements for "certified" metal ingots, oil filters, and organic liquids; and
- Classification of "cleaned" scrap materials.

We agree with the petitioner(s) that certain changes are needed to clarify these aspects of the work practice standards. The changes to the NESHAP in today's direct final rule amendments are expected to resolve issues associated with the work practice standards which require implementing guidance or minor changes in regulatory language.

Because the work practice standards will become effective on April 22, 2005 (1 year after promulgation), the clarifications contained in the direct final rule amendments are time-critical. Today's direct final rule amendments will reduce compliance uncertainties and improve understanding of the rule requirements.

II. Summary of Direct Final Rule Amendments

The work practice standards in 40 CFR 63.7700(a) require the owner or operator to comply with the scrap certification requirements in 40 CFR 63.7700(b) or the scrap selection/inspection requirements in 40 CFR 63.7700(c). According to one petitioner, the requirements in 40 CFR 63.7700(a) may be interpreted to require a foundry to either comply with the certification requirements in 40 CFR 63.7700(b) for the entire foundry's scrap material and melt only those materials that are "certified," or to comply with scrap selection/inspection requirements in 40 CFR 63.7700(c) for all scrap materials—even if a significant portion of the scrap material used by the foundry meets the requirements in 40 CFR 63.7700(b).

The requirements in 40 CFR 63.7700(a) were never intended to prevent a foundry from having segregated scrap storage areas, piles or bins, with the scrap material in some of these areas being subject to scrap certification requirements in 40 CFR 63.7700(b) and scrap material in other areas subject to scrap selection/inspection requirements in 40 CFR 63.7700(c). For example, we did not intend to require inspections of pig iron or other "certifiable" scrap simply because a foundry also recycled internal oily turnings. Consequently, we have revised the language in 40 CFR 63.7700(a) to clarify that the scrap requirements apply to each type of scrap material received or each scrap storage area, pile, or bin as long as the scrap material subject to certification requirements in 40 CFR 63.7700(b) remains segregated from scrap material subject to selection/inspection plans in 40 CFR 63.7700(c).

We have also clarified the requirement in 40 CFR 63.7700(b) that the foundry operate by a written certification that it purchases and uses only "certified" metal ingots, pig iron, slitter, or other materials that do not use post-consumer automotive body scrap, post-consumer engine blocks, oil filters, oily turnings, lead components, mercury switches, plastics, or organic liquids. The petitioner specifically asked EPA to identify who must certify the metal ingots, to clarify the "no organic liquids" restriction, and to modify the regulatory language to clarify that the prohibited material include only "used" oil filters.

We agree with the petitioner's concerns and have clarified the regulatory text of 40 CFR 63.7700(b). It is not our intent to require a separate certification for metal ingots. Accordingly, we have deleted the word "certified" from 40 CFR 63.7700(b). We have clarified the restriction on oil filters by adding the term "post-consumer" to signify that used filters

are the materials of concern. We have clarified the "no organic liquids" requirement by using the term "free organic liquids." The direct final rule amendments define "free organic liquids" as any material that fails the "Paint Filter Liquids Test" by EPA Method 9095A (incorporated by reference-see 40 CFR 63.14). If any portion of the material passes through and drips from the filter within the 5-minute test period, the material contains free liquids. EPA Method 9095A is available in EPA publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (Revision 1, December 1996).

The petitioner also stated that the regulatory language in 40 CFR 63.7700(b) does not allow for the recycling and use of materials if they have been processed to remove contaminants of concern. In support, the petitioner explained that some suppliers dismantle or crush and then wash post-consumer engine blocks prior to shipment as scrap material. Similarly, some scrap suppliers process oily turnings or used oil filters to make them environmentally acceptable for melting. In response to the petitioner's concerns, we have added a provision to 40 CFR 63.7700(b) to allow for the use of "cleaned" scrap material. The new provision states that any post-consumer engine blocks, post-consumer oil filters, or oil turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, plastics, or free organic liquids can be included in the certification.

The work practice standards in 40 CFR 63.7700(c)(1) require the owner or operator to operate according to a materials acquisition program to limit the organic contaminants in the scrap. The requirements for material to be charged to a scrap preheater, electric arc furnace, or electric induction furnace are more stringent than those required for scrap material that is to be charged to a cupola furnace. During conversations with the petitioners, concerns were raised that the requirements in 40 CFR 63.7700(c)(1) may be interpreted to require a foundry to exclusively comply with either the requirements in 40 CFR 63.7700(c)(1)(i) or (ii) for the entire foundry's scrap material—even if the foundry operates both a cupola and one of the other furnace types. This was not our intent. As such, we have added the words "as applicable" to 40 CFR 63.7700(c)(1) to clarify that a foundry may process scrap that meets 40 CFR 63.7700(c)(1)(i) and scrap that meets 40 CFR 63.7700(c)(1)(ii) in the appropriate furnaces.

During discussions with the petitioners regarding clarification of the work practice requirements, questions were raised regarding the ability to perform inspections at the scrap supplier's facility. In many cases, foundry representatives visit the supplier's facility to personally select and inspect scrap materials. To clarify our intent that the NESHAP allow inspections to take place at the supplier's facility, we have expanded 40 CFR 63.7700(c)(3) to specifically address this situation. The direct final rule amendments state that the visual inspections may be performed at the scrap supplier's facility. However, the inspection procedures in the foundry's scrap inspection/selection plan must include an explanation of how the periodic inspections ensure that not less than 10 percent of scrap purchased from each supplier is subject to inspection. This provision is needed to maintain consistency with the inspection requirements for scrap received at the facility gate.

III. Summary of Environmental, Energy, and Economic Impacts

The direct 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 work practice standards. No costs or economic impacts are associated with the direct final rule amendments.

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 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 12866, and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing rule (40 CFR part 63, subpart EEEEE) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0543, EPA ICR number 2096.02. A copy of the 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 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 direct final rule amendments.

For the purposes of assessing the impacts of today's direct final rule amendments on small entities, small entity is defined as: (1) A small business having 500 or fewer employees, as defined by the Small Business Administration for NAICS codes 331511, 331512 and 331513; (2) a

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 direct final rule amendments on small entities, the 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 conclude that there will be a positive impact on small entities because the direct final rule amendments clarify the rule requirements to reduce compliance uncertainties. The changes do not impose new costs or requirements. We have, therefore, concluded that today's direct 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.

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 the aggregate, or to the private sector in any 1 year. No new costs are attributable to the direct final rule amendments. Thus, the direct final rule amendments are not subject to the requirements of 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 because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the direct 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 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 plants 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 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 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 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 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 direct final rule amendments are not subject to Executive Order 13045 because the NESHAP (and the direct final rule 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 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 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 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, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The direct final rule amendments involve technical standards. The direct final rule amendments incorporate by reference the "Paint Filter Liquids Test" of EPA Method 9095A in EPA Publication SW–846, "Methods for Evaluating Solid Waste, Physical/Chemical Methods (Revision 1, December 1996). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Method 9095A. The search and review results have been documented and placed in the docket for public review.

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 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**. 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 in 40 CFR Part 63

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

Dated: May 6, 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 A—[Amended]

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

§ 63.14 Incorporations by reference.

* * * * *

(k) * * *

(2) Method 9095A, "Paint Filter Liquids Test," (Revision 1, December 1996) as published in EPA Publication SW–846: "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," IBR approved for §§ 63.7700(b) and 63.7765.

Subpart EEEEE—[Amended]

■ 3. Section 63.7700 is amended by:
■ a. Revising paragraph (a).
■ b. Revising paragraph (b).
■ c. Revising the introductory text of paragraph (c)(1).
■ d. Revising paragraph (c)(3)(i)
■ e. Adding paragraph (c)(3)(iv).

The revisions and additions read as follows:

§ 63.7700 What work practice standards must I meet?

(a) For each segregated scrap storage area, bin or pile, you must either comply with the certification requirements in paragraph (b) of this section, or prepare and implement a plan for the selection and inspection of scrap according to the requirements in paragraph (c) of this section. You may have certain scrap subject to paragraph (b) of this section and other scrap subject to paragraph (c) of this section at your facility provided the scrap remains segregated until charge make-up.

(b) You must prepare and operate at all times according to a written certification that the foundry purchases and uses only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, mercury switches, plastics, or free organic liquids. For the purpose of this paragraph (b), "free organic liquids" is defined as material that fails the paint filter test by EPA Method 9095A, "Paint Filter Liquids Test" (Revision 1, December 1996), as published in EPA Publication SW–846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (incorporated by reference—see § 63.14). Any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, plastics, or free organic liquids can be included in this certification.

(c) * * *

(1) A materials acquisition program to limit organic contaminants according to the requirements in paragraph (c)(1)(i) or (ii) of this section, as applicable.

* * * * *

(3) * * *

(i) The inspection procedures must identify the location(s) where inspections are to be performed for each type of shipment. Inspections may be performed at the scrap supplier's facility. The selected location(s) must provide a reasonable vantage point, considering worker safety, for visual inspection.

* * * * *

(iv) If the inspections are performed at the scrap supplier's facility, the inspection procedures must include an explanation of how the periodic inspections ensure that not less than 10 percent of scrap purchased from each supplier is subject to inspection.

* * * * *

■ 4. Section 63.7735 is amended by revising paragraph (a) to read as follows:

§ 63.7735 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) For each iron and steel foundry subject to the certification requirement in § 63.7700(b), you have demonstrated initial compliance if you have certified in your notification of compliance status that: "At all times, your foundry will purchase and use only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, mercury switches, plastics, or free organic liquids."

* * * * *

■ 5. Section 63.7765 is amended by adding, in alphabetical order, a

definition for the term, "Free organic liquids" to read as follows:

§ 63.7765 What definitions apply to this subpart?

* * * * *

Free organic liquids means material that fails the paint filter test by EPA Method 9095A (incorporated by reference—see § 63.14). That is, if any portion of the material passes through and drops from the filter within the 5-minute test period, the material contains free liquids.

* * * * *

[FR Doc. 05–9591 Filed 5–19–05; 8:45 am]
BILLING CODE 6560–50–P

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
CHARLESTON, WEST VIRGINIA

IN RE:

ACCEPT COMMENTS ON PROPOSED REVISIONS TO EXISTING LEGISLATIVE RULE 45CSR15 - EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS; 45CSR16-STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES; 45CSR25 - TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES; 45CSR33 - ACID RAIN PROVISIONS AND PERMITS; 45CSR34 - EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES; 45CSR37 - MERCURY BUDGET TRADING PROGRAM TO REDUCE MERCURY EMISSIONS; 45CSR39 - CONTROL OF ANNUAL NITROGEN OXIDE EMISSIONS TO MITIGATE INTERSTATE TRANSPORT OF OZONE 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.

TRANSCRIPT OF PROCEEDINGS had and/or testimony adduced in the public hearing regarding the above-referenced matter, held on the 18th day of July, 2005, commencing at 6:00 p.m. and concluding at 6:35 p.m., at the West Virginia Department of Environmental Protection, Cooper's Rock Training Room, 601 57th Street, S.E., Charleston, Kanawha County, West Virginia, with Jeanie Chandler, presiding.

NANCY MCNEALY
CERTIFIED COURT REPORTER
Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

MS. CHANDLER: This public hearing will now come to order on this 18th day of July, 2005, at the West Virginia Department of Environmental Protection, Cooper's Rock Training Room, 601 57th Street S.E., Charleston, West Virginia. This public is being held to accept comments on proposed revisions to existing legislative rule 45CSR15- Emission Standards for Hazardous Air Pollutants pursuant to 40 CFR Part 61; 45CSR16 - Standards of Performance for New Stationary Sources pursuant to to 40 CFR Part 60; 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities; 45CSR33; Acid Rain Provisions and Permits; 45CSR34 - Emission Standards for Hazardous Air Pollutants for Source Categories pursuant to 40 CFR Part 63; 45CSR37 - Mercury Budget Trading Program to Reduce Mercury Emissions; 45CSR39 - Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone 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.

A notice for the hearing was filed in the Secretary of State's office on June 15, 2005, and noticed

in the *State Register* on June 17, 2005. A class 1 legal advertisement was published in both the *Charleston Daily Mail* and *Charleston Gazette* on June 17, 2005, and the notice was posted on the Division of Air Quality's web site.

This public hearing is being held pursuant to the provisions of 29A of the West Virginia Code. My name is Jeanne Chandler with the Division of Air Quality, Department of Environmental Protection. I will be the moderator for the proceedings this evening.

Each rule will be considered separately this evening. Comments and testimony will be accepted until the close of this hearing and will be made part of the rule making record.

The court reporter is Nancy McNealy. If anyone desires a transcript of this proceeding, please contact Ms. McNealy at 988-2873.

The purpose of this hearing is to accept comments on proposed revisions to rule 45CSR34 - Emission Standards for Hazardous Air Pollutants for Source Categories pursuant to 40 CFR Part 63.

This rule establishes and adopts national emission standards for hazardous air pollutants, which will be called NESHAPS for the rest of the hearing, and other

regulatory requirements promulgated by the United States 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 hazardous air pollutants set forth in Section 112(b) of the Clean Air Act. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR 63, promulgated as of June 1st, 2005. 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 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. Environmental Protection Agency pursuant to Section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by

the U.S. Environmental Protection Agency under 40 CFR Part 63; whereas, 45CSR15 incorporates hazardous air pollutant standards promulgated by the U.S. Environmental Protection Agency under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1st, 2005: The National Environmental Performance Track Program, the National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dying of Fabrics and Other Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial, Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens, Pushing, Quenching and Battery Stacks, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated

Regulation For Equipment Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Steam Generating Units and Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

The floor is now open for public comment. Please identify yourself and affiliation, if any, prior to making comments.

(No response.)

There being nothing further, this public hearing for the proposed 45CSR34 is concluded.

(WHEREUPON, the hearing was concluded.)

REPORTER'S CERTIFICATE

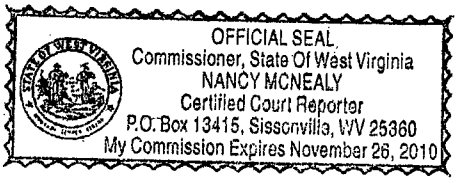
STATE OF WEST VIRGINIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, to wit:

I, **NANCY MCNEALY**, Certified Verbatim Court Reporter and Commissioner of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 21st day of July, 2005.

My commission expires November 26, 2010.

Certified Verbatim Court Reporter



dep

west virginia department of environmental protection

2006 Proposed Rules Public Hearing
601 57th Street SE
Charleston, WV 25302
July 18, 2005 6:00 p.m.

Sign-In

NAME (Please Print)	ADDRESS	ORGANIZATION	PHONE/FAX	E-MAIL	COMMENT YES/NO
Tim Mallan	P.O Box 1936 Charleston WV	APP/Mich Mountain	304-348-4136	tpmallan@dep.com	NO
Randy Cain	[redacted] Eco Cabin Hill Dr. Greensburg, PA 15601	Allegheny Energy	724-838-6004 fax- 724-830-5148	rcain2@alleghenyenergy.com	No
Anna Blankenship	P.O. Box 1721 Charleston WV	WVMA	304-347-8314	owcb@rainbow.com	Written only

AEP
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WV DEP / DIV. OF AIR QUALITY

American Electric Power
1 Riverside Plaza
Columbus, OH 43215-2373
aep.com

July 18, 2005

Mr. John A. Benedict, Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304

RE: AEP Comments on Proposed Division of Air Quality Rules

Dear Director Benedict:

Appalachian Power Company and Ohio Power Company, dba American Electric Power (AEP), are pleased to offer these comments on the Division of Air Quality's (DAQ) proposed rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, 45 C.S.R. 34, 45 C.S.R. 37, 45 C.S.R. 39, 45 C.S.R. 40, and 45 C.S.R. 41 which update and create new rules to incorporate the recent revisions to the federal air quality rules by the USEPA. AEP also wishes to endorse comments prepared and submitted by the West Virginia Chamber of Commerce and West Virginia Manufacturers Association.

AEP is pleased that the DAQ has chosen to adopt the CAIR and CAMR rules (45 CSR 37, 45 CSR 39, 45 CSR 40, and 45 CSR 41) for the utility sector largely as finalized by USEPA. One minor oversight was noted in both 45 CSR 39.53.1 and 45 CSR 40.53.1. It appears that the December 1, 2006 deadline for recording the 2009 through 2014 CAIR NO_x allowance allocations in the general compliance accounts was missed in Section 53.1 of both rules.

With regard to allowing other sources to opt-into the CAIR program or to absorb the non-EGU portion of the NO_x SIP Call program into the CAIR program, we believe that these options are appropriate so long as they do not jeopardize the ability of the West Virginia utility sources to participate in the USEPA CAIR trading program. To meet the USEPA cost estimates for CAIR, we believe that it is essential that the CAIR trading region be as large as possible.

AEP also supports the revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal counterparts.

If you have any questions on these comments, please contact G. J. Wooten of my staff at 614-716-1262.

Sincerely,

P. A. Dal Porto
Manager – Air Quality Services

cc: T. P. Mallan - Charleston
G. J. Wooten - AQS

WEST VIRGINIA CHAMBER OF COMMERCE
The Voice of Business in West Virginia

July 18, 2005

07-18-05P05

John A. Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street SE
Charleston, West Virginia 25304

Re: Comments on Proposed Regulations 45CSR15, 45CSR16, 45CSR25, 45CSR33, 45CSR34, 45CSR37, 45CSR39, 45CSR40, 45CSR41

Dear Director Benedict:

The West Virginia Chamber of Commerce is pleased to have the opportunity to comment on the proposed referenced rules. The West Virginia Chamber of Commerce has as its mission statement the goal of being an action-taking business organization. It is the state's largest business trade organization. We represent companies that employ more than half the state's private sector work force. The members of the Chamber seek not only to improve the state's business climate, but also to improve the state's quality of life.

As the amendments to Rules 15, 16, 25, 33 and 34 involve the incorporation of updates and amendments to federal regulations, the Chamber expresses its support for your efforts to maintain West Virginia's Air Quality Regulations in accord with the nation's regulatory structure. Moreover, we support the Division of Air Quality's efforts to issue the new regulations (45 CSR 37, 39, 40, 41), which incorporate the requirements contained in EPA's Clean Air Interstate Rule and the Clean Air Mercury Rule. Our review shows that these rules are in substantial agreement with the letter and purpose of these federal rules. The Chamber considers these proposed regulations to represent an important effort to link the goals of increased air quality with a reasonable and achievable program of emission control.

The Chamber would, however, like to express puzzlement and, to some degree of concern, about the change in language in 45 CSR 25. In Section 1.1.b there is a modification of the section that appears to significantly change the meaning of the requirement imposed. The existing language states:

> ***"all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such hazardous waste or constituent thereof."***

P.O. Box 2789, Charleston, West Virginia 25330-2789 • VOICE: 304/342-1115 • FACSIMILE: 304/342-1130 • ForJobs@wvchamber.com
www.wvchamber.com

This phrase has been eliminated in the proposed section and replaced by:

> ***"all persons engaged in the treatment, storage, or disposal of hazardous waste or any constituent thereof, will prevent emissions to the air in quantities which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property."***

The new language certainly seems to be much more stringent than existing language, it is quite broad as well as vague. Such poorly defined and overly broad language could lead to subjectivity and as a consequence arbitrarily applied regulatory actions. We would like to better understand the reason the Division feels the need to introduce this change.

In summary, with the exception noted above, the West Virginia Chamber of Commerce supports the agency's proposed changes to the West Virginia Air Quality Regulations.

Sincerely

West Virginia Chamber of Commerce
Timothy P. Mallan, Chair, Air Subcommittee ,
1624 Kanawha Blvd, E.
Charleston, WV 25301

WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311
Telephone: (304) 342-2123
FAX: (304) 342-4552
wvma@wvma.com

July 18, 2005

07-18-05P06:00 RCVD

John A. Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th SE
Charleston, WV 25304

RE: Comments on proposed 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 25, 45 C.S.R 33, 45 C.S.R. 34, 45 C.S.R. 37, 45 C.S.R 39, 45 C.S.R. 40, and 45 C.S.R. 41.

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION ON THE PROPOSED DIVISION OF AIR QUALITY RULES

The West Virginia Manufacturers Association ("WVMA") has many members operating sources which are affected by the West Virginia Department of Environmental Protection's Division of Air Quality ("DAQ") rules. In general, WVMA supports the DAQ's proposed rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 25, 45 C.S.R. 33, 45 C.S.R. 34, 45 C.S.R. 37, 45 C.S.R. 39, 45 C.S.R. 40, and 45 C.S.R. 41 which update and create new rules to incorporate the recent revisions to the federal air quality rules by the United States Environmental Protection Agency ("EPA"). Specifically, the WVMA supports the revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal

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counterparts. In addition, the WVMA supports the promulgation of new rules 45 C.S.R. 39, 45 C.S.R. 40 and 45 C.S.R. 41, which incorporate by reference the new Clean Air Interstate Rules promulgated by the EPA and new rule 45 C.S.R. 37, which incorporates the federal Clean Air Mercury Rule. However, WVMA has some concerns regarding the changes to proposed rule 45 C.S.R. 25, *et seq.*, To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities ("Rule 25"). The WVMA also suggests certain uniform amendments to Rules 15, 16 and 34 to comport with the requirements of W.Va. Code §22-5-4(a)(4). The WVMA appreciates the opportunity to submit the following comments in response to the proposed rules by DAQ:

I. Clean Air Interstate Rule and Clean Air Mercury Rule

The EPA has recently promulgated the Clean Air Interstate Rule ("CAIR") to reduce the interstate transport of fine particulate matter ("PM 2.5") and ozone. Under the CAIR rule, EPA requires that certain States that are not meeting the annual PM 2.5 national ambient air quality standards ("NAAQS") or the 8-hour ozone NAAQS adopt and submit revisions to their State Implementation Plan ("SIP") that would eliminate specified amounts of SO_2 and/or NO_X emissions. The DAQ has proposed to incorporate the EPA's CAIR rule in the proposed new Rules 39, 40, and 41. In addition, EPA has recently promulgated the Clean Air Mercury Rule as a means of reducing mercury emissions. The DAQ has incorporated this rule in the new proposed Rule 37. We support the incorporation of these revisions to the federal rules by West Virginia in these new rules.

II. Rule 25

The WVMA is concerned with the DAQ's proposed revisions to Rule 25. Specifically, we object to the proposed language in Section 1.1.b. Currently, the language states that "all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such hazardous waste or constituent thereof." The proposed revisions state as follows: "all persons engaged in the treatment, storage, or disposal of hazardous waste or any constituent thereof, will prevent emissions to the air in quantities which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property."

We believe that the proposed language is vague and overly stringent. The current language does not require affirmative action of the regulated sources to "prevent" such emissions. In addition, the DAQ has not offered any basis or reasoning for the proposed revisions. The WVMA is concerned that this provision could be applied subjectively to regulated sources as a "catch all" citation for alleged violations. All sources are bound by law not to cause a "statutory air pollution", but this rule goes beyond that obligation without necessary definitions.

Specifically, "constituent" is not defined in the proposed rule. The definition of "hazardous waste" in Rule 25 refers to the general definition in the federal regulations for "hazardous waste" which includes characteristic hazardous wastes and listed hazardous wastes. See, 40 CFR §261.3. The definition of "hazardous waste constituent" in the federal regulations only includes constituents that cause a hazardous waste to be listed or constituents specifically listed in the federal regulations. See, 40 CFR §260.10

Therefore, the definition of "hazardous waste constituent" in the federal regulations does not include constituents of *characteristic* hazardous wastes set forth under the general hazardous waste definition. The provision proposed in Rule 25 would not provide notice to a regulated entity as to what constitutes a constituent of a hazardous waste. As proposed, the term is so broad that it could literally include water or simple calcium, for example. In order to provide adequate clarification, the proposed rule would need to include a definition of "hazardous waste constituent" or, at the least, incorporate the definition of "hazardous waste constituent" under 40 CFR §260.10, which limits hazardous waste constituents to either those constituents listed under the federal regulations or those that cause a hazardous waste to be listed under the federal regulations.

In addition, "emissions to the air which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property" is very subjective, especially since there are no ambient air quality standards for "hazardous waste." Since the proposed provision would require sources to prevent such emissions, a definition of the term would be necessary to provide due process notice to the regulated sources. In order to comply with the proposed rule, a source must be able to understand its obligation. As proposed, the rule does not provide the clarity required under due process rights of the Constitution. Under the void-for-vagueness doctrine, constitutional due process requires that statutes and rules set forth impermissible conduct with sufficient clarity so that a person of ordinary intelligence knows what conduct is prohibited. See, State v. Appleby, 583 S.E.2d 800, 815 (W.Va. 2002). The West Virginia Supreme Court of Appeals has held that:

> Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.

State v. Appleby, 583 S.E.2d at 815 (quoting State v. Miller, 476 S.E.2d 535, 546 (W.Va. 1996); BMW of North American, Inc. v. Gore, 517 U.S. 559, 574, 116 S.Ct. 1589, 1598 (1996)). Likewise, a rule which creates an affirmative obligation should do so with clarity sufficient that the regulated entity can clearly implement compliance. The proposed language in Section 1.1.b in Rule 25 does not clearly define the prohibited conduct and would, therefore, be void-for-vagueness. The WVMA urges the DAQ to withdraw the proposed revisions to Section 1.1.b. At the very least, if these revisions remain, the DAQ should further clarify the provision by including specific definitions of "constituent" of hazardous waste and for those levels of "emissions to the air which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property", all consistent with W.Va. Code §22-5-4(a)(4) as well. We do not believe that federal rules for hazardous waste management contain such stringent provisions.

III. Opacity Stringency Conformity

The WVMA believes that in order to comply with the mandate of W.Va. Code §22-5-4(a)(4), that the "stringency" provisions in Rules 15, 16, and 34, in Section 7.1 of those rules, must be modified with respect to opacity. Opacity is not a regulated pollutant; it is not a pollutant at all. Rather, it is a measure of light transmission used as an indicator of compliance with underlying pollutant emission limits. The federal counterpart rules for sources regulated by NESHAP, NSPS and MACT standards all contain opacity limits of 20%, not the 10% opacity reflected in Rule 2 for boilers.

Accordingly, we request that Section 7.1 in each of Rules 15, 16 and 34 be amended to add the following phrase at the end thereof: "Notwithstanding the foregoing principle, any affected source governed by this rule shall be subject to the opacity (visible emissions) limits contained in the United States Environmental Protection Agency's rules herein adopted by reference in lieu of any other opacity limit established in the rules of the Department of Environmental Protection."

The WVMA appreciates the opportunity to comment on the proposed revisions to the rules and supports the DAQ's proposal to adopt the recent revisions to the federal rules by the EPA. However, the WVMA recommends that the DAQ reconsider the adoption of the additional proposals as discussed hereinabove.

Respectfully submitted,

John Pitner/HCB

The West Virginia Manufacturers Association
John Pitner, Air Team Leader
2001 Quarrier Street
Charleston, WV 25311

cc: Karen S. Price, President, WVMA
Air Team Members

David W. White
8204 Asbury Hills Drive
Cincinnati, Ohio 45255

July 18, 2005

Mr. John Benedict
Director
West Virginia Division of Air Quality
601 57th Street SE
Charleston, West Virginia 25304

Re: Proposed Regulations and Revisions
45 CSR 15, 16, 25, 33, 34, 37, 39, 40 and 41

Dear Mr. Benedict,

Thank you for the opportunity to provide comments on the proposed revisions to 45 CSR 15, 16, 25, 33 and 34 and the proposed new regulations 45 CSR 37, 39, 40 and 41. Unfortunately, such proposed revisions and new regulations fail to meet the requirements of the enabling legislation under which they are proposed for promulgation.

The West Virginia Code provides that the director of the division of environmental protection, or such other person to whom the director has delegated authority, is authorized to promulgate legislative rules not inconsistent with the provisions of the Air Pollution Control Act. W. Va. Code § 22-5-4(a)(4). The Code also provides that it shall be unlawful to cause a statutory air pollution. W. Va. Code § 22-5-3. A statutory air pollution is defined as the discharge in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property. W. Va. Code § 22-5-2(6).

For decades residents of communities along the Kanawha and Ohio River valleys have been assaulted by noxious emissions from coke batteries, steel mills, chemical plants and other sources subject to 45 CSR 15, 16, 25, and 34. Residents of towns such as Follansbee, Nitro, Institute, and Belle have historically and continue to have the quiet enjoyment of their property disturbed by toxic and noxious emissions. Revising these regulations in their present forms will only serve the farce that they are somehow consistent with the requirements of the West Virginia Code.

What are needed are regulations reflecting unique topographic conditions peculiar to West Virginia. The chronic and acute impacts on the health and welfare of West Virginians must be evaluated before any one of the regulations can be considered to have

been promulgated in accordance with the law. But no medical or toxicological evaluation has been conducted to make such a determination. Adoption of federal standards does not rise to the level of consistency with the law of West Virginia. These regulations are adopted under the authority of the West Virginia Code and must comply with its requirements.

Similarly the proposed programs under 45 CSR 37, 39, 40 and 41 do not provide for the protection of all residents of the state from adverse effects of power plant emissions. As research by past personnel of the Division of Air Quality has demonstrated, the vast majority of power plant emission impacts will occur at distances considerably less than 250 kilometers, generally within 50 kilometers. As such, trading programs such as 45 CSR 37 and transport programs such as 45 CSR 39, 40 and 41 are ineffective in controlling emission impacts of those residents adjacent to a paper reduction purchased on the open market, in contrast to an actual reduction required by the language of the West Virginia Code preventing creation of a statutory air pollution.

In short, the DAQ needs to quit permitting pollution and start enforcing the clear language of the law. Thank you again for the opportunity to provide these comments.

Sincerely,

David White

45CSR34

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

RESPONSE TO COMMENTS

On June 17, 2005, the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 18, 2005 to accept oral comments on revisions to proposed rule 45CSR34. Written comments were also accepted through 6:00 PM on Monday, July 18, 2005. No one verbally commented at the public hearing concerning proposed rule 45CSR34. Four commenters submitted written comments regarding proposed revisions to rule 45CSR34. DAQ addresses the written comments below.

I. **COMMENTER: American Electric Power**

COMMENT A. *The commenter states, "AEP also supports revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal counterparts."*

RESPONSE A. No response required.

II. **COMMENTER: West Virginia Chamber of Commerce**

COMMENT A. *The commenter states, "As the amendments to Rules 15, 16, 25, 33 and 34 involve the incorporation of updates and amendments to federal regulations; the Chamber expresses its support for your efforts to maintain West Virginia's Air Quality Regulations in accord with the nation's regulatory structure."*

RESPONSE A. No response required.

III. **COMMENTER: West Virginia Manufacturer's Association**

COMMENT A. *The commenter states, "Specifically, the WVMA supports the revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal counterparts."*

RESPONSE A. No response required.

COMMENT B. *The commenter states, "The WVMA believes that in order to comply with the mandate of W.Va. Code §22-5-4(a)(4), that the "stringency" provisions in Rules 15, 16, and 34, in Section 7.1 of those rules, must be modified with respect to opacity. .....The federal counterpart*

rules for sources regulated by NESHAP, NSPS and MACT standards all contain opacity limits of 20%, not the 10% opacity reflected in Rule 2 for boilers. Accordingly, we request that Section 7.1 in each of Rules 15, 16 and 34 be amended to add the following phrase at the end thereof: "Notwithstanding the foregoing principle, any affected source governed by this rule shall be subject to the opacity (visible emissions) limits contained in the United States Environmental Protection Agency's rules herein adopted by reference in lieu of any other opacity limit established in the rules of the Department of Environmental Protection.""

RESPONSE B. DAQ notes that there is not a federal counterpart for 45CSR2, and 45CSR2 therefore is not subject to a stringency comparison under W.Va. Code §22-5-4(a)(4). The opacity standard incorporated in 45CSR34 must comport to the federal counterpart opacity standard, and not to an opacity standard contained in another rule promulgated by the Secretary. Therefore, no action required.

IV. **COMMENTER: David W. White**

COMMENT A. *The commenter states, "Adoption of federal standards does not rise to the level of consistency with the law of West Virginia. These regulations are adopted under the authority of the West Virginia Code and must comply with its requirements. .....Revising these regulations in their present forms will only serve the farce that they are somehow consistent with the requirements of the West Virginia Code"*

RESPONSE A. The commenter does not provide legal or scientifically supportable evidence to support his assertion that 45CSR34 and its adoption of federal emission standards are not consistent with the West Virginia Code. The commenter generally assumes that these rules conflict with W.Va. Code §22-5-3, however, he does not identify specific sources of air pollutants which cause statutory air pollution nor does he provide evidence supporting the allegation of statutory air pollution. If such evidence is presented, the Secretary may, under W. Va. Code §22-1-3a, make a specific determination and adopt more stringent standards. At this point, the Secretary does not believe such a demonstration is necessary or appropriate. In addition, the DAQ may utilize its authority under W. Va. Code §22-5-3 on a case-by-case basis where warranted. The commenter also does not identify specific language in the proposed rules which conflict with §22-5-3. Additionally, the various federal counterpart regulations adopted each year under these rules adds to the types of sources controlled in West Virginia, and generally provide for more air pollutant reductions than previous versions of these rules. The commenter fails to explain how this conflicts with §22-5-3 or causes statutory air pollution. DAQ believes that adoption of national emission standards for hazardous air pollutants in West Virginia serves to reduce air pollutants rather than cause or contribute to statutory air pollution.