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

Form #3 ◘

Do Not Mark In This Box

RECEIVED
02 JUL 26 PM 4:51
OFFICE OF SECRETARY OF STATE

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

AGENCY: WV DEP - Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 34

TITLE OF RULE BEING AMENDED: "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

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

Authorized Signature

47.40

SCANNED

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 26, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) West Virginia Division of Air Quality
7012 MacCorkle Avenue, Southeast
Charleston, West Virginia 25304

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 12, 2002

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

Class I legal advertisement; Charleston Daily Mail & Charleston Gazette
Sent a copy of the Public Notice to our agency mailing list
Public Notice placed on Division's web site

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

Public Hearing - July 15 2002 Public Comment Period Ended - July 15, 2002

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 26, 2002

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, Deputy Director
7012 MacCorkle Avenue, SE
Charleston, WV 25304
Phone: (304) 926-3647

Fax: (304) 926-3637
jbenedict@mail.dep.state.wv.us

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)

See "f" above

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

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

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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 general provisions for 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). It is the intent of the Secretary to adopt by reference NESHAP standards promulgated as of June 1, 2002. It is also the intent of the Secretary to adopt associated reference methods, performance specifications and other test methods which are appended to such standards. The 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 (HAP) in or pursuant to section 112(b) of the CAA. 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.

This revised rule incorporates by reference the following NESHAP standards promulgated as of June 1, 2002: National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities and National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities, Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins and Group IV Polymers and Resins, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semi-chemical Pulp Mills, National Emission Standards for Pharmaceuticals Production, National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins, National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities, Ethylene Oxide Emissions Standards for Sterilization Facilities, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production, Emergency Extension of the Compliance Date for Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants, Interim Standards for Hazardous Waste Combustors, National Emission Standards for

Hazardous Air Pollutants for Leather Finishing Operations, Approval of Section 112(I) Authority for Hazardous Air Pollutants; State of West Virginia; Department of Environmental Protection, National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

This rule codifies general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by the U.S. Environmental Protection Agency (USEPA) as of June 1, 2002, pursuant to section 112 of the CAA. This rule incorporates hazardous air pollutant standards codified by USEPA under 40 CFR Part 63, whereas 45CSR15 primarily incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61 prior to amendment of the CAA. Promulgation of this rule will enable the State to be the primary enforcement authority for NESHAPS subparts promulgated by U.S. EPA. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA.

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

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

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 5, 2002 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

ADVISORY COUNCIL MEETING MINUTES

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

ATTENDEES:

Advisory Council Members:

Larry Harris
Bill Samples
Rick Roberts
Lisa Dooley
Bill Raney

DEP:

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

Citizens:

Rebecca Robertson, NiSource

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

Welcome/Opening Remarks - Bill Adams

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

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

PRESENTATION OF PROPOSED RULES

Division of Mining and Reclamation

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

Division of Water Resources

Bill Brannon presented rule 47CSR26 to the Council. He stated that general stormwater fees would be $300 rather than the $700 suggested by EPA. An inquiry was made as to how linear footage for water/sewer lines would be used to calculate whether 1-3 acres would be disturbed in order to qualify for a general permit. Director Turner stated that the agency would rely on the applicant's application information but that some clarification would be appropriate. Director Turner also agreed that clarification was needed on whether a $300 renewal fee would be required and whether it would be based on flow calculations. She noted also that an agreement similar to that with the coal division would be reached with the Office of Oil & Gas to issue the general permits and that Water and Oil & Gas would split the fee.

Office of Innovation

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

Division of Waste Management

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

Environmental Enforcement

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

Office of Oil and Gas

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

Division of Air Quality

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

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

OTHER BUSINESS

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

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

little or no time to review the proposals prior to the meeting. Mr. Adams agreed that this would be an appropriate change for future Council meetings.

Bill Samples suggested that action be taken as soon as possible regarding the predictability of permitting. Mr. Adams assured him and the Council that is a DEP priority and noted that all divisions and offices were under the Secretary's mandate to respond to permit applications within 24-48 hours.

The meeting adjourned at 12:07 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: Division of Air Quality

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

1. Effect of Proposed rule:

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

2. Explanation of Above Estimates:

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Part 60 as of June 1, 2002 will be covered under prior budget estimates for implementing Title V of the Clean Air Act, as amended, for which full program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

3. Objectives of These Rules:

This rule establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements pursuant to section 112 of the Clean Air Act, as amended. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act.

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

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:

      See section 2.

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

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

   C. Economic Impact on Citizens/Public at Large.

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

Date: _____

Signature of Agency Head or Authorized Representative:

_____

45CSR34

RECEIVED
02 JUL 26 PM 4:51
OFFICE OF THE SECRETARY OF STATE

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

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

§45-34-1. General.

1.1. Scope. -- This rule establishes general provisions for national emission standards for hazardous air pollutants (NESHAPS) and other regulatory requirements 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 substances listed as hazardous air pollutants (HAP) in or pursuant to section 112(b) of the CAA. ~~It is the intent of the~~ The Secretary ~~to adopt~~ hereby adopts these standards by reference. ~~It is also the intent of the~~ The Secretary ~~to adopt~~ also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W.Va. Code §§22-5-1 et seq.

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

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

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, 2001, as amended by the Federal Register through ~~December 6, 2001~~ June 1, 2002.

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 ~~June 8, 2001~~ April 16, 2002, and which became effective ~~July 1, 2001~~ July 1, 2002.

§45-34-2. Requirements.

2.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, 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.

2.2. 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.

2.3. After the effective date of the state permit program under Title V of the CAA, the Secretary shall determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to ~~Section~~ section 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with ~~Section~~ sections 112(d) and 112(e) of the CAA.

2.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the

owner or operator shall obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 45CSR30 and this rule.

§45-34-3. Definitions.

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

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

3.3. "Hazardous air pollutant" means any air pollutant listed pursuant to section §112(b) of the CAA as of June 1, 2001.

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

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

§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, 2001, as amended by the Federal Register through ~~December 6, 2001~~ June 1, 2002, for the purposes of implementing a program for emission standards for hazardous air pollutants for source categories, except as follows:

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

4.1.b. Any provision related to section 112(r) of the CAA, notwithstanding any requirements of 45CSR30.

§45-34-5. Secretary.

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

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

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 be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

§45-34-7. Inconsistency Between Rules.

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

ORIGINAL

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 34 "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63".

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E., Charleston, West Virginia, commencing at 6:02 p.m., on the 15th day of July, 2002, pursuant to notice.

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

P R O C E E D I N G S

MS. WELSH: We will now begin the hearing for 45CSR34. Emissions Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63.

This rule establishes and adopts general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by the U.S. Environmental Protection Agency pursuant to section 112 of the Federal Clean Air Act, as amended. The rule revisions adopt by reference NESHAP standards promulgated as of June 1, 2002.

It is now your opportunity to comment on 45CSR34. Are there any comments on 45CSR34?

MR. SAMPSON: Yes. Fred Sampson, Clay County. Paragraph 1.1.1 -- Paragraph 1, again it says that it is the intent of the secretary to adopt. It also says that it is also the intent of the secretary to adopt. I would request this to be changed to where it says the secretary hereby adopts.

Paragraph 2.3 -- 2.2.3, let me find that a minute. It now says unless the secretary determines that the maximum blah, blah, blah. I would like to add in there that it is revised to say that unless the secretary,

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

after public comment is received, determines that the dah, dah, dah. So that we make sure that we have public comment in here on hazardous air pollution.

My general comment on hazardous air pollution. You know, if you are having trouble breathing -- I am having trouble breathing. And in our state there is lots of acid rain. And there is lots of pollutions and tons, millions of tons being dumped in our air.

And right now on hazardous air pollution they say if you can't measure it to a certain standard like dioxin then it is not a requirement that we control or regulate that. And to me that is nonsense. If it is produced and you can tell it is produced and your data tells you that you know you have produced it and that you don't have a machine yet that can measure doesn't mean that it shouldn't be regulated.

We should regulate it even if the most minute amount of this thing is produced and it can hurt our people. And I would like to see in this hazardous air pollution that that section, and I don't know what section it is, that covers where you don't have to worry about regulating that which is not measurable, but present day instruments to be revised so that it is now regulated.

And if it happens to dioxin or other

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

dibenzopherons (sic) or whatever it is, just not allow that. If your unit is going to produce it, don't do it here. That's all.

MS. WELSH: Are there any other comments on 45CSR34?

MS. LEWIS: Connie Greytop Lewis for the Environmental Counsel. Again, we support Mr. Sampson's positions. It is many -- in addition, many people have antidotal evidence from their own lives, the lives of their family members, that when family members leave the Kanawha Valley in particular or other urbanized areas of West Virginia suddenly their health problems recede or in some cases actually disappear.

This is clear evidence that whatever we are doing in terms of regulating air pollutants it is not sufficient. And that more needs to be done. It is true that if you know you are producing it and if it seems to be an insignificant quantity, it may still be a problem. And it may still need to be -- and still needs to be regulated, there is no "may" about it.

In general, the Environmental Counsel is a comment covering the whole process would have liked to have seen a more inclusive process in writing and rewriting these regulations.

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

I believe that if the agency had the opportunity to hear from Mr. Sampson or other people with a technical background similar to his earlier in the process that the regulation would have garnered little or no -- the regulations would have garnered little or no opposition.

MS. WELSH: Are there any other comments on 45CSR34? If not this concludes the public hearing for 45CSR34. That's all we have for this evening.

(WHEREUPON, the public hearing was concluded.)

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 19th day of July, 2002.

Missy L. Young, CCR

Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943
Telephone Number: (304) 926-3647
Fax Number: (304) 926-3637

West Virginia Department of Environmental Protection

Bob Wise
Governor

Michael O. Callaghan
Cabinet Secretary

Sign -In

NAME	ADDRESS	ORGANIZATION	COMMENT YES	COMMENT NO
K.B. Poland	P.O. Box 1791 Charleston, WV 25326	Robinson & McElwee PLLC		X
Fred Sampson	HC-68, Box-25 Ivydale, WV 25113	Citizen	✓	
STEVE HANNAA	WV Dept of Ag capitol complex	WVDA	✓	
Joe Dawley	P.O. Box 273 Charleston WV	IOGA	✓	
Connie Greenleaf	2206 Washington St E Charleston WV 25311	WEC	✓	
Tom Nixon	Hansford St.	WVDEP-OOG		X

WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311
Telephone: (304) 342-2123
FAX: (304) 342-4552
wvma@wvma.com

July 15, 2002

Stephanie Timmermeyer, Director
Division of Air Quality
Department of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: Comments on Updated Air Regulations,
Incorporation by Reference

Dear Director Timmermeyer:

The West Virginia Manufacturers Association ("WVMA") appreciates the diligence of the Division of Air Quality in undertaking to incorporate updated sections of the Code of Federal Regulations ("CFR") in 45 CSR 16, 25, 33 and 34.

Please note that the proposed Section 4.1 of 45 CSR 33 (Acid Rain Provisions and Permits) fails to change the effective dates of incorporated CFR sections and Federal Registers from July 1, 2000 and June 13, 2001, respectively, to July 1, 2001 and June 14, 2002, respectively. It appears that this failure to include the more recent provisions is a mere oversight, since proposed Section 1.5 includes the July 1, 2001 and June 14, 2002 dates of incorporation. Nevertheless, the WVMA encourages the Division of Air Quality to explicitly incorporate all relevant CFR provisions through July 1, 2001, as amended by the Federal Register through June 14, 2002, by including these dates in Section 4.1.

We do note that this method of incorporation always means that the CFR referenced will be at least one year out of date from the federal compilation of Title 40 which is republished every year as of July 1, which creates a need for regulated entities and others to research to see what provisions truly applied as of the last Federal Register date incorporated by reference in the state rules. That requires an electronic search at best, and a trip through the library's hard copies at worst. For that reason, we would encourage the DAQ to adopt a protocol for incorporation by reference of the CFR to July 1 of the current year, not the prior year. That compilation will always be a known entity either before or during any comment period, and certainly before the agency files its final rules with the Legislature for approval to promulate. It will help to assure that regulated sources can more easily identify all applicable requirements.

Respectfully,

John K. Pitner
WVMA Air Team Leader

cc: Karen S. Price, President, WVMA
WVMA Air Team Members

Board of Directors

Allegheny Energy	Cytec Industries, Inc.	Elkem Metals Company	Kingsford Manufacturing Co.	Pilgrim's Pride Corporation
Ashland Chemical, Inc.	Dean Company (The)	Flexsys	Koppers Industries, Inc.	PPG Industries, Inc.
Aventis CropScience	The Dow Chemical Company	FMC Corporation	Marble King, Inc.	Special Metals Corporation
BASF Corporation	Downard Hydraulics, Inc.	Georgia-Pacific Corporation	Mylan Pharmaceuticals, Inc.	Toyota
Bowles Rice McDavid Graff & Love	DuPont	GE Plastics	Pechiney Rolled Products, LLC	W.M. Cramer Lumber Co.
Capitol Cement Corporation	Eagle Manufacturing Co.	Kanawha Manufacturing Co.	Phillips Machine Service, Inc.	Weirton Steel Corporation

July 15, 2002

WVA Dept. of Environmental Protection
West Virginia Dept. of Air Quality
7012 MacCorkle Ave., SE
Charleston, WV 25304-2943
Attn Stephanie Timmermeyer, Director.
Subj: Comments to Legislative Rules, WVA Code 22-5-4.

45CSR 34 "Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40CFR 63"

45-34-1, 1.1, The last two sentences state: "It is the intent of the Secretary to adopt..." ., "It is also the intent of the Secretary to adopt" I request this be changed to state:"the Secretary hereby adopts... ", in both sentences.

45-34-2, 2.3: Revise the last sentence to read: "...unless the Secretary, after public comment is received, determines that the .....".

45CSR33- "Acid rain provisions and permits":

45-33-1, 1-1:
Midway thru paragraph, Add after "amended" a date, for clarification.

Last sentence: Revise to read as follows: " The Secretary hereby adopts associated reference methods, performance specifications and other test methods which are appended to these standards".

45CSR16 "Standards of performance for New Stationary Sources Pursuant to 40CFR Part 60:

45-16-1, 1-1:
Rewrite to say: "Secretary hereby adopts" to agree with 45-16-4, 4.1. This will remove the word "intent".

45CSR30 "Requirements for operating permits":
45-30-2, 2.6.j : Take out the last part of the sentence after: "... Clean Air Act"

2.26.b.8. Remove "Municipal Incinerators" , "solid waste incinerators", Medical waste incinerators and ban Incineration of any waste material.. When you MIX AND BURN garbage, you create new deadly chemicals like "DIOXIN", which is a deadly cancer causing material. Please ban and do not issue any permits for incineration of Garbage, medical waste or and other types of incineration. If you do not have a complete chemical analysis of what you are burning, you cannot tell what the output into our air will be.

45-30-3, Para: 3.2a
Delete: "may be deferred by the Secretary", after the Clean Air Act, and delete the last sentence as no longer needed.

45-30-4, 4.3.g
Delete this complete paragraph and delete any other reference to "EMISSION TRADING"
Emission trading, in all of the scenarios existing to date, is only allowing those willing and able to meet the requirements to make money by polluting their neighbors worse than themselves and is discriminatory and in my opinion a tracking and enforcement nightmare. Please do not allow EMISSION TRADING.

5.1.a.3. Page 15;
Add to end of paragraph: "... and will not allow more emission than the standard"

5.1.d.1, 5.1.d.2, 5.1.d.3.
Revise to delete any pollution allowances, however and whenever obtained. There cannot be any allowances without discrimination and we will all suffer from dirtier air should this be allowed

5.1.h. and 5.1.j., 5.8.b, 5.8.d, 6.5.a.1.B,
Rewrite to delete any and all methods of EMISSION TRADING, (see comments on 4.3.g.

45CSR25 "To prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or disposal Facilities"

Paragraph 4.1.3.
DO NOT ALLOW HAZARDOUS|WASTE INCINERATORS. (see comments above).

4.14 e.3
Change the word :"brief" to "complete".

Paragraph 4.1.5.
Pathological Waste Incinerators.???
I take strong exception to allowing this type of incineration as what is going to be incinerated, or how much is allowed or just what is this.
DO NOT ALLOW.

45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits and Procedures for Evaluation.

45-13-6, Page 11:
6.1. Revise the end of the paragraph after "or other tests" to read as follows:
"... the Secretary specifies shall be conducted to determine compliance".
6.2: Revise the first part of this Paragraph to read as follows:
"For Cause, the Secretary shall request...".

45-13-11, Page 14.

11,1.
Mid paragraph, Revise to read as follows:
"....and other temporary purposes for periods of time not to exceed 90 days without applying for a construction permit...".

45-13-15, Page 16;
15.1, 15.1.a, 15.1.b, 15.1.c, 15.1.d, 15.2, 15.3.:
Revise these paragraphs so that ANY Hazardous Air Pollutant is: Recognized, acknowledged, and that they shall be limited to controls that will protect Public Health for those who handle, ship, move, touch or breath the hazardous pollutant.
Revise last sentence in 15.3. to read as follows:
"15.3. Any source or source category that has been the subject of an analysis pursuant to Section 112(n) of the Federal Clean Air Act is subject to all limitations and controls on hazardous air pollutants that is required to protect the health and safety of those coming in contact with the air pollutant. This section is applicable to all 112(n) source or sources. The secretary will provide the requirements upon receipt of an application that fully identifies the hazardous air pollutant.

45-13B
Item 12????
Describe "Mobile Sources".???

Item 25:
Delete "incinerators" Do not allow incineration as a method of getting rid of this waste!!!.

45CSR26 "Nox Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units".

2.46. "NOx Budget trading Program"
I take full exception to this program ; "... as a means of mitigating interstate transport of ozone and nitrogen oxides, an ozone precursor". This program will allow polluters to keep right on polluting in excess of what the codes and regulations and is a smoke screen that allows such pollution to continue which plagues the health, safety and welfare of the U.S.A.citizens.
I strongly oppose this trading program becoming any part of W.Va. rules and regulations, and ask that it be deleted from our regulations.

It is a regulatory nightmare, fraught with possibility of fraud, illegal trades, etc.
2.54, page 7:
I question the listed "33%" of a units maximum design heat input. Efficiency must be a part of this calculation???.
2.56, Page 7:
Do not allow the MOVEMENT of any allowances, allocations, transfers or deductions. If a UNIT produces it, that unit must be reworked, re-manufactured, repaired, upgraded or whatever is necessary to come into compliance or be shut down, PERIOD!!!. No exceptions allowed.
2.63, Page 7:
Why only 48 States????. Who is excluded and why???.

4.1.a., and 4.1.b, page 9:
Delete the following from the last sentence of both paragraphs: "and produced electricity for sale under a firm contract to the electric grid".

45-26-55, Page 32:
Delete NOX allowance Banking and do not allow this as a practice or as part of the regulations. This also allows greed, fraud, regulatory nightmare and limited accountability.

45-26-57:
57.1. Delete and do NOT allow: "Allowance transfers".
57.2 Delete and do NOT allow: "allowance transfers".
60.1, 60.1.a., 60.1.b., 60.1.c. and complete section 45-26-61 on pages 33 and 34 must be deleted and allowance transfers stopped. They are discriminatory and must not be allowed.

45-26-71.
Paragraphs 71.1. and 71.2.
These paragraphs do not give the reasons or requirements that will allow one to know if the units are or are not subject to an: "acid rain limitation". More description of the requirements needed.

74.4:
74.4.b.2.A. Page 41:
Delete any allowance for any owner/operator to apply for "early reduction credits".
74.4.d.
Revise the first part of this paragraph to read as follows:
" The NOx authorized account representative shall submit to the Administrator and the Secretary compliance certification...".

45CSR1 – "NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"

General Comment
NOx and OZONE have been a problem for years and it seems that EPA is trying to do something about this in this rule. It is very confusing and wordy and has a myriad of requirements, but, I do not see how this will in any way REDUCE either NOx or ozone .
The implementation of this program seems too far down the road before any reporting with any certainty that can be measured and I see NO accountability prior to then.
This recommended program allows :
trading of credits, banking of credits, transfer of credits, ,allocation of credits, set-asides of credits, exemptions for meeting requirements, early reduction of credits, deadlines for transfer of credits, compliance accounts for credits, overdraft accounts for credits and general accounts for credits and different requirements for the ozone season.
Talk about a nightmare for regulators to administer. If this program was designed to make more work for the already overworked regulators, I think it will be successful, However, I cannot see any thing this program offers that is going to reduce pollution of our Air.
There are some good guidelines for required reporting and with the full responsibility falling upon, not the owners or operators, but, squarely on the NOx account representative, Who will take the job, Who would want the job. How are you ever going to make this work????

Therefore, I recommend that DEP, delete all of the trading , banking, set-asides, transfers, deadlines, compliance accounts, overdraft accounts and general accounts for credits and therefore, completely scrap this program and rewrite it with enforcement of the requirements as #1 and make clear what the requirements are.
Also, start enforcing immediately the requirements that are already in the rules.
I see no reason for waiting 2-3 more years to start having better air for us West Virginians to breathe and I see no benefit to having new rules that allow others to trade on credits that can only make the problem worse.

Thanks for the opportunity to comment.

Fred Sampson
HC-68, Box 25
Ivydale, WV 25113
304-286-2204
E-mail: gsd01785@mail.wvnet.edu

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUL 12 2002

Ms. Stephanie R. Timmermeyer, Director
Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle, S.E.
Charleston, WV 25304

Dear Ms. Timmermeyer: Stephanie

The purpose of this letter is to respond to your June 11, 2002 request for the U.S. Environmental Protection Agency's (EPA) comments regarding proposed revisions to the following West Virginia air quality regulations: 45CSR1, 45CSR13, 45CSR16, 45CSR25, 45CSR26, 45CSR30, 45CSR33, and 45CSR34. Based on our review, we have no comments on the proposed changes to the aforementioned regulations. Once finalized, the proposed revisions must be formally submitted to EPA as a revision to the West Virginia State Implementation Plan. EPA would like to thank the State of West Virginia for the opportunity to comment on its proposed amendments.

If you should have any questions, please feel free to contact me, or Walter K. Wilkie, Deputy Chief, Air Quality Planning & Information Services Branch, at 215- 814-2150.

Sincerely,

Judith M. Katz, Director
Air Protection Division

Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474

JACKSON & KELLY PLLC

ATTORNEYS AT LAW

1600 LAIDLEY TOWER
P. O. BOX 553
CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

http://www.jacksonkelly.com

217 WEST BURKE STREET
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8800

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

150 CLAY STREET
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-284-4100

412 MARKET STREET
PARKERSBURG, WEST VIRGINIA 26101
TELEPHONE 304-424-3490

1000 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-2000

1144 MARKET STREET
WHEELING, WEST VIRGINIA 26003
TELEPHONE 304-233-4000

1099 18TH STREET
DENVER, COLORADO 80202
TELEPHONE 303-390-0003

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40588
TELEPHONE 859-255-9500

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20037
TELEPHONE 202-973-0200

MEMBER OF LEX MUNDI,
THE WORLD'S LEADING ASSOCIATION
OF INDEPENDENT LAW FIRMS.

July 15, 2002

kbeckett@jacksonkelly.com
(304) 340-1019

Stephanie R. Timmermeyer, Esq.
Director, Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: 2002 Proposed Regulatory Changes.

Dear Director Timmermeyer:

The following comments are provided on behalf of the West Virginia Chamber of Commerce to the draft rulemaking package the Division of Air Quality has recently circulated. One general comment that would enhance the commenting process would be for the agency to provide a preamble or rationale document explaining the agency's proposals. This would especially be useful in light of the agency's recent position that no further communication may be had with the public once a proposal has been published. Having read the changes, it is very natural to want to understand the issue the agency is attempting to address.

1. 45 CSR 1 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

2. 45 CSR 13 –

Modification Thresholds - It is proposed that the term "modification" be revised to require a permit for modifications that result in emissions of six pounds per hour "and" 10 tons per year or more and also for emissions that results in "more than 144 pounds per calendar day." Although the Chamber supports the inclusion of the "and" in the

definition, we question to need for the addition of the 144 pounds per calendar day threshold. The DAQ has not provided any rationale for this limitation in relation to the regulated pollutants. It would be well for the agency to provide additional discussion concerning this proposed change in order to educate the commentors as to the purpose served by this revision.

General Permits – In general, the Chamber supports the concept of creating a program for enhancing the usefulness of the state general permit program. It appears that the DAQ is attempting to modify the general permit program with a view toward that goal. The Chamber supports the creation of a modified fee structure for general permits. It would be well for the agency to provide additional discussion concerning these proposed changes in order to educate the commentors as to the intended result of these modifications.

Public Notice Requirements – The Chamber is appreciative of the modifications to Section 8.4.a and 8.5.a, in that they represent changes designed to address the need to clarify the existing regulation. The Chamber supports the DAQ's proposed removal of Section 8.7 as unnecessary.

Temporary Permits – The DAQ has proposed removal of the timeframe within which the agency would review the request for a temporary permit. Understanding the very nature of such permits, it appears that all would be well served by maintaining a limitation on review time. Perhaps had the agency provided a rationale for this change we would better understand the agency's concerns with the last sentence of Section 11.2.a. The Chamber does not support this modification.

3. 45 CSR 16 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

4. 45 CSR 25 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

5. 45 CSR 26 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

6. 45 CSR 30 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

7. 45 CSR 33 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

8. 45 CSR 34 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

Very truly yours,

Kathy G. Beckett

45CSR34

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

RESPONSE TO COMMENTS

On June 12, 2002, the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 15, 2002 to accept oral comments on the proposed rule, 45CSR34. Written comments were also accepted through 6:00 PM on Monday, July 15, 2002. Two people verbally commented at the public hearing concerning proposed rule 45CSR34. Four commenters submitted written comments on proposed rule 45CSR34. DAQ addresses these comments below.

I. COMMENTER: West Virginia Manufacturers Association

COMMENT A. *The commenter states that it appreciates the DAQ's diligence in undertaking to incorporate updated federal regulations, but also states that this method of incorporation always means that the CFR referenced will be at least one year out of date from the federal compilation of Title 40 which is republished every year as of July 1. This creates a need for regulated entities and others to research to see what provisions truly applied as of the last Federal Register date incorporated by reference in the state rules. That requires an electronic search at best, and a trip through the library's hard copies at worst. For that reason, the commenter encourages the DAQ to adopt a protocol for incorporation by reference of the CFR to July of the current year, not the prior year. That compilation will always be a known entity either before or during any comment period, and certainly before the agency files its final rules with the Legislature for approval to promulgate. It will help to assure that regulated sources can more easily identify all applicable requirements.*

RESPONSE A. The current method of incorporation by reference (IBR) is used by DAQ because referenced documents attached to agency proposed rules must be final, published regulations in effect at the time the proposed rule is filed with the Secretary of State for public notice. See 153CSR §6-8.1. Since the DAQ generally must file its proposed rules before July 1 every year (in order to meet the statutory deadline for filing with the Legislative Rulemaking Review Committee) the DAQ has found that the most efficient method of incorporating the latest federal regulations, i.e. those legally effective at the time a proposed rule is filed for notice, is to reference the previous year's Code of Federal Regulations (CFR) and to reference all regulations published in the Federal Register since that date. Moreover, while the revision date for the Title 40 CFR is indeed July 1 of each year, the date the publication is available is typically after the following October, four months later. This date is well after the proposed rules have been filed for public comment with the Secretary of State.

II. COMMENTER: Fred Sampson

COMMENT A. *The commenter states that in 45-34-1, 1.1, the last two sentences state: "It is the intent of the Secretary to adopt...", "It is also the intent of the Secretary to adopt" I request this be changed to state: "the Secretary hereby adopts..." in both sentences.*

RESPONSE A. DAQ agrees and has revised the subsection accordingly.

COMMENT B. *The commenter suggests that in 45-34-2, 2.3, revise the last sentence to read: "...unless the Secretary, after public comment is received, determines that the"(...so that we make sure that we have public comment in here on hazardous air pollution).*

RESPONSE B. The comment is outside the scope of the proposed revisions to "update" the rule. However, DAQ wishes to clarify that public notice would typically be part of the process of establishing case-by-case maximum achievable control technology standards or other limitations in any draft permit to be issued by the Director under 45CSR13, 45CSR14 or 45CSR30.

COMMENT C. *The commenter states ....my general comment on hazardous air pollution. ....in our state there is lots of acid rain. And there is lots of pollution and tons, millions of tons being dumped in our air.*

And right now on hazardous air pollution they say if you can't measure it to a certain standard like dioxin then it is not a requirement that we control or regulate that. And to me that is nonsense. If it is produced and you can tell it is produced and your data tells you that you know you have produced it and that you don't have a machine yet that can measure doesn't mean that it shouldn't be regulated.

We should regulate it even if the most minute amount of this thing is produced and it can hurt our people. And I would like to see in this hazardous air pollution that section, and I don't know what section it is, that covers where you don't have to worry about regulating that which is not measurable, but present day instruments need to be revised so that it is now regulated.

And if it happens to dioxin or other dibenzopherons (sic) *or whatever it is, just not allow that. If your unit is going to produce it, don't do it here.*

RESPONSE C. DAQ acknowledges the general comment submitted by Mr. Sampson. DAQ notes that the submitted comment is generally outside the scope of the proposed revisions to the rule, which simply are to "update" the rule by including the latest federal regulations governing the emission of hazardous air pollutants. The DAQ believes it is important to adopt the latest federal standards since it is at the federal level that appropriate standards and measurement techniques are best decided.

III. COMMENTER: West Virginia Environmental Council

COMMENT A. *The oral commenter states ....again, we support Mr. Sampson's positions. It*

is many - - in addition, many people have anecdotal evidence from their own lives, the lives of their family members, that when family members leave the Kanawha Valley in particular or other urbanized areas of West Virginia suddenly their health problems recede or in some cases actually disappear.

This is clear evidence that whatever we are doing in terms of regulating air pollutants it is not sufficient. And that more needs to be done. It is true that if you know you are producing it and if it seems to be an insignificant quantity, it may still be a problem. And it may still need to be - - and still needs to be regulated, there is no "may" about it.

In general, the Environmental Council as a comment covering the whole process would have liked to have seen a more inclusive process in writing and rewriting these regulations.

I believe that if the agency had the opportunity to hear from Mr. Sampson or other people with a technical background similar to his earlier in the process that the regulation would have garnered little or no - - the regulations would have garnered little or no opposition.

RESPONSE A. Please see responses II.A., II.B. and II.C. Also, the DAQ states that while it understands the benefits of a stakeholder process, there may be instances when the time and resources involved in a stakeholder process are not warranted. In this case, since the agency had recently conducted several extensive stakeholder processes on its rules in the year 2000, DAQ did not believe convening a stakeholder process was justified.

IV. COMMENTER: U.S. Environmental Protection Agency

COMMENT A. *The commenter states that it has no comments on the proposed changes to the rule.*

RESPONSE A. No response required.

V. COMMENTER: West Virginia Chamber of Commerce

COMMENT A. *The commenter states that it supports the revisions to the rule in that they are consistent with EPA guidance.*

RESPONSE A. No response required.

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.303	2070–0012
* * * * *	
721.333	2070–0012
* * * * *	
721.480	2070–0012
* * * * *	
721.545	2070–0012
* * * * *	
721.632	2070–0012
721.633	2070–0012
* * * * *	
721.1085	2070–0012
* * * * *	
721.2121	2070–0012
* * * * *	
721.2265	2070–0012
* * * * *	
721.3710	2070–0012
* * * * *	
721.3810	2070–0012
* * * * *	
721.3820	2070–0012
721.3821	2070–0012
721.3830	2070–0012
* * * * *	
721.3850	2070–0012
* * * * *	
721.4365	2070–0012
* * * * *	
721.4461	2070–0012
* * * * *	
721.4565	2070–0012
* * * * *	
721.4610	2070–0012
* * * * *	
721.5284	2070–0012
* * * * *	
721.5378	2070–0012
* * * * *	
721.5585	2070–0012
* * * * *	
721.5912	2070–0012
* * * * *	
721.5914	2070–0012
* * * * *	
721.5985	2070–0012
* * * * *	
721.6180	2070–0012
* * * * *	
721.6196	2070–0012
* * * * *	
721.6479	2070–0012
* * * * *	
721.6493	2070–0012
* * * * *	
721.6515	2070–0012
* * * * *	
721.8657	2070–0012
* * * * *	
721.9484	2070–0012
721.9485	2070–0012
721.9486	2070–0012
721.9487	2070–0012
* * * * *	
721.9514	2070–0012
* * * * *	
721.9535	2070–0012
721.9670	2070–0012
721.9671	2070–0012
* * * * *	

* * * * *

[FR Doc. 01–16457 Filed 6–28–01; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6997–9]

RIN 2060–AG91

National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities and National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: On June 17, 1999, we issued the national emission standards for hazardous air pollutants (NESHAP) from Oil and Natural Gas Production Facilities and the national emission standards for hazardous air pollutants from Natural Gas Transmission and Storage Facilities (Oil and Gas NESHAP) (64 FR 32610). These technical corrections will clarify intent and correct errors in the Oil and Gas NESHAP. These technical corrections will not change the level of health protection the Oil and Gas NESHAP provide or the basic control requirements of the Oil and Gas NESHAP. The Oil and Gas NESHAP require new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology (MACT).

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making these final rule corrections without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial in nature, and do not substantively change the requirements of the Oil and Gas NESHAP. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(5).

EFFECTIVE DATE: June 29, 2001.

ADDRESSEES: Docket No. A–94–04 contains the supporting information used in the development of this rulemaking. The docket is located at the U.S. EPA in room M–1500, Waterside Mall (ground floor), 401 M Street SW., Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–3078, facsimile: (919) 541–0246, electronic mail address: nizich.greg@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities that will potentially be affected by these corrections are those that process, upgrade, or store hydrocarbon liquids; or process, upgrade, store, or transport natural gas and are major sources of HAP as defined in section 112 of the Clean Air Act (CAA). The regulated categories and entities include:

Category	Examples of regulated entities
Industry	Condensate tank batteries, glycol dehydration units, natural gas processing plants, and natural gas transmission and storage facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 63.760 and 63.1270 of the Oil and Gas NESHAP. 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.

World Wide Web (WWW). The text of today's document 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 or promulgated rules.

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.

I. Background for the Corrections

Today's action consists of editorial, cross-referencing and clarifying corrections to the Oil and Gas NESHAP that was promulgated on June 17, 1999 (64 FR 32610). These editorial, cross-referencing and clarifying corrections are minor in nature and are noncontroversial. As an example of the editorial corrections, we have replaced the phrase "storage tank" or "tank" with "storage vessel." We have removed the definition of *relief device* since it is not used in the Oil and Gas NESHAP. We have corrected a reporting requirement by replacing "operating days" with "calendar days" as it applies to the submission of Periodic Reports. Cross-referencing errors were corrected as applicable.

II. Corrections and Clarifications of Intent

Some of the corrections in today's action are being made to clarify our intent in the promulgated rule. The following paragraphs present these changes and our rationale for making the changes.

Applicability. As promulgated, subparts HH and HHH (§§ 63.760(a)(1) and 63.1270(a)) require facilities that operate at or near their design throughput to use a throughput that is higher than their design maximum to calculate potential-to-emit (PTE). This outcome was not intended and is not consistent with the General Provisions (40 CFR part 63, subpart A) in which PTE is defined to be "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design." Therefore, we have added text to §§ 63.760(a)(1) and 63.1270(a) clarifying that owners and operators still have the option of using design maximum natural gas or hydrocarbon liquid throughput to estimate maximum PTE.

Section 63.1270(a) states that a "compressor station that transports natural gas prior to the point of custody transfer, or to a natural gas processing plant (if present) is considered a part of the oil and natural gas production source category." Our intent was to exclude a compressor station that transports natural gas prior to the point of custody transfer, or to a natural gas processing plant (if present) from the transmission and storage source category. Therefore, to clarify our intent, we have modified § 63.1270(a) to state that a "compressor station that transports natural gas prior to the point of custody transfer, or to a natural gas processing plant (if present) is not considered a part of the natural gas transmission and storage source category."

Section 63.1270(a)(1) contains a set of five equations that an owner or operator could use in sequence to estimate maximum facility natural gas throughput. We have modified § 63.1270(a)(1) by replacing the five equations with one equation, yielding the same result.

Definitions. We have reworded the definition of *custody transfer* in § 63.1271 by removing the phrase "* * * from storage vessels or automatic transfer facilities, or other equipment, including product loading racks, to pipelines or any other forms of transportation."

The definition of *major source* in subpart HH was confusing because it was unclear that facilities that are not production field facilities (i.e., facilities located after the point of custody transfer) are required to aggregate HAP emissions from all HAP emission units for the major source determination. This is consistent with our interpretation of the associated equipment terminology in section 112(n)(4) of the CAA (64 FR 32618). We have added a sentence to the definition of *major source* in § 63.761 to read: "For facilities that are not production field facilities, HAP emissions from all HAP emission units shall be aggregated for a major source determination."

Startups, shutdowns, and malfunctions. Sections 63.762 and 63.1272 of the Oil and Gas NESHAP require owners and operators to prepare startup, shutdown and malfunction plans, but do not provide an exemption for facilities that were subject to the rule but had no requirements (e.g., a natural gas processing plant, that was a major source, that has a dehydration unit with a throughput less than 18.4 thousand standard cubic meters per day would be subject to the rule, but would have no control requirements). A startup, shutdown and malfunction plan would serve little purpose if there were no emission limit; therefore, today's action clarifies that facilities meeting the exemption criteria specified in §§ 63.764(e) and 63.1274(d) are not required to prepare a startup, shutdown and malfunction plan.

Test methods, compliance procedures, and compliance demonstrations. Sections 63.772(e)(1) and 63.1282(d)(1) provide exemptions from conducting performance tests under those sections for certain specified control devices, including flares. However, §§ 63.772(e)(2) and 63.1282(d)(2) require an owner or operator to comply with § 63.11(b), which contains testing requirements for flares. Flares are not exempt from the testing requirements in § 63.11(b), but are exempt from the performance test requirements in §§ 63.772(e) and 63.1282(d). Therefore, today's action clarifies that intent by modifying §§ 63.772(e)(1)(i) and 63.1282(d)(1)(i) to state that except as specified in paragraph (e)(2) (or paragraph (d)(2) for subpart HHH), a flare designed and operated in accordance with § 63.11(b) of the General Provisions is exempt from the performance testing requirements of the subpart(s).

Also, §§ 63.772(e)(3) and 63.1282(d)(3) state that the performance test must be subject to the schedule specified in § 63.7(a)(2), meaning that the performance test results would be due 240 days after the effective date of the rule, but §§ 63.775(d) and 63.1285(d) require the results to be submitted in the notification of compliance status report, 180 days after the effective date of the rule. To correct this inconsistency, today's action modifies §§ 63.772(e)(3) and 63.1282(d)(3) to clarify that the performance test results must be submitted with the notification of compliance status report, but does not require owners or operators to follow the schedule specified in § 63.7(a)(2) of the General Provisions.

Finally, the Oil and Gas NESHAP allow an owner or operator to use GRI-GLYCalc™ in conjunction with the Atmospheric Rich/Lean Method to determine condenser performance as an alternative to the performance test procedures (§§ 63.772(e)(5) and 63.1282(d)(5)). The results from the GRI-GLYCalc™ program (i.e., uncontrolled emissions) are the same, regardless of control device type. Therefore, today's action modifies §§ 63.772(e)(3)(iii)(B) and 63.1282(d)(3)(iii)(B) to allow owners or operators to use GRI-GLYCalc™ to determine uncontrolled emissions.

Inspection and monitoring requirements. Under §§ 63.775(d) and 63.1285(d), the owner or operator is required to submit a notification of compliance status report that contains information in § 63.775(d)(1) through (12) in addition to the information in § 63.9(h). Section 63.9(h)(2)(i)(B) of the General Provisions requires the owner

or operator to submit "the results of any * * * monitoring procedures or other methods that were conducted * * *" to demonstrate compliance with the standards. Today's action modifies §§ 63.773(c)(2), 63.775(d), 63.1283(c)(2) and 63.1285(d) to clarify that the owner or operator must submit inspection results without having to refer to the General Provisions.

Similarly, §§ 63.775(e) and 63.1285(e) require the owner or operator to submit periodic inspection results in the Periodic reports. Today's action modifies §§ 63.773(c)(2) and 63.1283(c)(2) to refer the reader to the reporting requirements.

We made an error in § 63.773(d)(5) by stating that the owner or operator must comply with § 63.773(d)(5)(i) for all control devices "except for condensers." Section § 63.773(d)(5)(i) applies to all control devices, and owners and operators that install condensers must also comply with § 63.773(d)(5)(ii). Therefore, today's action removes the phrase "* * * except for condensers* * *" from § 63.773(d)(5).

Flare monitoring devices cannot calculate a daily average or a minimum or maximum operating value because they merely indicate that the pilot flame is either on or off. Therefore, today's action adds language to §§ 63.773(d) and 63.1283(d) clarifying that flares are exempt from calculating daily averages and minimum or maximum operating values.

We were not clear in § 63.773(d)(6)(iv) in stating that data available for less than 75 percent of the operating hours constitutes an excursion. Since averaging periods for demonstrating condenser compliance with the 95 percent control requirement can be either on a daily basis or 365-day basis, not specifying the period over which the data sufficiency criteria are evaluated could cause confusion. Therefore, today's action modifies § 63.773(d)(6)(iv) to clarify that an excursion occurs when the data are available for less than 75 percent of the operating hours in a day.

Reporting requirements. Section 63.10(c)(8) of the General Provisions requires an owner or operator to report excess emissions and parameter monitoring exceedances as defined in the relevant standard. As promulgated, §§ 63.775(e)(2)(i) and 63.1285(e)(2)(i) state that excess emissions are excursions. Therefore, since times when the pilot flame is absent would be a parameter monitoring excursion, reporting of the periods when the pilot flame is absent is required under the General Provisions. Today's action lists that requirement in §§ 63.775(e)(x) and 63.1285(e)(ix).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). These technical corrections do not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These technical corrections also are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because they are not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply. These technical corrections also do not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these technical corrections, 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 these rule amendments 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 technical correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 17, 1999 **Federal Register** notice containing the Oil and Natural Gas Production final rule and Natural Gas Transmission and Storage final rule.

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 29, 2001. 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).

List of Subjects for 40 CFR Part 63

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

Dated: June 8, 2001.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

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

PART 63—[AMENDED]

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

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

Subpart HH–[AMENDED]

2. Section 63.760 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 63.760 Applicability and designation of affected source.

(a) * * *

(1) Facilities that are major sources of hazardous air pollutants (HAP) as defined in § 63.761. Emissions for major source determination purposes can be estimated using the maximum natural gas or hydrocarbon liquid throughput, as appropriate, calculated in paragraphs (a)(1)(i) through (iii) of this section. As an alternative to calculating the maximum natural gas or hydrocarbon liquid throughput, the owner or operator of a new or existing source may use the facility's design maximum natural gas or hydrocarbon liquid throughput to estimate the maximum potential emissions. Other means to determine the facility's major source status are allowed, provided the information is documented and recorded to the Administrator's satisfaction. A facility that is determined to be an area source, but subsequently increases its emissions or its potential to emit above the major source levels (without first obtaining and complying with other limitations that keep its potential to emit HAP below major source levels), and becomes a major source, must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date specified in paragraph (f) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

* * * * *

3. Section 63.761 is amended by revising the definitions of "Control device," "Glycol dehydration unit process vent," and "Major source," and by removing the definition of "Relief device" to read as follows:

§ 63.761 Definitions.

* * * * *

Control device means any equipment used for recovering or oxidizing HAP or volatile organic compound (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused (i.e., injected into the flame zone of an enclosed combustion device), returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, is not considered to be a control device or closed-vent system.

* * * * *

Glycol dehydration unit process vent means the glycol dehydration unit reboiler vent and the vent from the GCG separator (flash tank), if present.

* * * * *

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment, as defined in this section), and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control;

(2) Emissions from processes, operations, or equipment that are not part of the same facility, as defined in this section, shall not be aggregated; and

(3) For facilities that are production field facilities, only HAP emissions from glycol dehydration units and storage vessels with the potential for flash emissions shall be aggregated for a major source determination. For facilities that are not production field facilities, HAP emissions from all HAP emission units shall be aggregated for a major source determination.

* * * * *

4. Section 63.762 is amended by revising paragraph (d) and by adding paragraph (e) to read as follows:

§ 63.762 Startups, shutdowns, and malfunctions.

* * * * *

(d) Except as provided in paragraph (e) of this section, the owner or operator shall prepare a startup, shutdown, and malfunction plan as required in § 63.6(e)(3), except that the plan is not required to be incorporated by reference into the source's title V permit as specified in § 63.6(e)(3)(i). Instead, the owner or operator shall keep the plan on record as required by § 63.6(e)(3)(v). The failure of the plan to adequately minimize emissions during startup, shutdown, or malfunctions does not shield an owner or operator from enforcement actions.

(e) Owners or operators are not required to prepare a startup, shutdown, and malfunction plan for any facility where all of the affected sources meet the exemption criteria specified in § 63.764(e).

5. Section 63.764 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (e)(1) introductory text;

c. Revising paragraph (e)(2) introductory text; and

d. Revising paragraph (e)(2)(i).

The revisions read as follows:

§ 63.764 General standards.

(a) Table 2 of this subpart specifies the provisions of subpart A (General Provisions) of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

* * * * *

(e) * * *

(1) The owner or operator is exempt from the requirements of paragraph (c)(1) of this section if the criteria listed in paragraph (e)(1)(i) or (ii) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.774(d)(1).

* * * * *

(2) The owner or operator is exempt from the requirements of paragraph (c)(3) of this section for ancillary equipment (as defined in § 63.761) and compressors at a natural gas processing plant subject to this subpart if the criteria listed in paragraph (e)(2)(i) or (ii) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.774(d)(2).

(i) Any ancillary equipment and compressors that contain or contact a fluid (liquid or gas) must have a total VHAP concentration less than 10 percent by weight, as determined by the procedures specified in § 63.772(a); or

* * * * *

6. Section 63.765 is amended by revising paragraph (c)(3) introductory text to read as follows:

§ 63.765 Glycol dehydration unit process vent standards.

* * * * *

(c) * * *

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraph (c)(3)(i) or (ii) of this section, through the installation and operation of controls as specified in paragraph (b)(1) of this section.

* * * * *

7. Section 63.769 is amended by revising paragraph (a) introductory text and paragraph (c)(6) to read as follows:

§ 63.769 Equipment leak standards.

(a) This section applies to equipment subject to this subpart and specified in paragraphs (a)(1) and (2) of this section that is located at a natural gas processing plant and operates in VHAP service equal to or greater than 300 hours per calendar year.

* * * * *

(c) * * *

(6) Pumps in VHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service located within a natural gas processing plant that is located on the Alaskan North Slope are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and 61.242–7(a), and paragraphs (c)(1) through (3) of this section.

* * * * *

8. Section 63.771 is amended by revising paragraphs (b)(1) and (e)(2) to read as follows:

§ 63.771 Control equipment requirements.

* * * * *

(b) *Cover requirements.*

(1) The cover and all openings on the cover (e.g., access hatches, sampling ports, and gauge wells) shall be designed to form a continuous barrier over the entire surface area of the liquid in the storage vessel.

* * * * *

(e) * * *

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the percent HAP reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including but not limited to changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall HAP emission reduction due to process modifications.

* * * * *

9. Section 63.772 is amended by:

a. Revising paragraph (c)(6)(i);

b. Revising paragraph (e)(1)(i);

c. Revising paragraph (e)(3) introductory text;

d. Revising paragraph (e)(3)(iii)(B) introductory text;

e. Revising paragraph (e)(3)(iii)(B)(*1*);

f. Adding paragraph (e)(3)(iii)(B)(*4*);

g. Revising paragraph (f) introductory text;

h. Revising paragraph (g) introductory text;

i. Revising paragraph (g)(2) introductory text;

j. Revising paragraph (g)(2)(iii) introductory text; and

k. Revising paragraph (g)(3).

The revisions and addition read as follows:

§ 63.772 Test methods, compliance procedures, and compliance demonstrations.

* * * * *

(c) * * *

(6) * * *

(i) Except as provided in paragraph (c)(6)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid, not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

* * * * *

(e) * * *

(1) * * *

(i) Except as specified in paragraph (e)(2) of this section, a flare that is designed and operated in accordance with § 63.11(b);

* * * * *

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.771(d)(1) or (e)(3)(**ii**), the owner or operator shall use the test methods and procedures specified in paragraphs (e)(3)(i) through (iv) of this section. The performance test results shall be submitted in the Notification of Compliance Status Report as required in § 63.775(d)(1)(ii).

* * * * *

(iii) * * *

(B) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed using the equations and procedures specified in paragraphs (e)(3)(iii)(B)(*1*) through (*3*) of this section. As an alternative, the mass rate of either TOC (minus methane and ethane) or total HAP at the inlet of the control device (E_i) may be calculated using the procedures specified in paragraph (e)(3)(iii)(B)(*4*) of this section.

(*1*) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in sample.

* * * * *

(*4*) As an alternative to the procedures for calculating E_i specified in paragraph (e)(3)(iii)(B)(*1*) of this section, the owner or operator may use the model GRI-GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI-GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and shall be determined using the procedures documented in the Gas Research Institute (GRI) report entitled "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1). When the TOC mass rate is calculated for glycol dehydration units using the model GRI-GLYCalc™, all organic compounds (minus methane and ethane) measured by Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, shall be summed. When the total HAP mass rate is calculated for glycol dehydration units using the model GRI-GLYCalc™, only HAP chemicals listed in Table 1 of this subpart shall be summed.

* * * * *

(f) *Compliance demonstration for control device performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in § 63.771(d)(1)(i) and (e)(3). Compliance shall be demonstrated using the requirements in paragraphs (f)(1) through (3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.771(d)(1)(ii) or (e)(3) may demonstrate compliance according to paragraph (g) of this section. An owner or operator may switch between compliance with paragraph (f) of this section and compliance with paragraph (g) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.775(e), following the change.

* * * * *

(g) *Compliance demonstration with percent reduction performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.771(d)(1)(ii) or (e)(3) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (g)(1) through (3) of this section.

* * * * *

(2) Compliance with the percent reduction requirement in § 63.771(d)(1)(ii) or (e)(3) shall be demonstrated by the procedures in paragraphs (g)(2)(i) through (iii) of this section.

* * * * *

(iii) Except as provided in paragraphs (g)(2)(iii)(A) and (B) of this section, at the end of each operating day, the owner or operator shall calculate the 365-day average HAP emission reduction from the condenser efficiencies as determined in paragraph (g)(2)(ii) of this section for the preceding 365 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.771(e), the 365-day average HAP emission reduction shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency as determined in paragraph (g)(2)(ii) of this section, both for the previous 365 operating days.

* * * * *

(3) If the owner or operator has data for 365 days or more of operation, compliance is achieved with the emission limitation specified in § 63.771(d)(1)(ii) or (e)(3) if the average HAP emission reduction calculated in paragraph (g)(2)(iii) of this section is equal to or greater than 95.0 percent.

10. Section 63.773 is amended by:

a. Revising paragraphs (c)(2)(i)(A) and (B);

b. Revising paragraphs (c)(2)(ii)(A) through (C);

c. Revising paragraphs (c)(2)(iii)(A) and (B);

d. Revising paragraph (d)(1) introductory text;

e. Revising paragraph (d)(5) introductory text; and

f. Revising paragraph (d)(6)(iv).

The revisions read as follows:

§ 63.773 Inspection and monitoring requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Conduct an initial inspection according to the procedures specified in § 63.772(c) to demonstrate that the closed-vent system operates with no detectable emissions. Inspection results shall be submitted with the Notification of Compliance Status Report as specified in § 63.775(d)(1) or (2).

(B) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; or broken or missing caps or other closure devices. The owner or operator shall monitor a component or connection using the procedures in § 63.772(c) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced or the connection is unsealed. Inspection results shall be submitted in the Periodic Report as specified in § 63.775(e)(2)(iii).

(ii) * * *

(A) Conduct an initial inspection according to the procedures specified in § 63.772(c) to demonstrate that the closed-vent system operates with no detectable emissions. Inspection results shall be submitted with the Notification of Compliance Status Report as specified in § 63.775(d)(1) or (2).

(B) Conduct annual inspections according to the procedures specified in § 63.772(c) to demonstrate that the components or connections operate with no detectable emissions. Inspection results shall be submitted in the Periodic Report as specified in § 63.775(e)(2)(iii).

(C) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; or broken or missing caps or other closure devices. Inspection results shall be submitted in the Periodic Report as specified in § 63.775(e)(2)(iii).

(iii) * * *

(A) Conduct visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover, or between the cover and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the case where the storage vessel is buried partially or entirely underground, inspection is required only for those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (e.g., fill ports, access hatches, gauge wells, etc.) and can be opened to the atmosphere.

(B) The inspections specified in paragraph (c)(2)(iii)(A) of this section shall be conducted initially, following the installation of the cover. Inspection results shall be submitted with the Notification of Compliance Status Report as specified in § 63.775(d)(12). Thereafter, the owner or operator shall perform the inspection at least once every calendar year, except as provided in paragraphs (c)(5) and (6) of this section. Annual inspection results shall be submitted in the Periodic Report as specified in § 63.775(e)(2)(iii).

* * * * *

(d) * * *

(1) For each control device, except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (9) of this section. Owners or operators that install and operate a flare in accordance with § 63.771(d)(1)(iii) are exempt from the requirements of paragraphs (d)(4) and (5) of this section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is achieving the applicable performance requirements of § 63.771(d) or (e)(3). The continuous parameter monitoring system shall meet the following specifications and requirements:

* * * * *

(5) For each operating parameter monitor installed in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall

comply with paragraph (d)(5)(i) of this section for all control devices, and when condensers are installed, the owner or operator shall also comply with paragraph (d)(5)(ii) of this section.

* * * * *

(6) * * *

(iv) An excursion occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day.

* * * * *

11. Section 63.774 is amended by:

a. Revising paragraph (b)(4)(i);

b. Revising paragraph (b)(4)(ii)(A);

c. Revising paragraph (b)(8);

d. Revising paragraph (d)(2)(i);

e. Revising paragraph (d)(2)(ii); and

f. Revising paragraph (e)(3).

The revisions read as follows:

§ 63.774 Recordkeeping requirements.

* * * * *

(b) * * *

(4) * * *

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.773(d) or specified by the Administrator in accordance with § 63.773(d)(3)(iii). For flares, the hourly records and records of pilot flame outages specified in paragraph (e) of this section shall be maintained in place of continuous records.

(ii) * * *

(A) For flares, the records required in paragraph (e) of this section.

* * * * *

(8) For each inspection conducted in accordance with § 63.773(c) during which no leaks or defects are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks or defects were detected.

* * * * *

(d) * * *

(2) * * *

(i) Information and data used to demonstrate that a piece of ancillary equipment or a compressor is not in VHAP service or not in wet gas service shall be recorded in a log that is kept in a readily accessible location.

(ii) Identification and location of ancillary equipment or compressors, located at a natural gas processing plant subject to this subpart, that is in VHAP service less than 300 hours per year.

(e) * * *

(3) All hourly records and other recorded periods when the pilot flame is absent.

12. Section 63.775 is amended by:

a. Revising paragraph (d) introductory text;

b. Revising paragraph (d)(1) introductory text;

c. Removing "; or" at the end of paragraph (d)(1)(i) and adding in its place ".";

d. Adding paragraph (d)(1)(iii);

e. Revising paragraph (d)(2) introductory text;

f. Removing ", and" at the end of paragraph (d)(2)(i) and adding in its place ".";

g. Adding paragraph (d)(2)(iii);

h. Revising paragraph (d)(9);

i. Adding paragraph (d)(12);

j. Revising paragraph (e)(1);

k. Revising paragraph (e)(2) introductory text;

l. Revising paragraph (e)(2)(ii)(D); and

m. Adding paragraph (e)(2)(x).

The revisions and additions read as follows:

§ 63.775 Reporting requirements.

* * * * *

(d) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status Report as required under § 63.9(h) within 180 days after the compliance date specified in § 63.760(f). In addition to the information required under § 63.9(h), the Notification of Compliance Status Report shall include the information specified in paragraphs (d)(1) through (12) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If all of the information required under this paragraph has been submitted at any time prior to 180 days after the applicable compliance dates specified in § 63.760(f), a separate Notification of Compliance Status Report is not required. If an owner or operator submits the information specified in paragraphs (d)(1) through (12) of this section at different times, and/or different submittals, subsequent submittals may refer to previous submittals instead of duplicating and resubmitting the previously submitted information.

(1) If a closed-vent system and a control device other than a flare are used to comply with § 63.764, the owner or operator shall submit the information in paragraph (d)(1)(iii) of this section and the information in either paragraph (d)(1)(i) or (ii) of this section.

* * * * *

(iii) The results of the closed-vent system initial inspections performed according to the requirements in § 63.773(c)(2)(i) and (ii).

(2) If a closed-vent system and a flare are used to comply with § 63.764, the owner or operator shall submit performance test results including the information in paragraphs (d)(2)(i) and (ii) of this section. The owner or operator shall also submit the information in paragraph (d)(2)(iii) of this section.

* * * * *

(iii) The results of the closed-vent system initial inspections performed according to the requirements in § 63.773(c)(2)(i) and (ii).

* * * * *

(9) The owner or operator shall submit the analysis performed under § 63.760(a)(1).

* * * * *

(12) If a cover is installed to comply with § 63.764, the results of the initial inspection performed according to the requirements specified in § 63.773(c)(2)(iii).

(e) * * *

(1) An owner or operator shall submit Periodic Reports semiannually beginning 60 calendar days after the end of the applicable reporting period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status Report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status Report is due.

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (x) of this section, as applicable.

* * * * *

(D) For each excursion caused by the lack of monitoring data, as specified in § 63.773(d)(6)(iv), the report must include the date and duration of the period when the monitoring data were not collected and the reason why the data were not collected.

* * * * *

(x) For flares, the records specified in § 63.774(e)(3).

* * * * *

13. In Table 2 of subpart HH the entries "§ 63.6(h)", "§ 63.7(a)(2)", "§ 63.9(b)(2)" and "§ 63.10(b)(1)" are revised to read as follows:

TABLE 2.—TO SUBPART HH—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
*	* *	* * * *
§ 63.6(h)	No	Subpart HH does not contain opacity or visible emission standards.
*	* *	* * * *
§ 63.7(a)(2)	Yes	But the performance test results must be submitted within 180 days after the compliance date.
*	* *	* * * *
§ 63.9(b)(2)	Yes	Existing sources are given 1 year (rather than 120 days) to submit this notification.
*	* *	* * * *
§ 63.10(b)(1)	Yes	§ 63.774(b)(1) requires sources to maintain the most recent 12 months of data on site and allows offsite storage for the remaining 4 years of data.

* * * * *

Subpart HHH—[AMENDED]

14. Section 63.1270 is amended by revising paragraphs (a) introductory text and (a)(1) introductory text and by removing paragraphs (a)(1)(i) through (iii) to read as follows:

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners and operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there are no local HAP emissions as defined using § 63.1271). Emissions for major source determination purposes can be estimated using the maximum natural gas throughput calculated in either paragraph (a)(1) or (2) of this section and paragraphs (a)(3) and (4) of this section. As an alternative to calculating the maximum natural gas throughput, the owner or operator of a new or existing source may use the facility design maximum natural gas throughput to estimate the maximum potential emissions. Other means to determine the facility's major source status are allowed, provided the information is documented and recorded to the Administrator's satisfaction. A compressor station that transports natural gas prior to the point of custody transfer or to a natural gas processing plant (if present) is not considered a part of the natural gas transmission and storage source category. A facility that is determined to be an area source, but subsequently increases its emissions or its potential to emit above the major source levels (without first obtaining and complying with other limitations that keep its potential to emit HAP below major source levels), and becomes a major source, must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date specified in paragraph (d) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(1) Facilities that store natural gas or facilities that transport and store natural gas shall calculate maximum annual facility natural gas throughput using the following equation:

$$\text{Throughput} = \frac{8{,}760}{\left(\frac{1}{IR_{max}} + \frac{1}{WR_{max}}\right)}$$

Where:

Throughput = Maximum annual facilitywide natural gas throughput in cubic meters per year.

$_{IR}$ max = Maximum facility injection rate in cubic meters per hour.

$_{WR}$ max = Maximum facility withdrawal rate in cubic meters per hour.

8,760 = Maximum hours of operation per year.

* * * * *

15. Section 63.1271 is amended by revising the definitions of "Control device," "Custody transfer," and "Glycol dehydration unit process vent," and by removing the definition of "Federal Energy Regulatory Commission Cushion or FERC Cushion" to read as follows:

§ 63.1271 Definitions.

* * * * *

Control device means any equipment used for recovering or oxidizing HAP or volatile organic compound (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon absorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused (i.e., injected into the flame zone of an enclosed combustion device), returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, is not considered to be a control device or a closed-vent system.

Custody transfer means the transfer of natural gas after processing and/or treatment in the production operations to pipelines or any other forms of transportation.

* * * * *

Glycol dehydration unit process vent means the glycol dehydration unit reboiler vent and the vent from the GCG separator (flash tank), if present.

* * * * *

16. Section 63.1272 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 63.1272 Startups, shutdowns, and malfunctions.

* * * * *

(d) Except as provided in paragraph (e) of this section, the owner or operator shall prepare a startup, shutdown, or malfunction plan as required in § 63.6(e)(3), except that the plan is not required to be incorporated by reference into the source's title V permit as specified in § 63.6(e)(3)(i). Instead, the owner or operator shall keep the plan on record as required by § 63.6(e)(3)(v). The failure of the plan to adequately minimize emissions during the startup, shutdown, or malfunction does not shield an owner or operator from enforcement actions.

(e) Owners or operators are exempt from the requirements to prepare a startup, shutdown, or malfunction plan for any facility where all of the affected

sources meet the exemption criteria specified in § 63.1274(d).

17. Section 63.1274 is amended by revising paragraph (d) introductory text and paragraph (d)(1) to read as follows:

§ 63.1274 General standards.

* * * * *

(d) *Exemptions.* The owner or operator is exempt from the requirements of paragraph (c) of this section if the criteria listed in paragraph (d)(1) or (2) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.1284(d).

(1) The actual annual average flow of gas to the glycol dehydration unit is less than 283.0 thousand standard cubic meters per day, as determined by the procedures specified in § 63.1282(a)(1); or

* * * * *

18. Section 63.1275 is amended by revising paragraphs (a) and (c)(3) introductory text to read as follows:

§ 63.1275 Glycol dehydration unit process vents standards.

(a) This section applies to each glycol dehydration unit subject to this subpart with an actual annual average natural gas flowrate equal to or greater than 283.0 thousand standard cubic meters per day and with actual average benzene glycol dehydration unit process vent emissions equal to or greater than 0.90 megagrams per year.

* * * * *

(c) * * *

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraph (c)(3)(i) or (ii) through the installation and operation of controls as specified in paragraph (b)(1) of this section.

* * * * *

19. Section 63.1281 is amended by revising paragraph (e)(2) to read as follows:

§ 63.1281 Control equipment requirements.

* * * * *

(e) * * *

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the percent HAP reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including but not limited to changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall HAP emission reduction due to process modifications.

* * * * *

20. Section 63.1282 is amended by:

a. Revising paragraph (a)(1)(ii);

b. Revising paragraph (b)(6)(i);

c. Revising paragraph (d)(1)(i);

d. Revising paragraph (d)(3) introductory text;

e. Revising paragraph (d)(3)(iii)(B) introductory text;

f. Revising paragraph (d)(3)(iii)(B)(*1*);

g. Adding paragraph (d)(3)(iii)(B)(*4*);

h. Revising paragraph (e) introductory text;

i. Revising paragraph (f)(2) introductory text;

j. Revising paragraph (f)(2)(iii) introductory text;

k. Revising paragraph (f)(2)(iii)(A);

l. Revising paragraph (f)(2)(iii)(B); and

m. Revising paragraph (f)(3).

The revisions and addition read as follows:

§ 63.1282 Test methods, compliance procedures, and compliance demonstrations.

(a) * * *

(1) * * *

(ii) The owner or operator shall document, to the Administrator's satisfaction, that the actual annual average natural gas flowrate to the glycol dehydration unit is less than 283.0 thousand standard cubic meters per day.

* * * * *

(b) * * *

(6)(i) Except as provided in paragraph (b)(6)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic HAP or VOC, the average stream response factor shall be calculated on an inert-free basis.

* * * * *

(d) * * *

(1) * * *

(i) Except as specified in paragraph (d)(2) of this section, a flare that is designed and operated in accordance with § 63.11(b);

* * * * *

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.1281(d)(1) or (e)(3)(ii), the owner or operator shall use the test methods and procedures specified in paragraphs (d)(3)(i) through (iv) of this section. The performance test results shall be submitted in the Notification of Compliance Status Report as required in § 63.1285(d)(1)(ii).

* * * * *

(iii) * * *

(B) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed using the equations and procedures specified in paragraphs (d)(3)(iii)(B)(*1*) through (*3*) of this section. As an alternative, the mass rate of either TOC (minus methane and ethane) or total HAP at the inlet of the control device (E_i) may be calculated using the procedures specified in paragraph (d)(3)(iii)(B)(*4*) of this section.

(*1*) The following equations shall be used:

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i$$

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20 °C.

n = Number of components in sample.

* * * * *

(4) As an alternative to the procedures for calculating E_i specified in paragraph (d)(3)(iii)(B)(*1*) of this section, the owner or operator may use the model GRI-GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI-GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and shall be determined using the procedures documented in the Gas Research Institute (GRI) report entitled "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1). When the TOC mass rate is calculated for glycol dehydration units using the model GRI-GLYCalc™, all organic compounds (minus methane and ethane) measured by Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, shall be summed. When the total HAP mass rate is calculated for glycol dehydration units using the model GRI-GLYCalc™, only HAP chemicals listed in Table 1 of this subpart shall be summed.

* * * * *

(e) *Compliance demonstration for control devices performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in § 63.1281(d)(1) and (e)(3)(ii). Compliance shall be demonstrated using the requirements in paragraphs (e)(1) through (3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.1281(d)(1)(ii) or (e)(3)(ii) may demonstrate compliance according to paragraph (f) of this section. An owner or operator may switch between compliance with paragraph (e) of this section and compliance with paragraph (f) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.1285(e), following the change.

* * * * *

(f) * * *

(2) Compliance with the percent reduction requirement in § 63.1281(d)(1)(ii) or (e)(3) shall be demonstrated by the procedures in paragraphs (f)(2)(i) through (iii) of this section.

* * * * *

(iii) Except as provided in paragraphs (f)(2)(iii)(A), (B), and (D) of this section, at the end of each operating day the owner or operator shall calculate the 30-day average HAP emission reduction from the condenser efficiencies as determined in paragraph (f)(2)(ii) of this section for the preceding 30 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.1281(e), the 30-day average HAP emission reduction shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency as determined in paragraph (f)(2)(ii) of this section, both for the preceding 30 operating days.

(A) After the compliance date specified in § 63.1270(d), an owner or operator of a facility that stores natural gas that has less than 30 days of data for determining the average HAP emission reduction shall calculate the cumulative average at the end of the withdrawal season, each season, until 30 days of condenser operating data are accumulated. For a facility that does not store natural gas, the owner or operator that has less than 30 days of data for determining average HAP emission reduction shall calculate the cumulative average at the end of the calendar year, each year, until 30 days of condenser operating data are accumulated.

(B) After the compliance date specified in § 63.1270(d), for an owner or operator that has less than 30 days of data for determining the average HAP emission reduction, compliance is achieved if the average HAP emission reduction calculated in paragraph (f)(2)(iii)(A) of this section is equal to or greater than 95.0 percent.

* * * * *

(3) Compliance is achieved with the emission limitation specified in § 63.1281(d)(1)(ii) or (e)(3) if the average HAP emission reduction calculated in paragraph (f)(2)(iii) of this section is equal to or greater than 95.0 percent.

21. Section 63.1283 is amended by:

a. Revising paragraphs (c)(2)(i)(A) and (B);

b. Revising paragraphs (c)(2)(ii)(A) through (C);

c. Revising paragraph (d)(1) introductory text; and

d. Revising paragraph (d)(6)(iii).

The revisions read as follows:

§ 63.1283 Inspection and monitoring requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Conduct an initial inspection according to the procedures specified in § 63.1282(b) to demonstrate that the closed-vent system operates with no detectable emissions. Inspection results shall be submitted with the Notification of Compliance Status Report as specified in § 63.1285(d)(1) or (2).

(B) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; or broken or missing caps or other closure devices. The owner or operator shall monitor a component or connection using the procedures specified in § 63.1282(b) to demonstrate that it operates with no detectable emissions following any time the component or connection is repaired or replaced or the connection is unsealed. Inspection results shall be submitted in the Periodic Report as specified in § 63.1285(e)(2)(iii).

(ii) * * *

(A) Conduct an initial inspection according to the procedures specified in § 63.1282(b) to demonstrate that the closed-vent system operates with no detectable emissions. Inspection results shall be submitted with the Notification of Compliance Status Report as specified in § 63.1285(d)(1) or (2).

(B) Conduct annual inspections according to the procedures specified in § 63.1282(b) to demonstrate that the components or connections operate with no detectable emissions. Inspection results shall be submitted in the Periodic Report as specified in § 63.1285(e)(2)(iii).

(C) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; or broken or missing caps or other closure devices. Inspection results shall be submitted in the Periodic Report as specified in § 63.1285(e)(2)(iii).

* * * * *

(d) * * *

(1) For each control device except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (9) of this section that will allow a determination to be made whether the control device is achieving the applicable performance requirements of § 63.1281(d) or (e)(3). Owners or operators that install and operate a flare in accordance with § 63.1281(d)(1)(iii) are exempt from the requirements of paragraphs (d)(4) and (5) of this section. The continuous

parameter monitoring system must meet the following specifications and requirements:

* * * * *

(6) * * *

(iii) An excursion occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day.

* * * * *

22. Section 63.1284 is amended by:

a. Revising paragraph (b)(3) introductory text;

b. Revising paragraphs (b)(4)(i) and (ii);

c. Revising paragraph (b)(7)(iii); and

d. Revising paragraph (e)(3).

The revisions read as follows:

§ 63.1284 Recordkeeping requirements.

* * * * *

(b) * * *

(3) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.1283(d). Notwithstanding the previous sentence, monitoring data recorded during periods identified in paragraphs (b)(3)(i) through (iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

* * * * *

(4) * * *

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.1283(d) or specified by the Administrator in accordance with § 63.1283(d)(3)(iii). For flares, the hourly records and records of pilot flame outages specified in paragraph (e) of this section shall be maintained in place of continuous records.

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.1283(d)(4). For flares, the records required in paragraph (e) of this section.

* * * * *

(7) * * *

(iii) Maximum instrument reading measured by the method specified in § 63.1282(b) after the leak or defect is successfully repaired or determined to be nonrepairable.

* * * * *

(e) * * *

(3) All hourly records and other recorded periods when the pilot flame is absent.

23. Section 63.1285 is amended by:

a. Revising paragraph (d) introductory text;

b. Adding paragraph (d)(1)(iii);

c. Adding paragraph (d)(2)(iii);

d. Revising paragraph (e)(1);

e. Revising paragraph (e)(2) introductory text;

f. Revising paragraph (e)(2)(vii); and

g. Adding paragraph (e)(2)(ix).

The revisions and additions read as follows:

§ 63.1285 Reporting requirements.

* * * * *

(d) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status Report as required under § 63.9(h) within 180 days after the compliance date specified in § 63.1270(d). In addition to the information required under § 63.9(h), the Notification of Compliance Status Report shall include the information specified in paragraphs (d)(1) through (10) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If all of the information required under this paragraph have been submitted at any time prior to 180 days after the applicable compliance dates specified in § 63.1270(d), a separate Notification of Compliance Status Report is not required. If an owner or operator submits the information specified in paragraphs (d)(1) through (10) of this section at different times, and/or different submittals, subsequent submittals may refer to previous submittals instead of duplicating and resubmitting the previously submitted information.

(1) * * *

(iii) The results of the closed-vent system initial inspections performed according to the requirements in § 63.1283(c)(2)(i) and (ii).

(2) * * *

(iii) The results of the closed-vent system initial inspections performed according to the requirements in § 63.1283(c)(2)(i) and (ii).

* * * * *

(e) * * *

(1) An owner or operator shall submit Periodic Reports semiannually beginning 60 calendar days after the end of the applicable reporting period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status Report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status Report is due.

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (ix) of this section, as applicable.

* * * * *

(vii) Any change in compliance methods as specified in § 63.1282(c).

* * * * *

(ix) For flares, the records specified in § 63.1284(c).

* * * * *

24. In Table 2 of subpart HHH the entries "§ 63.6(f)(1)" through "§ 63.7(d)" are added, and "§ 63.9(b)(2)" and "§ 63.10(b)(1)" are revised to read as follows:

TABLE 2.—TO SUBPART HHH—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH

General provisions reference	Applicable to subpart HHH	Explanation
*	* * * * * *	
§ 63.6(f)(1)	Yes	
§ 63.6(f)(2)	Yes	
§ 63.6(f)(3)	Yes	
§ 63.6(g)	Yes	
§ 63.6(h)	No	Subpart HHH does not contain opacity or visible emission standards.
§ 63.6(i)(1)–(i)(14).	Yes	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes	
§ 63.6(j)	Yes	

TABLE 2.—TO SUBPART HHH—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.7(a)(1)	Yes	
§ 63.7(a)(2)	Yes	But the performance test results must be submitted within 180 days after the compliance date.
§ 63.7(a)(3)	Yes	
§ 63.7(b)	Yes	
§ 63.7(c)	Yes	
§ 63.7(d)	Yes	
*	* *	* * * *
§ 63.9(b)(2)	Yes	Existing sources are given 1 year (rather than 120 days) to submit this notification.
*	* *	* * * *
§ 63.10(b)(1)	Yes	Section 63.1284(b)(1) requires sources to maintain the most recent 12 months of data on site and allows offsite storage for the remaining 4 years of data.

[FR Doc. 01–16438 Filed 6–28–01; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7003–1]

RIN 2050–AE64

Oil Pollution Prevention and Response; Non-Transportation-Related Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of June 30, 2000, revising requirements for facilities preparing Facility Response Plans. This document is being issued to correct typographical errors, remove inconsistent rule language, and change incorrect references in the rule.

EFFECTIVE DATE: June 29, 2001.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8823 (davis.barbara@epamail.epa.gov); or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323).

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

Non-transportation related facilities handling, storing, or transporting oil that are considered "significant and substantial harm," as well as certain other facilities designated by the Regional Administrator, must submit Facility Response Plans (FRPs) to the Agency. The Agency included in the final rule a more detailed description of which facilities are potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. In person. The Agency has established an official record for this action under docket control number SPCC–9P. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Superfund Docket, Suite 105, 1235 Jefferson Davis Highway, Crystal Gateway I, Arlington, VA 22202. You may inspect the docket between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays; and you may make an appointment to review the docket by calling 703–603–9232. You may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, you will be charged an administrative fee of $25 and a charge of $0.15 per page for each page after 266. The docket will mail materials to you if you are outside of the Washington, DC metropolitan area.

III. What Does This Technical Correction Do?

A final rule revising the facility response plan requirements for non-transportation related facilities handling, storing, or transporting animal fats or vegetable oils was published in the **Federal Register** of June 30, 2000 (65 FR 40776). This correction is being published to:

Correct minor typographical errors in §§ 112.20 and 112.21, and appendix E;

Correct the inadvertent reference to "petroleum oils" in section 8.2.1 of appendix E (this section is about animal fats and vegetable oils rather than petroleum oils, as shown in the title in section 8.0);

Remove inconsistent language and combine sections 9.2 and 9.2.1 of appendix E, which describe USCG planning levels corresponding to EPA's medium discharge;

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

I. Submission to Congress and the Comptroller General

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 this 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**. This 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, Chemical accident prevention, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 25, 2001.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

Part 63, chapter I, title 40 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—General Provisions

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

§ 63.14 Incorporations by reference.

* * *

(d) * * *

(2) New Jersey's *Toxic Catastrophe Prevention Act Program*, (July 20, 1998), Incorporation By Reference approved for § 63.99 (a)(30)(i) of subpart E of this part.

* * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by adding a new paragraph (a)(30) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(30) New Jersey

(i) Affected sources must comply with the Toxic Catastrophe Prevention Act Program (TCPA), (July 20, 1998), (incorporated by reference as specified in § 63.14) as described in paragraph (a)(30)(i)(A) of this section:

(A) Except for authorities identified as not being delegated, the regulations incorporated in New Jersey's "Toxic Catastrophe Prevention Act Program," Title 7, Chapter 31, of the New Jersey Administrative Code: Subchapter 1, "General Provisions" (sections 1.1 to 1.10 except for the definition of "What if Checklist"), Subchapter 2, "Hazard Assessment," Subchapter 3, "Minimum Requirements for a Program 2 TCPA Risk Management Program," Subchapter 4, "Minimum Requirements for a Program 3 TCPA Risk Management Program," Subchapter 5, "Emergency Response," Subchapter 6, "Extraordinarily Hazardous Substances," Subchapter 7, "Risk Management Plan and TCPA Submission," and Subchapter 8, "Other Federal Requirements," (effective July 20, 1998), pertain to the sources affected by 40 CFR part 68 and have been approved under the procedures in §§ 63.91, 63.93 and 63.95 to be implemented and enforced in place of 40 CFR part 68, Subparts A through H, as may be amended.

(*1*) Authorities not delegated:

(*i*) The New Jersey Department of Environmental Protection is not delegated the Administrator's authority to implement and enforce New Jersey's Toxic Catastrophe Prevention Act Program, Title 7, Chapter 31, of the New Jersey Administrative Code, in lieu of the provisions of 40 CFR part 68 as they apply to the regulation of processes that are covered only because they contain regulated quantities of liquid petroleum gases (LPG) regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (N.J.S.A. 21:1B),

(*ii*) Pursuant to § 63.90(c) the New Jersey Department of Environmental Protection is not delegated the Administrator's authority to add or delete substances from the list of substances established under section 112(r) and set forth in 40 CFR 68.130.

[FR Doc. 01–16561 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 264

[FRL–7001–8]

RIN 2050

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on targeted amendments to the regulations for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999 (NESHAP: Final

Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). The revisions make improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. We are approving these revisions to make it easier to comply with the September 30, 1999 final rule.

DATES: This rule is effective on October 16, 2001 without further notice, unless EPA receives adverse comment by August 17, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: If you wish to comment on this direct final rule, you must send an original and two copies of the comments referencing Docket Number F–2001–RC4F–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the "Supplementary Information" section below.

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

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view these as noncontroversial amendments. We anticipate no adverse comment because we have worked with the interested parties in their development. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the emissions standards for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999, if adverse comments are filed. This direct final rule will be effective on October 16, 2001 without further notice unless we receive adverse comment by August 17, 2001. If EPA receives adverse comment on one or more distinct amendments of this rulemaking, 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 of the distinct amendments in today's rulemaking for which we do not receive adverse comment will become effective on the date set above. We will address all public comments in a subsequent final rule based on the proposed rule, including any adverse comment on any distinct amendment, paragraph, or section of today's rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

Electronic Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov*. You should identify comments in electronic format with the docket number F–2001–RC4F–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Acronyms Used in the Rule

BIF—Boilers and industrial furnaces
CAA—Clean Air Act
CEMS—Continuous emissions monitors/monitoring system
CFR—Code of Federal Regulations
DOC—Documentation of Compliance
DRE—Destruction and removal efficiency
dscf—Dry standard cubic feet
dscm—Dry standard cubic meter
EPA/USEPA—United States Environmental Protection Agency
gr—Grains
HAP—Hazardous air pollutant
HWC—Hazardous waste combustor
MACT—Maximum Achievable Control Technology
MTEC—Maximum theoretical emissions concentration
NESHAP—National Emission Standards for Hazardous Air Pollutants
NIC—Notice of Intent to Comply
NOC—Notification of compliance
NODA—Notice of data availability
OPL—Operating parameter limit
PM—Particulate matter
POHC—Principal organic hazardous constituent
ppmv—Parts per million by volume
RCRA—Resource Conservation and Recovery Act
SVM—Semivolatile metals (lead and cadmium)
μg—Microgram

Table of Contents

Part One: Overview and Background for This Direct Final Rule

I. What Is the Purpose of This Direct Final Rule?
II. What Is the Phase I Rule?
III. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

Part Two: NESHAP—Amendments to the HWC Final Rule

I. Hazardous Waste Residence Time
II. Deletion of One-Time Notification of Compliance with Alternative Clean Air Act Standards
III. Use of DRE Data in Lieu of Testing
IV. Time Extension for Waiving PM and Opacity Standards to Correlate PM CEMS
V. Alternative Hydrocarbon Monitoring Location for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln
VI. Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals
VII. Deletion of Baghouse Inspection Requirements
VIII. Feedstream Analysis for Organic HAPs
IX. Revisions to the Metals Feedrate Extrapolation Procedures
X. Feedrate Limits for Undetectable Constituents
XI. Revisions to Assist Early Compliance
XII. Accuracy Requirements for Weight Measurement Devices
XIII. Deletion of Requirement for Establishing a Scrubber Liquid Minimum pH Operating Parameter Limit for Mercury Control for Wet Scrubbers

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866
II. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

III. Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks"
IV. Environmental Justice Executive Order 12898
V. Unfunded Mandates Reform Act
VI. Executive Order 13132 (Federalism)
VII. Consultation with Tribal Governments
VIII. Paperwork Reduction Act
IX. National Technology Transfer and Advancement Act of 1995
X. The Congressional Review Act (5 U.S.C. 801 *et seq.*, as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

Part Four: State Authority

Part One: Overview and Background for This Direct Final Rule

I. What Is the Purpose of This Direct Final Rule?

Today's notice makes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). After promulgation, commenters (primarily the regulated community) raised numerous potential issues through informal comments and during litigation settlement discussions. After considering the issues raised, we have decided to promulgate a limited number of changes to the final rule, most of them relating to compliance and implementation.

In a separate action today, we are proposing and soliciting comment on several additional amendments to the Phase I rule. If you wish to comment on those amendments, you must submit comments following the directions in the **ADDRESSES** section of that action.

The remaining sections of this part provide additional background information on the Phase I final rule.

II. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112 of the Clean Air Act (CAA) requires emissions standards for hazardous air pollutants to be based on the performance of the Maximum Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's notice, we refer to these three categories collectively as hazardous waste combustors (HWC). Hazardous waste combustors burn about 80% of the hazardous waste combusted annually within the United States. The Phase I HWC MACT standards are expected to achieve significant reductions in the amount of hazardous air pollutants being emitted each year.

Additionally, the Phase I HWC MACT rule satisfies our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

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

III. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the Phase I HWC MACT final rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 "Fast Track" final rule (63 FR 33783). Additionally, specific to the Phase I HWC MACT final rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the Phase I HWC MACT final rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the Phase I rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 "Fast Track" final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association* v. *EPA*, 217 F. 3d 861 (D.C. Cir. No. 99–1236). The court held that EPA had the legal authority to promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending to comply with the MACT emission standards. However, the court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the Phase I HWC MACT final rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the Phase I rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the Phase I HWC MACT final rule from the Code of Federal Regulations (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

Part Two: NESHAP—Amendments to the HWC Final Rule

I. Hazardous Waste Residence Time

"Hazardous waste residence time" is defined at § 63.1201(a) as the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste, excluding residues that may adhere to combustion chamber surfaces, exit the combustion chamber. As stakeholders recognize, hazardous waste residence time has significant regulatory and enforcement implications. For example, if sources

were to exceed an operating requirement or emission standard after the hazardous waste residence time has expired, it is not a violation if the exceedance occurred because of a start-up, shut-down, or malfunction and sources follow the procedures and corrective measures prescribed in the start-up, shut-down, and malfunction plan. In addition, after the hazardous waste residence time has expired, sources may elect to comply with emission standards the Agency has promulgated under sections 112 and 129 of the Clean Air Act for source categories that do not burn hazardous waste. They would comply with these standards in lieu of the hazardous waste combustor standards of Subpart EEE, Part 63. See § 63.1206(b)(1).

Since promulgation of the hazardous waste combustor rule, stakeholders have raised an issue: what is the hazardous waste residence time for sources that continuously recycle hazardous waste-derived materials?

We are taking direct final action so that recycled hazardous waste-derived materials should not be considered when calculating hazardous waste residence time.[1] See revision to the definition of hazardous waste residence time at § 63.1201(a).

A. What Causes Recycle Loops and What Is the Potential Consequence?

Cement kilns, and possibly other hazardous waste combustors, continuously volatilize and condense toxic constituents derived from hazardous waste in recycle loops within the kiln. For example, chlorine and semivolatile metal hazardous air pollutants, such as lead and cadmium, will volatilize in the kiln and partition to the combustion gas. A portion of these waste-derived, toxic materials will condense before the combustion gas exits the kiln and will partition back into the raw material bed. Thus, these waste-derived, toxic materials are recycled internally within the kiln.

In addition, cement kilns generally recycle a portion of their collected particulate matter, known as cement kiln dust, back into the kiln. This cement kiln dust contains toxic constituents derived from hazardous waste fuel, including metals that are hazardous air pollutants.

Stakeholders request that these recycle loops not be considered when calculating hazardous waste residence time. Stakeholders note that if the hazardous waste-derived materials in these recycle loops were to be considered in calculating residence time, then: (1) It would be very problematic to document when the recycled waste constituents finally exit the kiln; and (2) the hazardous waste residence time would not elapse for an unnecessarily protracted period of time.

B. How Are We Addressing This Issue?

We conclude that recycle loops need not be considered in calculating hazardous waste residence time to ensure compliance with the emission standards. Emissions of semivolatile metals, low volatile metals, and particulate matter immediately prior to a waste feed cutoff will typically be well below levels demonstrated during the performance test and thus below the emission standard. This is because sources typically spike metals (add extra metals to the waste fuel) during performance testing to establish a wide envelope of operating limits to reflect the maximum operating variability they are likely to encounter in actual operation, providing sufficient operating flexibility for unexpected situations. We do not believe, though, that conditions will invariably reflect this maximum variability before a waste feed cutoff. In addition, notwithstanding recycle loops, hazardous waste-derived metals emissions will begin to decrease upon waste feed cutoff. The levels will continue to decrease while the hazardous waste residence time elapses and will decrease to very low levels after the electrostatic precipitator or baghouse undergoes a cleaning cycle. Therefore, the metal emission standards should not be exceeded due to recycle loops containing hazardous waste-derived materials.

For these reasons, we are revising the definition of hazardous waste residence time at § 63.1201(a).

II. Deletion of One-Time Notification of Compliance With Alternative Clean Air Act Standards

If a source is not feeding hazardous waste and the hazardous waste residence time has expired, the source may elect to comply temporarily with alternative, otherwise applicable standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source makes this election, § 63.1206(b)(1)(ii)(A) currently requires the source to submit to the Administrator a written, one-time notification documenting compliance with those requirements and standards.

The rule requires this notice to alert regulatory officials that a source claims to have met the regulatory requirements for the otherwise applicable standards (i.e., section 112 and 129 standards the source would be subject to if the source did not burn hazardous waste). For example, a hazardous waste burning cement kiln may elect to comply with the MACT standards and operating requirements applicable to Portland cement manufacturing facilities provided under Subpart LLL after the hazardous waste residence time has transpired. The notice enables regulatory officials to know which sources claim to be in full compliance with such otherwise applicable standards and will assist those officials in establishing source inspection priorities.

Stakeholders have raised two issues since promulgation, however, that have led us to conclude that this notification requirement is unnecessary. First, stakeholders have indicated that virtually all sources are likely to want to have the option to switch temporarily to compliance under otherwise applicable section 112 or 129 standards at some point during their operations. Thus, the notice would not have the intended effect of singling out those sources that chose to do so for the purpose of establishing inspection priorities.

Stakeholders also point out that this notification requirement is duplicative of the title V compliance certification requirement of § 70.5(c)(9) that requires permit applicants to include in their application a detailed description of the source's compliance status and a certification by a responsible official of compliance with all applicable requirements. In addition, stakeholders state that title V sources must submit annual certifications of compliance with all applicable requirements. See § 70.6(c)(5). Thus, stakeholders note that the only scenario where the § 63.1206(b)(1)(ii)(A) notification requirement is not duplicative is for sources that have not yet been required to submit a certification under title V.

In addition, if sources anticipate complying temporarily with the alternative standards for nonhazardous waste combustors after the hazardous waste residence time has expired, sources may include appropriate terms and conditions in the title V permit using the "reasonably anticipated operating scenario" provisions of

[1] Another special case for addressing residence time is vitrification melter units, where certain inorganic waste components are incorporated into the vitrified melt, and where it is not desirable to remove the entire melt (i.e., the melt is removed from the chamber at lengthy, infrequent intervals). In these cases, it may be appropriate for sources to recommend an alternative "effective waste treatment" residence time under § 63.1209(g)(1).

§ 70.6(a)(9).[2] Once both scenarios (i.e., for burning hazardous waste and not burning hazardous waste) are included in the permit, sources simply document in the operating record when they switch from one scenario to another.

Finally, we also note that this notification requirement has been targeted for deletion under the Office of Solid Waste Burden Reduction Project. *See* 64 FR 32859 for the goals and objectives of this project.

For these reasons, we are deleting the notification requirement of § 63.1206(b)(1)(ii)(A).

III. Use of DRE Data in Lieu of Testing

We are revising two provisions associated with the allowance to use previously collected data in lieu of the initial performance test or the Destruction and Removal Efficiency (DRE) test under §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2). We are taking final action to: (1) Remove the existing restriction preventing the use of DRE test data collected prior to March 1998 to document compliance with the DRE standard [3]; and (2) eliminate the requirement limiting previous data to only RCRA permit issuance or reissuance testing results.

A. Why Are We Allowing DRE Data Obtained Prior to March 1998 To Be Used in Lieu of a New DRE Test?

Stakeholders question why the rule restricts the age of DRE data for sources required to conduct only one DRE test for the life of the source. For DRE testing, the rule states that if you fire hazardous waste in the flame zone, and the system is not modified, then you are only required to demonstrate compliance with the MACT DRE emissions standard once over the operational life of the device. However, as part of the final rule data in lieu provisions, we limit the use of previous test data submitted for the initial comprehensive performance test to data collected after March 1998. Stakeholders believe that this limit substantially reduces the number of sources that can submit previous DRE test data in lieu of conducting an additional DRE test. They say that most sources conducted their RCRA trial burns before March 1998 and therefore would be ineligible to submit these tests. Stakeholders point out that if a one-time test is sufficient for the life of the source, then we should not place a limit on previous RCRA data. We agree with this logic and are revising the rule today to require testing only for those sources that are modified or that fire at a location other than the flame zone.

B. Why Are We Allowing the Use of Data Obtained for Purposes Other Than RCRA Permit Issuance or Reissuance?

Stakeholders also express concern about the restrictions the rule places on the type of data that can substitute for a MACT performance test. The rule now stipulates that only data collected for the purpose of RCRA permit issuance or re-issuance can be submitted as in lieu data. Our primary concern with in lieu data submittals is to ensure data quality. Upon reevaluation, we believe data that is not associated with RCRA permit issuance or re-issuance can be reviewed by the regulatory authority to determine whether they are suitable for demonstrating compliance with the DRE standard and for setting MACT operating limits. We now understand that several sources engage in other types of CAA performance testing with oversight and quality assurance requirements comparable to RCRA testing. This modification will allow sources to coordinate CAA and RCRA testing that may facilitate early compliance. In today's direct final rule, we are modifying the current data in lieu provisions to allow sources to submit any test data in lieu of conducting a MACT performance test provided that the data meet our quality assurance requirements (except for DRE, as discussed above). We emphasize that a data in lieu of request must provide adequate quality assurance and quality control documentation. In most cases, tests conducted without significant regulatory oversight (and particularly without a reasonable opportunity for significant oversight) would not be considered to be of sufficiently known quality for use as data in lieu of testing.

For these reasons, we are revising the requirements of §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2).

IV. Time Extension for Waiving PM and Opacity Standards To Correlate PM CEMS

For facilities voluntarily using a particulate matter (PM) continuous emissions monitoring system (CEMS), the final rule allows the particulate matter standard and operating parameter limits used to ensure compliance with that standard to be waived for up to a 96-hour period during a PM CEMS correlation test. (*See* 64 FR 53046). This waiver period is necessary because PM CEMS outputs must be correlated to manual method results and during this time it is sometimes necessary to exceed the applicable operating parameter limits to produce an accurate correlation. The correlation is most accurate over the range of particulate matter emissions tested, so correlation tests should be performed over the full range of expected particulate matter emissions for the particular facility. We determined that allowing a facility to operate above the particulate matter standard for a 96-hour period is reasonable because this is a sufficient amount of time to: (1) Increase emissions to the desired level and reach system equilibrium; (2) perform correlation tests at the equilibrium condition; (3) return to normal equipment settings indicative of compliance with emissions standards and operating parameter limits; and (4) achieve equilibrium at normal conditions. (64 FR 52929).

Stakeholders contend that 96 hours may be too short of a time period to fulfill the testing requirements and that the regulations should allow for a longer time period. From the limited information available on the time required for PM CEMS correlation, they believe that 96 hours may be insufficient to complete the testing, particularly for HWCs that burn a variety of solid wastes. Petitioners suggest we change this provision to allow periods longer than 96 hours with the Administrator's approval.

In a March 2, 2000 letter to EPA, stakeholders describe the time necessary to complete PM CEMS correlation tests at an Eli Lilly incinerator as an indication of the need for additional time beyond the existing 96 hours. In Phase II of Eli Lilly's CEMS tests, Eli Lilly needed approximately 54 hours to achieve a successful correlation (Eli Lilly collected 34 data points requiring approximately three hours per data point above the particulate matter standard). This 54 hours only represented the testing time and did not include pre-and post-testing adjustments or the time before and after the tests when the incinerator was reaching equilibrium. The petitioners also point out that Eli Lilly had personnel with extensive experience in adjusting their incinerator to achieve desired HWC MACT particulate matter concentrations. Facilities with personnel who do not have this experience will go through a lengthy learning process and may need even more time. Therefore, stakeholders believe the current 96-hour allowance is not adequate to correlate a PM CEMS device in an accurate manner.

[2] Note that Subpart EEE incorporates this provision as § 63.1209(q), operating under different modes of operation.

[3] If hazardous waste is fed at a location other than the normal flame zone, sources must conduct periodic DRE testing. See § 63.1206(b)(7)(ii).

Based on the Eli Lilly experience and discussions with PM CEMS testing personnel, we agree that the 96-hour period may not be sufficient for hazardous waste combustors to correlate their PM CEMS. Furthermore, we do not want a 96-hour time limit to be a disincentive to use of PM CEMS. We conclude a site specific extension is the appropriate mechanism to ensure accurate calibrations and to encourage the use of particulate matter continuous emissions monitoring systems. Therefore, we are adding the phrase "unless more time is approved by the Administrator" to § 63.1206(b)(8)(v).

V. Alternative Hydrocarbon Monitoring Location for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln

Section 63.1206(b)(13)(i) requires new and existing cement kilns to comply with a main stack hydrocarbon standard of 20 ppmv if hazardous waste is fed at a location other than the kiln end where fuels are normally fired and products are normally discharged (this is also described as the "hot" end of the kiln). These other locations can include firing hazardous waste at midkiln, at the upper end of the kiln where raw materials are fed, or in the calciner. In addition, if hazardous waste is fed at these other locations, the rule does not give a cement kiln the option to comply with a carbon monoxide standard in the main stack in lieu of the hydrocarbon standard.

After promulgation of the final rule, stakeholders provided additional information supporting an alternative to the mandatory monitoring location for hydrocarbons in the main stack for short, dry process cement kilns. In today's notice, we are revising the requirements of § 63.1206(b)(13) to allow short, dry process cement kilns to continuously monitor hydrocarbons in both the alkali by-pass duct and at a "preheater tower combustion gas monitoring location" as an alternative to hydrocarbon monitoring in the main stack.[4] In addition, we are revising the requirements of § 63.1206(b)(13) to allow short dry process cement kilns to continuously monitor both carbon monoxide in the alkali by-pass duct and hydrocarbons at a "preheater tower combustion gas monitoring location" under limited circumstances.

[4] In today's action, we are defining "preheater tower combustion gas monitoring location." See definition in § 63.1201.

A. Why Are We Finalizing an Alternative to Hydrocarbon Monitoring in the Main Stack for Certain Cement Kilns?

At the time of the final rule, we were not aware of any short, dry process cement kilns firing hazardous waste at other locations than the kiln end where clinker product is discharged. As a result, we adopted the approach used in the Boiler and Industrial Furnace (BIF) rule[5] to control emissions of organic hazardous air pollutants from cement kilns that fire hazardous waste at these other locations as the best regulatory model. The BIF rule requires cement kilns that fire hazardous waste at locations other than the kiln end where clinker product is normally discharged to comply with a hydrocarbon limit in the main stack. Since promulgation of the rule, however, stakeholders submitted information about a new precalciner[6] cement kiln that will fire hazardous waste at locations other than the kiln end where clinker is normally discharged. One stakeholder also indicated that the main stack hydrocarbon standard may not be achievable due to hydrocarbons released from the raw materials in the upper stages of the preheater tower. Therefore, we are finalizing an alternative to main stack hydrocarbon monitoring that addresses a hazardous waste firing scenario not specifically considered during the development of the rule.

B. What Alternative to Hydrocarbon Monitoring in the Main Stack Are We Finalizing for Cement Kilns?

As an alternative to hydrocarbon monitoring in the main stack,[7] we are allowing short, dry process cement kilns to continuously comply with a hydrocarbon limit, and, under limited circumstances, a carbon monoxide limit at two separate locations within the kiln system. The two monitoring locations are: (1) In the alkali by-pass duct; and (2) in the upper stages of the preheater tower. The latter location is termed a "preheater tower combustion gas monitoring location." These two locations are located downstream (in terms of gas flow) of all hazardous waste firing locations. In addition, all combustion gases pass one of these two locations.

The stakeholders claim that continuously monitoring hydrocarbons at both locations provides the best assessment of the quality of combustion and offers the same level of assurance that hazardous waste is effectively combusted as does a main stack hydrocarbon standard. Monitoring for efficient combustion of the hazardous wastes at these two locations also avoids the potential problem of hydrocarbons generated from organics in the raw materials and entrained in the gas stream.

1. Why Is Hydrocarbon Monitoring in the Alkali By-Pass Duct Appropriate?

Short, dry process cement kilns may be equipped with an alkali by-pass system where 10–30 percent of the rotary kiln combustion gas is diverted to a separate air pollution control device and sometimes to a separate stack. These kiln gases are diverted to avoid a build-up of metal salts that can adversely affect cement manufacturing operations. Hydrocarbon levels in the by-pass duct are indicative of the combustion efficiency of hazardous waste and fossil fuels fired in the rotary kiln. This is because the by-pass duct draws off combustion gases from the kiln prior to the point that hydrocarbons generated by organic materials in the raw material can be problematic.

We are finalizing a hydrocarbon standard of 10 ppmv in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns that fire hazardous waste at a location other than the kiln end that clinker product is discharged because this level is indicative of good combustion conditions in the rotary kiln. Limiting hydrocarbons to 10 ppmv in the by-pass is identical to how a cement kiln with a by-pass duct or midkiln sampling system that only feeds hazardous waste at the kiln end where clinker product is normally discharged is regulated in the final rule. See §§ 63.1204(a)(5)(i)(B) and (b)(5)(i)(A)(2). For the same reasons a hydrocarbon standard of 10 ppmv was adopted in the rule, we likewise believe a hydrocarbon standard of 10 ppmv is appropriate in this situation. See 64 FR at 52887.

In today's direct final rule, with the exception discussed below, we are not allowing new and existing short, dry process cement kilns the option to comply with a carbon monoxide standard in the alkali by-pass duct when feeding hazardous wastes at any point in the rotary kiln downstream (in terms of gas flow) of the kiln end where

[5] See 56 FR at 7158.

[6] See "Final Technical Support Document for Hazardous Waste Combustor MACT Standards, Volume I: Description of Source Categories," July 1999, for a process description of precalciner cement kilns.

[7] The alternative hydrocarbon standard would not replace the hydrocarbon standard of 20 ppmv in the main stack as provided in § 63.1206(b)(13)(i). Cement kilns would continue to have the option to monitor hydrocarbons in the main stack.

clinker product is normally discharged. We do not allow this option because we do not have sufficient emissions data, using this alternative hazardous waste firing scenario, to fully evaluate the impacts. We are concerned that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted. If so, little carbon monoxide may be generated by the process and monitoring carbon monoxide alone would not ensure that hydrocarbons were minimized. Without these emissions data, we believe hydrocarbon monitoring is a more conservative, direct surrogate for control of organic hazardous air pollutants than are carbon monoxide emissions.

2. Under What Circumstances Is Monitoring of Carbon Monoxide in the Alkali By-Pass Appropriate?

There may be limited circumstances where carbon monoxide monitoring (as an option to hydrocarbon monitoring) in the alkali by-pass duct may be appropriate. An example would be a cement kiln whose only hazardous waste firing location upstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Another example would be a cement kiln that only fires hazardous waste at a location(s) downstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct. Firing hazardous waste under these circumstances reduces our concern that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted.

We are finalizing a carbon monoxide standard of 100 ppmv (as an option to hydrocarbon monitoring) in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns whose only hazardous waste firing location upstream of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Thus, if sources feed hazardous waste at the upper end of the kiln where raw materials are fed, or any other location upstream of where gases enter the by-pass duct other than the kiln end where products are discharged, then a cement kiln would not be eligible for this option to monitor carbon monoxide instead of hydrocarbons.

We are finalizing a carbon monoxide standard of 100 ppmv for control of organic hazardous air pollutants. A level of 100 ppmv is the same level that we established in the rule for cement kilns that only fire hazardous waste at the kiln end where products are normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1). For the same reasons a carbon monoxide standard of 100 ppmv was adopted in the rule, we likewise believe the same carbon monoxide standard of 100 ppmv is appropriate in this situation. See 64 FR at 52887.

In addition, if a source elects to comply with the carbon monoxide standard in the by-pass duct, we are requiring the source to demonstrate compliance with a hydrocarbon standard of 10 ppmv in the by-pass duct during the comprehensive performance test. This is consistent with the requirements for cement kilns that comply with a carbon monoxide standard in the by-pass duct when only firing hazardous wastes at the kiln end where clinker is normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1).

3. Why Is Hydrocarbon Monitoring at the "Preheater Tower Combustion Gas Monitoring Location" Appropriate?

Since only 10–30 percent of combustion gas is routed through the alkali by-pass duct, most short, dry process cement kilns' combustion gas travels through the cyclone stages of the preheater tower. Typically, raw material is introduced at the top of the preheater tower, which is a series of cyclones. Hot kiln flue gases move counter-current through the downward-moving raw material prior to introduction into the cement kiln. The cyclones are used to separate the raw material from the combustion gases and collected raw material sequentially is dropped into the next lower stage. Fossil and hazardous waste fuels can be fired in a calciner burner prior to the series of cyclones to further increase the raw material temperatures prior to introduction into the cement kiln.

A stakeholder identified a flue gas sampling location within the preheater tower where they believe a representative sample of combustion gas can be continuously monitored for hydrocarbons to demonstrate efficient combustion of the hazardous wastes. The stakeholder states that the preheater tower combustion gas monitoring location allows for continuous monitoring of hydrocarbons at a location downstream of the last point of hazardous waste fuel combustion, yet upstream of where non-fuel hydrocarbons from organics in the raw materials are generated and entrained in the gas stream. This location is termed a "preheater tower combustion gas monitoring location."

We are finalizing a hydrocarbon standard of 10 ppmv at the preheater tower combustion gas monitoring location (in addition to the alkali by-pass duct standards above) as an alternative to the main stack standard of 20 ppmv. Monitoring of hydrocarbons at the preheater tower combustion gas monitoring location is necessary to control emissions of organic hazardous air pollutants. We are finalizing a hydrocarbon standard of 10 ppmv for the same reasons discussed above for monitoring in the alkali by-pass duct. In addition, we are not allowing carbon monoxide monitoring at the preheater tower combustion gas monitoring location as an alternative to hydrocarbon monitoring for the same reasons discussed above for monitoring in the alkali by-pass duct.

VI. Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals

The final rule establishes a particulate matter emissions standard of 0.015 gr/dscf for new and existing incinerators as a surrogate to control non-mercury, CAA metal hazardous air pollutants (HAPs).[8] The rule also offers an alternative particulate matter emissions standard of 0.03 gr/dscf for incinerators that demonstrate the use of superior feedrate control of HAP metals in their hazardous waste feed. See § 63.1206(b)(14). Today, we are eliminating the alternative particulate matter emissions standard and replacing it with an alternative metal emissions control requirement. An incinerator source may elect to comply with this alternative requirement in lieu of complying with the 0.015 gr/dscf particulate matter standard. This source would remain subject to the existing standard for particulate matter in RCRA rules of 0.08 gr/dscf (a standard which would remain in the source's RCRA permit, should a source elect to comply with the alternative standard). See § 264.343(c). We are finalizing this option because we conclude that the alternative metal emissions control requirements control metal HAP emissions to levels based on MACT absent a particulate matter standard.

[8] Particulate matter is not a CAA HAP. The HWC MACT rule establishes a particulate matter standard to control non-mercury CAA HAP metals that are not directly controlled with an emission standard. See 64 FR at 52846–47.

A. Why Is EPA Eliminating the Alternative Particulate Matter Standard and Replacing It With Alternative Metal Emission Control Requirements?

We included the alternative particulate matter standard in the final rule after receiving comments that a particulate matter standard of 0.015 gr/dscf is not an appropriate surrogate to control metal hazardous air pollutants in situations where the particulate matter does not contain significant levels of metal HAPs. For example, this would include situations where the hazardous waste does not contain metals, and the resulting ash contains only relatively benign salts. (See § 63.1206(b)(14) and 64 FR 52972 for further discussion). To be eligible for the original alternative standard, incinerators must demonstrate that: (1) Non-mercury, metal HAPs are not detected in any feedstream; and (2) the maximum theoretical emission concentrations (MTEC) [9] for semivolatile and low volatile HAP metals are lower than the corresponding semivolatile and low volatile metal emission standards, assuming that non-detect metals are present at one-half the detection limit.

Based on additional information from stakeholders, we have determined that this approach did not provide the intended relief to incinerators with low levels of hazardous air pollutant metals in their feedstreams for two reasons. First, even for incinerators with very low levels of these metals in their feeds, over time metals measurements above detection limits will occasionally occur. This can occur as a result of trace metal contamination due to corrosion and/or inherent impurities in raw materials, as well as potential anomalies and variability of the analytical measurement method. Second, high detection limits that occur as a result of complex feedstream matrices may prevent a source from demonstrating that the MTECs are less than the low volatile or semivolatile metal emission standards. Because this original approach did not provide the intended relief, we are finalizing a more effective alternative to the particulate matter emission standard.

B. What Alternative Is EPA Finalizing?

In today's notice, we are allowing a source to operate under alternative HAP metal emission control requirements reflecting MACT in lieu of complying with the 0.015 gr/dscf particulate emission standard. Under the alternative, no particulate matter emission standard will apply to the incinerator under Subpart EEE; however, the incinerator will remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). This is because without a sufficiently protective particulate matter standard under Subpart EEE, we cannot defer our RCRA obligation to provide for a particulate matter requirement to Subpart EEE.[10]

The alternative to the particulate matter standard has three components. The first component is simply to meet metal emission standards for semivolatile and low volatile metals. The level of the standard is the same as that which applies to other incinerators, but the standard would apply to all HAP metals, not just those enumerated in the present semi-and low volatile metal standards. The second component is a requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT-defining metal feedrate floor control level.[11] The third component is a requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals. These components, which are described separately below, should provide for adequate control of non-mercury HAP metals in lieu of a particulate matter standard.

1. What Emission Limitation Must the Incinerator Comply With Under This Alternative?

Incinerators must comply with the same semivolatile and low volatile metal emission limitations that are specified in the final rule; however, the emission limitations apply to both enumerated *and* non-enumerated metal HAPs, excluding mercury. As discussed in the rule, enumerated metals are those metals that are directly controlled with a numerical emission standard, i.e., cadmium, lead, arsenic, beryllium, chromium. Non-enumerated metals are those metals, i.e., antimony, cobalt, manganese, nickel, and selenium that are not controlled directly with an emission standard, but are controlled through the surrogate particulate matter standard. For purposes of these alternative requirements, the non-enumerated metals are classified as either a semivolatile or a low volatile metal, and included in the calculation of compliance with the corresponding emissions limit.

For existing incinerators, the resulting emissions limits are: (1) A semivolatile emission limitation of 240 µg/dscm for the combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 µg/dscm for combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

For new sources, the resulting emissions limits are: (1) A semivolatile emission limitation of 24 µg/dscm for combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 µg/dscm for emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

We conclude it is appropriate to incorporate both the enumerated and non-enumerated metals into the semivolatile and low volatile metal emissions limits because this, in combination with the other two requirements discussed below, provides a reasonable approach to directly assure that the non-enumerated metal emissions are controlled to levels representative of MACT, in lieu of a particulate matter standard. This approach, in effect, lowers the existing semivolatile and low volatile metal emissions limits because the contribution of non-enumerated metals must be accounted for when achieving the same numerical semivolatile and low volatile emission limits. We believe this is appropriate because this effectively lower emissions limit for enumerated metals compensates for the lower emission levels that would have been achieved if the source used a particulate matter control device capable of achieving 0.015 gr/dscf, i.e., a control device that is an integral part of MACT control for semivolatile and low volatile metals. Put another way, we regard this emission limitation as an equivalent means of meeting the floor standard for HAP metals (except mercury) already established in the rule.

[9] We developed the term "Maximum Theoretical Emissions Concentration" to compare metals feedrates across sources of different sizes. MTEC is defined as the metals feedrate divided by the gas flowrate, and is expressed in µg/dscm.

[10] Sources electing to comply with these alternative requirements will be subject to the RCRA PM standard in their RCRA permit. The RCRA permit must include applicable operating limits that ensure compliance with the RCRA PM limit. Permit writers can impose a lower PM limit where necessary pursuant to the omnibus authority under section 3005(c)(3) of RCRA.

[11] These MACT defining feedrates are set out in "Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 6, July 1999.

2. What Hazardous Waste Metal Feedrate Control Requirement Must the Incinerator Comply With Under This Alternative?

Each incinerator that elects to operate under these alternative requirements must demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., it complies with a defined hazardous waste metal feedrate limit that is significantly lower than the MACT-defining metal feedrate floor control level. We define "reasonable hazardous waste metal feedrate control" as a hazardous waste metal HAP feedrate that does not exceed 25 percent of the MACT defining MTEC level.[12] Consistent with the above discussed emission standards, the hazardous waste metal feedrate limits apply to both enumerated and non-enumerated metal HAPs. The non-enumerated metal HAPs are categorized as either semivolatile or low volatile, and are incorporated into a corresponding semivolatile or low volatile hazardous waste metal feedrate limit.[13]

For existing incinerators, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 1,325 μg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 6,000 μg/dscm.[14]

For new sources, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 875 μg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 3250 μg/dscm.

We believe hazardous waste metal feedrate limits are essential parts of these alternative requirements. As discussed in the final rule preamble and in comment response documents, particulate matter control is an integral part of controlling both the enumerated and non-enumerated semivolatile and low volatile metals.[15] Therefore, any source that uses a particulate matter control technique that is less efficient than the MACT particulate floor standard should be required to use a "better than MACT" hazardous waste metal feedrate control (i.e., a level of feedrate control that compensates for the inefficient particulate control collection so that actual emissions of HAP metals reflect MACT). We believe that 25 percent of the MACT feedrate control levels for the combined enumerated and non-enumerated metal HAPs is within a reasonable range of values that are significantly lower than the MACT feedrate control levels. This feedrate control requirement, when combined with the emissions limit and system removal efficiency requirement, provides adequate control of metal HAPs (control equivalent to promulgated MACT).

3. How Efficient Must the Incinerator's Air Pollution Control Equipment Operate in Order To Comply With This Alternative?

If you elect to operate under these alternative requirements, you must demonstrate that the air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. Metal removal efficiency—whether measured by control of the surrogate particulate matter or directly through control of HAP metals—remains an essential element (along with feedrate control of HAP metals) of MACT for the non-mercury HAP metals, as demonstrated by the performance achievable by (and achieved by) the average of the best performing sources. In making this demonstration, you may spike semivolatile metals above 25 percent of the MACT defining MTEC level provided the emissions limits discussed above are achieved during the test. You may perform this test independently of the comprehensive performance test; however, you must use this test to establish applicable operating parameter limits as described in § 63.1209(n), excluding the § 63.1209(n)(2) metal feedrate limit requirements. These operating limits are needed to assure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations at the metal feedrates demonstrated during the test.

The 90 percent system removal efficiency requirement is based on the use of a well designed and well operated high energy venturi type wet scrubber. An analysis of hazardous waste incinerator trial burn data shows that systems with well operated and well designed venturi scrubbers have semivolatile metal system removal efficiencies ranging from approximately 90 percent to greater than 99.9 percent.[16] Thus, we are finalizing a semivolatile metal system removal efficiency of 90 percent as a conservative representation of control using a well designed and well operated high energy venturi scrubber. This method to select an appropriate control level is similar to the approach we used to develop the alternative particulate matter standard 0.03 gr/dscf that also was based on the use of well designed and well operated high energy venturi scrubbers.

System removal efficiency provides a direct indicator of the non-mercury metal HAP control efficiency of the hazardous waste incinerator system. The shift away from the use of a direct particulate matter emission standard to control non-mercury metal HAPs is a result, in part, of the reduced need for low metal feeding facilities to control particulate matter. For low metals feeding facilities, particulate matter may be composed primarily of non-metal HAP constituents such as silica, alumina, iron, etc., or HAP metals not present in hazardous waste. Thus, the control of particulate matter is not as strongly related to the control of HAP metals contributed by the hazardous waste compared with facilities which have feeds containing higher levels of those metals.

We also believe it is appropriate to require a 90 percent semivolatile metal system removal efficiency as part of these alternative requirements because,

[12] I.e., the MTEC level that was determined as a result of the aggregate feedrate analysis that was used to determine metal feedrate floor control levels in the September 30, 1999 rule.

[13] Thus, unlike the current rule where sources can choose whatever means they wish to comply with the emissions standard and so are not required to control feedrates below a regulatory level (so long as they achieve the emission standard), sources are required to comply with a specified metal feedrate limit under the alternative.

[14] These metal feedrate limits correspond to 25 percent of the MACT-defining MTEC levels. These MACT defining feedrates are set out in "Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 6, July 1999.

[15] See, for example, Table 8–1, pages 2 and 3, "Final Technical Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies," Chapter 3, July 1999, showing that sources with SVM feedrates below the MACT defining level but lacking proper PM control (i.e., emitting more PM than allowed by the PM standard) were unable to achieve the SVM emission standard.

[16] See Figure 4–3, "Draft Technical Support Document for HWC MACT Standards (NODA), Volume 1: MACT Evaluations Based on Revised Database," April 1997.

absent a particulate matter standard, there would be no explicit requirement for sources to use an air pollution control method that effectively removes metal HAPs from the exhaust emissions.[17] This provision therefore requires sources that operate under these alternative requirements to use a particulate matter control device. Even though this control device does not have to be a MACT particulate matter control device (i.e., a control device that achieves 0.015 gr/dscf) we believe that this requirement to achieve a 90 percent system removal efficiency, when combined with the hazardous waste metal feedrate limits and emissions limits, provides for an adequate level of control for HAP metals—that is, a level of control reflecting the level of performance achieved by, and achievable by, the average of the best performing 12 percent of sources.

4. What Operating Requirements Are Associated With This Alternative?

Semivolatile and low volatile metal operating parameter limits will be established to ensure compliance with the alternative emissions limits pursuant to § 63.1209(n), except that the semivolatile and low volatile metal feedrate limits apply to both the enumerated and non-enumerated HAP metals as previously discussed. We believe this approach is consistent with the final rule methodology to assure compliance with the semivolatile and low volatile metal emission standards and should be applied here. Note that the metal feedrate limits established to ensure compliance with the alternative emissions limit are mass feedrate limits for all feedstreams, including nonhazardous feeds. This is in contrast to the hazardous waste metal feedrate limits discussed below that are based only on hazardous waste metal MTEC levels.

You must also establish operating parameter limits to ensure compliance with the 90 percent system removal efficiency requirement. Consistent with the operating limits to ensure compliance with the alternative metal emission limitations, these operating limits would be established pursuant to § 63.1209(n), except that metal feedrate limits are not required for purposes of ensuring compliance with system removal efficiency provision.

[17] Absent a metal system removal efficiency requirement under these alternative requirements, an incinerator could comply with the emission limitations with feedrate control only without the use of particulate matter control. This would not be appropriate if metals are present in the feedstreams because particulate matter control is an integral part of controlling metal HAP emissions.

The twelve-hour rolling average hazardous waste metal feedrate limits are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as a maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate. In doing so, sources must account for each hazardous waste feedstream when determining compliance with the maximum theoretical emission concentration limits. Metal constituents not detected in hazardous waste feedstreams would be assumed to be present at one-half the detection limit when calculating the maximum theoretical emission concentration for compliance purposes, applicable to each hazardous waste feedstream.

VII. Deletion of Baghouse Inspection Requirements

Section 63.1206(c)(7)(ii) of the final rule prescribes baghouse operation and maintenance requirements for incinerators and lightweight aggregate kilns. These requirements are not applicable to cement kilns equipped with baghouses because cement kilns must continuously monitor opacity and comply with an opacity standard. Nonetheless, cement kilns are required to address baghouse operation and maintenance in the operation and maintenance plan required under § 63.1206(c)(7)(i).

The operation and maintenance requirements under § 63.1206(c)(7)(ii): (1) Prescribe the frequency of inspection of specific baghouse operations; and (2) require the use of a bag leak detector as a continuous monitor. We are today deleting the prescribed baghouse inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10). Instead we will rely on the general operation and maintenance plan requirements under § 63.1206(c)(7)(i) and the use of a bag leak detector to ensure proper operation and maintenance of the baghouse.

Stakeholders question the rationale for prescribing generic inspection frequencies for various baghouse operations, given that each baghouse must be equipped with a bag leak detector. Stakeholders believe that each source should identify appropriate, site-specific inspection intervals for baghouse operations in the facility operations and maintenance plan required under § 63.1206(c)(7)(i). In particular, they highlight two burdensome inspection requirements: (1) Monthly visual inspection of the interior of the baghouse for physical integrity; and (2) monthly inspection of bags and bag connections.[18]

We agree with stakeholders that these generic provisions are unnecessary and therefore are deleting the inspection requirements of § 62.1206(c)(7)(ii)(B)(1–10). We plan to develop guidance recommendations on baghouse inspection procedures that can be used to develop appropriate inspection procedures for the operation and maintenance plan required by § 63.1206(c)(7)(i). In addition, we are deleting the requirements of § 63.1206(c)(7)(ii)(A) requiring submittal of the baghouse operations and maintenance plan to the Administrator. Given that the operation and maintenance plan required under § 63.1206(c)(7)(i) is not submitted to the Administrator for review and approval, we do not see the need to single out the baghouse operation and maintenance plan for review and approval, particularly given that sources must continuously operate a bag leak detector system.

VIII. Feedstream Analysis for Organic HAPs

Section 63.1207(f)(1)(ii) of the final rule requires sources to include in their site-specific comprehensive performance test plan an analysis of all CAA hazardous air pollutants that could reasonably be present in their feedstreams. Regulatory officials will use this analysis to ensure compliance with the destruction and removal (DRE) standards of §§ 63.1203 through 63.1205. Stakeholders raised three questions about this requirement after promulgation: (1) Did we consider the implications of requiring analysis of HAPs rather than the RCRA organic compounds on Appendix VIII, Part 261; (2) why must the test plan for periodic comprehensive performance testing include an analysis of organic HAP compounds for sources that comply with the DRE standard with a one-time test; and (3) did we intend to require analysis of organic compounds for all feedstreams or just the hazardous waste feedstreams.

A. What Are the Implications of Requiring Analysis of CAA HAPs Rather than RCRA Appendix VIII, Part 261 Organic Compounds?

For the DRE standard, the final rule requires demonstration of compliance with one or more principal organic hazardous pollutants (POHCs) selected

[18] Letter from Michelle Lusk, CKRC, Thomas Nilan, CMA, and Melvin Keener, CRWI, to Elizabeth Cotsworth, EPA, Re. Multi-Industry HWC MACT Concerns and Solutions, dated March 2, 2000, p. 29 of the attachment.

from the list of HAPs established by 42 U.S.C. 7412(b)(1), excluding caprolactam. The basis for the HWC MACT DRE standard is the current RCRA requirement to ensure destruction of Appendix VIII, Part 261, organic compounds. In demonstrating compliance under RCRA, sources must select POHCs from the Appendix VIII list of organic compounds.

Stakeholders note that selecting POHCs from the list of organic CAA HAPs rather than RCRA organic compounds has several implications. Stakeholders question whether RCRA DRE test data can be used in lieu of MACT DRE testing if the POHCs selected during the RCRA test are not organic HAPs under the CAA. Stakeholders also question how to ensure DRE of organic HAPs for which thermal stability data (e.g., low oxygen thermal stability; heat of combustion) are not available. In response, we note that, to satisfy the MACT DRE standard, sources must ensure that the POHCs used to demonstrate compliance are representative of the most difficult to destroy organic compounds in their feedstream. For example, if the most difficult to destroy POHCs for RCRA DRE testing were used, those POHCs are also representative of the most difficult to destroy organic HAPs (irrespective of whether thermal stability data are available for a HAP).

B. For Sources That Comply With the DRE Standard With a One-Time Test, Why Must Their Periodic Comprehensive Performance Test Plan Include an Analysis of Organic HAP Compounds?

Section 63.1206(b)(7) allows demonstration of compliance with the DRE standard only once for the life of the source provided the source: (1) Is not modified in a manner than could affect achievability of the DRE standard; and (2) does not feed hazardous waste at a location other than the normal flame zone. Once a source has demonstrated compliance with the DRE standard, stakeholders question why analysis of waste streams for organic HAP compounds must be included with the site-specific test plan for comprehensive performance testing every five years.

The rule requires continued analyses of organic compounds with each comprehensive performance test plan to enable regulatory officials to determine whether the POHCs selected for the original DRE test continue to represent the organic HAPs being fed to the combustor. POHCs are representative of the organic HAPs fed to the combustor if they are equally or more difficult to destroy than those organic HAPs. In addition, POHCs are selected based on factors including the concentration of the organic compound in the feedstream and the toxicity of particular organic compounds.[19]

In retrospect, however, we do not believe that the comprehensive analysis required by § 63.1207(f)(1)(ii)(A)[20] is necessary in all cases to ensure that the POHCs continue to be representative of the organic HAPs being fed to the combustor. For example, if a source demonstrates compliance with the DRE standard with POHCs that represent the most difficult to destroy organic compounds, a less rigorous feedstream analysis may be appropriate to address other concerns, e.g., whether the feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic. It may also be appropriate to waive the comprehensive analysis for organic compounds based on the generator's knowledge or on a combination of waste knowledge and sampling and laboratory analysis that the POHCs selected represent the most difficult to destroy organic compounds in the waste. Accordingly, we are amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if a source documents that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams.

C. We Intended To Require Analysis of Organic HAPs in Hazardous Waste Feedstreams Only

Section 63.1207(f)(1)(ii) implies that sources must analyze all feedstreams for organic HAPs. The rule should have required analysis for hazardous waste feedstreams only. Regulatory officials will use the analysis to ensure that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. We are amending § 63.1207(f)(1)(ii) accordingly.

[19] In cases where an organic HAP is fed at particularly high concentrations, or where an organic HAP in the feedstream is particularly toxic, it is prudent to select such compounds as POHCs rather than relying only on surrogates that are considered to be equally or more difficult to destroy.

[20] That is, all organic HAPs except those that would not reasonably be expected to be found in the feedstream. Further, sources must identify any constituents excluded from the analysis and explain the basis for excluding them.

IX. Revisions to the Metals Feedrate Extrapolation Procedures

For sources using the metal extrapolation procedures, the final rule requires documentation that the levels of metal spiking (adding metals to the waste feed) be sufficient to demonstrate that the extrapolation procedures are as accurate and precise as if full spiking (no extrapolation) were used. See § 63.1207(f)(1)(x)(C). Today we are amending this provision to require documentation that spiking levels result in an extrapolation procedure that adequately assures compliance with the emission standard.

We included this requirement in the final rule to address the uncertainties that may be associated with extrapolating low metal feedrates, as demonstrated during testing, to higher metal feedrate limits. This documentation ensures that the uncertainties associated with the procedure are adequately addressed and that the extrapolated metal feedrate limits ensure compliance with the emission standard(s).

After discussions with stakeholders, we determined that the final rule regulatory language is too prescriptive and does not directly address our goal of assuring compliance with the emission standard. Stakeholders believe that it may not be possible to spike metals to levels such that the extrapolation procedures are as accurate and precise as if full spiking were used. They also question the accuracy and precision of the "fully spiked" feedstream and emissions analyses.

To address these concerns, we are requiring that sources document a level of spiking that ensures the extrapolation methodology is adequate to demonstrate compliance with the emission standard. The content and scope of this documentation should be determined on a site-specific basis, and should consider the uncertainties involved with extrapolating the tested low metal feedrates to higher metal feedrate limits. Examples of types of information that can document that the extrapolation methodology adequately assures compliance with the emission standards may include: (1) A description of the uncertainties associated with the extrapolation procedure, such as a description of the linearity of metal feedrates as compared to metal emission rates; (2) a description of the uncertainties associated with the data to be used in the extrapolation procedure;[21] and (3) the extent that

[21] For example, a description of the accuracy of the feedstream metal analysis considering the

Continued

these uncertainties are multiplied by the extrapolation procedure.

X. Feedrate Limits for Undetectable Constituents

The final rule requires sources to establish separate feedrate limits during the comprehensive performance test for semivolatile metals, low volatile metals, mercury, total chlorine, and/or ash for each feedstream that does not contain detectable levels of these constituents. See § 63.1207(n). The rule specifies that these separate feedrate limits must be established as "non-detect" feedrate limits. Under this approach, during normal operations, the feed locations that have "non-detect" limits cannot be fed detectable levels of the constituents unless certain criteria are met. Today, we are deleting this provision and, instead, are requiring sources to document, on a site-specific basis, the method they will use to account for non-detects when establishing feedrate limits.

We included this "non-detect feedrate limit" provision in the rule so sources would use a consistent methodology when establishing feedrate limits that best assures compliance with the emission standards. After discussions with stakeholders, we conclude that our approach to addressing detection limits when establishing feedrate limits is too prescriptive and that there are possibly alternative approaches that adequately assure compliance with the emission standards. Therefore, we are eliminating the requirements of § 63.1207(n) that require use of a specific method to address non-detects when establishing feedrate limits. As a replacement, we are requiring sources, on a site-specific basis, to specify in the comprehensive performance test workplan the method they will use to account for non-detects when establishing their feedrate limits. This will allow the method to be reviewed and approved by the regulatory official on a site-specific basis.

We continue to believe that the approach outlined in the final rule can be used to account for non-detects during the performance test. However, as previously mentioned, there may be alternative approaches that can be used that adequately assure compliance with the standards.[22]

We believe today's amendments to address non-detects on a site-specific basis will simplify the operating requirements for many combustors. We anticipate that regulatory officials will evaluate these site-specific approaches in part by considering: (1) Proximity of test results to the regulatory emission standard(s); (2) site-specific detection limit levels; and (3) the method or approach to address feedstream non-detects on a daily basis to demonstrate feedrate compliance. Accordingly, we are removing the requirements of § 63.1207(n) and adding § 63.1207(f)(xxvi).

XI. Revisions To Assist Early Compliance

In the final rule, we did not fully consider situations where sources would conduct performance testing prior to the compliance date. This "early compliance" prior to the September 30, 2002 deadline, is likely to occur to coordinate CAA and RCRA testing or to ensure the deadline for conducting the initial comprehensive performance test (i.e. 180 days after the compliance date) is met. We are particularly concerned that the regulation may inadvertently impede sources that would like to come into early compliance. Therefore, we are eliminating two impediments identified by stakeholders: (1) The requirement to stop burning hazardous waste if a source fails the comprehensive performance test; and (2) the requirement for the Documentation of Compliance.

A. When Is the Compliance Date for Sources that Comply Early?

Sources that choose to comply early are establishing a compliance date for themselves prior to the regulatory compliance date of September 30, 2002. On their compliance date, the source becomes subject to the substantive requirements of Subpart EEE. For example, on the compliance date, an exceedance of an emission standard (e.g., carbon monoxide) is a violation of the standard, and an exceedance of an operating parameter limit is evidence of failure to ensure compliance with an emission standard.

After considering the implications of early compliance, we are identifying the point at which the early complying source becomes subject to the substantive requirements of Subpart EEE as the postmark date for the Notification of Compliance (NOC). This is an appropriate point because the NOC is a legally enforceable document that contains all of the standards and operating parameters for a source complying with Subpart EEE.[23] See new § 63.1206(a)(4).

B. Sources That Fail a Comprehensive Performance Test Prior to the Compliance Date Are Not Required To Stop Burning Hazardous Waste

Section 63.1207(l) requires sources that fail a performance test for a mode of operation to stop burning hazardous waste immediately under that mode of operation. In retrospect, we conclude that this requirement is not appropriate for sources that conduct the performance test prior to the compliance date, including early complying sources, because compliance with the substantive requirements Subpart EEE is not yet triggered. Therefore, we are revising the rule accordingly. See revised § 63.1207(l)(1).

C. Early Complying Sources Would Be Exempt From the Documentation of Compliance Requirements

Section 63.1211(d) requires sources to place their Documentation of Compliance (DOC) in the operating record by the regulatory compliance date. The DOC identifies the applicable emission standards under Subpart EEE and the limits on the operating parameters under § 63.1209 that ensure compliance with those emission standards. In addition, the DOC identifies enforceable operating requirements from the compliance date until postmark of the Notification of Compliance. Given that the compliance date for early complying sources is the date the NOC is postmarked, the DOC would serve no purpose. Therefore, we are exempting early complying sources from the DOC requirement. See revised § 63.1211(d).

D. Notification of Testing for Sources That Choose To Comply Early

As with all Subpart EEE sources, those that comply early must notify permit officials of the scheduled performance test date and submit for review and approval the emissions test plan and continuous monitoring system evaluation test plan. See § 63.1207(e). Review and approval of test plans is appropriate for sources that comply early for the same reasons it is

representativeness (whether the feedstream is homogenous) of the feedstream samples if actual, unspiked feedstream metal levels are used to calculate metal feedrates.

[22] For example, separate limits for each location may not be needed to assure compliance with the standards if the detection limits are low. In this situation, a source could assume the constituent is not present in the non-detect feedstreams, or perhaps assume it is present at one-half the detection limit, and establish one total system feedrate limit instead of separate limits. This would be accomplished by adding these assumed non-detect feedrate values to the other known feedrates from the other feed locations.

[23] Sources will want to delete RCRA permit requirements that have been superseded by the Subpart EEE standards. See 64 FR at 52988. Modifying the RCRA permit precludes concerns about dual enforcement of emission standards.

appropriate for other sources—to ensure that the source's performance test plans will effectively determine whether the source is in compliance with the requirements of Subpart EEE. We encourage permit officials to review performance test plans expeditiously for sources that elect to comply early.

XII. Accuracy Requirements for Weight Measurement Devices

Section 63.1209(b)(2)(ii) specifies that the accuracy of weight measurement devices used to monitor flowrate of a feedstream must be ± 1 percent of the weight being measured. In addition, sources are required to verify the calibration of the device at least once every three months.

Stakeholders express concerns about these requirements. We concur with many of stakeholders' concerns about the accuracy requirement for weight measurement devices and are revising the rule to specify an accuracy requirement only for activated carbon feedrate measurement devices.

Stakeholders state that the ± 1 percent accuracy requirement is not appropriate for all weight measurement devices. This accuracy requirement is the same as we used in another rulemaking where it is applied only to the device used to measure carbon feedrate in an activated carbon injection system. Stakeholders state that the ± 1 percent accuracy is not achievable by many weight measurement devices, such as devices that measure the weight of raw materials.[24] Stakeholders also note that the implementation document for the boiler and industrial furnace standards under Part 266, Subpart H, lists acceptable measurement devices than cannot achieve this level of accuracy.

We agree with the stakeholders' concerns and are revising § 63.1209(b)(2)(ii) so that the accuracy requirement applies only to a carbon injection weight measurement device. Nonetheless, sources must include in the continuous monitoring system evaluation test plan the accuracy and calibration procedures for each monitor required under § 63.1209. This evaluation test plan must be submitted along with the comprehensive performance test plan for review and approval. See § 63.1207(e).

[24] For example, a clamshell bucket cannot achieve this level of accuracy for the feedstock because of the large weight of the clamshell relative to the feedstock and because some of the feedstream will stick to the bucket.

XIII. Deletion of Requirement for Establishing a Scrubber Liquid Minimum pH Operating Parameter Limit for Mercury Control for Wet Scrubbers

The final rule states that mercury emissions from hazardous waste combustors are controlled by: (1) Controlling the feedrate of mercury; (2) wet scrubbing to remove soluble mercury (e.g., mercuric chloride); and (3) carbon adsorption. There are specific operating parameter limits (OPL) that apply to each control technology.

For hazardous waste combustors using wet scrubbers to control mercury the OPLs are identical to those that are required to assure compliance with the hydrochloric acid/chlorine gas emission standard. See §§ 63.1209(l)(2) and (o)(3). We inadvertently established an inappropriate OPL requirement for mercury in developing the final rule. While a minimum pH of the scrubber water is an important parameter for chlorine control as required by § 63.1209(o)(3)(iv), it is not an appropriate OPL for mercury control. The Agency is amending the final rule by deleting the requirement for establishing a scrubber liquid minimum pH as an OPL for mercury control. Today's action does not change the requirements for hydrochloric acid and chlorine, however.

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866

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

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is a "significant regulatory action" because it may be considered significant under point four above: "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The aggregate annualized compliance costs for this rule are estimated to be less than $100 million. Furthermore, this rule is not expected to 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. The benefits to human health and the environment resulting from today's final action have not been monetized but are deemed to be less than $100 million per year.

We have prepared two economic support documents for this action. These are: Assessment of Potential Costs, Benefits and Other Impacts NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments (Assessment), and, Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments. The Assessment addresses economic impacts of the thirteen direct final amendments to the September 30, 1999 final rule. The Assessment also briefly examines equity considerations and other impacts. The Regulatory Flexibility Screening Analysis (RFSA) briefly examines small entity impacts potentially resulting from this action. This Part presents a summary of findings from the Assessment and the RFSA documents. The complete Assessment and RFSA documents are available in the RCRA docket established for this action. Interested readers are encouraged to read these documents.

A. Why Is This Direct Final Rule Necessary?

The environmental regulations promulgated by EPA seek to correct market failures through the internalization of negative environmental externalities. That is not the case with today's rule. This action is necessary in order to clarify and improve compliance, testing and monitoring requirements, and general

implementation efficiency associated with the final rule NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52828, September 30, 1999).

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, "to the extent permitted by law, and where applicable." The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s).

We have already employed education and outreach programs designed to help accomplish the objectives of the amendments in this rule. We believe that, at this point, a regulatory approach will ensure appropriate technical clarification and the necessary implementation efficiency designed to fully accomplish our objectives.

C. What Regulatory Options Were Considered?

This is a direct final action that does not facilitate the assessment of alternative regulatory options.

D. What Are the Potential Costs or Cost Savings of This Direct Final Rule?

The thirteen direct final amendments presented in today's action vary considerably in scope and substance. Many of the amendments are anticipated to result in minor to negligible incremental cost impacts (savings or increases) to both the regulated community and the Agency. Three of the amendments are expected to result in more substantive cost impacts to the regulated community. These findings are briefly summarized below. The Assessment document presents a detailed review of our methodology, data, findings, and analytical limitations.

1. Deletion of One-Time Notification of Compliance with Alternative Clean Air Act Standards (Amendment II)

In the final rule, a source that is not feeding hazardous waste when the hazardous waste residence time expires may elect to comply temporarily with alternative standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source chooses this option, § 63.1206(b)(1)(ii)(A) requires the source to submit to the Administrator a written, one-time notification documenting compliance with those requirements and standards. Since this stipulation duplicates requirements under title V of the CAA, such a requirement is redundant.

A deletion of this requirement reduces the administrative costs associated with compliance notification. Estimates of labor costs and administrative time spent on such a task suggest that about three hours per respondent would be saved. Out of this, two hours are estimated to be technical time (costed at a rate of $55 per hour), and one hour is likely to be management time (costed at $71 per hour). All facilities are likely to benefit from this exemption, thus leading to aggregate industry-wide cost savings of approximately $31,000 per year.

2. Alternative to the PM Standard for Incinerators Feeding Low Levels of Metals (Amendment VI)

The final rule established a particulate matter emission standard of 0.015 gr/dscf for new and existing sources as a surrogate for control of non-mercury CAA metal hazardous air pollutants (HAPs). The rule also offered an alternative particulate matter emission standard of 0.03 gr/dscf for sources that demonstrate the use of superior federate control of metals in their hazardous waste. Today, we are eliminating the alternative particulate matter emission standard and replacing it with metal emissions control requirements. As a result of this amendment, no particulate matter emissions standard would apply to the incinerator under Subpart EEE. However, the incinerator would remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). In addition to the 0.08 gr/dscf standard, the alternative standard requires sources to comply with the following four requirements: (1) A metal emissions limitation for semivolatile and low volatile metals that applies to all CAA HAP metals, excluding mercury; (2) A requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT defining metal feedrate floor control level; (3) A requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals; and (4) A set of operating requirements pursuant to § 63.1209(n).

These four components collectively provide for MACT control of non-mercury CAA metal HAPs in the absence of a MACT particulate matter standard. Hence, we believe that while this amendment would provide some reduced regulatory requirements to industry, there would be no adverse impact on the environment or any associated social costs.

The cost savings resulting from this amendment will have two components: Savings in up-front capital costs and operation and maintenance cost savings. The capital cost savings would be a result of not needing a control device that meets MACT PM control standards (i.e., a control device that achieves 0.015 gr/dscf). The unit capital cost savings for the five sources that are expected to avail themselves of this standard in a given year are estimated to be $150,000. Annualizing this amount over ten years, using a discount rate of 7 percent, gives an annual savings of approximately $21,500 for capital costs per facility.

Operation and maintenance costs for a less complex system would amount to approximately $120,000 per year per facility. These savings arise from reductions in energy usage (pressure drop devices can be very energy intensive); lower solid waste handling costs, and reduced baghouse maintenance costs. Assuming that five facilities are able to take advantage of this alternative, the total cost savings per year associated with this amendment would be approximately $707,500. It is important to note that the exact number of facilities that will take advantage of this standard is difficult to determine and is likely to change over time.

3. Feedstream Analysis Requirements for Organic HAPs (Amendment VIII)

Section 63.1207(f)(1)(ii) requires sources to include in their site-specific plan for a comprehensive performance test an analysis of all Clean Air Act hazardous air pollutants that could reasonably be present in "the feedstream." Regulators would use these analyses to ensure compliance with the destruction and removal efficiency standards of §§ 63.1203 through 63.1205.

However, upon further review, we believe that the comprehensive analyses required by § 63.1206(f)(1)(ii)(A) are not necessary in all cases to ensure compliance with the DRE standard. For example, if the source can demonstrate compliance with the DRE standard using POHCs that represent the most persistent organic compounds, a less rigorous analysis may be appropriate to address other concerns, such as whether

feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic.

We are, therefore, amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if sources can document that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. This amendment will result in cost savings in operation and maintenance expenses, estimated at $4,000 per facility per year. With 45 facilities expected to be affected by this amendment per year, the total annual cost savings from this effort amount to approximately $180,000.

In addition to the cost savings of $918,500 identified above we estimate that two of the thirteen amendments would result in quantifiable cost burdens to industry and the regulatory agency and/or states. These amendments are projected to result in aggregate cost increases of approximately $8,700 per year. The net aggregate cost impact associated with the thirteen amendments is estimated to be $909,800 per year. This cost impact estimate will marginally decrease the total annual social cost projection of $50 to $63 million [25] estimated for compliance with the final rule. All cost impacts are dependant upon the regional enforcement regime.

II. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in; (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 rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only amendment II is likely to impact one or more of the six small hazardous waste combustors. Under our assumed worst-case scenario where the maximum cost impacts of this amendment ($31,000 savings) are attributed to only these six small sources, we find that no source would experience impacts beyond 0.14 percent of annual gross revenues.[26] This does not represent a significant economic impact.

Although this rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of this rule on small entities. Although not specifically directed toward small business outreach, we have met with industry representatives during the developmental phase and requested comment and suggestions on all aspects of this rulemaking. No small business concerns were brought up by these industry representatives.

We have completed the analysis: *Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments,* in support of the direct final rule. This RFSA document is available for review in the docket established for today's action.

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

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, we do not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

In addition, these amendments, as part of the HWC MACT standards, are exempt from the requirements of Executive Order 13045 because the final rule is a technology-based regulation rather than a risk-based one. Nevertheless, the amendments would not result in any incremental environmental harm that would affect children's health.

IV. Environmental Justice Executive Order 12898

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

We have no data indicating that today's rule would result in disproportionately negative impacts on minority or low income communities.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA,

[25] U.S. Environmental Protection Agency, Office of Solid Waste, "Addendum to the Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule," July 23, 1999.

[26] Based on the July 1999 Assessment, we found that the smallest annual firm revenue associated with the six small facilities was $3.6 million. Dividing $31,000 by the six facilities results in approximately $5,200 maximum impact per small facility. ($5,200/$3.6 million = 0.14 percent).

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have 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 single year. It is estimated that the direct final amendments will result in increased costs to all states (or the Agency) of approximately $2,100 per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VI. Executive Order 13132 (Federalism)

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

This 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 is projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur to selected States an/or EPA Regional Offices if these entities experience increased administrative needs, enforcement requirements, or information requests. However, this rule will not have substantial direct effects on the States, intergovernmental relationships, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

VII. Consultation With 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. Today's action will not significantly or uniquely affect the communities of Indian tribal governments, nor will it impose substantial direct compliance costs on them. Tribal communities are not known to own or operate any hazardous waste combustion facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting responsibilities associated with this rule.

VIII. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.03) listing the information collection requirements of this direct final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050–0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environment Protection Agency (2137), 1200 Pennsylvania Avenue NW., Washington DC 20460, or by calling (202) 260–2740.

Some of the amendments finalized today pertain to RCRA provisions of the rule (i.e., to 40 CFR parts 260 thru 271), and were covered under an earlier ICR No. 1361.08. Today's amendments to these RCRA provisions are all de-regulatory, and do not impose any burden on the regulated community. They only reduce the existing burden shown in that ICR. The ICR No. 1361.08 will be revised to show the reduced burden when the direct final rule is promulgated. The public burden associated with other provisions of this direct final rule (which are under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 1.7 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $118 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

IX. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

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

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 direct final rule will be effective on October 16, 2001 unless EPA receives adverse comment by August 17, 2001.

Part Four: State Authority

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR at 52991).

List of Subjects

40 CFR Part 63

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

40 CFR Part 264

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

Dated: June 18, 2001.

Christine Todd Whitman,

Administrator.

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

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

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

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

2. Section 63.1201 is amended by revising the definition of "Hazardous waste residence time" and adding the definition of "Preheater tower combustion gas monitoring location" to paragraph (a) in alphabetical order to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Hazardous waste residence time means the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste (excluding residues that may adhere to combustion chamber surfaces and excluding waste-derived recycled materials such as cement kiln dust and internally recycled metals) exit the combustion chamber. For combustors with multiple firing systems whereby the residence time may vary for the firing systems, the hazardous waste residence time for purposes of complying with this subpart means the longest residence time for any firing system in use at the time of the waste cutoff.

* * * * *

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

* * * * *

3. Section 63.1206 is amended by:

a. Adding paragraph (a)(4).

b. Revising paragraphs (b)(1)(ii), (b)(6)(i), (b)(7)(i)(B), (b)(7)(ii)(B), (b)(8)(v), (b)(13)(i), and (b)(14).

c. Revising paragraph (c)(7)(ii).

The revisions and additions read as follows:

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

(a) * * *

(4) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to September 30, 2002, your compliance date is the date you postmark the Notification of Compliance under § 63.1207(j)(1).

(b) * * *

(1) * * *

(ii) When hazardous waste is not in the combustion chamber (i.e., the hazardous waste feed to the combustor has been cut off for a period of time not less than the hazardous waste residence time) and you have documented in the operating record that you are complying with all otherwise applicable requirements and standards promulgated under authority of sections 112 (e.g., subpart LLL of this part for cement kilns) or 129 of the Clean Air Act in lieu of the emission standards of §§ 63.1203 through 63.1205; the monitoring and compliance standards of this section and §§ 63.1207 through 63.1209, except the modes of operation requirements of § 63.1209(q); and the notification, reporting, and recordkeeping requirements of §§ 63.1210 through 63.1212.

* * * * *

(6) * * *

(i) If a DRE test performed prior to the compliance date is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

* * * * *

(7) * * *

(i) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(*1*) You have not modified the design or operation of your source in a manner that could effect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(*2*) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(*1*) You have not modified the design or operation of your source in a manner that could affect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(*2*) The DRE test data meet the quality assurance objectives determined on a site-specific basis.

* * * * *

(8) * * *

(v) The particulate matter and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for a correlation test, including all runs of all test conditions, unless more time is approved by the Administrator.

* * * * *

(13) * * *

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of § 63.1204 as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

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

(*2*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

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

(*2*)(*i*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

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

(*3*)(*i*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

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

* * * * *

(14) *Alternative to the particulate matter standard for incinerators.* (i) *General.* In lieu of complying with the applicable particulate matter standard of § 63.1203(a)(7) or (b)(7), existing and new incinerators may elect to instead comply with the alternative metal emission control requirements described in paragraph (b)(14)(ii) or (b)(14)(iii) of this section, respectively.

(ii) *Alternative metal emission control requirements for existing incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 240 μg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the

atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iii) *Alternative metal emission control requirements for new incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 24 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 µg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iv) *Other requirements.* Existing and new incinerators must document in the operating record that they meet the requirements of paragraph (b)(14)(iv)(A) through (C) of this section.

(A) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(*1*) For existing incinerators, 1,325 µg/dscm.

(*2*) For new incinerators, 875 µg/dscm.

(B) The twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(*1*) For existing incinerators, 6,000 µg/dscm.

(*2*) For new incinerators, 3250 µg/dscm.

(C) You must document that your air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. In making this demonstration, you may spike semivolatile metals above the applicable levels of paragraph (b)(14)(iv)(A) or (B) of this section provided that the applicable alternative emission limitation of paragraph (b)(14)(ii)(A) or (iii)(A) of this section is attained during the test. This test may be performed independently of the comprehensive performance test and must be used to establish applicable operating parameter limits as described in § 63.1209(n), not including § 63.1209(n)(2), to ensure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations.

(v) *Operating limits.* (A) Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits would apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits would apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(B) Twelve-hour rolling average hazardous waste metal feedrate limits required pursuant to paragraphs (b)(14)(iv)(A) and (B) of this section are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as an maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate.

(C) For purposes of complying with the twelve-hour rolling average hazardous waste metal feedrate limits of paragraphs (b)(14)(iv)(A) and (B) of this section, non-detectable metal constituents in each hazardous waste feed must be assumed to be present at one-half the detection limit.

(c) * * *

(7) * * *

(ii) *Bag leak detection system requirements for baghouses at lightweight aggregate kilns and incinerators.* If you own or operate a hazardous waste incinerator or hazardous waste burning lightweight aggregate kiln equipped with a baghouse (fabric filter), you must continuously operate a bag leak detection system that meets the specifications and requirements of paragraph (c)(7)(ii)(A) of this section and you must comply with the corrective measures requirements of paragraph (c)(7)(ii)(B) of this section:

(A) *Bag leak detection system specification and requirements.* (*1*) The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter or less;

(*2*) The bag leak detection system shall provide output of relative particulate matter loadings;

(*3*) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(*4*) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(*5*) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(*6*) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7)(i) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(*7*) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

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

(B) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7)(i) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a bag leak detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified in this paragraph. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(*1*) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(*2*) You must alleviate the cause of the alarm by taking the necessary corrective

measure(s) which may include, but are not to be limited to, the following measures:

(*i*) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(*ii*) Sealing off defective bags or filter media;

(*iii*) Replacing defective bags or filter media, or otherwise repairing th control device;

(*iv*) Sealing off a defective baghouse compartment;

(*v*) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(*vi*) Shutting down the combustor.

4. Section 63.1207 is amended by:

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

b. Revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ii)(C), and (f)(1)(x)(C).

c. Revising paragraph (l)(1) introductory text.

d. Redesignating paragraph (f)(1)(xxvi) as (f)(1)(xxvii).

e. Adding paragraph (f)(1)(ii)(D).

f. Adding new paragraph (f)(1)(xxvi).

g. Removing paragraph (n).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results adequately demonstrate compliance with the applicable standards;

(B) Was in conformance with the requirements of paragraph (g)(1) of this section; and,

(C) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standard of § 63.1203, § 63.1204, or § 63.1205, continue to be representative of the organic hazardous air pollutants in your hazardous waste feedstreams;

* * * * *

(x) * * *

(C) Documentation that the level of spiking recommended during the performance test will mask sampling and analysis imprecision and inaccuracy to the extent that the extrapolated feedrate limits adequately assure compliance with the emission standards;

* * * * *

(xxvi) For purposes of calculating semivolatile metal, low volatile metal, mercury, and total chlorine (organic and inorganic), and ash feedrate limits, a description of how you will handle performance test feedstream analytical results that determines these constituents are not present at detectable levels.

* * * * *

(l) * * *

(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2002 (or a later compliance date approved under § 63.6(i).

* * * * *

5. Section 63.1209 is amended by:

a. Revising paragraph (b)(2)(ii).

b. Revising paragraph (l)(2).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(b) * * *

(2) * * *

(ii) *Accuracy and calibration of weight measurement devices for activated carbon injection systems.* If you operate a carbon injection system the accuracy of the weight measurement device must be ±1 percent of the weight being measured. The calibration of the device must be verified at least once every three months.

* * * * *

(l) * * *

(2) *Wet scrubber.* If your combustor is equipped with a wet scrubber, you must establish operating parameter limits prescribed by paragraph (o)(3) of this section, except for paragraph (o)(3)(iv).

* * * * *

6. Section 63.1211 is amended by revising paragraph (c)(1) to read as follows:

§ 63.1211 What are the record keeping and reporting requirements?

* * * * *

(c) * * *

(1) By the compliance date, you must develop and include in the operating record a Documentation of Compliance. You are not subject to this requirement, however, if you submit a Notification of Compliance under § 63.1207(j) prior to the compliance date.

* * * * *

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

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

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

8. Section 264.340 is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * *

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

* * *

(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with

the alternative to the particulate matter standard of § 63.1206(b)(14) of this chapter.

* * * * *

[FR Doc. 01–16425 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 01–162]

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules for implementing a five-year interim "Freeze" of the jurisdictional separations process in order to simplify and stabilize the separations process pending more comprehensive separations reform. We believe these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until the comprehensive reform is completed. The Report and Order in CC Docket No. 80–286 was published in the **Federal Register** on June 21, 2001. One of the rules contained information collection requirements.

DATES: Section 36.3(b), published at 66 FR 33202, June 21, 2001, was approved by the Office of Management and Budget (OMB) on June 22, 2001 and became effective on June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Eric Einhorn or Andrew Firth, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On May 21, 2001, the Commission released a Report and Order in CC Docket No. 80–286 (Order), 66 FR 33202, June 21, 2001, that took action in response to the Federal-State Joint Board on Jurisdictional Separations' recommended reforms to the jurisdictional separations process codified at part 36 of the Commission's rules, 47 CFR 36 *et seq.*, as a means to simplify and stabilize the separations process pending more comprehensive reform. Specifically, pending further reform, the Commission adopts a five-year freeze of all part 36 category relationships and jurisdictional allocation factors for price cap incumbent local exchange carriers, and a freeze of all allocation factors for rate-of-return incumbent local exchange carriers. The Commission believes these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until comprehensive reform is completed. A summary of the Order was published in the **Federal Register**. See 66 FR 33202, June 21, 2001. One of the rules contained information collection requirements that required OMB approval. On June 22, 2001, OMB approved the information collections. See OMB No. 3060–0988. The rule amendments adopted by the Commission in the Order took effect on June 22, 2001. This publication satisfies the statement in the Order that the Commission would publish a document in the **Federal Register** announcing the effective date of that rule.

List of Subjects in 47 CFR Part 36

Jurisdictional separations, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16651 Filed 7–2–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[DA 01–1239; MM Docket No. 01–37, RM–10065]

Radio Broadcasting Services; Houston and Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of June 6, 2001, a document concerning the allotment of channels in the State of Alaska. In that Report and Order, the Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK–FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1. This document corrects that action to modify Station KNIK–FM to Channel 289C1, the correct channel.

EFFECTIVE DATES: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–14017 published in the **Federal Register** of June 6, 2001, (66 FR 30335) Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK–FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1, rather than Channel 289C1, the correct channel.

In rule FR Doc. 01–14017, published on June 6, 2001 (66 FR 30335), make the following correction. On page 30335, in the preamble, in the first column, and in the amendment to § 73.202 in the second column, remove channel "286C1" and add "289C1" in its place.

Federal Communications Commission.

John A Karousos,

Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–16649 Filed 7–2–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 97–81; FCC 01–171]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; clarification.

SUMMARY: The document addresses four petitions for reconsideration and/or clarification of the *MAS Report and Order*. Specifically, the Commission responds to requests for reconsideration and/or clarification of issues relating to the types of services classified as private internal, shared use and private carrier service in the private internal bands, grandfathering provisions as they relate to transfers and assignments, service area coverage of the Gulf of Mexico, operational flexibility, and other minor points that help clarify its intentions for the MAS service. In addition, the Commission makes minor changes to certain technical requirements in part 101, as well as, the current application freeze in the 928/959 megahertz (MHz) MAS bands. In this document, the Commission grants two petitions and grants a third petition, in part. The fourth petition is dismissed as moot.

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Shellie Blakeney at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION:

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * *	*	*	*	*

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* *	*	*	* *	*
Transportation Control Measures SIP Revision.	All Nonattainment and Maintenance Areas.	05/09/2000	July 16, 2001 66FR 32924	Chapter 1. Introduction, chapter 2. General, and chapter 3. Criteria and procedures.

[FR Doc. 01–17555 Filed 7–13–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7010–1]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins and Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: The EPA is taking final action to amend certain portions of the national emission standards for hazardous air pollutants (NESHAP) for Group I Polymers and Resins; and the NESHAP for Group IV Polymers and Resins, which were promulgated in September 1996. These changes consist of minor cross referencing and typographical errors, as well as minor clarifications.

These amendments will not change the basic control requirements of the NESHAP or the level of health protection they provide. These amendments do not alter the requirement for new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

Section 553 of the Administrative Procedure Act provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making these rule amendments final without prior proposal and opportunity for comment because these minor technical corrections are noncontroversial in nature, and because they do not substantively change the requirements of these NESHAP. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under section 553 of the Administrative Procedure Act.

EFFECTIVE DATE: July 16, 2001.

ADDRESSES: Docket number A–92–44 for the Group I Polymers and Resins NESHAP and Docket number A–92–45 for the Group IV Polymers and Resins NESHAP contain supporting information used in developing the standards. The dockets are located at the U.S. EPA, Room M–1500, 1200 Pennsylvania Avenue, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning these final rule amendments, contact Mr. Robert Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608, facsimile number (919) 541–3470, electronic mail address: rosensteel.bob@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket reflects the full administrative record for this action and includes all the information relied upon by EPA in the development of these NESHAP. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated NESHAP and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *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.

Regulated Entities. The regulated category and entities affected by this action include:

Category	SIC codes	NAICS	Examples of regulated entities
Industry	2821, 2822	325211, 325212	Butyl Rubber, Halobutyl Rubber, Epichlorohydrin Elastomer, Ethylene Propylene Rubber, Hypalon™, Neoprene, Nitrile Butadiene Rubber, Nitrile Butadiene Latex, Polybutadiene Rubber, Styrene-Butadiene Rubber or Latex, Acrylonitrile Butadiene Styrene Resin, Styrene Acrylonitrile Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, Methyl Methacrylate Butadiene Styrene Resin, Poly(ethylene terephthalate) Resin, Polystyrene Resin, and Nitrile Resin producers.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the amendments to the standards affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in § 63.480 of the Group I Polymers and Resins NESHAP and § 63.1310 of the Group IV Polymers and Resins NESHAP. If you have any questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On September 5, 1996 (61 FR 46906) and September 12, 1996 (61 FR 48208), the EPA promulgated NESHAP for Group I Polymers and Resins (40 CFR part 63, subpart U) and the NESHAP for Group IV Polymers and Resins (40 CFR part 63, subpart JJJ), respectively. In November 1996, petitions for review of the September 1996 Groups I and IV Polymers and Resins NESHAP were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised numerous technical issues and concerns with these NESHAP. Based on a settlement agreement that was reached in 1998 between EPA and the petitioners, EPA promulgated amendments to these NESHAP on June 19, 2000 (65 FR 38030). After promulgation of those amendments, based in part on information provided by industry, EPA determined the rule required some minor changes both to carry out the purpose of the June 19, 2000 amendments and to correct errors in sections of the rule. These changes consist of minor referencing and typographical corrections, removing discrepancies between subparts U and JJJ, as well as minor clarifications. In this action, we are promulgating amendments to correct these minor errors.

In addition to these final amendments to subparts U and JJJ, other actions taken to amend various aspects of subparts U and JJJ since the original promulgation of these NESHAP in September of 1996 include the following **Federal Register** notices: January 14, 1997 (62 FR 1835), equipment leaks compliance date extension for both NESHAP; June 6, 1997 (62 FR 30993), equipment leaks compliance date extension for poly(ethylene terephthalate) (PET) resin affected sources; July 15, 1997 (62 FR 37720), minor corrections and clarifications to the NESHAP; February 27, 1998 (63 FR 9944), change in the effective date to February 27, 1998 for subpart JJJ; March 31, 1998 (63 FR 15312), a temporary compliance extension until February 27, 2001 for existing affected sources producing PET using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process; December 9, 1998 (63 FR 67879), notification of a proposed partial settlement; March 9, 1999 (64 FR 11536), clarifications and corrections to the NESHAP; March 9, 1999 (64 FR 11561), proposed amendments to the NESHAP; May 7, 1999 (64 FR 24511), withdrawal of one amendment from the amendments in the March 9, 1999 direct final rule as a result of adverse comments; June 8, 1999 (64 FR 30406), equipment leaks compliance date extension for new and existing affected sources producing PET; June 8, 1999 (64 FR 30456), proposed denial of petition for reconsideration of the equipment leak requirements in subpart JJJ; June 30, 1999 (64 FR 35023), indefinite stay of the compliance dates for certain provisions under subparts U and JJJ; June 19, 2000 (65 FR 38030), promulgated amendments to the NESHAP; August 29, 2000 (65 FR 52319), indefinite stay of compliance date for existing affected sources producing PET using the TPA high viscosity multiple end finisher process; October 26, 2000 (65 FR 64161), withdrawal of indefinite stay of compliance date for existing affected sources producing PET using the TPA high viscosity multiple end finisher process; February 23, 2001 (66 FR 11233), indefinite stay of compliance date for existing affected sources producing PET using the TPA high viscosity multiple end finisher process; and February 26, 2001 (66 FR 11543), compliance date extension for new and existing affected sources producing PET, in order to complete reconsideration of the equipment leaks requirements in subpart JJJ.

II. Summary of Corrections

Today's changes are described in Table 2 to this preamble for the convenience of the reader.

40 CFR, Part 63	Change
Subpart U:	
§ 63.480(i)(2)(ii)	Corrects compliance date.
§ 63.482	Clarifies the definitions of the terms "Group 1 wastewater stream" and "Reconstruction" by removing an internal inconsistency.
§ 63.485(k)	Adds cross reference.
§ 63.487(a)(1)(i)	Corrects typographical error.
§ 63.487(b)(2)	Clarifies when correction to 3 percent oxygen is required for combustion control devices by making language internally consistent within the rule.
§ 63.487(f)(1)(ii)	Corrects cross reference.
§ 63.487(g)(1)(ii)	Corrects cross reference.
§ 63.489(e)(1)(ii)	Clarifies the emission reduction options.
§ 63.501(c)	Clarifies exemptions to certain wastewater requirements.
§ 63.506(e)(5)(i)	Removes the inapplicable term "continuous monitoring system performance evaluations."
§ 63.506(e)(5)(ii)(D)	Corrects cross reference.
§ 63.506(e)(6)(iii)(A)	Corrects cross reference.
§ 63.506(e)(7)(ii)(A)	Removes cross reference to (e)(7)(iii).
§ 63.506(e)(7)(ii)(B)	Removes cross reference to (e)(7)(ii).
Table 1	Clarifies compliance demonstration requirements for flares.
Table 2	Changes § 63.183 to § 63.182 and notes that § 63.131 is a reserved section.
Table 6	Moves entry regarding "Absorber" control/recovery device into the correct columns.
Table 9	Corrects due dates for Precompliance Report and Emissions Averaging Plan; moves text regarding the Precompliance Report in "Description of Report" to the correct "Due Date" column.
Subpart JJJ:	
§ 63.1310(i)(1)(i)	Corrects text, removes "as provided in § 63.6(b)" consistent with Table 1 entry.
§ 63.1310(i)(2)(ii)	Removes reference to § 63.1329 applicable to existing process contact cooling towers.
§ 63.1310(i)(2)(iii)	Removes reference to § 63.1329 applicable to existing process contact cooling towers.
§ 63.1311(b)	Corrects compliance date that was inadvertently changed in a previous notice.
§ 63.1312	Clarifies the definition of the term "Group 1 wastewater stream" by removing an internal inconsistency.
§ 63.1315(a)(9)	Adds cross reference.
§ 63.1315(d)	Removes "are not subject to the provisions of this section and instead."
§ 63.1316(b)(1)(i)(B)	Adds word "or" to the end of the paragraph.
§ 63.1318(a)	Clarifies performance test requirements.
§ 63.1319(a)	Corrects cross reference.
§ 63.1320(a)	Corrects cross reference.
§ 63.1320(b)(3)	Removes incorrect citation.
§ 63.1322(f)(1)(ii)	Corrects cross reference.
§ 63.1322(g)(1)(ii)	Corrects cross reference.
§ 63.1323(b)(6)(i)(C)	Corrects cross reference.
§ 63.1323(h)(1)	Adds text ". . . after the last recover device (if any recovery devices are present) . . ." to clarify the location for determining halogen status.
§ 63.1324(f)(1)(ii)	Clarifies that there are two emission reduction control options.
§ 63.1327(b)	Corrects cross reference.
§ 63.1330(a)	Revises paragraph (a) to be consistent with added paragraphs (d) and (e).
§ 63.1330(b)(8)(i)–(ii)	Removes typographical error—extra word "of" in each paragraph.
§ 63.1330(d)	Adds paragraph inadvertently left out of the NESHAP.
§ 63.1330(e)	Adds paragraph inadvertently left out of the NESHAP.
§ 63.1335(e)(5)(i)	Removes the inapplicable term "continuous monitoring system performance evaluations."
§ 63.1335(e)(7)(ii)(A)	Removes cross reference (e)(7)(ii).
§ 63.1335(e)(7)(i)(B)	Removes cross reference (e)(7)(ii).
Table 1	Clarifies compliance demonstration requirements for flares.
Table 6	Adds check marks for acrylonitrile and 1,3-butadiene to MABS row.
Table 6	Adds check marks for methylmethacrylate to MABS and MBS rows.
Table 7	Corrects superscript error for Precompliance Report in the fourth record/report for scrubber for halogenated batch vents.
Table 9	Corrects due date for Precompliance Report; moves text regarding the Precompliance Report in "Description of Report" to the correct "Due Date" column; corrects Emissions Averaging Plan due date.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. These rule amendments also do not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). These rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These rule amendments also are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. These rule amendments also do not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these amendments, 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 these rule amendments in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. These rule amendments do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rules is discussed in the September 5, 1996 (61 FR 46906) and the September 12, 1996 (61 FR 48208) **Federal Register** notices.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 16, 2001. 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).

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 3, 2001.

Christine Todd Whitman,

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—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

2. Section 63.480 is amended by revising paragraph (i)(2)(ii) to read as follows:

§ 63.480 Applicability and designation of affected sources.

* * * * *

(i) * * *

(2) * * *

(ii) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (i)(2)(i)(A) and (i)(2)(i)(B) of this section are not met and that replacement of components creates one or more emission points (i.e., either newly created Group 1 emission points or emission points that change from Group 2 to Group 1) or causes any other emission point to be added (i.e., Group 2 emission points, back-end process operations subject to §§ 63.493 and 63.500, and heat exchange systems and equipment leak components subject to § 63.502), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.481 (i.e., July 31, 1997 for most equipment leak components subject to § 63.502, and June 19, 2001 for emission points other than equipment leaks), whichever is later.

* * * * *

3. Section 63.482(b) is amended by revising the definitions "Group 1 wastewater stream" and "Reconstruction."

§ 63.482 Definitions.

* * * * *

(b) * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c), with the exceptions listed in § 63.501(a)(10) for the purposes of this subpart (i.e., for organic HAP as defined in this section).

* * * * *

Reconstruction means the replacement of components of an affected source or of a previously unaffected stationary source that becomes an affected source as a result of the replacement, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required

to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

* * * * *

4. Section 63.485 is amended by revising the first sentence of paragraph (k) to read as follows:

§ 63.485 Continuous front-end process vent provisions.

* * * * *

(k) When § 63.114(e) or § 63.117(f) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator of an affected source shall comply with the provisions of § 63.505 for establishing the parameter monitoring level and shall comply with § 63.506(e)(5) for the purposes of reporting information related to the establishment of the parameter monitoring level, for the purposes of this subpart. * * *

* * * * *

5. Section 63.487 is amended as follows:

a. By revising paragraph (a)(1)(i);

b. By revising paragraph (b)(2);

c. In paragraph (f)(1)(ii), by revising the reference to "§ 63.506(e)(5)(iv)" to read "§ 63.506(e)(5)(ix)".

d. In paragraph (g)(1)(ii), by revising the reference to "§ 63.506(e)(5)(iv)" to read "§ 63.506(e)(5)(ix)".

The revisions to paragraphs (a)(1)(i) and (b)(2) read as follows:

§ 63.487 Batch front-end process vents—reference control technology.

(a) * * *

(1) * * *

(i) The owner or operator of the affected sources shall comply with the requirements of § 63.504(c) for the flare.

* * * * *

(b) * * *

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent or to a concentration of 20 ppmv, whichever is less stringent, on a continuous basis using a control device. For purposes of complying with the 20 ppmv outlet concentration standard, the outlet concentration shall be calculated on a dry basis. When a combustion device is used for purposes of complying with the 20 ppmv outlet concentration standard, the concentration shall be corrected to 3 percent oxygen if supplemental combustion air is used to combust the emissions. If supplemental combustion air is not used, a correction to 3 percent oxygen is not required.

* * * * *

6. Section 63.489 is amended by revising paragraph (e)(1)(ii) to read as follows:

§ 63.489 Batch front-end process vents—monitoring equipment.

* * * * *

(e) * * *

(1) * * *

(ii) For aggregate batch vent streams using a control device to comply with § 63.487(b)(2), the established level shall reflect the emission reduction requirement of either 90 percent or 20 ppmv specified in § 63.487(b)(2).

* * * * *

7. Section 63.501 is amended by revising paragraph (c) to read as follows:

§ 63.501 Wastewater provisions.

* * * * *

(c) The provisions of paragraphs (a) and (b) of this section do not apply to the following:

(1) Back-end streams originating from equipment whose only elastomer products are latex products.

(2) Back-end streams at affected sources that are subject to a residual organic HAP limitation in § 63.494(a), and that are complying with these limitations through the use of stripping technology.

* * * * *

8. Section 63.506 is amended as follows:

a. By revising paragraph (e)(5)(i) introductory text;

b. In paragraph (e)(5)(ii)(D), by revising the reference to "§ 63.505 (b)(3)(ii)" to read "§ 63.505 (b)(3)(iii)';

c. In paragraph (e)(6)(iii)(A), by revising the references to "§ 63.146(f)" to read "§ 63.146(g)" and "§ 63.104(b)(4)" to read "§ 63.104(f)(2); and

d. By revising paragraph (e)(7)(ii)(A); and

e. By revising paragraph (e)(7)(ii)(B).

The revisions read as follows:

§ 63.506 General recordkeeping and reporting provisions.

* * * * *

(e) * * *

(5) * * *

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under §§ 63.122 and 63.484 for storage vessels, § 63.117 for continuous front-end process vents, § 63.492 for batch front-end process vents, § 63.499 for back-end process operations, § 63.146 for process wastewater, and § 63.503 for emission points included in an emissions average. In addition, the owner or operator of an affected source shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

* * * * *

(7) * * *

(i) * * *

(ii) * * *

(A) If use of a nominal control efficiency is part of the initial Emissions Averaging Plan described in paragraph (c)(4)(ii) of this section, the information shall be submitted with the Emissions Averaging Plan.

(B) If an owner or operator elects to use a nominal control efficiency after submittal of the initial Emissions Averaging Plan as described in paragraph (e)(4)(ii) of this section, the information shall be submitted at the discretion of the owner or operator.

* * * * *

9. Revise Tables 1, 2, 5, 6, and 9 to subpart U of part 63, to read as follows:

TABLE 1 TO SUBPART U OF PART 63

[Applicability of general provisions to subpart U affected sources]

Reference	Applies to subpart U	Explanation
§63.1(a)(1)	Yes	§63.482 specifies definitions in addition to or that supersede definitions in §63.2.
§63.1(a)(2)	Yes.	
§63.1(a)(3)	Yes	§63.481(f) through (k) and §63.160(b) identify those standards which may apply in addition to the requirements of subparts U and H of this part, and specify how compliance shall be achieved.
§63.1(a)(4)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
§63.1(a)(5)	No	[Reserved.].
§63.1(a)(6)–(8)	Yes.	
§63.1(a)(9)	No	[Reserved.].
§63.1(a)(10)	Yes.	
§63.1(a)(11)	Yes.	
§63.1(a)(12)–(14)	Yes.	
§63.1(b)(1)	No	§63.480(a) contains specific applicability criteria.
§63.1(b)(2)	Yes.	
§63.1(b)(3)	No	§63.480(b) provides documentation requirements for EPPUs not considered affected sources.
§63.1(c)(1)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
§63.1(c)(2)	No	Area sources are not subject to subpart U.
§63.1(c)(3)	No	[Reserved.].
§63.1(c)(4)	Yes.	
§63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications that are not required by subpart U.
§63.1(d)	No	[Reserved.].
§63.1(e)	Yes.	
§63.2	Yes	§63.482 specifies those subpart A definitions that apply to subpart U.
§63.3	Yes.	
§63.4(a)(1)–(3)	Yes.	
§63.4(a)(4)	No	[Reserved.].
§63.4(a)(5)	Yes.	
§63.4(b)	Yes.	
§63.4(c)	Yes.	
§63.5(a)(1)	Yes	Except the terms "source" and "stationary source" should be interpreted as having the same meaning as "affected source".
§63.5(a)(2)	Yes.	
§63.5(b)(1)	Yes	Except §63.480(i) defines when construction or reconstruction is subject to new source standards.
§63.5(b)(2)	No	[Reserved.].
§63.5(b)(3)	Yes.	
§63.5(b)(4)	Yes	Except that the Initial Notification and §63.9(b) requirements do not apply.
§63.5(b)(5)	Yes.	
§63.5(b)(6)	Yes	Except that §63.480(i) defines when construction or reconstruction is subject to the new source standards.
§63.5(c)	No	[Reserved.].
§63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and §63.9(b)(5) do not apply.
§63.5(d)(1)(ii)	Yes	Except that §63.5(d)(1)(ii)(H) does not apply.
§63.5(d)(1)(iii)	No	§63.506(e)(5) and §63.502(f) specify Notification of Compliance Status requirements.
§63.5(d)(2)	No.	
§63.5(d)(3)	Yes	Except §63.5(d)(3)(ii) does not apply, and equipment leaks subject to §63.502 are exempt.
§63.5(d)(4)	Yes.	
§63.5(e)	Yes.	
§63.5(f)(1)	Yes.	
§63.5(f)(2)	Yes	Except that where §63.9(b)(2) is referred to, the owner or operator need not comply.
§63.6(a)	Yes.	
§63.6(b)(1)	No	The dates specified in §63.481(b) apply, instead.
§63.6(b)(2)	No.	
§63.6(b)(3)	No.	
§63.6(b)(4)	No.	
§63.6(b)(5)	No.	
§63.6(b)(6)	No	[Reserved.].
§63.6(b)(7)	No.	
§63.6(c)(1)	Yes	§63.481 specifies the compliance date.
§63.6(c)(2)	No.	

TABLE 1 TO SUBPART U OF PART 63—Continued

[Applicability of general provisions to subpart U affected sources]

Reference	Applies to subpart U	Explanation
§ 63.6(c)(3)	No	[Reserved.].
§ 63.6(c)(4)	No	[Reserved.].
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	[Reserved.].
§ 63.6(e)	Yes	Except as otherwise specified for individualparagraphs. Does not apply to Group 2 emission points, unless they are included in an emissions average.[a]
§ 63.6(e)(1)(i)	No	This is addressed by § 63.480(j)(4).
§ 63.6(e)(1)(ii)	Yes.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	Yes.	
§ 63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.502), the start-up, shutdown, and malfunction planrequirement of § 63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.
§ 63.6(e)(3)(i)(A)	No	This is addressed by § 63.480(j)(4).
§ 63.6(e)(3)(i)(B)	Yes.	
§ 63.6(e)(3)(i)(C)	Yes.	
§ 63.6(e)(3)(ii)	Yes.	
§ 63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.506(b)(1).
§ 63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.506(b)(1).
§ 63.6(e)(3)(v)	Yes.	
§ 63.6(e)(3)(vi)	Yes.	
§ 63.6(e)(3)(vii)	Yes.	
§ 63.6(e)(3)(vii) (A)	Yes.	
§ 63.6(e)(3)(vii) (B)	Yes	Except the plan shall provide for operation in compliance with § 63.480(j)(4).
§ 63.6(e)(3)(vii) (C)	Yes.	
§ 63.6(e)(3)(viii)	Yes.	
§ 63.6(f)(1)	Yes.	
§ 63.6(f)(2)	Yes	Except 63.7(c), as referred to in § 63.6(f)(2)(iii)(D) does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.502.
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart U does not require opacity and visibleemission standards.
§ 63.6(i)(1)	Yes.	
§ 63.6(i)(2)	Yes.	
§ 63.6(i)(3)	Yes.	
§ 63.6(i)(4)(i)(A)	Yes.	
§ 63.6(i)(4)(i)(B)	No	Dates are specified in § 63.481(e) and § 63.506(e)(3)(i).
§ 63.6(i)(4)(ii)	No.	
§ 63.6(i)(5)–(14)	Yes.	
§ 63.6(i)(15)	No	[Reserved.].
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	No.	§ 63.506(e)(5) specifies the submittal dates of performance test results for all emission pointsexcept equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
§ 63.7(a)(3)	Yes.	
§ 63.7(b)	No	§ 63.504(a)(4) specifies notification requirements.
§ 63.7(c)	No	Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g).
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	Yes	Except that all performance tests shall beconducted at maximum representative operating conditions achievable at the time without disruption of operations or damage to equipment.
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	No	Subpart U specifies requirements.
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes	Except that § 63.144(b)(5)(iii)(A) & (B) shall apply for process wastewater. Also, since a site specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3) approval or disapproval of the alternative test method shall not be tied to the site specific test plan.

TABLE 1 TO SUBPART U OF PART 63—Continued

[Applicability of general provisions to subpart U affected sources]

Reference	Applies to subpart U	Explanation
§63.7(g)	Yes	Except that the requirements in §63.506(e)(5) shall apply instead of references to the Notification of Compliance Status report in 63.9(h). In addition, equipment leaks subject to §63.502 are not required to conduct performance tests.
§63.7(h)	Yes	Except §63.7(h)(4)(ii) is not applicable, since the site-specific test plans in §63.7(c)(2) arenot required.
§63.8(a)(1)	Yes.	
§63.8(a)(2)	No.	
§63.8(a)(3)	No	[Reserved.].
§63.8(a)(4)	Yes.	
§63.8(b)(1)	Yes.	
§63.8(b)(2)	No	Subpart U specifies locations to conductmonitoring.
§63.8(b)(3)	Yes.	
§63.8(c)(1)	Yes.	
§63.8(c)(1)(i)	Yes.	
§63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with §63.506(b)(1)(i)(B); for equipmentleaks, comply with §63.181(g)(2)(iii).
§63.8(c)(1)(iii)	Yes.	
§63.8(c)(2)	Yes.	
§63.8(c)(3)	Yes.	
§63.8(c)(4)	No	§63.505 specifies monitoring frequency; not applicable to equipment leaks, because §63.502does not require continuous monitoring systems.
§63.8(c)(5)–(8)	No.	
§63.8(d)	No.	
§63.8(e)	No.	
§63.8(f)(1)–(3)	Yes.	
§63.8(f)(4)(i)	No	Timeframe for submitting request is specified in §63.506(f) or (g); not applicable to equipmentleaks, because §63.502 (through reference to subpart H) specifies acceptable alternative methods.
§63.8(f)(4)(ii)	No	Contents of request are specified in §63.506(f) or (g).
§63.8(f)(4)(iii)	No.	
§63.8(f)(5)(i)	Yes.	
§63.8(f)(5)(ii)	No.	
§63.8(f)(5)(iii)	Yes.	
§63.8(f)(6)	No	Subpart U does not require CEM's.
§63.8(g)	No	Data reduction procedures specified in§63.506(d) and (h); not applicable to equipment leaks.
§63.9(a)	Yes.	
§63.9(b)	No	Subpart U does not require an initial notification.
§63.9(c)	Yes.	
§63.9(d)	Yes.	
§63.9(e)	No	§63.504(a)(4) specifies notification deadline.
§63.9(f)	No	Subpart U does not require opacity and visible emission standards.
§63.9(g)	No.	
§63.9(h)	No	§63.506(e)(5) specifies Notification of Compliance Status requirements.
§63.9(i)	Yes.	
§63.9(j)	No.	
§63.10(a)	Yes.	
§63.10(b)(1)	No	§63.506(a) specifies record retention requirements.
§63.10(b)(2)	No	Subpart U specifies recordkeeping requirements.
§63.10(b)(3)	No	§63.480(b) requires documentation of sources that are not affected sources.
§63.10(c)	No	§63.506 specifies recordkeeping requirements.
§63.10(d)(1)	Yes.	
§63.10(d)(2)	No	§63.506(e)(5) specifies performance test reporting requirements; not applicable to equipment leaks.
§63.10(d)(3)	No	Subpart U does not require opacity and visible emission standards.
§63.10(d)(4)	Yes.	
§63.10(d)(5)(i)	Yes	Except that reports required by §63.10(d)(5)(i) shall be submitted at the same time as Periodic Reports specified in §63.506(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
§63.10(d)(5)(ii)	No.	
§63.10(e)	No	§63.506 specifies reporting requirements.
§63.10(f)	Yes.	

TABLE 1 TO SUBPART U OF PART 63—Continued

[Applicability of general provisions to subpart U affected sources]

Reference	Applies to subpart U	Explanation
§63.11	Yes	§63.11(b) specifies requirements for flares used to comply with provisions of this subpart. §63.504(c) contains the requirements to conduct compliance demonstrations for flares subject to this subpart.
§63.12	Yes	Except that the authority of §63.503(i) and the authority of §63.177 (for equipment leaks) will not be delegated to States.
§§63.13–63.15	Yes.	

[a] The plan and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

TABLE 2 TO SUBPART U OF PART 63

[Applicability of Subparts F, G, & H of this Part to Subpart U affected sources]

Reference	Applies to Subpart U	Comment	Applicable section of Subpart U
Subpart F:			
§63.100	No.		
§63.101	Yes	Several definitions from §63.101 are referenced in §63.482.	§63.482.
§§63.102–63.103	No.		
§§63.104–63.105	Yes		§§63.501 and 63.502.
§§63.106–63.109	No.		
Subpart G:			
§63.110	No.		
§63.111	Yes	Several definitions from §63.111 reference in §63.482.	§63.482.
§63.112	No.		
§§63.113–63.118	Yes	With the differences noted in §63.485 (b) through §63.485(k).	
§§63.119–63.123	Yes	With the differences noted in §63.484(c) through 63.484(s).	63.484.
§§63.124–63.125	No	[Reserved.].	
§§63.126–63.130	No.		
§63.131		[Reserved.].	
§§63.133–63.147	Yes	With the differences noted in §63.501(a)(1) through (19).	§63.501.
§§63.148–63.149	Yes	With the differences noted in §§63.484(c) through (s) and 63.501(a)(1) through (23).	§§63.484 and 63.501.
§63.150(a) through (f)	No.		
§63.150(g)(1) and (2)	No.		
§63.150(g)(3)	Yes		§63.503(g)(3).
§63.150(g)(4)	No.		
§63.150(g)(5)	Yes		§63.503(g)(5).
§63.150(h)(1) and (2)	No.		
§63.150(h)(3)	Yes		§63.503(h)(3).
§63.150(h)(4)	No.		
§63.150(h)(5)	Yes		§63.503(h)(5).
§63.150(i) through (o)	No.		
§§63.151–63.152	No.		
Subpart H:			
§§63.160–63.182	Yes	Subpart U affected sources shall comply with all requirements of subpart H of this part, with the differences noted in §63.502.	§63.502.

* * * * *

TABLE 5 TO SUBPART U OF PART 63

[Known organic HAP emitted from the production of elastomer products]

Organic HAP/chemical name (CAS No.)	Elastomer product/subcategory											
	BR	EPI	EPR	HBR	HYP	NEO	NBL	NBR	PBR/SBRS	PSR	SBL	SBRE
Acrylonitrile (107131)							✔	✔				
1,3 Butadiene (106990)							✔	✔	✔		✔	✔

TABLE 5 TO SUBPART U OF PART 63—Continued

[Known organic HAP emitted from the production of elastomer products]

Organic HAP/chemical name (CAS No.)	Elastomer product/subcategory											
	BR	EPI	EPR	HBR	HYP	NEO	NBL	NBR	PBR/SBRS	PSR	SBL	SBRE
Carbon Disulfide							✔	✔	✔		✔	✔
Carbon Tetrachloride (56235)					✔							
Chlorobenzene (108907)					✔							
Chloroform (67663)					✔							
Chloroprene (126998)						✔						
Epichlorohydrin (106898)		✔										
Ethylbenzene (100414)	✔										✔	
Ethylene Dichloride (107062)										✔		
Ethylene Oxide (75218)		✔								✔		
Formaldehyde (50000)		✔								✔		
Hexane (110543)	✔		✔						✔			
Methanol (67561)	✔								✔			
Methyl Chloride (74873)	✔				✔							
Propylene Oxide (75569)		✔										
Styrene (100425)									✔		✔	✔
Toluene (108883)		✔	✔			✔			✔			
Xylenes (1330207)	✔											
Xylene (m-) (108383)	✔											
Xylene (o-) (95476)	✔											
Xylene (p-) (106423)	✔											

CAS No. = Chemical Abstract Service Number.
BR = Butyl Rubber.
EPI = Epichlorohydrin Rubber.
EPR = Ethylene Propylene Rubber.
HBR = Halobutyl Rubber.
HYP = Hypalon ™.
NEO = Neoprene.
NBL = Nitrile Butadiene Latex.
NBR = Nitrile Butadiene Rubber.
PBR/SBRS = Polybutadiene and Styrene Butadiene Rubber by Solution.
PSR = Polysulfide Rubber.
SBL = Styrene Butadiene Latex.
SBRE = Styrene Butadiene Rubber by Emulsion.

TABLE 6 TO SUBPART U OF PART 63

[Group 1 batch front-end process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature[a]	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in §63.491(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in §63.491(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream value established in the NCS or operating permit—PR.[d,e]

TABLE 6 TO SUBPART U OF PART 63—Continued

[Group 1 batch front-end process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
		5. Reporting all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d,e]
		6. Report all instances when monitoring data are not collected.
Boiler or process heater with a design heat input capacity less than 44 megawatts and where the batch front—end process vents or aggregate batch vent streams are "not" introduced with or used as the primary fuel.	Firebox temperature[a]	1. Continuous records as specified in §63.491(e)(1).[b]
		2. Record and report the average firebox temperature measured during the performance test—NCS.[c]
		3. Record the batch cycle daily average firebox temperature as specified in §63.491(e)(2).[d]
		4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Flare	Presence of a flame at the pilot light	1. Hourly records of whether the monitor was continuously operating during light batch emission episodes selected for control and whether a flame was continuously present at the pilot light during each hour.
		2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c]
		3. Record the times and durations of all periods during batch emission episodes when all flames at the pilot light of a flare are absent or the monitor is not operating.
		4. Report the times and durations of all periods during batch emission episodes selected for control when all flames at the pilot light of a flare are absent—PR.[d]
Scrubber for halogenated batch front-end process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	a. pH of scrubber effluent, and	1. Continuous records as specified in §63.491(e)(1).[b]
		2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c]
		3. Record the batch cycle daily average pH of the scrubber effluent as specified in §63.491(e)(2).
		4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating value established in the NCS or operating permit and all instances when insufficient monitoring data arecollected—PR.[d,e]
	b. Scrubber liquid and gas flow rates (§63.489(b)(4)(ii)).	1. Records as specified in §63.491(e)(1).[b]
		2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS.[c]
		3. Record the batch cycle daily average scrubber liquid/gas ratio as specified in §63.491(e)(2).
		4. Report all batch cycle daily average scrubber liquid/gas ratios that are below the minimum value established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d,e]
Absorber[f]	a. Exit temperature of the absorbing liquid, and	1. Continuous records as specified in §63.491(e)(1).[b]

TABLE 6 TO SUBPART U OF PART 63—Continued

[Group 1 batch front-end process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
		2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in §63.491(e)(2) for each batch cycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are above the maximum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
	b. Exit specific gravity of the absorbing liquid	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS. 3. Record the batch cycle daily average exit specific gravity as specified in §63.491(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in §63.491(e)(1)[b] 2. Record and report the average exit temperature measured during the performance test—NCS. 3. Record the batch cycle daily average exit temperature as specified in §63.491(e)(2). 4. Report all batch cycle daily average exit temperatures that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Carbon adsorber[f]	a. Total regeneration steam flow or nitrogen flow, or pressure gauge or absolute) during carbon bed regeneration cycle(s), and	1. Record of total regeneration steam flow or nitrogen flow, or pressure for each carbon bed regeneration cycle. 2. Record and report the total regeneration steam flow or nitrogen flow, or pressure during each carbon bed regeneration cycle during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration steam flow or nitrogen flow, or pressure is above the maximum value established in the NCS or operating permit—PR.[d,e]
	b. Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s)measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum value established in the NCS or operating permit—PR.[d,e]

TABLE 6 TO SUBPART U OF PART 63—Continued

[Group 1 batch front-end process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
All control devices	a. Diversion to the atmosphere from the control device *or*	1. Hourly records of whether the flow indicator was operating during batch emission episodes selected for control and whether a diversion was detected at any time during the hour, as specified in § 63.491(e)(3). 2. Record and report the times of all periods during batch emission episodes selected for control when emissions are diverted through a bypass line, or the flow indicator is not operating—PR.[d]
	b. Monthly inspections of sealed valves	1. Records that monthly inspections were performed as specified in § 63.491(e)(4)(i). 2. Record and report all monthly inspections that show that valves are in the diverting position or that a seal has been broken—PR.[d]
Absorber, condenser, and carbon adsorber (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device.	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report and average batch vent concentration level or reading measured during the performance test—NCS. 3. Record the batch cycle daily average concentration level or reading as specified in § 63.491(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum values established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]

[a] Monitor may be installed in the firebox or in the duct work immediately downstream of the firebox before any substantial heat exchange is encountered.

[b] "Continuous records" is defined in § 63.111.

[c] NCS = Notification of Compliance Status described in § 63.506(e)(5).

[d] PR = Periodic Reports described in § 63.506(e)(6).

[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.506(e)(6)(iii)(C).

[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

* * * * * * *

TABLE 9 TO SUBPART U OF PART 63

[Routine reports required by this subpart]

Reference	Description of report	Due Date
§ 63.506(b) and subpart A	Refer to § 63.506(b), Table 1 of this subpart, and to subpart A.	Refer to subpart A.
§ 63.506(e)(3)	Precompliance Report[a]	1. Existing affected sources: December 19, 2000. 2. New affected sources: with the application for approval of construction or reconstruction.
§ 63.506(e)(4)	Emissions Averaging Plan	September 19, 2000.
§ 63.506(e)(4)(iv)	Updates to Emissions Averaging Plan	120 days prior to making the change necessitating the update.
§ 63.506(e)(5)	Notification of Compliance Status[b]	Within 150 days after the compliance date.
§ 63.506(e)(6)	Periodic reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.506(e)(6)(i) for the due date for this report.
§ 63.506(e)(6)(xi)	Quarterly for reports Emissions Averaging	No later than 60 days after the end of each quarter. First report is due with the Notification of Compliance Status.
§ 63.506(e)(6)(xii)	Quarterly reports upon request of the Administrator.	No later than 60 days after the end of each quarter.
§ 63.506(e)(7)(i)	Storage Vessels Notification of Inspection	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.

TABLE 9 TO SUBPART U OF PART 63—Continued

[Routine reports required by this subpart]

Reference	Description of report	Due Date
§ 63.506(e)(7)(ii)	Requests for Approval of a Nominal Control Efficiency for Use in Emissions Averaging.	Initial submittal is due with the Emissions Averaging Plan; later submittals are made at the discretion of the owner or operator as specified in § 63.506(e)(7)(ii)(B).
§ 63.506(e)(7)(iii)	Notification of Change in the Primary Product	For notification under § 63.480(f)(3)(ii)—notification submittal date at the discretion of the owner or operator.[c] For notification under § 63.480(f)(4)(ii)—within 6 months of making the determination.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.502 and one for other emission points subject to this subpart.

[b] There will be two versions of this report due at different times; one for equipment subject to § 63.502 and one for other emission points subject to this subpart.

[c] Note that the EPPU remains subject to this subpart until the notification under § 63.480(f)(3)(i) is made.

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

10. Section 63.1310 is amended by revising paragraphs (i)(1)(i) introductory text and (i)(2)(ii) and (iii) to read as follows:

§ 63.1310 Applicability and designation of affected sources.

* * * * *

(i) * * *

(1) * * *

(i) If a group of one or more TPPUs that produce the same primary product is added to a plant site, the added group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in paragraph (f) of this section, is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial start-up or February 27, 2001, whichever is later, if the added group of one or more TPPUs meets the criteria in either paragraph (i)(1)(i)(A) or (i)(1)(i)(B) of this section, and the criteria in either paragraph (i)(1)(i)(C) or (i)(1)(i)(D) of this section are met.

* * * * *

(2) * * *

(ii) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section are not met, and that replacement of components creates one or more Group 1 emission points (i.e., either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (i.e., Group 2 emission points, equipment leak components subject to § 63.1331, continuous process vents subject to §§ 63.1316 through 63.1320, and heat exchange systems subject to § 63.1328), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission points shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.1311 (i.e., February 27, 1998 for most equipment leak components subject to § 63.1331, and June 19, 2001 for most emission points other than equipment leaks), whichever is later.

(iii) If an addition or process change (not including a process change that solely replaces components) is made to an existing affected source that creates one or more Group 1 emission points (i.e., either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (i.e., Group 2 emission points, equipment leak components subject to § 63.1331, continuous process vents subject to §§ 63.1316 through 63.1320, and heat exchange systems subject to § 63.1328), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.1311 (i.e., February 27, 1998 for most equipment leak components subject to § 63.1331, and June 19, 2001 for most emission points other than equipment leaks), whichever is later.

* * * * *

11. Section 63.1311 is amended by revising paragraph (b) to read as follows:

§ 63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 upon initial start-up or August 27, 2001, whichever is later.

* * * * *

12. Section 63.1312(b) is amended by revising the definitions for the terms "Group 1 wastewater stream" and "Reconstruction."

§ 63.1312 Definitions.

* * * * *

(b) * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c) and/or that meets the criteria for Group 1 status in § 63.132(d), with the exceptions listed in § 63.1330(b)(8) for the purposes of this subpart (i.e., for organic HAP as defined in this section).

* * * * *

Reconstruction means the replacement of components of an affected source or of a previously unaffected stationary source that becomes an affected source as a result of the replacement, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required

to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

* * * * *

13. Section 63.1315 is amended by revising paragraphs (a)(9) and (d) to read as follows:

§ 63.1315 Continuous process vents provisions.

* * * * *

(a) * * *

(9) When § 63.114(e) or § 63.117(f) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator of an affected source shall comply with the provisions of § 63.1335(e)(5) for purposes of reporting information related to establishment of the parameter monitoring level for purposes of this subpart. Further, the term "level" shall apply when the term "range" is used in §§ 63.114, 63.117, and 63.118.

* * * * *

(d) Affected sources producing PET or polystyrene using a continuous process are subject to the emissions control provisions of § 63.1316, the monitoring provisions of § 63.1317, the testing and compliance demonstration provisions of § 63.1318, the recordkeeping provisions of § 63.1319, and the reporting provisions of § 63.1320. However, in some instances as specified in § 63.1316, select continuous process vents present at affected sources producing PET or polystyrene using a continuous process are subject to the provisions of this section.

* * * * *

14. Section 63.1316 is amended by revising paragraph (b)(1)(i)(B) to read as follows:

§ 63.1316 PET and polystyrene affected sources—emissions control provisions.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) As specified in § 63.1318(d), the owner or operator shall maintain the daily average outlet gas stream temperature from each final condenser in a material recovery section at a temperature of +3°C (+37°F) or less (i.e., colder); or

* * * * *

15. Section 63.1318 is amended by revising paragraph (a) to read as follows:

§ 63.1318 PET and polystyrene affected sources—testing and compliance demonstration provisions.

(a) Except as specified in paragraphs (b) through (d) of this section, continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable testing and compliance provisions for continuous process vents specified in § 63.1315(a) except that, for purposes of this paragraph (a), references to group determinations (i.e., total resource effectiveness) do not apply and owners or operators are not required to comply with § 63.113.

* * * * *

16. Section 63.1319 is amended in paragraph (a) by revising the reference to "§ 63.1315" to read "§ 63.1315(a)."

17. Section 63.1320 is amended in paragraph (a) by revising the reference to "§ 63.1315" to read "§ 63.1315(a)." and by revising paragraph (b)(3) to read as follows:

§ 63.1320 PET and polystyrene affected sources—reporting provisions.

* * * * *

(b) * * *

(3) Whenever a process change, as defined in § 63.115(e), is made that causes emissions from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source to be greater than 0.12 kg organic HAP per Mg of product, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report. The report shall include the information specified in § 63.1319(b)(1) and a description of the process change.

* * * * *

18. Section 63.1322 is amended in paragraphs (f)(1)(ii) and (g)(1)(ii) by revising the references to "§ 63.1335(e)(5)(iv)" to read "§ 63.1335(e)(5)(viii)."

19. Section 63.1323 is amended in paragraph (b)(6)(i)(C) by revising the reference to "§ 63.506(e)(3)" to read "§ 63.1335(e)(3)," and by revising paragraph (h)(1) introductory text to read as follows:

§ 63.1323 Batch process vents—methods and procedures for group determination.

* * * * *

(h) * * *

(1) The concentration of each organic compound containing halogen atoms (ppmv, by compound) for each batch emission episode shall be determined after the last recovery device (if any recovery devices are present), based on any one of the following procedures:

* * * * *

20. Section 63.1324 is amended by revising paragraph (f)(1)(ii) to read as follows:

§ 63.1324 Batch process vents—monitoring equipment.

* * * * *

(f) * * *

(1) * * *

(ii) For aggregate batch vent streams using a control device to comply with § 63.1322(b)(2), the established level shall reflect the emission reduction requirement of either 90 percent or 20 ppmv specified in § 63.1322(b)(2).

* * * * *

21. Section 63.1327 is amended in paragraph (b) by revising the reference to "§ 63.480(i)(2)(ii)" to read "§ 63.1310(i)(2)(ii)."

22. Section 63.1330 is amended as follows:

a. By revising paragraph (a);

b. By revising paragraph (b)(8)(i);

c. By revising paragraph (b)(8)(ii);

d. By adding paragraph (d); and

e. By adding paragraph (e).

The revisions and additions read as follows:

§ 63.1330 Wastewater provisions.

* * * * *

(a) Except as specified in paragraphs (d) and (e) of this section, the owner or operator of each affected source shall comply with paragraphs (b) and (c) of this section.

(b) * * *

(8) * * *

(i) When §§ 63.132 through 63.149 refer to table 8 compounds, the owner or operator is only required to consider 1,3-butadiene for purposes of this subpart.

(ii) When §§ 63.132 through 63.149 refer to table 9 compounds, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1312 and that are listed on table 9 of 40 CFR part 63, subpart G, for the purposes of this subpart, except for ethylene glycol which need not be considered.

* * * * *

(d) The provisions of paragraph (b) of this section do not apply to each affected source producing ASA/AMSAN.

(e) The provisions of paragraphs (b) and (c) of this section do not apply to each affected source producing polystyrene using either a continuous or batch process.

23. Section 63.1335 is amended as follows:

a. By revising paragraph (e)(5)(i) introductory text;

b. By revising (e)(7)(ii)(A); and

c. By revising (e)(7)(ii)(B).

The revisions read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

* * * * *

(e) * * *

(5) * * *

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under §§ 63.1311(m), 63.122, and 63.1314 for storage vessels, § 63.117 for continuous process vents, § 63.146 for process wastewater, §§ 63.1316 through 63.1320 for continuous process vents subject to § 63.1316, § 63.1327 for batch process vents, § 63.1329 for process contact cooling towers, and § 63.1332 for emission points included in an emissions average. In addition, the owner or operator of an affected source shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

* * * * *

(7) * * *

(i) * * *

(ii) * * *

(A) If use of a nominal control efficiency is part of the initial Emissions Averaging Plan described in paragraph (e)(4)(ii) of this section, the information shall be submitted with the Emissions Averaging Plan.

(B) If an owner or operator elects to use a nominal control efficiency after submittal of the initial Emissions Averaging Plan as described in paragraph (e)(4)(ii) of this section, the information shall be submitted at the discretion of the owner or operator.

* * * * *

24. Revising Tables 1, 6, 7, and 9 to Subpart JJJ of Part 63, to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63

[Applicability of general provisions to subpart JJJ affected sources]

Reference	Applies to Subpart JJJ	Explanation
§ 63.1(a)(1)	Yes	§ 63.1312 specifies definitions in addition to or that supersede definitions in § 63.2.
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes	§ 63.1311(g) through (l) and § 63.160(b) identify those standards which may apply in addition to the requirements of subparts JJJ and H of this part, and specify how compliance shall be achieved.
§ 63.1(a)(4)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
§ 63.1(a)(5)	No	[Reserved.].
§ 63.1(a)(6)–(8)	Yes.	
§ 63.1(a)(9)	No	[Reserved.].
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12)–(14)	Yes.	
§ 63.1(b)(1)	No	§ 63.1310(a) contains specific applicability criteria.
§ 63.1(b)(2)	Yes.	
§ 63.1(b)(3)	No	§ 63.1310(b) provides documentation requirements for TPPUs not considered affected sources.
§ 63.1(c)(1)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
§ 63.1(c)(2)	No	Area sources are not subject to subpart JJJ.
§ 63.1(c)(3)	No	[Reserved.].
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications that are not required by subpart JJJ.
§ 63.1(d)	No	[Reserved.].
§ 63.1(e)	Yes.	
§ 63.2	Yes	§ 63.1312 specifies those subpart A definitions that apply to subpart JJJ.
§ 63.3	Yes.	
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	No	[Reserved.].
§ 63.4(a)(5)	Yes.	
§ 63.4(b)	Yes.	
§ 63.4(c)	Yes.	
§ 63.5(a)(1)	Yes	Except the terms "source" and "stationary source" should be interpreted as having the same meaning as "affected source."
§ 63.5(a)(2)	Yes.	
§ 63.5(b)(1)	Yes	Except § 63.1310(i) defines when construction or reconstruction is subject to new source standards.
§ 63.5(b)(2)	No	[Reserved.].
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes	Except that the Initial Notification and § 63.9(b) requirements do not apply.
§ 63.5(b)(5)	Yes.	
§ 63.5(b)(6)	Yes	Except that § 63.1310(i) defines when construction or reconstruction is subject to new source standards.
§ 63.5(c)	No	[Reserved.]
§ 63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and § 63.9(b)(5) do not apply.
§ 63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.

TABLE 1 TO SUBPART JJJ OF PART 63—Continued

[Applicability of general provisions to subpart JJJ affected sources]

Reference	Applies to Subpart JJJ	Explanation
§63.5(d)(1)(iii)	No	§§63.1335(e)(5) and 63.1331(a)(4) specify Notification of Compliance Status requirements.
§63.5(d)(2)	No.	
§63.5(d)(3)	Yes	Except §63.5(d)(3)(ii) does not apply, and equipment leaks subject to §63.1331 are exempt.
§63.5(d)(4)	Yes.	
§63.5(e)	Yes.	
§63.5(f)(1)	Yes.	
§63.5(f)(2)	Yes	Except that where §63.9(b)(2) is referred to, the owner or operator need not comply.
§63.6(a)	Yes.	
§63.6(b)(1)	No	The dates specified in §63.1311(b) apply, instead.
§63.6(b)(2)	No.	
§63.6(b)(3)	No.	
§63.6(b)(4)	No.	
§63.6(b)(5)	No.	
§63.6(b)(6)	No	[Reserved.].
§63.6(b)(7)	No.	
§63.6(c)(1)	Yes	Except that §63.1311 specifies the compliance date.
§63.6(c)(2)	No.	
§63.6(c)(3)	No	[Reserved.].
§63.6(c)(4)	No	[Reserved.].
§63.6(c)(5)	Yes.	
§63.6(d)	No	[Reserved.].
§63.6(e)	Yes	Except as otherwise specified for individual paragraphs. Does not apply to Group 2 emissionpoints, unless they are included in an emissions average.[a]
§63.6(e)(1)(i)	No	This is addressed by §63.1310(j)(4).
§63.6(e)(1)(ii)	Yes.	
§63.6(e)(1)(iii)	Yes.	
§63.6(e)(2)	Yes.	
§63.6(e)(3)(i)	Yes	For equipment leaks (subject to §63.1331), the start-up, shutdown, and malfunction plan requirement of §63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, malfunction plan may include written procedures that identifyconditions that justify a delay of repair.
§63.6(e)(3)(i)(A)	No	This is addressed by §63.1310(j)(4).
§63.6(e)(3)(i)(B)	Yes.	
§63.6(e)(3)(i)(C)	Yes.	
§63.6(e)(3)(ii)	Yes.	
§63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in §63.1335(b)(1).
§63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in §63.1335(b)(1).
§63.6(e)(3)(v)	Yes.	
§63.6(e)(3)(vi)	Yes.	
§63.6(e)(3)(vii)	Yes.	
§63.6(e)(3)(vii)(A)	Yes.	
§63.6(e)(3)(vii)(B)	Yes	Except the plan shall provide for operation in (B) compliance with §63.1310(j)(4).
§63.6(e)(3)(vii)(C)	Yes.	
§63.6(e)(3)(viii)	Yes.	
§63.6(f)(1)	Yes.	
§63.6(f)(2)	Yes	Except §63.7(c), as referred to in §63.6(f)(2)(iii)(D), does not apply, and except that §63.6(f)(2)(ii) does not apply to equipment leaks subject to §63.1331.
§63.6(f)(3)	Yes.	
§63.6(g)	Yes.	
§63.6(h)	No	Subpart JJJ does not require opacity and visible emission standards.
§63.6(i)(1)	Yes.	
§63.6(i)(2)	Yes.	
§63.6(i)(3)	Yes.	
§63.6(i)(4)(i)(A)	Yes.	
§63.6(i)(4)(i)(B)	No	Dates are specified in §63.1311(e) and §63.1335(e)(3)(i).
§63.6(i)(4)(ii)	No.	
§63.6(i)(5)–(14)	Yes.	
§63.6(i)(15)	No	[Reserved.].
§63.6(i)(16)	Yes.	
§63.6(j)	Yes.	
§63.7(a)(1)	Yes.	
§63.7(a)(2)	No	§63.1335(e)(5) specifies the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
§63.7(a)(3)	Yes.	
§63.7(b)	No	§63.1333(a)(4) specifies notification requirements.
§63.7(c)	No.	

TABLE 1 TO SUBPART JJJ OF PART 63—Continued

[Applicability of general provisions to subpart JJJ affected sources]

Reference	Applies to Subpart JJJ	Explanation
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	Yes	Except that all performance tests shall be conducted at maximum representative operating conditions achievable at the time without disruption of operations or damage to equipment.
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	No	Subpart JJJ specifies requirements.
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes	Except that § 63.144(b)(5)(iii)(A) and (B) shall apply for process wastewater. Also, because a site specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3), approval or disapproval of the alternative test method shall not be tied to the site specific test plan.
§ 63.7(g)	Yes	Except that the requirements in § 63.1335(e)(5) shall apply instead of references to the Notification of Compliance Status report in § 63.9(h). In addition, equipment leaks subject to § 63.1331 are not required to conduct performance tests.
§ 63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, because the site-specific test plans in § 63.7(c)(2) are not required.
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	No.	
§ 63.8(a)(3)	No	[Reserved.].
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	No	Subpart JJJ specifies locations to conduct monitoring.
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	Yes.	
§ 63.8(c)(1)(i)	Yes.	
§ 63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with § 63.1335(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(iii).
§ 63.8(c)(1)(iii)	Yes.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	No	§ 63.1334 specifies monitoring frequency; not applicable to equipment leaks because § 63.1331 does not require continuous monitoring systems.
§ 63.8(c)(5)–(8)	No.	
§ 63.8(d)	No.	
§ 63.8(e)	No.	
§ 63.8(f)(1)–(3)	Yes.	
§ 63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.1335(f) or (g); not applicable to equipment leaks because § 63.1331 (through reference to subpart H) specifies acceptable alternative methods.
§ 63.8(f)(4)(ii)	No	Contents of requests are specified in § 63.1335(f) or (g).
§ 63.8(f)(4)(iii)	No.	
§ 63.8(f)(5)(i)	Yes.	
§ 63.8(f)(5)(ii)	No.	
§ 63.8(f)(5)(iii)	Yes.	
§ 63.8(f)(6)	No	Subpart JJJ does not require continuous emission monitors.
§ 63.8(g)	No	Data reduction procedures specified in § 63.1335(d) and (h); not applicable to equipment leaks.
§ 63.9(a)	Yes.	
§ 63.9(b)	No	Subpart JJJ does not require an initial notification.
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	No	§ 63.1333(a)(4) specifies notification deadline.
§ 63.9(f)	No	Subpart JJJ does not require opacity and visible emission standards.
§ 63.9(g)	No.	
§ 63.9(h)	No	§ 63.1335(e)(5) specifies Notification of Compliance Status requirements.
§ 63.9(i)	Yes.	
§ 63.9(j)	No.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	No	§ 63.1335(a) specifies record retention requirements.
§ 63.10(b)(2)	No	Subpart JJJ specifies recordkeeping requirements.
§ 63.10(b)(3)	No	§ 63.1310(b) requires documentation of sources that are not affected sources.
§ 63.10(c)	No	§ 63.1335 specifies recordkeeping requirements.
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	No	§ 63.1335(e) specifies performance test reporting requirements; not applicable to equipment leaks.
§ 63.10(d)(3)	No	Subpart JJJ does not require opacity and visible emission standards.
§ 63.10(d)(4)	Yes.	

TABLE 1 TO SUBPART JJJ OF PART 63—Continued

[Applicability of general provisions to subpart JJJ affected sources]

Reference	Applies to Subpart JJJ	Explanation
§ 63.10(d)(5)(i)	Yes	Except that reports required by § 63.10(d)(5)(i) may be submitted at the same time as Periodic Reports specified in § 63.1335(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
§ 63.10(d)(5)(ii)	No.	
§ 63.10(e)	No	§ 63.1335 specifies reporting requirements.
§ 63.10(f)	Yes.	
§ 63.11	Yes	§ 63.11(b) specifies requirements for flares used to comply with provisions of this subpart. § 63.1333(e) contains the requirements to conduct compliance demonstrations for flares subject to this subpart.
§ 63.12	Yes	Except that the authority of § 63.1332(i) and the authority of § 63.177 (for equipment leaks) shall not be delegated to States.
§§ 63.13–63.15	Yes.	

[a] The plan and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

* * * * * * *

TABLE 6 TO SUBPART JJJ OF PART 63

[Known organic HAP emitted from the production of thermoplastic products]

Thermoplastic product/ Subcategory	Organic HAP/chemical name (CAS No.)							
	Acetaldehyde (75–07–0)	Acrylonitrile (107–13–1)	1,3 Butadiene (106–99–0)	1,4-Dioxane (123–91–1)	Ethylene Glycol (107–21–1)	Methanol (67–56–1)	Methyl methacrylate (80–62–6)	Styrene (100–42–5)
ABS latex		✔	✔					✔
ABS using a batch emulsion process		✔	✔					✔
ABS using a batch suspension process		✔	✔					✔
ABS using a continuous emulsion process		✔	✔					✔
ABS using a continuous mass process		✔	✔					✔
ASA/AMSAN		✔						✔
EPS								✔
MABS		✔	✔				✔	✔
MBS		✔	✔					
Nitrile resin								
PET using a batch dimethyl terephthalate process	✔			✔	✔	✔		
PET using a batch terephthalic acid process	✔			✔	✔			
PET using a continuous dimethyl terephthalate process	✔			✔	✔	✔		
PET using a continuous terephthalic acid process	✔			✔	✔			
PET using a continuous terephthalic acid high viscosity multiple end finisher process	✔			✔	✔			
Polystyrene resin using a batch process								✔
Polystyrene resin using a continuous process								✔
SAN using a batch process		✔						✔
SAN using a continuous process		✔						✔

CAS No. = Chemical Abstract Service Number.
ABS = Acrylonitrile butadiene styrene resin.

ASA/AMSAN = Acrylonitrile styrene resin/alpha methyl styrene acrylonitrile resin.
EPS = expandable polystyrene resin.
MABS = methyl methacrylate acrylonitrile butadiene styrene resin.
PET = poly(ethylene terephthalate) resin.
SAN = styrene acrylonitrile resin.
MBS = methyl methacrylate butadiene styrene resin.

TABLE 7 OF SUBPART JJJ OF PART 63

[Group 1 batch process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature[a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average upstream and bed downstream temperatures and the average temperature difference across the catalyst bedmeasured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream value established in the NCS or operating permit—PR.[d e] 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d e] 6. Report all instances when monitoring data are not collected.[e]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch process vents or aggregate batch vent streams are not introduced with or used as the primary fuel.	Firebox temperature[a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Flare	Presence of a flame at the pilot light	1. Hourly records of whether the monitor was continuously operating during batch emission episodes, or portions thereof, selected for control and whether a flame was continuously present at the pilot light during said periods. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all flames at the pilot light of a flare are absent—PR.[d]
Scrubber for halogenated batch process vents or aggregate batch vent strreams (Note: Controlled by a combustion device other than a flare).	a. pH of scrubber effluent, and	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
	b. Scrubber liquid and gas flow rates	1. Records as specified in § 63.1326(e)(1).[b] 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS.[c]

TABLE 7 OF SUBPART JJJ OF PART 63—Continued

[Group 1 batch process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
		3. Record the batch cycle daily average scrubber liquid/gas ratio as specified in §63.1326(e)(2). 4. Report all batch cycle daily average scrubber liquid/gas ratios that are below the minimum value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Absorber[f]	a. Exit temperature of the absorbing liquid, and.	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in §63.1326(e)(2) for each batchcycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
	b. Exit specific gravity for the absorbing liquid.	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit specific gravity as specified in §63.1326(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average exit temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature as specified in §63.1326(e)(2). 4. Report all batch cycle daily average exit temperatures that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Carbon Adsorber[f]	a. Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) during carbon bed regeneration cycle(s), and.	1. Record the total regeneration steam flow or nitrogen flow, or pressure for each carbon bed regeneration cycle. 2. Record and report the total regeneration steam flow or nitrogen flow,or pressure during carbon bed regeneration cycle measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration steam flow or nitrogen flow, or pressure is above the maximum value established in the NCS or operating permit—PR.[d,e]
	b. Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s) measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum value established in the NCS or operating permit—PR.[d,e]
All control devices	a. Diversion to the atmosphere from the control device or.	1. Hourly records of whether the flow indicator was operating during batch emission episodes, or portions thereof, selected for control and whether a diversion was detected at any time during said periods as specified in §63.1326(e)(3). 2. Record and report the times of all periods during batch emission episodes, or portions thereof, selected for control when emissions are diverted through a bypass line or the flow indicator is not operating—PR.[d]
	b. Monthly inspection of sealed valves.	1. Records that monthly inspections were performed as specified in §63.1326(e)(4)(i).

TABLE 7 OF SUBPART JJJ OF PART 63—Continued

[Group 1 batch process vents and aggregate batch vent streams—monitoring, recordkeeping, and reporting requirements]

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
		2. Record and report all monthly inspections that show the valves are in the diverting position or that a seal has been broken—PR.[d]
Absorber, condenser, and carbon Adsorber (as an alternative to the requirements previously presented in this table).	Concentration level or reading indicated by an organic monitoring device at the outlet of the control device.	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average batch vent concentration level or reading measured during the performance test—NCS.[c] 3. Record the batch cycle daily average concentration level or reading as specified §63.1326(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in §63.111.
[c] NCS = Notification of Compliance Status described in §63.1335(e)(5).
[d] PR = Periodic Reports described in §63.1335(e)(6).
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in §63.1335(e)(6)(iii)(C).
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

* * * * * * *

TABLE 9 OF SUBPART JJJ OF PART 63

[Routine reports required by this subpart]

Reference	Description of report	Due date
§63.1335(b) and subpart A	Refer to Table 1 and subpart A	Refer to subpart A.
§63.1335(e)(3)	Precompliance Report[a]	Existing affected sources—December 19, 2000. New affected sources—with application for approval of construction or reconstruction.
§63.1335(e)(4)	Emissions Averaging Plan	September 19, 2000.
§63.1335(e)(4)(iv)	Updates to Emissions Averaging Plan	120 days prior to making the change necessitating the update.
§63.1335(e)(5)	Notification of Compliance Status[b]	Within 150 days after the compliance date.
§63.1335(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See §63.1335(e)(6)(i) for the due date for the first report.
§63.1335(e)(6)(xi)	Quarterly reports for Emissions Averaging	No later than 60 days after the end of each quarter. First report is due with the Notification of Compliance Status.
§63.1335(e)(6)(xii)	Quarterly reports upon request of the Administrator.	No later than 60 days after the end of each quarter.
§63.1335(e)(7)(i)	Storage Vessels Notification of Inspection	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.
§63.1335(e)(7)(ii)	Requests for Approval of a Nominal Control Efficiency for Use in Emissions Averaging.	Initial submittal is due with the Emissions Averaging Plan specified in §63.1335(e)(4)(ii); later submittals are made at the discretion of the owner or operator as specified in §63.1335(e)(7)(ii) (B).
§63.1335(e)(7)(iii)	Notification of Change in the Primary Product	1. For notification under §63.1310(f)(3)(ii)—notification submittal date at the discretion of the owner or operator.[c] 2. For notification under §63.1310(f)(4)(ii)—within 6 months of making the determination.

[a] There may be two versions of this report due at different times; one for equipment subject to §63.1331 and one for other emission points subject to this subpart.
[b] There will be two versions of this report due at different times; one for equipment subject to §63.1331 and one for other emission points subject to this subpart.
[c] Note that the TPPU remains subject to this subpart until the notification under §63.1310(f)(3)(i) is made.

[FR Doc. 01–17333 Filed 7–13–01; 8:45 am]
BILLING CODE 6560–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7007–1]

National Oil and Hazardous SubstancesPollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the Red Penn Landfill Site from the National Priorities List (NPL).

SUMMARY: EPA Region 4 announces the deletion of the Kentucky Red Penn Landfill Site (site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to Part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. The EPA has determined that the site poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, no further remedial measures pursuant to CERCLA are warranted.

DATES: This "direct final" action will be effective on September 14, 2001 unless EPA receives significant adverse or critical comments by August 15, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Femi Akindele, Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, or by email to *akindele.femi@epa.gov.* Comprehensive information on this site is available through the public docket which is available for viewing at the site information repositories at the following locations: U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; and the South Oldham Library, 6720 W. Highway 146, Crestwood, Kentucky 40014, telephone number (270) 247–2911.

FOR FURTHER INFORMATION: Contact Femi Akindele, Project Manager, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, telephone (404) 562–8809, fax number(404) 562–8788, email address: *akindele.femi@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion
V. Action
VI. State Concurrence Statement

I. Introduction

The U.S. EPA, Region 4, announces the deletion of the Red Penn Landfill Superfund Site, Oldham County, Kentucky, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL for these sites. EPA has determined that the Red Penn Site *does not* pose a significant risk to human health or the environment. EPA will accept public comments for thirty days after publication of this notice in the **Federal Register**.

Sections II and III of this notice describe the criteria for deleting sites from the NPL and the procedure used for the intended deletion of the Red Penn Site. Section IV summarizes the history of Red Penn and explains how the site meets EPA deletion criteria. Section V provides a summary statement on the current action of deleting the site from the NPL subject to any dissenting comments received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or re-categorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response action required;

(ii) All appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, no remedial measures are needed.

In the case of the Red Penn Site, EPA's remedial investigation and subsequent groundwater monitoring conducted by the state indicated that the site did not pose a significant threat to public health or the environment, and, therefore, no Superfund remedial measures were justifiable. However, pursuant to State solid waste law, the landfill required proper closure to prevent deterioration and threat to human health and the environment. Therefore, the responsible parties implemented an appropriate response action by installing a landfill cap at the site under the State's authority and supervision. Nevertheless, EPA may initiate any necessary remedial action in the future if new information so indicates. In accordance with the NCP (40 CFR § 300.425(e)(3)), whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the site:(1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) The Commonwealth of Kentucky has concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Direct Final Deletion; and, (4) All relevant documents have been made available for public review in the local site information repository. EPA is requesting only dissenting comments on this proposed action to delete.

EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. If no dissenting comments are received, no further activities will be implemented and this "direct final" action will become effective. Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist EPA management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides EPA's rationale for the proposal to

requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 25, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(260)(i)(B) and (c)(266)(i)(B)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(260) * * *

(i) * * *

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 2020 adopted on September 17, 1998.

* * * * *

(266) * * *

(i) * * *

(B) * * *

(*3*) Rule 2201 adopted on August 20, 1998.

* * * * *

[FR Doc. 01–17705 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6997–8]

RIN 2060–AI34

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: Under the Clean Air Act (CAA), EPA promulgated the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills on January 12, 2001. The promulgated rule requires new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology. The technical corrections in this action will not change the standards established by the rule or the level of health protection it provides.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections consisting largely of correcting typographical errors and other misprints and correcting minor errors in the rule's effective dates, are noncontroversial, and do not substantively change the requirements of the rule. In addition, there has already been full opportunity to comment on all of the provisions in this Notice. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (see also the final sentence of section 307(d)(1) of the Clean Air Act, 42 U.S.C. section 7607(d)(1), indicating that the good cause provisions of the Administrative Procedure Act continue to apply to this type of rulemaking under the Clean Air Act).

Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's changes do not substantively change the requirements of the rule, we find good cause to make these technical corrections effective immediately.

EFFECTIVE DATE: July 19, 2001.

ADDRESSES: Docket No. A–94–67 contains the supporting information for the original NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical mills and this action. The docket is located at the U.S. EPA in room M–1500, Waterside Mall (ground floor), 401 M Street SW., Washington, DC 20460, and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, electronic mail address telander.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action are those kraft, soda, sulfite, and stand-alone semichemical pulp mills with chemical recovery processes that involve the combustion of spent pulping liquor. Categories and entities potentially regulated by this action include:

Category	SIC code	NAICS code	Examples of regulated entities
Industry	2611, 2621, 2631	32211, 32212, 32213 ...	Kraft, soda, sulfite, and stand-alone semichemical pulp mills.

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.

To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.860 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

World Wide 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 the Technology Transfer Network (TTN). Following the signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or final rules at http://www.epa.gov/ttn/oarpg/t3pfpr.html. 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.

I. Background

The EPA, under 40 CFR part 63, subpart MM, promulgated the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills on January 12, 2001 (66 FR 3180). The final rule includes emissions limits, as well as monitoring, performance testing, recordkeeping, and reporting requirements.

II. Summary of Corrections

Today's changes are described below for the convenience of the reader.

Citation	Change
§ 63.863(a)	Change the compliance date for existing affected sources to March 13, 2004.
§ 63.863(b)	Change the startup date, after which new affected sources must comply immediately upon startup, to March 13, 2001.
§ 63.865(a)	Reduce the number of referenced paragraphs from "(a)(1) through (4)" to "(a)(1) and (2)" to reflect the elimination of paragraphs (a)(3) and (4).
§ 63.865(a)(3), (a)(4), (b)(5), and (b)(6).	Remove paragraphs (a)(3) and (4) from § 63.865(a) and revise and redesignate them as new paragraphs § 63.865(b)(5) and (6) so that these requirements will no longer be limited under § 63.865(a) to existing sources using the PM bubble compliance alternative.
§ 63.865(b)	Change the reference from "63.862(a)" to "§ 63.862(a) or (b)" so as to include the new source standards under § 63.862(b). Also, increase the number of referenced paragraphs from "(b)(1) through (4)" to "(b)(1) through (6)" to reflect the addition of paragraphs (b)(5) and (6).
§ 63.865(b)(2)	Change the reference from "paragraph (a)(1) or (2) of § 63.862" to "paragraph (a) or (b) of § 63.862" so as to include the new source standards under § 63.862(b).
§ 63.865(b)(4)	Revise Equation 8 so that the numerator and denominator of the oxygen correction factor are reversed to yield: $Q_{corr} = Q_{meas} \times (21 - Y)/(21 \times X)$. Also, reorder the definition of terms for Equation 8 to place "Y" before "X."
§ 63.865(c)	Add a reference to Methods 1 through 4 to the reference to Method 308 because those four test methods are also needed.
	Because Methods 1 through 4 are also being referenced, clarify that the sampling time and sample volume apply to each Method 308 run.
§ 63.865(d)	Add a reference to Methods 1 through 4 to the reference to Method 25A because those four test methods are also needed. Because Methods 1 through 4 are also being referenced, clarify that the sampling time and sample volume apply to each Method 25A run.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget (OMB). Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (63 FR 67249, November 6, 2000). This action 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 also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA is not proposing/adopting any voluntary consensus standards in this action.

This technical correction action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these technical corrections, 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 these technical corrections in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. These technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This

determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 19, 2001. 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).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Pulp and paper mills.

Dated: June 8, 2001.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

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

PART 63—[AMENDED]

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

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

Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

2. Section 63.863 is amended by revising paragraph (a) and (b) to read as follows:

§ 63.863 Compliance dates.

(a) The owner or operator of an existing affected source or process unit must comply with the requirements in this subpart no later than March 13, 2004.

(b) The owner or operator of a new affected source that has an initial startup date after March 13, 2001 must comply with the requirements in this subpart immediately upon startup of the affected source, except as specified in § 63.6(b).

* * * * *

3. Section 63.865 is amended by:

a. Revising paragraph (a) introductory text;

b. Removing paragraphs (a)(3) and (4);

c. Revising paragraphs (b) introductory text, (b)(2), and (b)(4);

d. Adding paragraphs (b)(5) and (6);

e. Revising paragraph (c) introductory text; and

f. Revising paragraph (d) introductory text.

The revisions and additions read as follows:

§ 63.865 Performance test requirements and test methods.

(a) The owner or operator of a process unit seeking to comply with a PM emission limit under § 63.862(a)(1)(ii)(A) must use the procedures in paragraphs (a)(1) and (2) of this section:

* * * * *

(b) The owner or operator seeking to determine compliance with § 63.862(a) or (b) must use the procedures in paragraphs (b)(1) through (6) of this section.

* * * * *

(2) For sources complying with paragraph (a) or (b) of § 63.862, the PM concentration must be corrected to the appropriate oxygen concentration using Equation 7 of this section as follows:

$$C_{corr} = Cmeas \times (21 - X)/(21 - Y) \quad \text{(Eq. 7)}$$

Where:

C_{corr} = the measured concentration corrected for oxygen, g/dscm (gr/dscf).

C_{meas} = the measured concentration uncorrected for oxygen, g/dscm (gr/dscf).

X = the corrected volumetric oxygen concentration (8 percent for kraft or soda recovery furnaces and sulfite combustion units and 10 percent for kraft or soda lime kilns).

Y = the measured average volumetric oxygen concentration.

* * * * *

(4) For purposes of complying with of § 63.862(a)(1)(ii)(A), the volumetric gas flow rate must be corrected to the appropriate oxygen concentration using Equation 8 of this section as follows:

$$Q_{corr} = Qmeas \times (21 - Y)/(21 - X) \quad \text{(Eq. 8)}$$

Where:

Q_{corr} = the measured volumetric gas flow rate corrected for oxygen, dscm/min (dscf/min).

Q_{meas} = the measured volumetric gas flow rate uncorrected for oxygen, dscm/min (dscf/min).

Y = the measured average volumetric oxygen concentration.

X = the corrected volumetric oxygen concentration (8 percent for kraft or soda recovery furnaces and 10 percent for kraft or soda lime kilns).

(5) For purposes of selecting sampling port location and number of traverse points, determining stack gas velocity and volumetric flow rate, conducting gas analysis, and determining moisture content of stack gas, Methods 1 through 4 in appendix A of 40 CFR part 60 must be used.

(6) Process data measured during the performance test must be used to determine the black liquor solids firing rate on a dry basis and the CaO production rate.

(c) The owner or operator seeking to determine compliance with the gaseous organic HAP standard in § 63.862(c)(1) without using an NDCE recovery furnace equipped with a dry ESP system must use Method 308 in appendix A of this part, as well as Methods 1 through 4 in appendix A of part 60 of this chapter. The sampling time and sample volume for each Method 308 run must be at least 60 minutes and 0.014 dscm (0.50 dscf), respectively.

* * * * *

(d) The owner or operator seeking to determine compliance with the gaseous organic HAP standards in § 63.862(c)(2) for semichemical combustion units must use Method 25A, as well as Methods 1 through 4, in appendix A of part 60 of this chapter. The sampling time for each Method 25A run must be at least 60 minutes.

* * * * *

[FR Doc. 01–17559 Filed 7–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301146 FRL–6793–8]

RIN 2070–AB78

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective July 19, 2001. Objections and requests for hearings, identified by docket control number OPP–301146, must be received by EPA on or before August 20, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by

who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–980 is added to read as follows:

§ 165.T09–980 Safety Zone; Blue Water Offshore Classic, St. Clair River, MI.

(a) *Location.* This moving safety zone encompasses all waters within 1000 yards ahead, 1000 yards behind, and 50 yards on either side of any deep draft vessel that can only safely navigate within the channel of the St. Clair River. The moving safety zone will be enforced to the South, starting 500 yards East of the Newman and River Road Intersection at position 42°51′54″ N, 082°28′00″ W. To the North, the moving safety zone will be enforced starting 300 yards East of the St. Clair Michigan State Police Docks at position 42°28′54″ N, 082°28′48″ W. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Enforcement times and dates.* This section will be enforced 8 a.m. until 6 p.m. on August 3, 4 and 5, 2001. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative.

Dated: July 25, 2001.

S.P. Garrity,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 01–19314 Filed 8–1–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[FRL–7020–3]

RIN 2060–AE83

National Emission Standards for Pharmaceuticals Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and direct final rule; corrections and amendments.

SUMMARY: The EPA is taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for pharmaceuticals production. This direct final rule provides additional compliance options for process vent and storage tank emissions, specifies additional methods that may be used to analyze wastewater, shifts one compound from the list of partially soluble hazardous air pollutants (HAP) to the list of soluble HAP, eliminates an unintended restriction on the use of enhanced biological treatment, allows a sewer line between drains and the first downstream junction box to be vented, clarifies how to assign storage tanks that are shared among pharmaceutical manufacturing process units and other types of process units, clarifies the monitoring frequency requirements for connectors, clarifies and simplifies recordkeeping and reporting requirements, eliminates inconsistencies, and corrects several referencing and typesetting errors. We view these revisions to be minor and noncontroversial, and we anticipate no adverse comment.

In compliance with the Paperwork Reduction Act (PRA), this action also amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for the pharmaceuticals production rule.

DATES: The amendments to 40 CFR part 9 are effective on August 2, 2001. The direct final rule amendments to 40 CFR

part 63 are effective on October 16, 2001 without further notice, unless EPA receives adverse comments by September 4, 2001, or by September 17, 2001 if a public hearing is requested. See the proposed rule in this issue of the **Federal Register** for information on the hearing. If we receive any adverse comments, and those comments apply to an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–03, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–03, U.S. EPA, 401 M Street, SW, Washington DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.** *Docket.* Docket No. A–96–03 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address: mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–96–03. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. 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 this action will also be available through the WWW. Following signature, a copy of this action will be posted on the 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.

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	2833 and 2834	• Producers of finished dosage forms of drugs (e.g., tablets, capsules, and solutions), active ingredients, or precursors.
	Typically 325199	Typically 2869	• 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 § 63.1250 of the rule. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this 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 October 1, 2001. Under section 307(d)(7)(B) of the CAA, only an objection to this 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 this direct final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements. Also under section 307(b)(1) of the CAA, judicial review of the amendment to part 9 in this action is available by filing a petition for review in the U.S. Court of Appeals for

the District of Columbia Circuit within October 1, 2001. Under section 307(b)(2) of the CAA, the requirements that are the subject of this amendment 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. Why are we publishing these amendments as a direct final rule?
II. What amendments are we making to part 9 to reflect OMB approval of the information collection request for subpart GGG?
III. What amendments are we making to the process vent provisions?
IV. What amendments are we making to the wastewater provisions?
V. What amendments are we making to the storage tank provisions?
VI. What minor technical corrections are we making?
VII. What are the administrative requirements for this direct final rule?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children for Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. The Congressional Review Act
J. Executive Order 13211 (Energy Effects)

I. Why Are We Publishing These Amendments as a Direct Final Rule?

In this direct final rule, we are correcting referencing and typesetting errors, identifying additional test methods that may be used to analyze wastewater, classifying triethylamine as a soluble HAP instead of a partially soluble HAP, adding an outlet concentration limit compliance option for storage tanks, clarifying the monitoring frequency for connectors, clarifying storage tank assignment procedures, and adding planned routine maintenance provisions for centralized combustion control devices (CCCD). These changes provide clarifications and additional compliance options. In all instances, we believe that these changes have the potential to reduce the burden on both owners and operators of affected sources and on the State or local agency implementing the rule, although we are unable to quantify reductions in hours for these amendments. For these reasons, we view these amendments as noncontroversial and anticipate no adverse comments, and we are publishing these amendments in a direct final rule.

If an adverse comment applies to an amendment, paragraph, or section of this direct final rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for any provisions in this direct final rule on which we receive adverse comments. The EPA will publish a timely withdrawal before the effective date of this rule indicating which provisions are being withdrawn. If part or all of this direct final rule is withdrawn, all public comments received will be addressed in a subsequent final rule based on the proposal. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time. The nature of the changes contained in this direct final rule are such that it will benefit both industry and the States for these changes to become effective sooner, rather than later, as will be described in more detail below.

II. What Amendments Are We Making to Part 9 To Reflect OMB Approval of the Information Collection Request for Subpart GGG?

This final rule amends the table of currently approved Information Collection Request (ICR) control numbers issued by OMB. As noted in section VII.G of this preamble, as well as in the preambles to earlier amendments and the promulgated rule, OMB has approved the information collection requirements contained in subpart GGG and assigned OMB control No. 2060–0358. However, when we amended § 9.1 on September 21, 1998, we entered the incorrect number 2060–0314. Because the correct number was listed in the earlier preambles and amendment of the table is technical in nature, we believe that another notice and comment period for this amendment is unnecessary and that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(b)) to amend this table without prior notice and comment.

III. What Amendments Are We Making to the Process Vent Provisions?

This direct final rule specifies requirements for meeting the process vent standards during periods of planned routine maintenance of CCCD. Use of a CCCD, while not required by subpart GGG, is a common control technique at existing pharmaceutical production facilities because the facilities have found such a device to be more reliable and efficient than multiple point-of-use devices. However, under subpart GGG as currently written, when routine maintenance on a CCCD is needed, you must either shutdown all processes or have a backup control device that you have demonstrated achieves the same level of control. We understand that shutting down all processes is inefficient and costly for at least two reasons: (1) Because all processes have different cycles, the shutdown would almost certainly have to be staggered, which means some process equipment would have to be shutdown for a longer period than is needed simply to perform the maintenance on the control device; and (2) pharmaceutical production facilities often shutdown only a section of the facility for maintenance as opposed to the entire facility because it is impractical to have an in-house maintenance staff large enough to perform such maintenance in a short period of time, and outside resources may not be sufficiently skilled or available when needed. We also realize that demonstrating compliance for a backup device could be a significant burden. To address these concerns, this direct final rule provides an additional compliance option for periods of planned routine maintenance of a CCCD that is simple to implement and achieves reductions that are at least equivalent to the maximum achievable control technology (MACT) floor.

The new planned routine maintenance provisions specify separate requirements for organic HAP emissions and hydrogen chloride (HCl) emissions. You must route emissions from process vents with organic HAP emissions greater than 15 pounds per day (lb/day) through a closed vent system to a condenser that operates at: (1) Less than 50 degrees centigrade (C) when the emission stream contains HAP with a partial pressure greater than 20 kilopascals (kPa) and (2) less than −5 degrees C when the emission stream contains HAP with a partial pressure less than or equal to 20 kPa. The partial pressures must be determined at 25 C. These requirements are designed to be similar to State reasonably available control technology rules that are based on the generalized control program described on page 1–5 of the 1978 Control Techniques Guideline (CTG) Document for Control of Volatile Organic Emissions from Manufacture of

Synthesized Pharmaceutical Products (EPA 450/2–78–029). However, to achieve the MACT floor control level of 93 percent, the operating temperatures required by the planned routine maintenance provisions differ from those specified in the CTG, and all vents with organic HAP emissions greater than 15 lb/day must be controlled (not just vents from the unit operations listed in the CTG). The planned routine maintenance provisions are limited to the use of condensers as specified above to keep the compliance requirements simple and because many facilities typically already have backup condensers available onsite.

Because the CTG did not cover HCl emissions, the planned routine maintenance provisions specify that you must route emissions from process vents with HCl emissions greater than or equal to 15 lb/day through a closed vent system to a caustic scrubber. As with the condenser, we have kept compliance requirements simple. Compliance is demonstrated by daily monitoring of the scrubber effluent and maintaining the effluent at pH 9 or greater.

Although § 63.1258 of the pharmaceuticals production NESHAP specifies parameters for scrubbers, we are not requiring monitoring of the scrubber liquid flow rate or pressure drop for caustic scrubbers during periods of planned routine maintenance. The effectiveness of absorbing HCl into caustic solution is so great that monitoring effluent pH is adequate to demonstrate compliance. The relatively small amount of HCl generated during periods of planned routine maintenance does not justify the need to burden the industry with design evaluation demonstrations and continuous monitoring for each individual scrubber application during the limited period of planned routine maintenance.

Hydrogen chloride has a great affinity for water. Referencing the "Chemical Engineering Handbook" by Perry and Chilton, solubility of HCl is almost 70 grams per 100 grams of water at 30 degrees C. An aqueous solution at the same temperature can absorb up to 10 percent HCl before reaching an equilibrium of 20 parts per million volume (ppmv) of HCl in the gas phase. In addition, absorption increases as vapor pressure decreases, and vapor pressure of HCl can be decreased significantly by adding a chemical reactant such as sodium hydroxide (NaOH) to tie up the solute gas. The chemical reaction in a caustic scrubber frees up liquid volume for dissolving more gas. A caustic scrubber operating such that the effluent stays at or above pH 9 is considered a very effective control device.

The 15 lb/day emission rate cutoffs apply to emissions from vents on individual unit operations, not to aggregated emissions from multiple unit operations that are manifolded together into a common header (i.e., the emission rates must be determined only at the equipment where the emissions enter the closed vent system prior to being combined with emissions from other unit operations). Therefore, a manifolded stream with emissions that exceed 15 lb/day is not subject to control requirements during periods of planned routine maintenance of the CCCD if the emissions from each of the unit operation vents that are combined in that manifold have emissions less than 15 lb/day. If any individual unit operation vents with emissions less than 15 lb/day are manifolded with a unit operation vent that has emissions greater than or equal to 15 lb/day, then the entire manifolded stream must be controlled (or the emissions from the unit operation with emissions greater than 15 lb/day must be diverted from the other vents in the manifold for control).

You may use the planned routine maintenance provisions if you use the CCCD to comply with any of the requirements in § 63.1254(a) of the pharmaceuticals production NESHAP for process vents from all non-dedicated pharmaceutical manufacturing process units (PMPU) that are controlled by the CCCD. However, there are several requirements to ensure that the level of control achieved is at least equivalent to the MACT floor. First, you may only route emissions from vents that are subject to the 98 percent reduction requirement in § 63.1254(a)(3) if you demonstrate that the planned routine maintenance is needed and that there is no way to perform it during periods when a process with such a vent is not operating. To make this demonstration, you must document your plans in either your Notification of Compliance Status Report or in a periodic report that is submitted prior to the planned routine maintenance event. Second, if you use the CCCD to control emissions so as to comply with the annual mass limit, you must calculate controlled emissions during periods of planned routine maintenance assuming the control efficiency is 93 percent. Third, whenever you implement the planned routine maintenance provisions, you must monitor the condenser outlet temperature as specified in § 63.1258(i). This requirement applies even if you comply with the alternative standard or if the CCCD is a boiler, process heater, or hazardous waste incinerator that meets any of the criteria in § 63.1257(a)(4). Fourth, you may not use the process vents in emissions averaging during the period that you comply with the planned routine maintenance provisions. During this time period, the process vents are being controlled to the level of the MACT floor; thus, no debits or credits can be calculated.

There are also several other restrictions on how the planned routine maintenance provisions may be implemented. For example, the planned routine maintenance provisions may be implemented for no more than 240 hours per year (hr/yr). This time period is consistent with the time allowed in § 63.1253(e) of the pharmaceuticals production NESHAP for planned routine maintenance of a control device used to control storage tank emissions. As we have stated in previous rulemaking packages, we believe this time is sufficient to perform maintenance on combustion devices (59 FR 19441, April 22, 1994). In addition, the planned routine maintenance provisions are not available for process vents from dedicated PMPU because planning a shutdown for such a PMPU can be more easily scheduled than for non-dedicated PMPU whose operation is more unpredictable in nature. Finally, the planned routine maintenance provisions may not be used for emissions from wastewater systems or equipment leaks because the MACT floor level of control for these emissions is 95 percent. If the CCCD is used to control emissions from storage tanks, you may elect to control them with the condenser during periods of planned routine maintenance. However, this control is not required because § 63.1253(e) specifies that the emission limitations are not applicable during periods of planned routine maintenance up to 240 hr/yr.

IV. What Amendments Are We Making to the Wastewater Provisions?

This direct final rule makes four changes to the wastewater provisions. One change is that we are adding two EPA test methods to the list of acceptable test methods that may be used to analyze wastewater samples. The second change is that we are reclassifying triethylamine as a soluble HAP instead of as a partially soluble HAP. The third change is to allow wastewater streams with more than 50 parts per million weight (ppmw) of partially soluble HAP to be sent to an enhanced biological treatment unit if the partially soluble HAP has already been reduced by 99 percent or more. The fourth change is to modify the

venting requirements for individual drain systems. In addition, although we are not changing the sampling requirements, we are clarifying those requirements.

Section 63.1257(b)(10)(ii) of the amended final rule states that you may use EPA Methods 624, 625, 1624, and 1625 of 40 CFR part 136 to determine the concentration of various HAP in wastewater samples (65 FR 52610, August 29, 2000). This direct final rule adds EPA Methods 1666 and 1671 to that list so that you may use them routinely without performing the method validation procedures required in § 63.1257(b)(10)(iv). The two new methods can be used to measure certain analytes (e.g., methanol, acetonitrile, and n-hexane) that cannot be measured using the other methods in 40 CFR part 136. These two methods were added to 40 CFR part 136 when the revisions to the pharmaceutical effluent limitation guidelines and standards were promulgated in September 1998. They have the same quality assurance/quality control requirements as the earlier methods; in particular, sampling must be conducted so as to minimize loss of volatile compounds. In addition, they can detect target HAP at the outlet concentrations that may be required by the rule (e.g., as low as 13 ppmw in the outlet from a treatment unit that must reduce partially soluble HAP by 99 percent).

For the final rule, compounds were classified as either partially soluble HAP or soluble HAP based on their Henry's Law constants. Triethylamine was classified as a partially soluble HAP listed in Table 2 of subpart GGG because its Henry's Law constant is relatively high. However, in this direct final rule, we are now removing triethylamine from Table 2 of subpart GGG and reclassifying it as a soluble HAP in Table 3 of subpart GGG because it has two unique characteristics that distinguish it from the listed partially soluble HAP. First, at pH ranges of 6 to 9 (typical for pharmaceutical production wastewater), triethylamine has unique ionic disassociative properties, unlike the listed partially soluble HAP. In the liquid phase, the nitrogen in triethylamine has an unshared pair of electrons that readily react with a proton in the liquid. As a result, virtually all of the free triethylamine in solution is converted to triethylammonium ions, which are soluble, non-volatile, and stable. Second, triethylamine is unique among the HAP used in the pharmaceutical production industry in that it typically is used as an organic base in reactions (in situations where an inorganic base is not acceptable) and not as a primary solvent.

Section 63.1256(g)(10) of the pharmaceuticals production NESHAP specifies that the partially soluble HAP concentration in wastewater streams sent to an enhanced biological treatment unit must be less than 50 ppmw. An unintended effect of this restriction is that it applies even if the partially soluble HAP has been reduced by more than 99 percent by treatment upstream of the enhanced biological treatment unit. This restriction is unnecessary because a 99 percent reduction in the partially soluble HAP is otherwise sufficient; there is no reason to prevent the use of enhanced biological treatment to reduce the soluble HAP in the same stream. Therefore, we have amended § 63.1256(g)(10) to clarify that a wastewater stream may be sent to an enhanced biological treatment unit if the partially soluble HAP is reduced to a concentration less than 50 ppmw or by at least 99 percent (i.e., in accordance with § 63.1256(g)(8)) in a treatment unit upstream of the enhanced biological treatment unit.

Section 63.1256(e) of subpart GGG specifies work practice standards to suppress emissions from individual drain systems. These standards allow junction boxes to be vented, but not sewer lines. Without a vent, wastewater may backup in drains and not flow properly to the first downstream junction box if there are low points in the sewer line. To alleviate this problem, we have revised § 63.1256(e)(4)(iii) to allow venting of a sewer line between drains and the first downstream junction box, provided certain conditions are met. First, the drains must be equipped with either water seals or tightly fitting caps or plugs as specified in § 63.1256(e)(4)(i). Second, the sewer line entrance to the first downstream junction box must be water sealed. These provisions apply regardless of whether the junction box is vented to the atmosphere or to a process or control device. They also are standard operating practices, and they ensure that air will not flow through the sewer line and be emitted from the vent on the sewer line. Finally, the size of the atmospheric opening is minimized by having the sewer line vent pipe meet the same design criteria as for vents on junction boxes.

The final rule specifies that wastewater samples may be grab samples or composite samples, samples must be taken at approximately equally-spaced time intervals over a 1-hour period, each 1-hour period constitutes a run, and a performance test must consist of at least three runs (§ 63.1257(e)(2)(iii)(B), (C)(*1*), (D)(*1*), and (E)(*1*)). Similar requirements are specified for gas stream samples at the exit of a combustion treatment unit or at the inlet or exit of control devices (§ 63.1257(e)(2)(iii)(D)(*4*) and (e)(3)(i)(C)). As in the Hazardous Organic NESHAP (HON) (40 CFR part 63, subpart G), we intentionally did not specify exactly how to take samples because the procedures will vary depending on the circumstances and the selected test method. In some cases, any of the options may be acceptable, whereas in other cases, some options may not be available. For example, if you conduct wastewater sampling in accordance with a sampling plan based on the sample handling requirements in EPA Method 25D of 40 CFR part 60, appendix A, you would have to take grab samples; you would not be able to take composite samples. On the other hand, for emission stream samples where concentration measurements are to be determined using EPA Method 18 of 40 CFR part 60, appendix A, you have the option of taking either grab samples or composite samples. The rule does not specify the number of samples that you must collect because we do not want to restrict the number of samples that you take to cover different, representative operating conditions (as opposed to supplementing with modeling or engineering assessments). However, you must take at least one sample per run. The requirement to take samples at equally-spaced time intervals over the 1-hour period means that the samples must be taken at the same point in the 1-hour period for each of the three runs; this requirement applies even if you take only one sample per run.

V. What Amendments Are We Making to the Storage Tank Provisions?

This direct final rule adds an outlet concentration limit compliance option for storage tank emissions. Under this option, you must conduct an initial performance test to demonstrate that emissions are reduced to outlet concentrations less than or equal to 20 ppmv as total organic compound (TOC) and less than or equal to 20 ppmv as hydrogen halides and halogens. You also must establish applicable operating parameter levels during the performance test to use as monitoring limits for ongoing compliance demonstrations. This option is identical to options already provided for process vent emissions and wastewater emissions.

The exclusion of this option for storage tanks was an oversight that was only recently discovered. We always intended to provide this option for storage tank emissions as well as other

types of emissions, as evidenced by the fact that we included a statement specifying how to demonstrate initial compliance with such an option in § 63.1257(c)(1) of the final rule (63 FR 50355, September 21, 1998). In previous amendments, we inadvertently modified this statement to refer to compliance with the alternative standard (65 FR 52610, August 29, 2000). Therefore, in addition to providing the outlet concentration limit as an option in § 63.1253(b)(2) and (c)(2), this direct final rule also restores the original intent of the provision in § 63.1257(c)(1).

VI. What Minor Technical Corrections Are We Making?

This direct final rule corrects referencing errors, corrects drafting and typesetting errors, and clarifies the intent of several provisions. All of the minor technical corrections are described in Table 1.

TABLE 1.—MINOR TECHNICAL CORRECTIONS TO SUBPART GGG

Section of subpart GGG	Description of correction
§ 63.1250(e)	The original language in these paragraphs specified only how to determine ownership if a storage tank was shared among PMPU's. The revised language in paragraphs (e)(2) and (3) clarifies how to determine ownership of a tank that is shared among one or more PMPU's and other types of process units. The requirement to assign storage tanks to a process unit based on predominant use has not changed. We also revised the introductory text to paragraph (e) to specify that if you produce only pharmaceutical products, you do not need to assign storage tanks to a PMPU except when you comply with the pollution-prevention alternative and when you need to determine whether a dedicated PMPU is subject to new source standards. Otherwise, the assignment requirement is not needed at these facilities because all of the storage tanks are subject to storage tank requirements in the rule, and there are no other applicability requirements based on total emissions from a PMPU. We expect that this clarification will reduce the burden for some facilities.
§ 63.1250(h)(2)	Clarified the overlapping provisions by discussing the requirements in two paragraphs instead of one. One paragraph describes your options if you have a control device subject to both the pharmaceuticals production NESHAP and any of the subparts AA, BB, or CC in 40 CFR parts 264 and/or 265. The second paragraph describes your options if you have equipment subject to the equipment leak provisions in both § 63.1255 and in subpart BB of 40 CFR parts 264 and/or 265. Options for waste management units subject to both the pharmaceuticals production NESHAP and subpart CC of 40 CFR parts 264 and/or 265 are described in § 63.1250(h)(5).
§ 63.1253(f)(7)(i)	Corrected this paragraph by replacing the incorrect reference to paragraph (b)(7)(i) with the correct reference to paragraph (f)(7).
§ 63.1255(b)(4)(iii)(A)	Corrected this paragraph by replacing the incorrect reference to paragraph (b)(3)(iii)(B) with the correct reference to paragraph (b)(4)(iii)(B).
§ 63.1255(b)(4)(iii)(D)	Revised this paragraph to clarify that you must monitor leaking connectors once per year until the percent leaking connectors is less than 0.5 percent. After the percent leaking connectors falls below 0.5 percent, you may again implement the applicable less frequent monitoring schedule. Without this clarification, the paragraph could be interpreted to mean that you must always monitor leaking connectors once per year.
§ 63.1255(c)(2)(iii), (c)(3), and (5)(iv)	The original language in these paragraphs was inconsistent. Paragraph (c)(5)(iv) required EPA Method 21 monitoring to verify the presence of a leak if indications of liquids dripping were detected during a visual inspection. Paragraph (c)(2)(iii) simply stated that a leak was present if there were visual indications of liquids dripping. We revised both paragraphs to specify that if there are visual indications of liquids dripping during a weekly visual inspection, then you must either monitor using EPA Method 21 or eliminate the visual indication of liquids dripping before the next weekly inspection. These changes also make the paragraphs consistent with the Consolidated Federal Air Rule and 40 CFR part 63, subpart UU (the Generic MACT). We also revised paragraph (c)(3) to clarify that the repair provisions for all leaking pumps/agitators are the same.
§ 63.1255(c)(4)(ii)	The original language in this paragraph specified that you must monitor pumps monthly instead of quarterly if, on a 1-year rolling average, greater than 10 percent or 3 pumps have leaked in a group of processes. As written, this paragraph could be interpreted to mean that all subsequent monitoring for that group of processes must be monthly. This was not our intent. To correct this oversight, we have revised the paragraph to specify that you may revert to quarterly monitoring after the 1-year rolling average again indicates that less than 10 percent or fewer than 3 pumps have leaked.
§ 63.1255(e)(7)(iii)	Added a sentence to this paragraph to clarify that monitoring in the 3 months after repair is in addition to the monitoring required to demonstrate repair. This amendment is consistent with the language in the Consolidated Federal Air Rule and 40 CFR part 63, subpart UU. It is also consistent with the intent of the HON.
§ 63.1255(e)(9)	Corrected this paragraph by replacing the incomplete reference to paragraphs (e)(4)(iii) and (iv) with a reference to paragraphs (e)(4)(iii), (iv), and (v). The reference to paragraph (e)(4)(v) was inadvertently left out of the final rule. The change makes the paragraph consistent with the Consolidated Federal Air Rule.
§ 63.1255(h)(1)(ii)	Deleted the word "and" at the end of this paragraph because, as specified in paragraph (h)(1), the only reports that must be submitted are those specified in paragraphs (h)(1)(i) and (ii).
§ 63.1255(h)(3)(i)	Revised the schedule for submitting Periodic reports with information on equipment leak compliance to be consistent with the schedule specified in § 63.1260(g)(1).
§ 63.1256(c)(1)(i)(A)	Corrected this paragraph by replacing the incorrect reference to paragraph (c)(1)(iv) with the correct reference to paragraph (c)(1)(v).

TABLE 1.—MINOR TECHNICAL CORRECTIONS TO SUBPART GGG—Continued

Section of subpart GGG	Description of correction
§ 63.1256(e)(4)(i)(B)	The original language in this paragraph used the terms "flexible cap" and "flexible shield," interchangeably. To clarify our intent, we revised the paragraph to use only the term "flexible shield."
§ 63.1256(g)(9)(ii)	Revised this paragraph to allow design evaluations, as well as performance tests, to demonstrate removal or destruction of soluble HAP by 90 percent in all treatment units except open biological treatment units. This change makes the requirements of this paragraph consistent with the requirements in paragraph (g)(4). It also makes this paragraph consistent with the amended requirements in paragraphs (g)(8)(ii), (11)(ii), and (12) of this section. We inadvertently neglected to amend this paragraph at the same time that the others were amended.
§ 63.1257(a)(6)	Corrected this paragraph by replacing the incorrect reference to § 63.1258(b)(1) through (5) with the correct reference to § 63.1258(b)(1) through (4). Section 63.1258(b)(5) is not applicable because it relates to the alternative standard, whereas § 63.1257(a)(6) is describing monitoring requirements to demonstrate compliance with the outlet concentration limits of 20 ppmv TOC and 20 ppmv hydrogen halides and halogens.
§ 63.1257(d)(2)(i)(D)(*9*)	Corrected Equation 31 by replacing "N_{HAP}" with "n_{HAP}."
§ 63.1257(d)(2)(i)(D)(*10*)	Corrected Equation 32 by replacing individual HAP partial pressures with partial pressures for individual condensable compounds.
§ 63.1257(d)(2)(i)(E)	Added a sentence specifying that individual HAP partial pressures in the equation to calculate emissions from vacuum systems may be calculated using Raoult's Law. This change makes the procedures for this equation consistent with the procedures that are allowed for calculating emissions from other types of emission episodes.
§ 63.1257(d)(3)(iii)(B)	Corrected this paragraph by replacing the incorrect reference to paragraphs (d)(2)(iii)(B)(*1*) and (*2*) with the correct reference to paragraphs (d)(3)(iii)(B)(*1*) and (*2*).
§ 63.1257(e)(2)(iii)(B)	Corrected this paragraph by replacing the incorrect reference to paragraph (b)(10)(iii) with the correct reference to paragraph (b)(10)(vi) and replacing the incorrect reference to paragraphs (b)(10)(i), (ii), and (iii) with the correct reference to paragraphs (b)(10)(i) through (vi).
§ 63.1257(e)(2)(iii)(C)(*1*), (D)(*1*), and (E)(*1*)	Corrected these paragraphs by replacing the incorrect reference to paragraph (b)(10)(v) with the correct reference to paragraph (b)(10)(vi).
§ 63.1258(b)(3)	Deleted the reference to process vents from the heading to this paragraph. The intent of this paragraph is to specify procedures for setting parameter levels for all control devices, not just those used to control process vent emissions.
§ 63.1258(b)(5)(i)(A)	Deleted the last sentence in this paragraph because it conflicts with the requirement in § 63.1258(b)(1)(x) that calibration of CEMS include, at a minimum, quarterly cylinder gas audits.
§ 63.1258(b)(5)(ii)(A)(*2*)	Revised this paragraph to specify that it applies if you comply with the alternative standard instead of achieving a control efficiency of "98 percent," not "98 percent or less." Paragraph (b)(5)(ii)(A)(*1*) specifies requirements if you comply with the alternative standard instead of achieving a control efficiency of 95 percent or less. Subpart GGG has no control efficiency requirements between 95 and 98 percent. Therefore, the phrase "or less" in paragraph (b)(5)(ii)(A)(*2*) is both unnecessary and conflicts with paragraph (b)(5)(ii)(A)(*1*).
§ 63.1258(b)(8)(iii)	Revised this paragraph to clarify that violations of the alternative standard apply to the 50 ppmv option for noncombustion devices, as well as the 20 ppmv option for combustion devices. We inadvertently neglected to amend this paragraph when we added the 50 ppmv option to the alternative standard (65 FR 52588, August 29, 2000).
§ 63.1258(h)(6) and (7)	Corrected these paragraphs by replacing the incorrect references to paragraphs (h)(8)(i) and (ii) with the correct reference to paragraph (h)(8).
§ 63.1258(h)(10)	Added paragraph (h)(10) to specify that closed-vent systems operated and maintained under negative pressure are not subject to the inspection requirements for closed-vent systems. For this type of closed-vent system, you must install a pressure gauge or other pressure measurement device that can be used to verify that the negative pressure is being maintained when the control device is operating. This new provision is consistent with the provision in § 63.1255(b)(4)(ii)(B) for closed-vent systems used to route equipment leak emissions to a control device.
§ 63.1259(a)(3)(iii) and (b)(13)	Deleted the reference to § 63.10(b)(2)(iii) in paragraph (a)(3)(iii) because, as noted in Table 1 to subpart GGG, this section of the General Provisions does not apply to subpart GGG. The reference also is unnecessary because the requirement to record maintenance performed on the control device is clearly specified in this paragraph. However, because this maintenance recordkeeping requirement will not always be related to a startup, shutdown, or malfunction procedure, we also moved it to a new paragraph (b)(13).
§ 63.1259(b)(5)(i)	Corrected this paragraph by removing the references to individual process vents and § 63.1254(a)(3). This paragraph requires records of emissions for certain nonstandard batches. At an existing source, these records are needed to demonstrate compliance with a process-based percent reduction requirement for process vents from nonstandard batches if you control some vents to more than 93 percent and others to less than 93 percent (or 98 percent for new sources). Assuming the monitored operating parameters are at acceptable levels, the control efficiency for each control device is unchanged, but the overall control level for the process could change if the impact of the nonstandard batch on uncontrolled emissions is not identical for each vent. This situation cannot occur for individual vents that are subject to percent reduction requirements under § 63.1254(a)(3); thus, there is no need to maintain a record of nonstandard batch emissions for these vents.

TABLE 1.—MINOR TECHNICAL CORRECTIONS TO SUBPART GGG—Continued

Section of subpart GGG	Description of correction
§ 63.1259(b)(8)	Revised this paragraph to require a log or schedule of operating scenarios that is updated daily or, at a minimum, each time a different operating scenario takes effect. The original requirements to update the schedule or log daily and prior to making a change are unnecessarily burdensome.
§ 63.1259(i)(7)	Paragraph (i)(7) requires records of information associated with inspections of closed vent systems during which a leak is detected. As currently written, paragraph (i)(7)(i) requires records identifying the leaking equipment and records of the instrument identification number and operator name. This paragraph may be confusing because the instrument identification number and operator name can be recorded only for leaks that are detected using the instrument method. To clarify the requirements, we revised the language and split it into two paragraphs. The revised paragraph (i)(7)(i) requires records identifying the leaking equipment; this record is required regardless of the technique used to identify the leak. The revised paragraph (i)(7)(ii) requires a record of the instrument identification number and operator name for each leak that is detected using the instrument method. For each leak detected by sensory observations, this paragraph also requires a record indicating that the leak was detected by sensory observations. The original paragraphs (i)(7)(ii) through (viii) are redesignated as paragraphs (i)(7)(iii) through (ix).
§ 63.1260(g)(1)	Added statement specifying that each periodic report after the first report covers the 6-month period following the preceding report. Also deleted the requirement to submit the Periodic reports 60 operating days after the end of the applicable reporting period because it could conflict with the requirements to submit the first periodic report no later than 240 days after the Notification of Compliance Status Report is due and to submit subsequent reports every 6 months thereafter. These changes also make paragraph (g)(1) consistent with § 63.1255(h)(3)(i).
§ 63.1260(g)(2)(v)	Corrected this paragraph by replacing the incorrect reference to paragraph (g)(2)(iv)(A) with the correct reference to paragraph (g)(2)(v)(A).
§ 63.1260(g)(2)(vii)	Revised this paragraph to specify that the first periodic report must include each operating scenario operated since the due date of the Notification of Compliance Status Report, not since the compliance date. This change makes the time period for this information consistent with the time period covered by the first periodic report, as specified in § 63.1260(g)(1).
§ 63.1260(h)	Revised this paragraph to require process change notifications as part of the Periodic report instead of quarterly. We determined that requiring submittal of the process change notification more frequently than the Periodic report was an unnecessary burden.
§ 63.1260(i)	We made two changes to clarify this paragraph and make it more consistent with the startup, shutdown, and malfuction (SSM) reporting requirements in § 63.10(d)(5). First, we split the requirements into two paragraphs; the first paragraph specifies reporting requirements for actions that are consistent with the SSM plan, and the second paragraph specifies immediate reporting requirements for actions that are not consistent with the SSM plan. Second, we deleted the requirement to report records required by § 63.1259(a)(3)(iii) because reporting this information is inconsistent with § 63.10(d)(5)(i) of the General Provisions, which requires only a statement that the procedures in the SSM plan were followed.
Table 1 to subpart GGG	Corrected typesetting errors in entries §§ 63.1(c)(5), 63.5(e), and 63.8(e)(5)(i). Also corrected the entry for § 63.6(i) by replacing the incorrect reference to § 63.1250(f)(4) with the correct reference to § 63.1250(f)(6), and by indicating that the approval provisions in § 63.6(i)(7) through (14) apply to requests for approval of compliance extensions that are requested according to § 63.1250(f)(6).

VII. What Are the Administrative Requirements for This Direct Final Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that these 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. 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."

These 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 these amendments. Thus, the requirements of section 6 of the Executive Order do not apply to these rules.

C. 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 officals in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

These rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate pharmaceutical production facilities. Thus, Executive Order 13175 does not apply to these rule amendments.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, these rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in 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.

The EPA has determined that these rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the Pharmaceuticals Production NESHAP for any year has been estimated to be approximately $64 million (63 FR 50287, September 21, 1998), and today's amendments do not add new requirements that would increase this cost. Thus, these rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that these 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, these rule amendments are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. The EPA has also determined that this direct final rule will not have a significant impact on a substantial number of small entities. For purposes of assessing the impacts of this direct final rule on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325411 or 325412 that has as many as 750 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) 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 (4) 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 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 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 burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule amendments impose no additional regulatory requirements on owners or operators of affected sources, many of the rule amendments provide additional compliance options, and other rule amendments clarify requirements and correct minor drafting errors. We have therefore, concluded that these rules will relieve regulatory burden for all small entities.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1998 pharmaceuticals production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control No. 2060–0358. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1781.01), and a copy may be obtained from Sandy Farmer by mail at U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740.

The amendments contained in these final rules will have no net impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113 (March 7, 1996), 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 methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus 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 does not use available and applicable voluntary consensus standards.

During the rulemaking, EPA searched for voluntary consensus standards that might be applicable. The search identified no applicable voluntary consensus standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to this direct final rule.

I. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency adopting 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 this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule will be effective on October 16, 2001.

Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, for the amendments to the table that lists OMB control numbers, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 2, 2001. 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).

J. Executive Order 13211 (Energy Effects)

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

List of Subjects in 40 CFR Parts 9 and 63

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

Dated: July 24, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9 1857 *et seq.*, 6901–6992k, 7401–7671g, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by revising the entry "63.1259–63.1260" in the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories.[3]	
* * * * *	
63.1259–63.1260	2060–0358
* * * * *	

[3] The ICR's referenced in this section of the table encompass the applicable General Provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—[AMENDED]

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

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

Subpart GGG—National Emission Standards for Pharmaceuticals Production

4. Section 63.1250 is amended by:

a. Revising paragraph (e); and

b. Revising paragraph (h)(2). The revisions read as follows:

§ 63.1250 Applicability.

* * * * *

(e) *Storage tank ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (e)(1) through (5) of this section to determine to which PMPU a storage tank shall belong. If an owner or operator produces only pharmaceutical products, the procedures specified in paragraphs (e)(1) through (5) of this section are required only to determine applicability and demonstrate compliance with the pollution-prevention alternative specified in § 63.1252(e), or to determine new source applicability for a PMPU dedicated to manufacturing a single product as specified in paragraph (b) of this section.

(1) If a storage tank is dedicated to a single PMPU, the storage tank shall belong to that PMPU.

(2) If a storage tank is shared among process units (including at least one PMPU), then the storage tank shall belong to the process unit located on the same plant site as the storage tank that has the greatest annual volume input into or output from the storage tank (i.e., said PMPU or process unit has the predominant use of the storage tank).

(3) If predominant use cannot be determined for a storage tank that is shared among process units (including at least one PMPU), then the owner or operator shall assign the storage tank to any one of the PMPU's that shares it and is also subject to this subpart.

(4) If the predominant use of a storage tank varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 21, 1998 for existing affected sources. For new affected sources, predominant use will be based on the first year after initial startup. The determination of predominant use shall be reported in the Notification of Compliance Status required by § 63.1260(f). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic report.

(5) If the storage tank begins receiving material from (or sending material to) another PMPU, or ceases to receive material from (or send material to) a PMPU, or if the applicability of this subpart to a storage tank has been determined according to the provisions of paragraphs (e)(1) through (4) of this section and there is a significant change in the use of the storage tank that could reasonably change the predominant use, the owner or operator shall reevaluate the applicability of this subpart to the storage tank and report such changes to EPA in the next Periodic report.

* * * * *

(h) * * *

(2) *Consistency with 40 CFR parts 264 and 265, subparts AA, BB, and/or CC.* (i) After the compliance dates specified in this section, if any control device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA, BB, or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA, BB, or CC, and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264, subpart AA, BB, or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. If the owner or operator elects to comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, the owner or operator shall report all information required by § 63.1260(g) and (i). The owner or operator shall identify in the Notification of Compliance Status, required by § 63.1260(f), the monitoring, recordkeeping, and reporting authority under which the owner or operator will comply.

(ii) After the compliance dates specified in this section, if any equipment at an affected source that is subject to § 63.1255, is also subject to 40 CFR part 264, subpart BB, or to 40 CFR part 265, subpart BB, then compliance with the recordkeeping and reporting requirements of 40 CFR parts 264 and/or 265 may be used to comply with the recordkeeping and reporting requirements of § 63.1255, to the extent that the requirements of 40 CFR parts 264 and/or 265 duplicate the requirements of § 63.1255. The owner or operator shall identify in the Notification of Compliance Status, required by § 63.1260(f), if the owner or operator will comply with the recordkeeping and reporting authority under 40 CFR parts 264 and/or 265.

* * * * *

5. Section 63.1251 is amended by adding a definition in alphabetical order for *centralized combustion control device* to read as follows:

§ 63.1251 Definitions.

* * * * *

Centralized combustion control device (CCCD) means enclosed combustion devices that are used to control process vent emissions from non-dedicated PMPU's at a facility. Centralized combustion control devices may also be used to control emissions from source types including, but not limited to, storage tanks, waste management units, and equipment leaks.

* * * * *

6. Section 63.1252 is amended by adding paragraph (h) to read as follows:

§ 63.1252 Standards: General.

* * * * *

(h) *Planned routine maintenance for centralized combustion control devices.* The owner or operator may operate non-dedicated PMPU's during periods of planned routine maintenance for CCCD in accordance with the provisions specified in paragraphs (h)(1) through (6) of this section.

(1) For equipment leaks and wastewater emissions that normally are controlled by the CCCD, if any, the owner or operator must continue to comply with the requirements in §§ 63.1255(b)(4)(ii) and 63.1256(h), respectively, using other control devices during the planned routine maintenance period for the CCCD.

(2) During the planned routine maintenance period, the owner or operator must route emissions from process vents with organic HAP emissions greater than 15 pounds per day (lb/day) through a closed-vent system to a condenser that meets the conditions specified in paragraphs (h)(2)(i) through (iii) of this section.

(i) The outlet gas temperature must be less than −50°C (−58°F) when the emission stream contains organic HAP with a partial pressure greater than 20 kPa (2.9 psia).

(ii) The outlet gas temperature must be less than −5°C (23°F) when the emission stream contains organic HAP with a partial pressure less than or equal to 20 kPa (2.9 psia).

(iii) The HAP partial pressures in paragraphs (h)(2)(i) and (ii) of this section must be determined at 25°C.

(3) The owner or operator must route HCl emissions from process vents with HCl emissions greater than 15 lb/day through a closed-vent system to a caustic scrubber, and the pH of the scrubber effluent must be maintained at or above 9.

(4) For the purposes of the emission calculations required in paragraphs (h)(2) and (3) of this section, the term "process vent" shall mean each vent from a unit operation. The emission calculation shall not be performed on the aggregated emission stream from multiple unit operations that are manifolded together into a common header. Once an affected process vent has been controlled in accordance with this section, it is no longer subject to the requirements of this section or § 63.1254 during the routine maintenance period.

(5) The total period of planned routine maintenance, during which non-dedicated PMPU's that are normally controlled by the CCCD continue to operate, and process vent emissions are controlled as specified in paragraphs (h)(2) and (3) of this section, must not exceed 240 hours in any 365-day period.

(6) While being controlled as specified in paragraphs (h)(2) and (3) of this section, the process vents may not be used in emissions averaging.

7. Section 63.1253 is amended by:

a. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5) and adding paragraph (b)(2);

b. Redesignating paragraphs (c)(2) through (4) as paragraphs (c)(3) through (5) and adding paragraph (c)(2);

c. Revising the second sentence in paragraph (e); and

d. Revising "paragraph (b)(7)(i)" to read "paragraph (f)(7)" in paragraph (f)(7)(i).

The revisions and additions read as follows:

§ 63.1253 Standards: Storage tanks.

* * * * *

(b) * * *

(2) Reduces emissions to outlet concentrations less than or equal to 20 ppmv as TOC and less than or equal to 20 ppmv as hydrogen halides and halogens;

* * * * *

(c) * * *

(2) Reduces emissions to outlet concentrations less than or equal to 20 ppmv as TOC and less than or equal to 20 ppmv as hydrogen halides and halogens; STARS≤

(e) * * * Periods of planned routine maintenance of the control devices (including CCCD subject to § 63.1252(h)), during which the control device does not meet the specifications of paragraphs (b) through (d) of this section, as applicable, shall not exceed 240 hours in any 365-day period.

* * * * *

8. Section 63.1254 is amended by adding paragraph (a)(4) to read as follows:

§ 63.1254 Standards: Process vents.

(a) * * *

(4) *Planned routine maintenance.* For each PMPU that is controlled with a CCCD, the owner or operator must comply with the provisions specified in either paragraph (a)(4)(i), (ii), or (iii) of this section during periods of planned routine maintenance of the CCCD. The owner or operator is not required to comply with the same provision for all of the PMPU's controlled by the CCCD.

(i) Shutdown the affected process.

(ii) Comply with the requirements of paragraphs (a)(1) through (3) of this section by using other means.

(iii) For a non-dedicated PMPU, implement the procedures described in paragraphs (a)(4)(iii)(A) through (C) of this section for those process vents that are normally controlled by the CCCD. This option is not available for process vents from dedicated PMPU's.

(A) If the owner or operator uses a CCCD to comply with the 93 percent reduction requirement in paragraph (a)(1)(i) or (ii) of this section, the outlet concentration limit in paragraph (a)(1)(ii)(A) of this section, the alternative standard as specified in paragraphs (a)(1)(ii)(D) and (c) of this section, or the annual mass limit in paragraph (a)(2) of this section, implement the provisions in § 63.1252(h) during planned routine maintenance of the CCCD.

(B) If the owner or operator reduces HAP emissions from process vents by using a CCCD that is also a control device specified in § 63.1257(a)(4), implement the provisions in § 63.1252(h) during planned routine maintenance of the CCCD.

(C) If the owner or operator uses a CCCD to reduce emissions from a process vent subject to paragraph (a)(3) of this section, implement the planned routine maintenance provisions in § 63.1252(h) for that vent only if the reason the planned routine maintenance is needed, and the reason it cannot be performed at a time when the vent subject to paragraph (a)(3) of this section is not operating, has been described in the Notification of Compliance Status Report or a periodic report submitted before the planned routine maintenance event.

* * * * *

9. Section 63.1255 is amended by:

a. Adding paragraph (b)(4)(ii)(C);

b. Revising "paragraphs (b)(3)(iii)(B) through (F)" to read "paragraphs (b)(4)(iii)(B) through (F)" in paragraph (b)(4)(iii)(A);

c. Revising paragraph (b)(4)(iii)(D);

d. Revising paragraph (c)(2)(iii);

e. Revising paragraph (c)(3)(i);

f. Revising paragraph (c)(4)(ii);

g. Revising paragraph (c)(5)(iv);

h. Removing paragraphs (c)(5)(vi)(C) and (D) and adding paragraph (c)(5)(vii);

i. Adding a sentence at the end of paragraph (e)(7)(iii) introductory left;

j. Revising the second sentence in paragraph (e)(9);

k. Revising paragraph (h)(1)(ii); and

l. Revising paragraph (h)(3)(i).

The revisions and additions read as follows:

§ 63.1255 Standards: Equipment leaks.

* * * * *

(a) * * *

(4) * * *

(ii) * * *

(C) The requirements apply at all times, except as specified in § 63.1250(g). The owner or operator may not comply with the planned routine maintenance provisions in § 63.1252(h).

(iii) * * *

(D) Except as provided in paragraph (b)(4)(iii)(B) of this section, if leaking connectors comprise at least 0.5 percent but less than 1.0 percent of the connectors during the last monitoring period, the owner or operator shall monitor at least once every 2 years for the next monitoring period. At the end of that 2-year monitoring period, if the percent leaking connectors is greater than or equal to 0.5 percent, the owner or operator shall monitor once per year until the percent leaking connectors is less than 0.5 percent. If, at the end of a monitoring period, the percent leaking connectors is less than 0.5 percent, the owner or operator shall monitor in accordance with paragraph (b)(4)(iii)(C) or (F) of this section, as appropriate.

* * * * *

(c) * * *

(2) * * *

(iii) *Visual Inspections.* Each pump and agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump or agitator seal. If there are indications of liquids dripping from the pump or agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (c)(2)(iii)(A) or (B) of this section prior to the next weekly inspection.

(A) The owner or operator shall monitor the pump or agitator by the method specified in § 63.180(b). If the instrument reading indicates a leak as specified in paragraph (c)(2)(ii) of this section, a leak is detected.

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(3) * * *

(i) When a leak is detected pursuant to paragraph (c)(2)(i), (c)(2)(iii)(A),

(c)(5)(iv)(A), or (c)(5)(vi)(B) of this section, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (b)(4)(i) of this section.

* * * * *

(4) * * *

(ii) If, calculated on a 1-year rolling average, the greater of either 10 percent or three of the pumps in a group of processes leak, the owner or operator shall monitor each pump once per month, until the calculated 1-year rolling average value drops below 10 percent or three pumps, as applicable.

* * * * *

(5) * * *

(iv) Each pump/agitator is checked by visual inspection each calendar week for indications of liquids dripping from the pump/agitator seal. If there are indications of liquids dripping from the pump or agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedures specified in either paragraph (c)(5)(iv)(A) or (B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the pump or agitator using the method specified in § 63.180(b) to determine if there is a leak of organic HAP in the barrier fluid. If the instrument reading indicates a leak, as specified in paragraph (c)(2)(ii) of this section, a leak is detected.

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

* * * * *

(vii) When a leak is detected pursuant to paragraph (c)(5)(iv)(A) or (B) of this section, the leak must be repaired as specified in paragraph (c)(3) of this section.

* * * * *

(e) * * *

(7) * * *

(iii) * * * The monitoring required by this paragraph is in addition to the monitoring required to satisfy the definitions of "repaired" and "first attempt at repair."

* * * * *

(9) * * * Instead, the owner or operator shall monitor each valve in organic HAP service for leaks once each quarter, or comply with paragraph (c)(4)(iii), (iv), or (v) of this section, except as provided in paragraph (f) of this section.

* * * * *

(h) * * *

(1) * * *

(ii) Periodic reports described in paragraph (h)(3) of this section.

* * * * *

(3) * * *

(i) A report containing the information in paragraphs (h)(3)(ii), (iii), and (iv) of this section shall be submitted semiannually. The first report shall be submitted no later than 240 days after the Notification of Compliance Status Report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status Report is due. Each subsequent report shall cover the 6-month period following the preceding period.

* * * * *

10. Section 63.1256 is amended by:

a. Revising "paragraph (c)(1)(iv)" to read "paragraph (c)(1)(v)" in paragraph (c)(1)(i)(A);

b. Revising "flexible cap" to read "flexible shield" in the last sentence in paragraph (e)(4)(i)(B);

c. Revising paragraph (e)(4)(iii);

d. Revising paragraph (g)(9)(ii);

e. Revising the first sentence in paragraph (g)(10);

f. Revising paragraph (h) introductory text; and

g. Adding paragraph (h)(5).

The revisions and additions read as follows:

§ 63.1256 Standards: Wastewater.

* * * * *

(e) * * *

(4) * * *

(iii) The owner or operator shall operate and maintain sewer lines as specified in paragraphs (e)(4)(iii)(A) and (B) of this section.

(A) Except as specified in paragraph (e)(4)(iii)(B) of this section, each sewer line shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visible gaps or cracks in joints, seals, or other emission interfaces.

Note: This provision applies to sewers located inside and outside of buildings.

(B) A sewer line connected to drains that are in compliance with paragraph (e)(4)(i) of this section may be vented to the atmosphere, provided that the sewer line entrance to the first downstream junction box is water sealed and the sewer line vent pipe is designed as specified in paragraph (c)(4)(ii)(B)(*1*) of this section.

* * * * *

(g) * * *

(9) * * *

(ii) *Percent mass removal/destruction option.* The owner or operator shall reduce the mass of total soluble HAP by 90 percent or more, either by removal or destruction. The removal/destruction efficiency shall be determined by the procedures in § 63.1257(e)(2)(ii) or (e)(2)(iii)(C) for noncombustion, nonbiological treatment processes; § 63.1257(e)(2)(ii) or (e)(2)(iii)(D) for combustion processes; § 63.1257(e)(2)(iii)(F) for open biological treatment processes; and § 63.1257(e)(2)(ii) or (e)(2)(iii)(G) for closed, biological treatment processes.

(10) *Control option: Enhanced biotreatment for wastewater containing soluble HAP.* The owner or operator may elect to treat affected wastewater streams containing soluble HAP in an enhanced biological treatment system, as defined in § 63.1251, provided the wastewater stream contains less than 50 ppmw partially soluble HAP, or the owner or operator complies with the requirements of paragraph (g)(8) of this section before treating the affected wastewater stream in the enhanced biological treatment system. * * *

* * * * *

(h) For each control device or combination of control devices used to comply with the provisions in paragraphs (b) through (f) and (g)(5) of this section, the owner or operator shall operate and maintain the control device or combination of control devices in accordance with the requirements of paragraphs (h)(1) through (5) of this section.

* * * * *

(5) The provisions in paragraphs (h)(1) through (4) of this section apply at all times, except as specified in § 63.1250(g). The owner or operator may not comply with the planned routine maintenance provisions in § 63.1252(h) for vent streams from waste management units.

* * * * *

11. Section 63.1257 is amended by:

a. Revising the last sentence in paragraph (a)(6);

b. Revising paragraph (b)(10)(ii);

c. Revising paragraph (c)(1) introductory text;

d. Adding a sentence at the end of paragraph (d)(1)(i);

e. Revising "N_{HAP}" to read "n_{HAP}" in equation 31 in paragraph (d)(2)(i)(D)(*9*);

f. Revising paragraph (d)(2)(i)(D)(*10*);

g. Adding a sentence after the first sentence in paragraph (d)(2)(i)(E);

h. Revising "paragraphs (d)(2)(iii)(B)(*1*) and (*2*)" to read "paragraphs (d)(3)(iii)(B)(*1*) and (*2*)" in paragraph (d)(3)(iii)(B) introductory text;

i. Revising "paragraph (b)(10)(iii)" to read "paragraph (b)(10)(vi)" and revising "paragraphs (b)(10)(i), (ii), and (iii)" to read "paragraphs (b)(10)(i) through (vi)" in paragraph (c)(2)(iii)(B); and

j. Revising "paragraph (b)(10)(v)" to read "paragraph (b)(10)(vi)" in

paragraphs (e)(2)(iii)(C)(*1*), (D)(*1*), and (E)(*1*).

The revisions and additions read as follows:

§ 63.1257 Test methods and compliance procedures.

(a) * * *

(6) * * * The owner or operator shall comply with the monitoring provisions in § 63.1258(b)(1) through (4) on the initial compliance date.

* * * * *

(b) * * *

(10) * * *

(ii) *EPA Method 624, 625, 1624, 1625, 1666, or 1671.* Use procedures specified in EPA Method 624, 625, 1624, 1625, 1666, or 1671 of 40 CFR part 136, appendix A, and comply with requirements in paragraph (b)(10)(vi) of this section.

* * * * *

(c) * * *

(1) *Performance test.* If this option is chosen to demonstrate initial compliance with the percent reduction requirement of § 63.1253(b)(1) or (c)(1)(i), the efficiency of the control device shall be calculated using performance test data as specified in paragraphs (c)(1)(i) through (iii) of this section. To demonstrate initial compliance with the outlet concentration requirements in § 63.1253(b)(2) and (c)(2), the owner or operator must conduct a performance test and fulfill the requirements of paragraph (a)(6) of this section.

* * * * *

(d) * * *

(1) * * *

(i) * * * Controlled emissions during periods of planned routine maintenance of a CCCD as specified in § 63.1252(h), must be calculated assuming the HAP emissions are reduced by 93 percent.

* * * * *

(2) * * *

(i) * * *

(D) * * *

(*10*) Emissions from depressurization may be calculated using equation 32 of this subpart:

$$E = \frac{V}{(R)(T)} \times \ln\left(\frac{P_1 - \sum_{j=1}^{m}(P_j)}{P_2 - \sum_{j=1}^{m}(P_j)}\right) \times \sum_{i=1}^{n}(P_i)(MW_i) \qquad \text{(Eq. 32)}$$

Where:

V = free volume in vessel being depressurized

R = ideal gas law constant

T = temperature of the vessel, absolute

P_1 = initial pressure in the vessel

P_2 = final pressure in the vessel

P_j = partial pressure of the individual condensable compounds (including HAP)

MW_i = molecular weight of the individual HAP compounds

n = number of HAP compounds in the emission stream

m = number of condensable compounds (including HAP) in the emission stream

i = identifier for a HAP compound

j = identifier for a condensable compound.

(E) * * * The individual HAP partial pressures may be calculated using Raoult's Law. * * *

* * * * *

12. Section 63.1258 is amended by:

a. Revising paragraph (b)(3) heading;

b. Revising paragraph (b)(5)(i)(A);

c. Revising paragraph (b)(5)(ii)(A)(*2*);

d. Revising paragraph (b)(8)(iii);

e. Adding a sentence between the first and second sentences in paragraph (c);

f. Revising "paragraph (h)(9)" to read "paragraphs (h)(9) and (10)" in paragraph (h)(1);

g. Revising "paragraph (h)(8)(i)" to read "paragraph (h)(8)" in paragraph (h)(6) introductory text;

h. Revising "paragraph (h)(8)(ii)" to read "paragraph (h)(8)" in paragraph (h)(7) introductory text;

i. Adding paragraph (h)(10); and

j. Adding paragraph (i).

The revisions and additions read as follows:

§ 63.1258 Monitoring requirements.

* * * * *

(b) * * *

(3) *Procedures for setting parameter levels for control devices used to control emissions.* * * *

* * * * *

(5) * * *

(i) * * *

(A) A TOC monitor meeting the requirements of EPA Performance Specification 8, 9, or 15 of appendix B of 40 CFR part 60 shall be installed, calibrated, and maintained according to § 63.8.

* * * * *

(ii) * * *

(A) * * *

(*2*) If complying with the alternative standard instead of achieving a control efficiency of 98 percent, the owner or operator must maintain a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816°C.

* * * * *

(8) * * *

(iii) Except as provided in paragraph (b)(8)(iv) of this section, exceedances of the 20 or 50 ppmv TOC outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device. Except as provided in paragraph (b)(8)(iv) of this section, exceedances of the 20 or 50 ppmv hydrogen halide or halogen outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device.

* * * * *

(c) * * * During periods of planned routine maintenance when emissions are controlled as specified in § 63.1252(h), the owner or operator must calculate controlled emissions assuming the HAP emissions are reduced by 93 percent. * * *

* * * * *

(h) * * *

(10) Instead of complying with the provisions of paragraphs (h)(2) through (8) of this section, an owner or operator may design a closed-vent system to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the associated control device is operating.

(i) *Planned routine maintenance.* During periods of planned routine maintenance when organic HAP emissions are controlled as specified in § 63.1252(h)(2), the owner or operator must monitor the condenser outlet gas temperature according to the procedures specified in paragraph (b)(1)(iii) of this section. During periods of planned routine maintenance when HCl emissions are controlled as specified in § 63.1252(h)(3), the owner or operator

must monitor the pH of the scrubber effluent once per day.

13. Section 63.1259 is amended by:

a. Revising paragraph (a)(3)(iii);

b. Revising paragraph (b)(5)(i) introductory text;

c. Redesignating paragraphs (b)(5)(ii)(D) and (E) as paragraphs (b)(5)(ii)(E) and (F);

d. Adding paragraph (b)(5)(ii)(D);

e. Revising paragraph (b)(8);

f. Revising paragraph (b)(10);

g. Adding paragraph (b)(13);

h. Revising "paragraphs (i)(7)(i) through (viii)" to read "paragraphs (i)(7)(i) through (ix)" in paragraph (i)(7) introductory text; and

i. Redesignating paragraphs (i)(7)(i) through (viii) as paragraphs (i)(7)(ii) through (ix), adding paragraph (i)(7)(i), and revising redesignated paragraph (i)(7)(ii).

The revisions and additions read as follows:

§ 63.1259 Recordkeeping requirements.

(a) * * *

(3) * * *

(iii) For each startup, shutdown, or malfunction, the owner or operator shall record all information necessary to demonstrate that the procedures specified in the affected source's startup, shutdown, and malfunction plan were followed, as specified in § 63.6(e)(3)(iii); alternatively, the owner or operator shall record any actions taken that are not consistent with the plan, as specified in § 63.6(e)(3)(iv).

* * * * *

(b) * * *

(5) * * *

(i) For processes that are in compliance with the percent reduction requirements of § 63.1254(a)(1) or (b)(1) and that contain vents controlled to less than the percent reduction requirement, the records specified in paragraphs (b)(5)(i)(A) through (C) of this section are required.

* * * * *

(ii) * * *

(D) Actual controlled emissions for each batch operated during periods of planned routine maintenance of a CCCD, calculated according to § 63.1258(c).

* * * * *

(8) A schedule or log of each operating scenario updated daily or, at a minimum, each time a different operating scenario is put into operation.

* * * * *

(10) Periods of planned routine maintenance as described in §§ 63.1252(h) and 63.1257(c)(5).

* * * * *

(13) All maintenance performed on the air pollution control equipment.

* * * * *

(i) * * *

(7) * * *

(i) Identification of the leaking equipment.

(ii) The instrument identification numbers and operator name or initials, if the leak was detected using the procedures described in § 63.1258(h)(3); or a record that the leak was detected by sensory observations.

* * * * *

14. Section 63.1260 is amended by:

a. Adding paragraph (f)(7);

b. Revising paragraph (g)(1) introductory text;

c. Revising "paragraphs (g)(2)(iv)(A) through (D)" to read "paragraphs (g)(2)(v)(A) through (D)" in paragraph (g)(2)(v) introductory text;

d. Revising paragraph (g)(2)(vi);

e. Revising the last sentence in paragraph (g)(2)(vii);

f. Revising paragraph (h)(1) introductory text; and

g. Revising paragraph (i).

The revisions and additions read as follows:

§ 63.1260 Reporting requirements.

* * * * *

(f) * * *

(7) Anticipated periods of planned routine maintenance of a CCCD subject to § 63.1252(h) during the period between the compliance date and the end of the period covered by the first Periodic report, and if applicable, the rationale for why the planned routine maintenance must be performed while a process with a vent subject to § 63.1254(a)(3) will be operating.

(g) * * *

(1) *Submittal schedule.* Except as provided in paragraphs (g)(1)(i), (ii), and (iii) of this section, an owner or operator shall submit Periodic reports semiannually. The first report shall be submitted no later than 240 days after the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due. Each subsequent Periodic report shall cover the 6-month period following the preceding period.

* * * * *

(2) * * *

(vi) The information specified in paragraphs (g)(2)(vi)(A) through (C) for periods of planned routine maintenance.

(A) For each storage tank subject to control requirements, periods of planned routine maintenance during which the control device does not meet the specifications of § 63.1253(b) through (d).

(B) For a CCCD subject to § 63.1252(h), periods of planned routine maintenance during the current reporting period and anticipated periods of planned routine maintenance during the next reporting period.

(C) Rationale for why planned routine maintenance of a CCCD subject to § 63.1252(h) must be performed while a process with a vent subject to § 63.1254(a)(3) will be operating, if applicable. This requirement applies only if the rationale is not in, or differs from that in, the Notification of Compliance Status report.

(vii) * * * For the initial Periodic report, each operating scenario for each process operated since the due date of the Notification of Compliance Status Report shall be submitted.

* * * * *

(h) * * *

(1) Except as specified in paragraph (h)(2) of this section, whenever a process change is made, or a change in any of the information submitted in the Notification of Compliance Status Report, the owner or operator shall submit the information specified in paragraphs (h)(1)(i) through (iv) of this section with the next Periodic report required under paragraph (g) of this section.

* * * * *

(i) *Reports of startup, shutdown, and malfunction.* An owner or operator shall prepare startup, shutdown, and malfunction reports as specified in paragraphs (i)(1) and (2) of this section.

(1) If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan, the owner or operator shall state this fact in a startup, shutdown, or malfunction report. The report shall also include the information specified in § 63.1259(a)(3)(i) and (ii) and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy. For the purposes of this subpart, the startup, shutdown, and malfunction reports shall be submitted on the same schedule as the periodic reports required under paragraph (g) of this section instead of the schedule specified in § 63.10(d)(5)(i). Reports are only required if a startup, shutdown, or malfunction occurred during the reporting period.

(2) Any time an owner or operator takes an action that is not consistent

with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall submit immediate startup, shutdown, and malfunction reports as specified in § 63.10(d)(5)(ii).

* * * * *

15. Table 1 to subpart GGG is amended by:

a. Revising entries "63.1(c)(5)," "63.5(e)," and "63.8(e)(5)(i)"; and

b. Removing entry "63.6(i)" and adding entries "63.6(i) (1) through (7)" and "63.6(i) (8) through (14)."

The revisions and additions read as follows:

TABLE 1 TO SUBPART GGG.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
*	* * *	*	* *
§ 63.1(c)(5)	Notification requirements for an area source that increases HAP emissions to major source levels.	Yes	
*	* * *	*	* *
§ 63.5(e)	Construction/reconstruction approval	Yes	
*	* * *	*	* *
§ 63.6(i)(1) through (7)	Requests for compliance extensions	No	§ 63.1250(f)(6) specifies provisions for compliance extensions.
§ 63.6(i)(8) through (14)	Approval of compliance extensions	Yes	Except references to § 63.6(i)(4) through (6) mean § 63.1250(f)(6).
*	* * *	*	* *
§ 63.8(e)(5)(i)	Reporting performance evaluation results	Yes	See § 63.1260(a).
*	* * *	*	* *

16. Table 2 to subpart GGG is revised to read as follows:

TABLE 2 TO SUBPART GGG.—PARTIALLY SOLUBLE HAP

1,1,1–Trichloroethane (methyl chloroform)	Chloroform
1,1,2,2-Tetrachloroethane	Chloromethane
1,1,2-Trichloroethane	Chloroprene
1,1-Dichloroethylene (vinylidene chloride)	Cumene
1,2-Dibromoethane	Dichloroethyl ether
1,2-Dichloroethane (ethylene dichloride)	Dinitrophenol
1,2-Dichloropropane	Epichlorohydrin
1,3-Dichloropropene	Ethyl acrylate
2,4,5-Trichlorophenol	Ethylbenzene
2-Butanone (mek)	Ethylene oxide
1,4-Dichlorobenzene	Hexachlorobenzene
2-Nitropropane	Hexachlorobutadiene
4–Methyl-2-pentanone (MIBK)	Hexachloroethane
Acetaldehyde	Methyl methacrylate
Acrolein	Methyl-t-butyl ether
Acrylonitrile	Methylene chloride
Allyl chloride	N,N-dimethylaniline
Benzene	Propionaldehyde
Benzyl chloride	Propylene oxide
Biphenyl	Styrene
Bromoform (tribromomethane)	Tetrachloroethene (perchloroethylene)
Bromomethane	Tetrachloromethane (carbon tetrachloride
Butadiene	Toluene
Carbon disulfide	Trichlorobenzene (1,2,4-)
Chlorobenzene	Trichloroethylene
Chloroethane (ethyl chloride)	Trimethylpentane
Vinyl acetate	Xylene (p)
Vinyl chloride	N-hexane
Xylene (m).	
Xylene (o).	

17. Table 3 to subpart GGG is revised to read as follows:

TABLE 3 TO SUBPART GGG.—SOLUBLE HAP

Compound
1,1-Dimethylhydrazine.
1,4-Dioxane.
Acetonitrile.
Acetophenone.
Diethyl sulfate.
Dimethyl sulfate.
Dinitrotoluene.
Ethylene glycol dimethyl ether.
Ethylene glycol monobutyl ether acetate.
Ethylene glycol monomethyl ether acetate.
Isophorone.
Methanol (methyl alcohol).
Nitrobenzene.
Toluidene.
Triethylamine.

18. Table 9 to subpart GGG. is revised to read as follows:

TABLE 9 TO SUBPART GGG—DEFAULT BIORATES FOR SOLUBLE HAP

Compound name	Biorate (K1), L/g MLVSS-hr
Acetonitrile	0.100
Acetophenone	0.538
Diethyl sulfate	0.105
Dimethyl hydrazine(1,1)	0.227
Dimethyl sulfate	0.178
Dinitrotoluene(2,4)	0.784
Dioxane(1,4)	0.393
Ethylene glycol dimethyl ether	0.364
Ethylene glycol monobutyl ether acetate	0.496
Ethylene glycol monomethyl ether acetate	0.159
Isophorone	0.598
Methanol	[a]
Nitrobenzene	2.300
Toluidine (-0)	0.859
Triethylamine	1.064

[a] For direct dischargers, the default biorate for methanol is 3.5 L/g MLVSS-hr; for indirect dischargers, the default biorate for methanol is 0.2 L/g MLVSS-hr.

[FR Doc. 01–18879 Filed 8–1–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–83–1–200101; FRL–7022–3]

Approval and Promulgation of Implementation Plans: Florida; Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on December 10, 1999, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This submittal consists of revisions to the ozone air quality maintenance plans for the Jacksonville (Duval County) and Southeast Florida (Broward, Dade, and Palm Beach Counties) areas to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program (MVIP) from the future year emission projections contained in those plans. Florida submitted technical amendments to this revision on January 18, 2000. This revision updates the control strategy by removing emissions credit for the MVIP, and as such, transportation conformity must be redetermined by the Metropolitan Planning Organizations (MPOs) within 18 months of the final approval of this notice. EPA proposed approval of this revision to the Florida SIP on March 17, 2000.

EFFECTIVE DATE: This rule will be effective September 4, 2001.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. FL83–200101. The docket is available at the following address for inspection during normal business hours: Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: *levasseur.joey@epa.gov*).

SUPPLEMENTARY INFORMATION: The following sections: Background, Response to Comments, and Final Action, provide additional information concerning the revisions to the ozone air quality maintenance plans for the Jacksonville and Southeast Florida areas to remove the emission reduction credits attributable to the MVIP from the future year emission projections contained in those plans.

I. Background

Today's action finalizes EPA's approval of the maintenance plan revisions submitted on December 10, 1999. A detailed description of Florida's submittal may be found in the Notice of Proposed Rulemaking for today's action, which was published in the **Federal Register** on March 17, 2000. On April 13, 2000, EPA extended the proposal's comment period and on June 20, 2000, EPA reopened the comment period and announced a public hearing. The hearing was held on July 20, 2000. EPA received numerous comments during the comment period. In addition to comments on the proposed action, EPA also received comments on the Florida Legislature's decision to shutdown the MVIP in all areas in the State. That decision and action by the Florida Legislature has no bearing on today's action and such comments will not be addressed here.

II. Response to Comments

1. *Comment:* "Elimination of the MVIP will result in adverse consequences. The likelihood that

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 October 5, 2001. 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 Parts 52 and 70

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 17, 2001.

William A. Spratlin,

Acting Regional Administrator, Region 7.

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 AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for "10–6.110" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
	Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri			
10–6.110 ...	Submission of Emission Data, Emission Fees, and Process Information.	11/30/00	8/6/01 FR 40903	Section (5), Emission Fees, has not been approved as part of the SIP.

* * * * *

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

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

2. Appendix A to Part 70 is amended by adding under "Missouri"paragraph (j) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(j) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information" on November 27, 2000, approval effective October 5, 2001.

* * * * *

[FR Doc. 01–19454 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7025–2]

RIN: 2060–AH47

National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments and denial of petitions.

SUMMARY: The EPA promulgated the Group IV Polymers and Resins national emission standards for hazardous air pollutants (NESHAP) on September 12, 1996. The EPA was petitioned to reconsider the equipment leak detection and repair (LDAR) standards contained in the promulgated rule as they pertain to polyethylene terephthalate (PET) facilities. On June 8, 1999, we issued a proposed denial of the petitions for reconsideration and issued a direct final rule amendment to extend the compliance dates specified for equipment leaks for PET affected sources, as a result of the petitions to reconsider the equipment leak standards for PET facilities.

After revising costs and hazardous air pollutant (HAP) emissions reductions using data provided by petitioners and other commenters, the EPA is retaining the equipment leak provisions of the promulgated rule with one exception; we are modifying the definition of a leak for certain ethylene glycol pumps. In addition, we are extending the compliance dates for the PET affected sources to comply with the equipment leak provisions to August 6, 2002, in order to provide PET facilities time to develop an LDAR program.

EFFECTIVE DATE: August 6, 2001.

ADDRESSES: Docket No. A–92–45 contains information considered by EPA in the development of the standards for the Group IV Polymers and Resins. The docket is available for public inspection and copying between 8:00 a.m. and 5:00

p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–5605, fax (919) 541–3470, and electronic mail: barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket reflects the full administrative record for this action and includes all the information relied upon by EPA in the development of these petition denials. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this final rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's action will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules 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.

Regulated Entities. The regulated category and entities affected by this action include:

Category	SIC codes	NAICS	Examples of regulated entities
Industry	2821	325211	Facilities manufacturing PET resin using a batch dimethyl terephthalate (DMT), continuous DMT, batch terephthalic acid (TPA), or continuous TPA process.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the amendments to the standards affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in § 63.1310 of the Group IV Polymers and Resins NESHAP. If you have any questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On September 12, 1996, the EPA promulgated the Group IV Polymers and Resins NESHAP (61 FR 48208). Following promulgation, we received two petitions for reconsideration regarding the LDAR program provisions of the rule, and additional data in support of these petitions. The EPA also received petitions regarding other sections of the promulgated rule and is responding to those separately.

The petitions raised two primary issues. One issue stated that the light liquid LDAR program was more costly than EPA estimated, was not cost effective, and should not have been required. The other issue contended that we had not performed a substantive analysis on the heavy liquid LDAR program, which was added between proposal and promulgation, to determine whether the cost per ton of HAP emissions reductions was reasonable; thus, the EPA failed to meet its obligation under section 112(d)(2) of the CAA. The petitioners requested that we revise the cost and cost per ton of HAP emissions reductions of the equipment leak program based on new cost and emissions data they provided in support of the petitions. The petitioners stated that this revised analysis would show that the costs of the LDAR requirements are not reasonable and would lead us to delete the equipment leak provisions for PET facilities from the Group IV Polymers and Resins NESHAP.

In response to the two petitions, in October 1998, we performed an analysis that revised the cost and emission reduction estimates that supported the equipment leak provisions of the Group IV Polymers and Resins NESHAP. Based on that analysis, we proposed to deny the petitions for reconsideration in a **Federal Register** notice that was published on June 8, 1999 (64 FR 30456). Based on the comments received, we performed a final equipment leak analysis in December 2000 entitled, "Final Analysis of Equipment Leak Program for PET Facilities Subject to the Group IV Polymers and Resins NESHAP," which is available in Docket A–92–45.

II. Summary of Comments and Responses

Several comments on the proposal to deny the petitions concerned costs and the emission factors used to calculate the cost per ton of HAP emissions reductions of the equipment leak program. Specifically, commenters stated that we had underestimated the costs of the portion of the light liquid program based on EPA Method 21 of 40 CFR 60, appendix A, monitoring of equipment leaks. They also stated that the use of synthetic organic chemical manufacturing industry (SOCMI) emission factors is inappropriate for PET facilities, and that the use of those factors resulted in an overestimation of the HAP emissions reductions resulting from the equipment leak provisions as applied to PET production facilities. The commenters stated that we should not combine portions of equipment leak programs based on one-time equipment modifications with portions that require EPA Method 21 monitoring when determining whether the cost of the equipment leak program is reasonable.

In response to comments, in the December 2000 final analysis, we revised the cost of the EPA Method 21 portion of the equipment leak program based on data provided by the commenters. We continue to believe that use of SOCMI emission factors is appropriate for PET facilities. This is because, in general, the SOCMI and PET facilities have comparable process design and process operation, use the same types of equipment, and use similar feedstocks. However, in order to determine the impact of the differences between the SOCMI emission factors and the equipment leak data provided by commenters, we performed a final equipment leak cost analysis using industry-supplied leak data. The results of that final analysis indicate that the incremental cost per ton of additional

HAP emissions reductions for the equipment leak program is reasonable. (See the December 2000 final equipment leak analysis, which is available in Docket A–92–45.)

We did not perform cost analyses which separate portions of the equipment leak programs that require one-time equipment modifications from the portions that are based on EPA Method 21 monitoring. We consider the LDAR program to be a whole program designed to reduce HAP emissions from equipment leaks across the total facility. The leaks from individual equipment components are considered together due to the similarity of the cause of the emissions and the control techniques. We do not believe it is appropriate nor necessary to disaggregate equipment leak programs by individual component types.

One commenter stated that there was a discrepancy between heavy liquid pump requirements for PET facilities and light liquid pumps for polystyrene plants. Specifically, for certain polystyrene pumps, an indication of liquids dripping from pump seal bleed ports is not considered to be a leak because dripping of fluid is a required feature of this type of seal. There are also certain ethylene glycol pumps that require dripping of fluid for proper seal operation. In response to comments, we have modified the definition of a leak for ethylene glycol pumps with this type of seal. Additional details on comments and responses may be found in "Responses to Comments" memo dated December 2000 in Docket A–92–45.

III. Results and Conclusion

The following table presents the cost per ton of HAP emissions reductions ratios by subcategory for the December 2000 final analysis supporting this final denial of the petitions for reconsideration, the October 1998 analysis supporting the proposed denial, the April 1996 analysis supporting the promulgated Group IV Polymers and Resins NESHAP, and the March 1995 analysis supporting the proposed Group IV Polymers and Resins NESHAP. These ratios represent the incremental cost per additional ton of HAP emissions reductions of going beyond the floor of no controls for leaks to requiring facilities to implement an LDAR program. In the October 1998 analysis, the cost-per-ton ratios ranged from $1,300 to $2,100 per ton of HAP emissions reductions. The cost-per-ton ratios of the equipment leak program under the December 2000 final analysis range from $1,600 to $3,300 per ton of HAP emissions reductions.

SUMMARY OF COST–PER–TON RATIOS OF EQUIPMENT LEAK PROGRAM FOR GROUP IV RESINS—PET PRODUCTION

[$/ton of HAP Emissions Reductions]

Process subcategory	December 2000 final analysis	October 1998 analysis	April 1996 analysis	March 1995 analysis
DMT-Batch	3,300	2,100	620	960
DMT-Continuous	2,700	1,300	320	730
TPA-Continuous	1,700	1,600	1,500	1,100
TPA-Batch	1,600	1,600	730	2,200

Even after analyzing the cost-per-ton ratios using industry-supplied leak frequency data in lieu of SOCMI emission factors, and industry-supplied cost data, we have determined that the costs of the equipment leak provisions of the promulgated rule are reasonable. Therefore, we are not removing the equipment leak standards from the promulgated NESHAP for Group IV Polymers and Resins, and we are not modifying any provisions within the equipment leak program of 40 CFR part 63, subpart H, except as noted in the following section.

IV. Other Actions

A. Compliance Date Extension

On February 26, 2001, we issued a direct final rule amendment (66 FR 11543) to extend compliance dates contained in the promulgated Group IV Polymers and Resins NESHAP to August 27, 2001. The revisions extended the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources. These compliance extensions were approved pursuant to the CAA section 301(a)(1) in order to complete reconsideration of equipment leak provisions and any necessary revisions to the NESHAP.

After reconsideration of the equipment leak provisions, we are retaining the equipment leak provisions of the promulgated NESHAP. However, we are extending the dates for compliance with the equipment leak provisions for the PET affected sources to August 6, 2002, so that they are able to develop their equipment leak programs.

B. Modification of Leak Definition for Certain Ethylene Glycol Pumps

In reviewing the comments received on the June 1999 proposed denial of petition, we are modifying the definition of a leak for certain ethylene glycol pumps which are designed to weep fluids from the seals. Seals that are designed to weep fluid will not be considered to be leaking. This change was made to be consistent with a similar provision for polystyrene pumps.

V. Administrative Requirements

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 Office of Management and Budget (OMB) on the basis of 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.

Today's action does not fall within any of the four categories described above. Instead, it finalizes the denial of the petitions for reconsideration, makes a minor revision to the equipment leak provisions of the Group IV Polymers

and Resins rule and provides a compliance extension. The final action does not add any additional control requirements. Therefore, this is not a "significant regulatory action" within the meaning of Executive Order 12866 and was not required to be reviewed by OMB.

B. 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."

These 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. This is because the final action applies to affected sources in PET facilities, not to States or local governments. Nor will State law be preempted, or any mandates be imposed on States or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

C. 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. Today's final action does not significantly or uniquely affect the communities of Indian tribal governments because they do not own or operate any of the sources affected by this final rule. Thus, Executive Order 13175 does not apply to this final rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have 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. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it is based on technology performance, and not on health or safety risks.

E. Executive Order 13211, Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 F.R. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. 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 must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. This action does not impose any enforceable duties on State, local, or tribal governments, i.e., they own or operate no sources subject to the Group IV Polymers and Resins NESHAP and, therefore, are not required to purchase control systems to meet the requirements of the NESHAP. Regarding the private sector, today's action will affect only 23 existing facilities nationwide. The EPA projects that annual economic effects will be far less than $100 million. Thus, today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

We have also determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to the NESHAP and, therefore, are not

required to purchase control systems to meet the requirements of the NESHAP.

G. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final rule amendments. The EPA has also determined that these rule amendments will not have a significant impact on a substantial number of small entities because no small entities are subject to the NESHAP.

H. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to OMB under the Paperwork Reduction Act. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. 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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA has amended 40 CFR part 9, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

Today's action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Group IV Polymers and Resins NESHAP includes technical standards. Therefore, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods potentially equivalent to the methods required by the Group IV Polymers and Resins NESHAP, all of which are methods previously promulgated by EPA. The NESHAP includes methods that measure: (1) Determination of excess air correction factor (percent oxygen)(EPA Method 3B); (2) sampling site location (EPA Method 1 or 1A); (3) volumetric flow rate (EPA Methods 2, 2A, 2C, or 2D); (4) gas analysis (EPA Method 3); (5) stack gas moisture (EPA Method 4); (6) concentration of organic HAP (EPA Method 18 or 25A); and (7) organic compound equipment leaks (EPA Method 21). These EPA methods are found in appendix A to 40 CFR part 60.

No potentially equivalent methods for the methods in the final rule were found in the NSSN database search, and none were brought to our attention in comments on the proposed action. Therefore, the EPA has decided to use the methods listed above.

J. Submission to Congress and the Comptroller General

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 final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). These final rule amendments will be effective on August 6, 2001.

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 31, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIRPOLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart JJJ—National Emission Standards for Hazardous AirPollutant Emissions: Group IV Polymers and Resins

2. Section 63.1311 is amended by revising paragraphs (b) and (d)(6), to read as follows:

§ 63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 upon initial start-up or August 6, 2002, whichever is later.

* * * * *

(d) * * *

(6) Nothhstanding paragraphs (d)(1) through (5) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 no later than August 6, 2002.

* * * * *

3. Section 63.1331 is amended by revising (a)(6) introductory text and adding paragraph (a)(6)(v), to read as follows:

§ 63.1331 Equipment leak provisions.

* * * * *

(a)* *

(6) For pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems; owners or operators of affected sources producing PET shall comply with the requirements of paragraphs (a)(6)(i) and (ii) of this section instead of with the requirements of § 63.139. Owners or operators of PET affected sources shall comply with all other provisions of subpart H of this part for pumps, valves, connectors, and agitators in heavy liquid service;

pressure relief devices in light liquid or heavy liquid service; and instrumentation systems, except as specified in paragraphs (a)(6)(iii) through (v) of this section.

* * * * *

(v) Indications of liquids dripping, as defined in subpart H of this part, from packing glands for pumps in ethylene glycol service where the pump seal is designed to weep fluid shall not be considered to be a leak. Ethylene glycol dripping from pump seals must be captured in a catchpan and returned to the process.

* * * * *

[FR Doc. 01–19560 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–038–EXTa; FRL–7023–9]

Clean Air Act Promulgation of Extension of Attainment Date for the San Diego, California Serious Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is extending the attainment date for the San Diego serious ozone nonattainment area from November 15, 2000, to November 15, 2001. This extension is based in part on monitored air quality readings for the 1-hour national ambient air quality standard (NAAQS) for ozone during 2000. Accordingly, we are updating the table concerning attainment dates for the State of California. In this action, we are approving the State's request through a "direct final" rulemaking. Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this attainment date extension request.

DATES: This direct final rule is effective October 5, 2001 unless before September 5, 2001 adverse comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register**, and inform the public that the rule will not take effect.

ADDRESSES: Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2),75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 1001 I Street Sacramento, CA 95812

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288. E-mail: *jesson.david@epa.gov*

SUPPLEMENTARY INFORMATION:

Request for Attainment Date Extension for the San Diego Area

The San Diego serious ozone nonattainment area, which consists of San Diego County, is currently designated a serious ozone nonattainment area. The statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act ("the Act"), was November 15, 1999. On May 15, 2000, the State of California requested a one-year attainment date extension to November 15, 2000. EPA granted that extension on October 11, 2000 (65 FR 60362). On February 7, 2001, California requested a second one-year extension to November 15, 2001.

CAA Requirements Concerning Designation and Classification

Section 107(d)(4) of the Act required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, we completed this process by designating and classifying all areas of the country for ozone. *See, e.g.*, 56 FR 58694 (Nov. 6, 1991), and 57 FR 56762 (Nov. 30, 1992). San Diego County was originally classified as severe, but was reclassified as serious based upon our determination that the ozone value used in the original classification was incorrect. *See* 60 FR 3771 (Jan. 19, 1995).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. As noted, the San Diego ozone nonattainment area was reclassified as serious. By this classification, its attainment date became November 15, 1999. A discussion of the attainment dates is found in EPA's General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990. See 57 FR 13498 (April 16, 1992).

CAA Requirements Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, we determine attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of serious ozone nonattainment areas, the three-year period is 1997–1999.

A review of the actual ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS) shows that three air quality monitors located in the San Diego ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three-year period from 1997 to 1999 and the three-year period from 1998 to 2000.[1] (See Table 1.) Over the three-year period of 1997 to 1999, there were 9 exceedances at the Alpine monitor. There were 8 exceedances at the Alpine monitor for the period 1998 to 2000, all of which occured in 1998. For both of these three-year periods, this constitutes a violation of the ozone NAAQS for the San Diego area, since the average annual exceedance at the Alpine monitor is more than 1.0. Thus, the area met neither the November 15, 1999 attainment date nor the November 15, 2000 extended attainment date, and the area continues to violate the 1-hour ozone NAAQS because of multiple exceedances recorded in 1998, which must be included in the calculation of average annual exceedances over the most recent 3-year period.

[1] AIRS Data Monitor Values Reports are available electronically at http://www.epa.gov/airsdata/monvals.htm.



Federal Register

Wednesday,
August 22, 2001

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7039–4]

RIN 2060–AG27

National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing boat manufacturing facilities. The processes regulated include fiberglass resin and gel coat operations, carpet and fabric adhesive operations, and aluminum recreational boat painting operations. The EPA has identified boat manufacturing as a major source of hazardous air pollutants (HAP), such as styrene, methyl methacrylate (MMA), methylene chloride (dichloromethane), toluene, xylene, n-hexane, methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), and methyl chloroform (1,1,1-trichloroethane). The NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). We estimate the final NESHAP will reduce nationwide emissions of HAP from these facilities by 3,450 tons per year (tpy) (approximately 35 percent from the 1997 level of emissions).

EFFECTIVE DATE: August 22, 2001.

ADDRESSES: *Docket.* Docket No. A–95–44 contains the information considered by EPA in developing the NESHAP. This docket is located at the U.S. EPA, Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Room M–1500, Waterside Mall, Washington, DC 20460. The docket may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

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 § 63.13. For information concerning the analyses performed in developing the NESHAP, contact Mr. Mark Morris, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5416, morris.mark@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public Comments. The NESHAP for boat manufacturing were proposed on July 14, 2000 (65 FR 43842) and 27 comment letters were received on the proposal. The comment letters are available in Docket No. A–95–44, along with a summary of the comment letters and EPA's responses to the comments. In response to the public comments, EPA adjusted the final NESHAP where appropriate.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or final rules at http://www.epa.gov/ttn/oarpg/t3pfpr.html. 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.

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

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	336612	3732	Boat manufacturing facilities that perform fiberglass production operations or aluminum coating operations.
	.....	3731	Shipbuilding and repair facilities that perform fiberglass production operations.
Federal Government	336612	3731 3732	Federally owned facilities (e.g., Navy shipyards) that perform fiberglass production operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Not all facilities classified under the NAICS or SIC codes are affected. Other types of entities not listed could be affected. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.5683 of the final 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.

Judicial Review: The NESHAP for boat manufacturing facilities were proposed on July 14, 2000 (65 FR 43842). This action announces EPA's final decisions on the NESHAP. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by October 22, 2001. Only those objections to the NESHAP which 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 today's final NESHAP 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. Introduction
  A. What is the purpose of the NESHAP?
  B. What is the statutory authority for NESHAP?
  C. What processes and operations constitute boat manufacturing?
II. Summary of the Final NESHAP

A. What sources and operations are subject to the NESHAP?
B. What pollutants are regulated?
C. What do the final NESHAP require?
D. What is the MACT model point value and how is it used in the final NESHAP?
E. When must I comply?
F. How do I demonstrate compliance?
G. How do I demonstrate compliance if I use an enclosure and an add-on control device?
III. Summary of Environmental, Energy, and Economic Impacts
A. What facilities are affected by the NESHAP?
B. What are the air quality impacts?
C. What are the water quality impacts?
D. What are the solid and hazardous waste impacts?
E. What are the energy impacts?
F. What are the cost impacts?
G. What are the economic impacts?
IV. Summary of Changes Since Proposal
A. Operations Not Covered by the NESHAP
B. Determining Whether a Facility is a Major Source or Area Source
C. Open Molding Resin and Gel Coat Operations
D. Standards for Resin and Gel Coat Mixing Operations
E. Standards for Resin and Gel Coat Application Equipment Cleaning Operations
F. Standards for Carpet and Fabric Adhesive Operations
G. Standards for Aluminum Recreational Boat Surface Coating Operations
H. Methods for Determining Hazardous Air Pollutant Content
I. Notifications, Reports, and Records
J. Definitions
V. Summary of Responses to Major Comments
A. Open Molding Operations
B. Filled Tooling Resins
C. Standards for Closed Molding Resin Operations
D. Standards for Aluminum Recreational Boat Surface Coating Operations
E. Methods for Determining Hazardous Air Pollutant Content
F. Notifications, Reports, and Records
G. Pollution Prevention
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act
J. Executive Order 13211 (Energy Effects)

I. Introduction

A. What Is the Purpose of the NESHAP?

The purpose of the final NESHAP is to protect the public health by reducing emissions of HAP from boat manufacturing facilities.

B. What Is the Statutory Authority for NESHAP?

Section 112 of the CAA requires that we promulgate standards for the control of HAP from both new and existing major sources. A major source of HAP is defined as any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tpy or more of any single HAP or 25 tpy or more of multiple HAP.

The CAA requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable taking into consideration the cost of achieving the emissions reductions, any non-air-quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the MACT.

We based the final NESHAP for boat manufacturing for new and existing sources on the MACT floor control level. 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 all major HAP emission sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each category. 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 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 (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, non-air-quality health and environmental impacts, and energy requirements.

C. What Processes and Operations Constitute Boat Manufacturing?

The final NESHAP regulate fiberglass boat and aluminum recreational boat manufacturing operations. The emissions from these boat manufacturing operations and processes are fugitive in nature. Fugitive emissions result from HAP evaporating from the resins, gel coats, solvents, adhesives, and surface coatings used in manufacturing processes. The following paragraphs provide a brief description of the operations found at boat manufacturing facilities.

Fiberglass boat manufacturing operations. Fiberglass boats are built from glass fiber reinforcements laid in a mold and saturated with a polyester or vinylester plastic resin. The resin hardens to form a rigid plastic part reinforced with the fiberglass. The resin is mixed with a catalyst as it is applied that causes a cross-linking reaction between the resin molecules. The cross-linking reaction causes the resin to harden from a liquid to a solid.

Fiberglass manufacturing processes are generally considered either "open molding" or "closed molding." In open molding, fiberglass boat parts are built "from the outside in" according to three basic process steps:

(1) The mold is sprayed with a layer of gel coat, which is a pigmented polyester resin that hardens and becomes the smooth outside surface of the part.

(2) The inside of the hardened gel coat layer is coated with a "skin coat" of chopped glass fibers and polyester or vinylester resin.

(3) Additional layers of fiberglass cloth or chopped glass fibers saturated with resin are added until the part is the final thickness.

The same basic process is used to build or repair molds with tooling gel coat and tooling resin.

In closed molding, the resin is applied to fabric placed between the halves of a two-piece mold. Three basic types of closed molding used in boat manufacturing are resin infusion molding, resin transfer molding, and compression molding with sheet molding compound.

The polyester and vinylester resins that are used in fiberglass boat manufacturing contain styrene as a solvent and a cross-linking agent. Gel coats also contain MMA as a solvent, and styrene. Styrene and MMA are HAP, and a fraction evaporates during resin and gel coat application and curing. Resins and gel coats containing styrene and MMA are also used to make the molds used in producing fiberglass parts.

Mixing is done to stir the resin or gel coat and promoters, fillers, or other additives before being applied to the parts. Some HAP from the resin and gel coat are emitted during the mixing process.

Resin and gel coat application equipment requires solvent cleaning to remove uncured resin or gel coat when not in use. The resin or gel coat will catalyze in the hoses or gun if not flushed with a solvent after each use.

Fabric and carpet adhesive operations. The interiors of many types of fiberglass boats and aluminum recreational boats are covered with carpeting or fabric to improve appearance, provide traction, or deaden sound. The material is bonded to the interior with contact adhesives. These adhesives often contain HAP solvents, such as methylene chloride, toluene, xylenes, and methyl chloroform (1,1,1-trichloroethane). The solvents evaporate as the adhesives dry.

Aluminum recreational boat surface coatings. Aluminum recreational boat hull topsides and decks are painted with coatings applied with spray guns. These coatings may be high-gloss polyurethane coatings or low-gloss single-part coatings. These surface coatings often contain HAP solvents, such as toluene, xylenes, and isocyanates.

The HAP-containing solvents are also used to clean surfaces before finishing (wipedown solvents) and for cleaning paint and coating spray guns.

II. Summary of the Final NESHAP

This preamble section discusses the final NESHAP as they apply to "you," the owner or operator of a new or existing boat manufacturing facility.

A. What Sources and Operations Are Subject to the NESHAP?

The final NESHAP will regulate organic HAP from major sources that manufacture aluminum recreational boats (that is, noncommercial and nonmilitary aluminum boats) or all types of fiberglass boats. Coating operations on vessels used for commercial and military purposes are covered by the shipbuilding and repair NESHAP (40 CFR part 63, subpart II).

The final NESHAP apply to fiberglass boat manufacturers making all sizes and types of fiberglass boats using the operations listed below:

- All open molding operations, including pigmented gel coat, clear gel coat, production resin, tooling resin, and tooling gel coat.
- All closed molding resin operations.
- All resin and gel coat application equipment cleaning.
- All resin and gel coat mixing operations.
- All carpet and fabric adhesive operations.

The final NESHAP apply to aluminum recreational boat manufacturing facilities performing the operations listed below:

- All aluminum recreational boat surface coating and associated spray gun cleaning and wipedown solvent operations.
- All carpet and fabric adhesive operations.

B. What Pollutants Are Regulated?

The final NESHAP regulate the total organic HAP content in the materials used in each regulated operation. The final NESHAP do not set limits for individual species of HAP. The HAP emitted by boat manufacturing facilities typically include styrene, MMA, toluene, xylenes, methyl chloroform (1,1,1-trichloroethane), MEK, n-hexane, and MIBK. However, the total organic HAP content limit includes all organic HAP listed in section 112(b) of the CAA.

C. What do the Final NESHAP Require?

The final NESHAP have various formats for the different operations being regulated. For open molding resin and gel coat operations, you must comply with a HAP emission limit that is calculated for your facility using MACT model point value equations, which are described in section II.D.

You can demonstrate compliance with the HAP emission limit for your facility either by (1) averaging emissions with the MACT model point value equations, (2) complying with equivalent material HAP content limits for each type of open molding operation, or (3) using an add-on control device. The HAP emissions limit and equivalent HAP content limits are the same for new and existing sources. You may use averaging for all of your open molding operations or only for some of them. For those operations not included in the emissions average, you must comply with one of the alternative provisions.

For resin operations, different HAP content limits apply to atomized and nonatomized resin application methods. The HAP content limits for open molding are presented in Table 2 to subpart VVVV. If you use an add-on control device to meet the emissions limit, the emissions limit is calculated using the MACT model point value equations and is in units of kilograms (kg) of organic HAP per megagram of resin or gel coat consumed.

As stated above, you may use a combination of compliance options for the different resin and gel coat operations within your facility. For example, a hull production line may use several resins and gel coats. You may choose to use a laminating resin that complies with the appropriate HAP content limit, but decide to use the averaging approach for the skin coat resin and the production gel coats. In another example, you could include in the average all production resins and pigmented gel coats at your facility, but decide not to include clear gel coat, tooling resin, and tooling gel coat. You could also use averaging to use a mix of atomized and nonatomized resin application methods but at different HAP contents from those in Table 2 to subpart VVVV.

Other operations regulated by the final NESHAP will be subject to work practice requirements or HAP content limits. Resin and gel coat mixing containers with a capacity of 208 liters (55 gallons) or more must be covered. Routine resin and gel coat application equipment cleaning operations must use solvents containing no more than 5 percent organic HAP, but solvents used to remove cured resin or gel coat from equipment are exempt. The containers used to hold the exempt solvent and to clean equipment with cured resin and gel coat must be covered. Carpet and fabric adhesive operations must use adhesives containing no more than 5 percent organic HAP.

Aluminum recreational boat wipedown solvents and surface coatings are subject to HAP content limits. Aluminum recreational boat spray gun cleaning operations are subject to a work practice requirement.

Compliance with the emissions limits in the final NESHAP is based on a 12-month rolling average except when an add-on control device is used. At the end of every month, you determine compliance for each operation based on the HAP content and material consumption data collected over the past 12 months. When an add-on control device is used, compliance is determined through emissions testing and subsequent monitoring.

D. What Is the MACT Model Point Value and How Is it Used in the Final NESHAP?

The MACT model point value is a number calculated for each open molding operation and is a surrogate for emissions. The MACT model point value is a way to rank the relative performance of different resin and gel coat emissions reduction techniques. This approach allows you to create control strategies using different resin and gel coat emissions reduction techniques. The final NESHAP provide equations to calculate MACT model point values based on HAP content and application method for each material

that you use. These MACT model point values are then averaged and compared to limits in the final NESHAP to determine if your open molding operations are in compliance.

The MACT model point values have units of kg of HAP per megagram of resin or gel coat applied. It is important to note that the MACT model point values are surrogates for emissions, and the MACT model point value equations are used only for determining compliance with the emission limits for open molding operations. The MACT model point value equations should not be used in other environmental programs for estimating emissions in place of true emission factor equations or site-specific data.

The MACT model point value equations account only for HAP content and application method. Other factors (including curing time, part thickness, and operator technique) can have significant effects on emissions, but these factors are not accounted for in the MACT model point value equations. Determining the HAP content of materials and the method of application is relatively easy, but it is difficult to determine the other factors. Also, part thickness and curing time can be specific to the part being manufactured, so limiting these factors would impede production. Therefore, factors other than HAP content and application method are not included in the MACT model point value equations.

E. When Must I Comply?

Existing boat manufacturing facilities must comply within 3 years of August 22, 2001. New sources that commence construction after July 14, 2000 must comply by August 22, 2001 or upon startup, whichever is later. Existing and new area sources that become major sources after August 22, 2001 must comply within 1 year after becoming a major source or within 3 years of August 22, 2001, whichever is later.

The CAA instructs EPA to establish a compliance date or dates for existing sources that will provide for compliance "as expeditiously as practicable, but in no event later than 3 years after the effective date."

Existing sources using pollution prevention approaches for compliance will need to make changes in application equipment and raw materials. We believe these sources need the full 3–year period provided by the CAA to evaluate different resins, gel coats, carpet and fabric adhesives, or aluminum recreational boat surface coatings and the effects of these changes on production processes and product performance. In addition, we believe that providing the maximum amount of allowable time will encourage more sources to use compliant materials rather than emissions averaging, thereby reducing the amount of records and paperwork needed to demonstrate initial and continuous compliance.

If an existing source chooses to use an add-on control device to comply, the full 3 years provided by the CAA is necessary to allow sufficient time to design, purchase, install, and work out operational problems that occur in trying to start up a new control device.

F. How Do I Demonstrate Compliance?

Unless you are using an add-on control device, you must measure and record the HAP content of all the materials regulated by the final NESHAP. You may determine HAP content using test methods specified in the NESHAP, or you may use documentation provided by the material manufacturer, such as a material safety data sheet (MSDS), to show compliance. Although you may use either the test methods specified in the NESHAP or the manufacturer's documentation to show compliance, we will use the test method results to determine compliance if they differ from the manufacturer's documentation.

Compliance with the HAP content limits is based on the weighted-average HAP content for each material on a 12-month rolling-average basis. Compliance is determined at the end of every month (12 times per year) based on the past 12 months of data. To determine weighted-average HAP content, you will also need to monitor and record the amount of each regulated material used per month, as well as HAP content. On the compliance date, new and existing sources must begin collecting the data needed to demonstrate compliance.

If all of the material in a particular operation meets the applicable HAP content limit, then you will not need to record the amount of material used. Likewise, you will not need to perform and record any calculations to determine weighted-average HAP content.

For open molding resin and gel coat operations, how you show compliance will depend on which compliance option you choose. For example, if you choose to average among several open molding resin and gel coat operations, you will have greater operating flexibility, but you will also need to do more recordkeeping and calculations to show compliance than if you comply with each individual HAP content limit. Also, you must complete an implementation plan for the open molding operations at your facility that are included in an averaging option. The implementation plan must describe the resin and gel coat materials you plan to use, their HAP contents, and how you will apply those materials so that you are in compliance. The plan must also include calculations showing that your choice of materials and application methods will achieve compliance.

You must keep records of the HAP content of all materials that are subject to HAP content limits. You must also keep records of the amount of material used and any calculations you perform to determine compliance using weighted-average HAP contents or the averaging option for open molding operations. Every month, you must inspect the covers required by the work practice standards for resin and gel coat mixing containers and aluminum recreational boat coating spray gun cleaners. You must also keep records of the results of these inspections and any repairs made to the covers. All records must be kept for 5 years (at least the last 2 years of records must be kept onsite). After the initial compliance demonstration, all sources must complete semiannual compliance reports.

Today's final NESHAP contain the specific monitoring, recordkeeping, and reporting requirements for each regulated operation.

G. How Do I Demonstrate Compliance if I Use an Enclosure and an Add-On Control Device?

If you use an enclosure (such as a spray booth) and add-on control, you must use EPA Method 204 to prove that the enclosure is a total enclosure. If the enclosure is not a total enclosure, you must use a temporary enclosure to measure the fugitive emissions from the enclosure and the control device. Stack testing is used to determine compliance with the emissions limit. You must use either EPA Method 25A to measure emissions as total hydrocarbons (as a surrogate for total HAP) or EPA Method 18 for specific HAP. New and existing sources that comply using add-on control devices must conduct the required performance testing no later than 180 days after the compliance date.

During and after the initial performance test, you must monitor and record certain control device parameters to ensure that the control device continues to be operated as it was during the test. For example, for thermal oxidizers you must monitor and record combustion temperature and maintain the temperature above an allowable minimum value. For control devices other than thermal oxidizers, you must

identify parameters that demonstrate proper control device operation and have these parameters approved by the EPA. Monitored operating parameters must be kept within the allowable ranges to demonstrate compliance with the control device operating requirements.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Facilities Are Affected by the NESHAP?

There are approximately 119 existing facilities manufacturing fiberglass boats or aluminum recreational boats that are major sources and will be subject to the final NESHAP. The rate of growth for the boat manufacturing industry is estimated to be five new facilities per year for the next 5 years.

B. What Are the Air Quality Impacts?

The 1997 baseline emissions from the boat manufacturing industry are estimated at 9,920 tpy. The final NESHAP will reduce HAP from existing sources by 3,450 tpy from the baseline level, a reduction of 35 percent.

The final NESHAP will not result in any increase in other air pollution emissions. While combustion devices can result in increased sulfur dioxide and nitrogen oxide emissions, we do not expect anyone to comply by installing new combustion devices during the next 5 years.

C. What Are the Water Quality Impacts?

We estimate that the final NESHAP will have no adverse water quality impacts. We do not expect anyone to comply by using add-on control devices or process modifications that will generate wastewater.

D. What Are the Solid and Hazardous Waste Impacts?

We estimate that the final NESHAP will decrease the amount of solid waste generated by the boat manufacturing industry by approximately 400 tpy. The decrease in solid waste is directly related to switching to nonatomized resin application equipment (e.g., flowcoaters and resin rollers). Switching to flowcoaters decreases overspray because of the greater transfer efficiency of resin from flowcoaters to the part being manufactured. A decrease in overspray consequently reduces the amount of waste from disposable floor coverings, cured resin waste, and personal protective equipment (PPE) for workers. Disposable floor coverings are replaced on a periodic basis to prevent resin buildup on the floor. We estimate that solid waste generation of floor coverings will decrease by approximately 350 tpy, and that cured resin solid waste will decrease by approximately 50 tpy.

Decreased overspray from flowcoaters will result in a decreased usage of PPE, which also reduces the amount of solid waste. Workers who use flowcoaters typically wear less PPE than when using spray guns because of the reduced presence of resin aerosols and lower styrene levels in the workplace. Because we did not have information on the many different types of PPE currently used, we did not estimate this decrease in solid waste.

Some facilities that switch from spray guns to flowcoaters may have a small increase of hazardous waste from the used flowcoater cleaning solvents. However, most facilities will not see an increase, and the overall impact on the industry will be small relative to the solid waste reductions. Nearly all flowcoaters require resin and catalyst to be mixed inside the gun (internal-mix) and must be flushed when work is stopped for more than a few minutes. External-mix spray guns do not need to be flushed because resin is mixed with catalyst outside the gun. Facilities that switch from external-mix spray guns to flowcoaters will use more solvent. Solvent usage should not change at facilities switching from internal-mix spray guns to flowcoaters.

The most common flushing solvents are acetone and water-based emulsifiers. Only a couple of ounces of solvent are typically needed to flush the mixing chamber and nozzle of flowcoaters and internal- mix spray guns. We have observed during site visits that this small quantity of solvent is usually sprayed into the air or onto the floor coverings and allowed to evaporate.

We do not have adequate data to predict the potential solvent waste impact from switching to flowcoaters. The magnitude of the impact depends on the type of gun currently used (internal-or external-mix), the frequency of flushing, and the type of solvent used. However, because of the small amount of solvent used, and since most is allowed to evaporate, we believe the overall solvent waste increase will be small compared to the solid waste reductions.

E. What Are the Energy Impacts?

Compliance with the NESHAP is not expected to cause any increase in energy consumption at new or existing facilities. No new or existing facilities are expected to install add-on control devices to comply with the final NESHAP in the first 5 years after promulgation. One facility currently uses a thermal oxidizer to control some of their styrene and MMA emissions from fiberglass boat manufacturing operations.

F. What Are the Cost Impacts?

We estimate that nationwide annual compliance costs for the existing facilities will be $14 million. This estimate includes annualized capital costs and increased material costs for purchasing more expensive, lower-HAP materials. Annual costs also include monitoring, recordkeeping, and reporting costs. The estimated annual cost of reduced HAP is $4,060/ton.

The capital costs will be for the purchase of new resin application equipment, resin mixer covers, and adhesive application equipment. The estimated cost of new resin application equipment (flowcoaters) is $6,000 per unit (includes flowcoater, hoses, and resin and catalyst pumps). The estimated cost of new adhesive application equipment is also approximately $6,000 per unit. The resin and gel coat mixer covers will be approximately $180 per year per container.

No capital costs are predicted for mold construction or aluminum recreational boat surface coating operations.

G. What Are the Economic Impacts?

The EPA prepared an economic impact analysis to evaluate the primary and secondary impacts of the proposed and final NESHAP on the boat manufacturing market, consumers, and society. Because the characteristics of boats vary greatly throughout the industry, we evaluated the market by assessing the impacts on six separate market segments of the industry, including: outboard boats, inboard runabouts/sterndrive, inboard cruisers/yachts, jet boats/personal watercraft, sailboats, and canoes. The total annualized social cost (in 1994 dollars) of the final NESHAP on the industry is $13.0 million, which is 0.2 percent of total baseline revenue. Generally, the analysis indicates a minimal change in market prices and quantity of boats sold. Imports will increase negligibly, with a corresponding decrease in exports. The analysis also suggests a loss (at the maximum) of 48 employees out of the 51,500 employees in the industry. The impacts on specific market segments are summarized in the table below.

TABLE 2.—ECONOMIC IMPACT OF FINAL NESHAP ON BOAT MARKET SEGMENTS

Boat market segment	Change in price	Change in market output
Outboard Boats	0.1%	−0.3%
Inboard Runabouts/Sterndrive	0.1%	−0.1%
Inboard Cruisers/Yachts	0.0%	−0.0%
Jet Boats/Personal Watercraft	0.0%	−0.0%
Sailboats	0.1%	−0.2%
Canoes	0.1%	−0.1%

The analysis also predicts the number of facilities that will close as a result of the cost of complying with the final NESHAP. The EPA used market level information on total predicted change in quantity to infer how many plants would close if the quantity decrease was borne entirely by one (or more) facility. For example, if the market analysis predicts that 1,000 fewer boats are produced and the average facility produces 500 boats, then the impact is equivalent to two facility closures. Using this approach, the predicted reduction in quantity did not equal even one facility closure in any of the six market segments. While this does not mean that no facilities will close as a result of the final NESHAP, it does indicate that the final NESHAP has minimal total impacts, and that any facility closure will likely be the result of poor baseline cost conditions rather than a direct result of the compliance burden.

IV. Summary of Changes Since Proposal

In response to comments received on the proposed NESHAP and after further analysis, the following changes have been made.

A. Operations Not Covered by the NESHAP

The exemptions in the applicability section of the final NESHAP (§ 63.5683(d)) have been revised to clarify that the NESHAP do not apply to adhesives that are used to bond aluminum parts or other parts that are not fiberglass. This exemption does not apply to carpet and fabric adhesives, which are regulated by the NESHAP. We are also exempting research and development activities and activities in analytical laboratories. A definition of research and development activity has been added to § 63.5779 of the final NESHAP.

B. Determining Whether a Facility Is a Major Source or Area Source

Section 63.5686(b) contains material consumption restrictions that allow a source to limit their potential to emit HAP to much less than the major source thresholds without otherwise obtaining a federally enforceable operating permit. We have added a third material consumption restriction that boat manufacturers may use to demonstrate they are not a major source. In the new method, a fiberglass or aluminum recreational boat manufacturing facility is an area source and exempt from the standards if the materials consumed per year at the facility contain less than 5 tons of a single HAP and less than 12.5 tons of a combination of HAP. The two methods included in the NESHAP at proposal have been retained in the final NESHAP. The usage limits ensure that a facility's potential and actual emissions of HAP are below the major source thresholds of 10 tons of a single HAP and 25 tons of a combination of HAP.

The final NESHAP contain additional modifications to these provisions to ensure that the usage limits will keep actual emissions from most facilities substantially below the major thresholds. These modifications include a requirement that at least 90 percent of annual HAP emissions from the facility must come from the fiberglass boat manufacturing operations or the aluminum recreational boat manufacturing operations. If the facility has sources of HAP emissions other than these materials, the owner or operator must keep any records necessary to demonstrate that the facility meets the 90 percent criterion.

The final NESHAP also require owners and operators to maintain records to demonstrate that they do not exceed the annual material or HAP usage rates, based on a 12-month rolling-average basis. These records include monthly usage records for the following: all resins and gel coats used in fiberglass boat manufacturing operations; carpet and fabric adhesives; surface wipedown solvents, application gun cleaning solvents, and paints and coatings used in aluminum recreational boat manufacturing operations; documentation of HAP content (if needed); and any other records necessary to document emissions from source categories other than boat manufacturing.

A facility may exceed the usage limits and still remain an area source exempt from the standards if, before exceeding the limit, the facility obtains other limits (such as a federally enforceable State operating limit on their potential to emit) that keep its potential to emit HAP below the major source thresholds. If a facility exceeds the usage limits and does not have some other limit on its potential to emit, the facility becomes a major source and thereafter must comply with the standards on the applicable compliance date in the NESHAP. These provisions prevent facilities from alternating between area-source and major-source status while evading major source requirements. Also, these provisions make it possible from a legal standpoint to consider the usage cutoff levels as limiting a source's potential to emit HAP.

C. Open Molding Resin and Gel Coat Operations

The standards for open molding operations in § 63.5698 have been revised to include exemptions for several specialty materials. Production resins (including skin coat resins) used to build military vessels that must meet military specifications and those used on vessels built to U.S. Coast Guard specifications for lifesaving equipment and small passenger vessels will be exempt from the production resin HAP content limits. Pure 100 percent vinylester resins that are used for skin coats will also be exempt from the production resin HAP content limits; the exempt resin cannot exceed 5 percent of total production resin usage. However, these specialty production resins and 100 percent vinylester skin coat resins must be applied with nonatomized (non-spray) application equipment. Gel coat materials that are used for part and mold repair and touch up will be exempt from the open molding standards. The gel coat materials included in this exemption must not exceed 1 percent of the total gel coat used at that facility on a 12-month rolling-average basis.

The final NESHAP contain a new section (§ 63.5714) which specifies procedures for calculating compliance for filled tooling and production resins based on the as-applied MACT model point value for the filled resin.

D. Standards for Resin and Gel Coat Mixing Operations

Section 63.5731 has been revised to clarify that the standards for resin and gel coat mixing operations apply to on-site mixing of putties and polyputties.

E. Standards for Resin and Gel Coat Application Equipment Cleaning Operations

Section 63.5734 has been revised such that all solvents (both virgin and recycled) that are used for routine resin and gel coat application equipment cleaning are subject to the same 5 percent organic HAP content limit. Solvents used for removing cured resin or gel coat from application equipment are not subject to the 5 percent organic HAP content limit.

Section 63.5737 has been revised to state that if a cleaning solvent is recycled (either on-site or off-site), a boat manufacturer may use a certification or measurement of the HAP content of the material as originally purchased from the material supplier for demonstrating compliance. The requirement in § 63.5737(b) for operators to record the amount of recycled solvent they purchase has been deleted.

The requirements for cured resin and gel coat solvent cleaning operations in § 63.5734(b) have been revised so they are the same as the requirements in § 63.462 of 40 CFR part 63, subpart T (national emission standards for halogenated solvent cleaning), for containers holding more than 2 gallons of halogenated solvent. In addition, the final NESHAP state that solvent containers used for cleaning cured resin and gel coat from equipment are exempt from subpart T.

F. Standards for Carpet and Fabric Adhesive Operations

The HAP content limit for carpet and fabric adhesives in § 63.5740 has been changed such that all carpet and fabric adhesives must contain no more than 5 percent organic HAP.

G. Standards for Aluminum Recreational Boat Surface Coating Operations

The format of the emission limit for aluminum recreational boat wipedown solvents in § 63.5743(a) has been revised, and the emission limit has been recalculated to conform with the new format. The recalculated emission limit for aluminum wipedown solvents is 0.33 kg organic HAP per liter of total coating solids (2.75 pounds per gallon). Total coating solids is the combined solids from primers, clear coats, and top coats.

Boat manufacturers will also have the option of complying with a combined emission limit for aluminum wipedown operations and aluminum coating operations. The combined emission limit is 1.55 kg organic HAP per liter of total coating solids (12.9 pounds per gallon), which is the sum of the individual limits for aluminum wipedown operations (0.33 kg organic HAP per liter coating solids (2.75 pounds per gallon)) and aluminum coating operations (1.22 kg organic HAP per liter coating solids (10.2 pounds per gallon)). If a boat manufacturer complies with the combined emission limit, they can offset higher HAP from one operation with lower HAP from the other operation.

The work practices for aluminum coating spray gun cleaning operations in § 63.5743 have been revised so that spray gun cleaning operations that use recycled non-HAP solvents (which may contain trace amounts of HAP) are not subject to the spray gun cleaning work practice requirements. Recycled cleaning solvents that contain trace amounts of HAP (5 percent or less by weight) are considered to be non-HAP. A provision has been added to § 63.5743 to specifically allow for the use of alternative spray gun cleaning work practices approved according to the procedures in § 63.6(g). In § 63.5755(b)(1), the requirement that enclosed spray gun cleaners have covers that "close properly" has been revised to state that the covers "must have no visible gaps."

H. Methods for Determining Hazardous Air Pollutant Content

Section 63.5758(a) has been revised to state that only organic HAP are included in determining HAP content. Inorganic HAP are added as pigments to gel coats and surface coatings and are not emitted from the operations regulated by these NESHAP and, therefore, are not included in determining HAP content. This section has also been revised to allow the use of ASTM D1259–85 (Standard Test Method for Nonvolatile Content of Resins), and EPA Method 24 for measuring volatile organic matter content as a surrogate for demonstrating the HAP content of coatings. If volatile organic matter is used as a surrogate for HAP content, then the boat manufacturer must assume that all volatile organic matter is HAP.

Section 63.5758 has also been revised to recognize the fact that some material manufacturers and suppliers report on their MSDS a manufacturing target value for HAP constituents, such as styrene in resin and gel coat. If the organic HAP content is provided as a single value, you may assume the value is a manufacturing target value and actual organic HAP content may vary from the target value. If a separate measurement of the total organic HAP content using the methods specified in the NESHAP is less than 2 percentage points higher than the value for total organic HAP content provided by the material supplier or manufacturer, then you may use the provided value to demonstrate compliance. If the measured total organic HAP content exceeds the provided value by 2 percentage points or more, then you must use the measured organic HAP content to determine compliance. This allowance does not apply if the HAP content is reported on an MSDS as a range. In that case, the measured HAP content cannot exceed the upper limit of the reported HAP content range.

Section 63.5758 has been revised to provide guidance on determining the HAP content of solvent blends when the MSDS has reported a solvent blend but not the HAP content of the solvent blend. The guidance includes a table of values for the HAP content of commonly used solvent blends.

Section 63.5758 has been revised to clarify how total HAP is calculated. In determining total HAP, you must include HAP that are present at concentrations equal to or greater than 1.0 percent, unless the HAP is an OSHA-defined carcinogen, in which case you must include the HAP in the total if it is present at a concentration equal to or greater than 0.1 percent. For example, if a material contains four species of noncarcinogenic HAP that are each present at 0.9 percent by weight, none of these four species needs to be included in the total HAP calculation.

I. Notifications, Reports, and Records

We have revised the emission limitations in §§ 63.5698(b) and 63.5743(a) and (b) so that compliance is demonstrated on a 12-month rolling-average basis, rather than a 3-month rolling-average basis for sources not using an add-on control device. For new and existing sources that do not use an add-on control device, the initial 12-month compliance period will begin on the compliance date.

For sources using an add-on control device, compliance is based on a performance test and continuous monitoring of the control device.

J. Definitions

We have revised the definition of hazardous air pollutant (HAP) in § 63.5779 so it has the same wording as the definition of HAP in § 63.2. We have added a definition of research and development activities which will be exempt from the NESHAP. We have also revised the definition of aluminum boat to better distinguish aluminum recreational boats from ships which are subject to the ship building and repair surface coating NESHAP (40 CFR part 63, subpart II). The revised definition states that aluminum recreational boats are intended by the manufacturer to be used primarily for pleasure and are built indoors in a production line manufacturing plant, rather than outdoors in a dry dock, graving dock, or on a marine railway.

The definitions of resins and gel coats have been revised to address pigmented resins and to clarify that pigmented resins are subject to the emission limitations for laminating resins. The definition of resin has been revised to indicate that resins include pigmented resins that are used to encapsulate and bind together reinforcement fibers. The definition of gel coat has been revised to indicate that a gel coat layer does not contain any reinforcing fibers, and gel coats are applied directly to mold surfaces or to a finished laminate.

V. Summary of Responses to Major Comments

This section presents a summary of significant public comments and responses. A summary of all the public comments that were received and EPA's responses to those comments can be found in Docket No. A–95–44.

A. Open Molding Operations

Comment: Several commenters requested exemptions or higher HAP content limits for several different specialty applications of resin and gel coat used in open molding operations.

One commenter requested an exemption that would allow them to comply with the production resin HAP content limit of 35 percent, but use atomizing equipment (rather than nonatomizing equipment) to apply up to 5 percent of total annual resin usage. Under the proposed NESHAP, a boat manufacturer must meet a production resin HAP content limit of 28 percent when using atomizing equipment, or comply by emission averaging if using a mix of atomizing and nonatomizing equipment.

A second commenter requested either a higher HAP content limit or an exemption for high-strength or heat-resistant resins. The commenter defined high-strength resins as those having a tensile strength greater than 10,000 pounds per square inch (psi) in clear cast form as measured by ASTM D638, and defined heat-resistant resins as those having a heat deflection temperature greater than 212 °F (100 °C) in clear cast form as measured by ASTM D648.

A third commenter requested that EPA either create a separate standard for, or include an exemption for, the use of backup gel coat. According to the commenter, backup gel coat is a black gel coat that is applied behind the white exterior gel coat to provide a dark background, against which air trapped in the wet laminate can be more easily detected and removed before the laminate hardens. The commenter reported they use a backup gel coat containing 44 percent HAP.

Response: The EPA recognizes that many boat manufacturers have situations in which they must use higher HAP materials for specialized purposes. In developing the NESHAP, we wanted to provide flexibility to deviate from the HAP content limits in these specialized situations. At the same time, it is impossible in the NESHAP to specifically accommodate all the situations in which a higher HAP material is needed. Attempting to do so could also limit flexibility if a particular situation requiring an exemption was overlooked and not accounted for in the NESHAP. Therefore, one of our objectives was to provide flexibility to use some higher HAP materials by adopting the averaging provisions and using weighted-average HAP contents in setting the MACT for each operation.

The averaging provisions allow each manufacturer to select a mix of resin and gel coat products that is best for their operation and to use higher HAP products based on their unique needs, as long as the emission limits are met. The plant-wide weighted-average HAP content used in determining MACT also accounts for the variation in HAP content among products used by a single manufacturer.

Because of the flexibility provided by the averaging options, the final NESHAP do not contain any of the three exemptions or higher HAP content limits requested by the commenters. Boat manufacturers that wish to apply some resin with atomizing equipment may use emissions averaging, rather than comply with the HAP content limit for atomized resin application operations.

The final standards do not exempt high-strength or heat-resistant resins from the HAP content limits. At least one vinylester resin being used by boat manufacturers meets both of the performance criteria suggested by the commenter and has an organic HAP content of 35 percent. (See Docket A–95–44). The resin has a tensile strength of 10,560 psi, and a heat deflection temperature of 228.6 °F. Therefore, boat manufacturers can still comply with the HAP content limits when using resins that must meet high-strength or heat-resistant specifications. Boat manufacturers that wish to continue to use their current materials may also average these resins with other open molding operations.

We do not believe an exemption or separate HAP content limit is needed for backup gel coats. According to the EPA database and observations made during site visits to various boat manufacturers, the majority of boat manufacturers do not use these backup gel coats. Those boat manufacturers that choose to use backup gel coats have the option of averaging these gel coats with other gel coats or resin application operations to demonstrate compliance.

Comment: Two commenters asked EPA to exempt or establish a HAP limit of 48 percent for production resin meeting military specifications, U.S. Coast Guard specifications for lifesaving equipment and small passenger vessels, Lloyd's Register (LR) certification criteria, American Bureau of Shipping (ABS) certification criteria, or other third party material performance specifications.

Response: The EPA database from which the NESHAP were developed represents almost exclusively recreational boat manufacturers. We have no data on resins used on boats built to military specifications or U.S. Coast Guard requirements. Therefore, production resins (including skin coat resins) are exempt from the production resin HAP content limits when those resins must meet military specifications or must be approved by the U.S. Coast Guard for use in life saving equipment and small passenger vessels. However, the final NESHAP do require that these resins be applied with nonatomized (non-spray) application equipment since nonatomized resin application does not affect resin performance.

Resins used on boats that are certified as meeting LR, ABS, or other third party standards will not be exempt from the HAP content limits for production resins. We have data indicating that laminates made with resins containing 35 percent styrene can meet both LR and ABS performance specifications. (*See* Docket A–95–44.)

Comment: Several commenters asked EPA to exempt 100 percent vinylester

skin coat resins from the HAP content limits, or establish a higher HAP content limit for skin coat resins. The commenters stated that skin coat resin, which is applied between the gel coat layer and the laminations on the bottom of the boat, is typically less than 5 percent of total production resin used. The commenters stated that low-HAP resins, including blended polyester-vinylester resins, do not offer the osmotic blister resistance of 100 percent vinylester skin coat resins with HAP contents of about 46 percent.

One commenter provided data to EPA comparing the blister resistance of pure vinylester resins to several blended polyester-vinylester resins in accelerated testing conditions. None of the blended resins had the same performance as the pure vinylester resins. According to the commenters, the pure vinylester resins are more expensive than the blended resins and are used only on larger boats that are intended to remain in the water continuously and that are removed only for periodic maintenance.

The commenters also concluded that using low-HAP skin coats could cause increased osmotic blistering to occur. Repairing osmotic blisters requires peeling or grinding the damaged gel coat and resin layers from the boat bottom and applying new resin and gel coat. These repairs result in additional styrene emissions and solid waste, thus offsetting the emission reduction benefits of low-HAP skin coats.

Response: We evaluated the test data submitted and agree with the conclusions of the commenters. The final rule exempts 100 percent vinylester resin used for skin coats from the production resin HAP content requirements. The resins eligible for the exemption will be limited to a maximum of 5 percent of the total resin used at each facility using the exemption. A facility using the exemption will need to maintain records of the amount of resin included in the exemption. This 5 percent cap is consistent with the amount of 100 percent vinylester resin used at the commenters' facilities.

This exemption for 100 percent vinylester skin coat resins is consistent with the results of the MACT analysis. The EPA database includes at least 13 boat manufacturers that are using skin coat resins with an organic HAP content of 35 percent or less. However, these are blended polyester-vinylester resins and are not pure vinylester resins. In addition, these blended resins are not used on boats in the size range on which the 100 percent vinylester resins are used. There are no facilities using a 100 percent vinylester resin with an organic HAP content of 35 percent.

B. Filled Tooling Resins

Comment: Several commenters requested that the HAP content of filled tooling resin be determined "as applied" rather than before the filler is added. Alternatively, the commenters suggested setting a separate MACT standard for filled tooling resins or exempting filled tooling resins from any HAP content limits. In the proposed NESHAP, the tooling resin HAP content limits were based on unfilled tooling resins. This approach would require operators to determine the HAP content of the tooling resin before the filler is added. According to the commenters, tooling resins to which filler will be added must have a higher HAP content to maintain a workable viscosity after the filler is added, but the HAP content is lowered substantially by the filler.

Response: The MACT floor for tooling resins was based on the use of a low-HAP, unfilled resin. Recently, more boat manufacturers have begun using filled tooling resins. We agree with the commenters that compliance for filled resins (both tooling and production) should be determined on an as-applied basis, rather than based on the HAP content of the neat (unfilled) resin before filler is added. However, because the emissions from filled and unfilled resins are different, compliance cannot be based on the HAP content of a filled resin. In a filled resin system, the percent of available styrene emitted is nearly the same as in the neat unfilled resin before the filler is added. In other words, if a filled resin and unfilled resin have the same HAP content on an as-applied basis, then the filled resin system will have higher HAP emissions than the unfilled resin because the filled resin has a higher styrene-to-resin polymer ratio. Therefore, filled resins must be compared to the MACT standard based on the MACT model point value (kilogram of HAP per megagram of filled resin applied (kg/Mg)). This approach accounts for differences in both HAP content and the amount of filler added.

A facility using a filled resin would calculate the MACT model point value for that resin based on the HAP content of the unfilled (neat) resin. The calculated MACT model point value would then be multiplied by the weight fraction of resin in the filled resin system to calculate the kg of HAP per Mg of filled resin applied. The final NESHAP contain procedures for calculating compliance for filled resins on an as-applied basis.

C. Standards for Closed Molding Resin Operations

Comment: Several commenters encouraged EPA to allow averaging between open and closed molding operations in cases where closed molding replaced an existing open molding operation. The commenters also encouraged EPA to allow a facility to average open and closed molding at new sources, and at existing sources where the closed molding was part of an expansion that did not replace open molding capacity. The commenters argued that allowing more averaging would encourage the development of closed molding technology that would further reduce HAP emissions.

Response: In the preamble to the proposed NESHAP, we solicited comments on the feasibility of allowing emissions averaging between open and closed molding operations in cases where the closed molding was considered a replacement for existing open molding operations. We received no comments that supported the legal feasibility of such averaging. We have decided that in the final NESHAP, closed molding operations will not be included in any averaging compliance options for either new or existing sources.

For the proposed NESHAP, we considered two options in determining MACT for open and closed molding operations. First, we considered determining MACT for all molding operations combined, including both open and closed molding. Although open and closed molding are different production processes, in this option we considered closed molding to be simply a very good emission control technique for open molding. Under this option, MACT limits would be set based on using a mix of open and closed molding. To comply, a facility could offset excess emissions from its open molding operations by using emission "credits" generated by using a greater fraction of closed molding operations than required by the standard. However, determining MACT by this method would result in a standard for existing sources that would be difficult, if not impossible, to achieve by sources that use only open molding. Also, MACT for new sources would be nearly 100 percent closed molding, which may not be achievable by most new sources. For these reasons, we did not determine MACT on a combined basis in the proposed NESHAP.

The second option we considered for determining MACT (and the one we proposed) was to treat open and closed molding as separate processes with

separate standards. Industry agreed with this position. We considered allowing emissions averaging under this option, but decided that averaging would provide little, if any, advantage. We have insufficient data for establishing MACT model point values for the different closed molding technologies. These MACT model point values would be needed to compute emission reductions for "over controlling" the closed molding operations. Even if such point values were established, it is unlikely that a source could achieve substantial reductions beyond the closed molding standard since closed molding operations emit so little.

We concluded, therefore, that emissions averaging at new and existing sources as requested by the commenters is not feasible. One method of allowing averaging would provide very little benefit and the other method would create an unreasonably stringent standard for sources that choose not to comply by emissions averaging.

Although we are not allowing emissions averaging between open and closed molding, we do encourage the use of closed molding because of its low-emitting nature. Even in the absence of averaging, we believe that there can be other benefits of using closed molding, such as minimized worker exposure, less recordkeeping and reporting, and the operational flexibility to use materials with any HAP content desired.

D. Standards for Aluminum Recreational Boat Surface Coating Operations

Comment: Two commenters requested that the MACT floor for aluminum recreational boat wipedown solvents be recalculated using the total volume of coating solids (primers, clear coats, and top coats) as a surrogate for the surface area to be cleaned. The commenters argued that the format of the NESHAP for aluminum recreational boat wipedown solvents is inappropriate because it uses the solids volume from the first coat (aluminum primers and clear coats applied to bare aluminum) as a surrogate for the surface area of the boat being cleaned prior to coating. According to the commenters, the use of the first coat solids volume is significantly more variable and biases the standard in favor of higher-solids primers. Therefore, the limit may not be achievable by facilities using lower-solids primers. According to the commenters, using the total volume of coating solids as a surrogate for surface area to be cleaned is more appropriate since the dry film thickness of the complete system is generally more uniform than that of primers and clear coats.

The commenters also asked EPA to allow facilities to average emissions between aluminum recreational boat surface preparation and coating operations by adopting a single HAP content limit for the combined operations. The commenters argued that this flexibility would help manufacturers meet the aluminum wipedown solvent and coating operation standards. They also noted that surface preparation, primers, and topcoats are often parts of a single coating system. The commenters estimated that the MACT floor based on combined emissions calculated at each facility would be equal to 1.87 kg HAP per liter of coating solids.

Response: We agree with the commenters that the total volume solids of primers, clear coats, and top coats is a better surrogate for total surface area than the volume solids of primer and clear coats applied to bare aluminum. We originally used primers and clear coats as a surrogate to reduce bias introduced by facilities that use more than a single color and apply multiple layers in the top coats. However, as noted by the commenters, the bias introduced by multiple top coat layers is less than the bias introduced by variability in the solids content of primers and clear coats.

To develop the combined emission limit, we have calculated the mass of HAP from aluminum wipedown solvents consumed per volume of total coating solids for the aluminum recreational boat manufacturing facilities in the EPA database. Based on this format, the MACT floor facility has a weighted-average HAP consumption rate of 0.33 kg organic HAP per liter of coating solids, including primers, clear coats, and topcoats.

We agree that allowing averaging or complying with a single HAP emission limit for these combined operations will provide greater flexibility and simplify compliance for boat manufacturers. In the final NESHAP, boat manufacturers may comply with either a single limit for combined operations or individual limits for wipedown solvents and coatings.

The combined HAP content limit for wipedown solvents and surface coating operations was derived as the sum of the separate limits for wipedown solvents and aluminum coatings. The limit for wipedown solvents is 0.33 kg organic HAP per liter coating solids and for aluminum coatings is 1.22 kg organic HAP per liter of coating solids. The combined limit is 1.55 kg organic HAP per liter of coating solids. This combined limit is more stringent than the limit estimated by the commenters (1.87 kg organic HAP per liter coating solids) because we performed separate MACT analyses for wipedown solvents and aluminum coatings. We performed separate analyses, rather than a MACT analysis for the combined emissions at each facility, because we disagree that the wipedown solvent is part of a coating system. We reviewed the data on coatings and aluminum wipedown solvents and noted that different boat manufacturers using the same coating system from the same supplier often used different aluminum wipedown solvents.

E. Methods for Determining Hazardous Air Pollutant Content

Comment: Several commenters asked EPA to clarify that compliance with the HAP content limits for gel coat is based only on organic HAP content and should not include inorganic HAP included as metal pigments because these metal pigments are not emitted during application or curing.

Response: We did not consider metal pigments in determining the HAP content limits for gel coats, and we agree that they are not emitted from the gel coat operations. Therefore, § 63.5758 of the final rule clarifies that HAP content includes organic HAP only and does not include inorganic HAP.

Comment: One commenter asked EPA to allow the use of less expensive methods ASTM D1644–88 (Standard Test Method for Nonvolatile Content of Varnishes) and ASTM D1259–85 (Standard Test Method for Nonvolatile Content of Resins), in addition to EPA Method 311, to demonstrate compliance with HAP content limits. The ASTM methods do not directly measure the HAP content and instead measure volatile organic matter.

Response: We agree that facility owners and operators should be allowed to demonstrate compliance with the HAP content limits using the ASTM D1259–85, but we do not see the utility of ASTM D1644–88. We are not regulating varnishes, and we are allowing in the final NESHAP the use of ASTM D1259–85 for resins and gelcoats and EPA Method 24 for coatings, which are weight-loss methods similar to ASTM D1644–88. We are allowing the use of ASTM D1259–85 because it tends to overestimate HAP content, compared to EPA Method 311, since it measures all volatile species and not just HAP. Likewise, the final NESHAP also allow the use of EPA Method 24 to measure volatile organic compound content as a surrogate for HAP.

Comment: One commenter asked that EPA ensure that the MACT standards reflect the high end of the HAP content ranges reported in the MSDS collected by EPA through the industry survey. In addition, if an MSDS offered a single HAP content value, the commenter asked EPA to ensure that the manufacturer did not allow the value to fluctuate above the value reported in the MSDS. For example, an MSDS provided by the commenters for a production gel coat reports the combined styrene and MMA content is 36.4 percent, but notes that these values are target formula values and "actual batch concentrations will vary within limits consistent with separately established product specifications."

Response: In selecting the HAP content limits for all operations regulated by the proposed NESHAP, we always used the upper limit of the range for reported HAP content values. Therefore, we are confident that the proposed HAP content limits are achievable.

However, we agree that some material manufacturers and suppliers report on their MSDS the "target" value for a constituent and actual values may vary from the target value by plus or minus 2 percentage points. Since the standards are based on these same data, the standards should account for this variation between actual and reported values. Therefore, § 63.5758 of the final NESHAP includes a provision that if a HAP content measured using the methods specified in the NESHAP is within 2 percentage points of the reported target value, you may use the reported value for demonstrating compliance. Otherwise, you must use the measured value to demonstrate compliance.

F. Notifications, Reports, and Records

Comment: Several commenters asked EPA to allow compliance with the standards to be demonstrated based on a 12-month rolling average instead of a 3-month rolling average. They argued that this is consistent with the typical recordkeeping and reporting obligations in most title V permits. In addition, many facilities experience seasonal variations in production and mold construction that may require them to use higher HAP materials for several months at a time. A 3-month averaging period would not allow them to offset these higher emissions with lower emissions during the rest of the year.

Response: We agree with the commenters, and the final NESHAP allow compliance to be demonstrated on a 12-month rolling average basis, rather than a 3-month rolling average basis for sources that are not using an add-on control device. For sources using an add-on control device, compliance is based on continuous parameter monitoring.

G. Pollution Prevention

Comment: One commenter asked EPA to include provisions by which a facility already subject to the rule could become exempt by employing pollution prevention measures that are at least equivalent to MACT and that make the source physically incapable of being a major source. According to the commenter, EPA policy is that a source that is a major source on the compliance date for a rule is always subject to a rule, even if it adopts process changes or pollution prevention strategies that make it physically impossible to emit at greater than the major source threshold. According to the commenter, EPA's "once in, always in" policy discourages facilities from adopting pollution prevention strategies that could achieve significant emission reductions.

Response: The EPA, through discussion with State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials, has reached a tentative solution that will require changes in the NESHAP General Provisions (40 CFR part 63, subpart A) or individual MACT rules, rather than a change in the EPA policy on "Once-In-Always-In." (See the May 16, 1995 memorandum on "Potential to Emit" from John Seitz to the EPA Regional Administrators, available on the World Wide Web at http://www.epa.gov/ttn/oarpg.) We have been working to develop regulatory options that would allow qualifying sources to satisfy the MACT requirements through innovative, streamlined approaches, if, after a source achieves compliance with an applicable MACT rule, they achieve HAP emission reductions equivalent to or better than MACT levels of control through pollution prevention measures. The regulatory options under consideration for the final solution will include components that meet the legal requirements of the CAA and still resolve the issues regarding pollution prevention. Once we reach a final solution, we plan to develop rule language to propose to amend either the NESHAP General Provisions or existing MACT rules. We project proposing these amendments later in 2001.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a final 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, it has been determined that today's final rule is not a "significant regulatory action" because it will not have an annual effect on the economy of $100 million or more and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the rule. 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 rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the 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 final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from its federalism official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No boat manufacturing facilities subject to the final rule are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from this final rule. Furthermore, EPA is directed to develop the final rule by section 112 of the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

C. 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. Thus, Executive Order 13175 does not apply to this rule.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final rule is not subject to Executive Order 13045 because it establishes an environmental standard based on technology, not health or safety risk. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, today's final rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must generally 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, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $14 million per year. This final rule contains no mandates affecting State, local, or Tribal governments. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires us to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. We must prepare a regulatory flexibility analysis unless we determine that the rule will not have a "significant economic impact on a substantial number of small entities." Small entities

include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's final rule 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."

We have determined that 66 out of the 2,307 small firms in the industry (2.9 percent) may be affected by this final rule. In a screening of impacts on these small firms, we found that 47 firms have costs that comprise less than 1 percent of firm revenues, and 19 firms have estimated compliance costs that exceed 1 percent of their revenues. Based on available data of industry profit margins, the average return on sales for the industry is 3.4 percent. Of the 19 firms with costs greater than 1 percent of revenues, only one firm is estimated to experience costs exceeding 3 percent of revenues. Thus, reviewing the range of costs to be borne by small businesses in light of the 3.4 percent profit margins typical of this industry, the Agency has determined the costs are typically small and, overall, do not constitute a significant impact on a substantial number of small businesses. In addition, this final rule is likely to also increase profits at the 2,241 small firms that are not affected by the final rule due to the very slight increase in market prices. The economic impacts are summarized in section III.G. of this document and in the economic impact analysis contained in Docket No. A–95–44.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of this final rule on small entities. We have met with ten of these small firms and their trade association. They have been fully involved in this rulemaking, and their concerns have been considered in the development of this final rule. In developing these final standards, we have provided the maximum degree of flexibility to minimize impacts on small businesses by providing several different compliance options, several of which require a minimum amount of recordkeeping and reporting. Also, these final standards, which are based on MACT floor level control technology, reflect the minimum level of control allowed under the CAA. Small businesses that are subject to the final rule will not be systematically impacted more than larger operations.

Pursuant to the provisions of 5 U.S.C. 605(b), we have determined that this final rule will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in today's final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 1966.02) and a copy may be obtained from Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The final rule contains monitoring, reporting, and recordkeeping requirements. The required notices and reports are the minimum needed by us to determine who is subject to the NESHAP and whether you are in compliance. The final recordkeeping requirements are the minimum necessary to determine initial and ongoing compliance. Based on reported information, we would decide which boat manufacturers and what records or processes should be inspected. The recordkeeping and reporting requirements are consistent with the general provisions of 40 CFR part 63.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B.

The EPA expects the final rule to affect a total of 134 boat manufacturing facilities over the first 3 years. The EPA assumes that five new boat manufacturing facilities will become subject to the final rule during each of the first 3 years. The EPA expects 119 existing facilities to be affected by the final rule, and these existing facilities will begin complying in the third year.

The estimated average annual burden for the first 3 years after promulgation of the final rule for industry and the implementing agency is outlined below. You can find the details of this information collection in the "Standard Form 83 Supporting Statement for ICR No. 1966.02," in Docket No. A–95–44.

Affected entity	Total hours	Labor costs	Capital costs	Operating and maintenance costs	Total costs
Industry	10,343	635,526	0	895	636,421
Implementing agency	2,456	141,073	0	0	141,073

The EPA estimates that there are no capital or startup costs for these new facilities because they are expected to comply by limiting the HAP content of materials. The implementing agency would not incur any capital or startup costs.

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. Control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. When the OMB approves the information collection requirements of the final rule, the EPA will amend the table in 40 CFR part 9 of currently approved ICR control

numbers issued by OMB for various regulations.

H. 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.

This rulemaking involves technical standards. The EPA cites the following standards in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 18, 24, 25A, 204, and 311. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, and 311. The search and review results have been documented and are placed in the docket (Docket No. A–95–44) for this rule.

Two voluntary consensus standards are cited in this rule for determining the volume solids content of coatings. These two standards are ASTM D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings" and ASTM D6093–97, "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer." These standards fill a void in EPA Method 24 which directs that volume solids content be calculated from the coating manufacturer's formulation. Today's rule does allow for the use of volume solids content values calculated from the coating manufacturer's formulation; however, test results will take precedence if they do not agree with calculated values.

We are also citing the voluntary consensus standard ASTM D1259–85, "Standard Test Method for Nonvolatile Content of Resins," as an acceptable method to measure the volatile matter content of resins and gel coats for open molding operations, to be used as a substitute for organic HAP content.

Six voluntary consensus standards: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference in EPA Method 24. Five voluntary consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311. In addition, we are separately specifying the use of ASTM D1475–90, "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products," for measuring the average density of volatile matter in the coating.

The voluntary consensus standard ASTM D6420–99, "Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS)," is appropriate in the cases described below for inclusion in this rule in addition to EPA Method 18 codified at 40 CFR part 60, appendix A.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 only where: (1) the target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and (2) the target concentration is between 150 parts per billion by volume and 100 parts per million by volume.

For target compound(s) not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the rule specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Table 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

In addition to the voluntary consensus standards EPA will use in this rule, the search for emissions measurement procedures identified 12 other voluntary consensus standards. The EPA determined that nine of these 12 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, the EPA does not intend to adopt these standards.

Three of the 12 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this 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); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ISO/PWI 17895, "Paints and Varnishes-Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints," for EPA Method 24.

Sections 63.5719 and 63.5758 to subpart VVVV list the EPA testing methods included in the rule. Under § 63.8, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, 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 final rule and other required information to the U.S. Senate, the U.S. House or Representatives, and the Comptroller General of the United States, prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2), and therefore, will be effective on August 22, 2001.

J. Executive Order 13211 (Energy Effects)

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

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Incorporation by reference, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: August 14, 2001.

Christine Todd Whitman,

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.*

2. Part 63 is amended by adding subpart VVVV to read as follows:

Subpart VVVV—National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

Sec.

What the Subpart Covers

63.5680 What is the purpose of this subpart?
63.5683 Does this subpart apply to me?
63.5686 How do I demonstrate that my facility is not a major source?
63.5689 What parts of my facility are covered by this subpart?
63.5692 How do I know if my boat manufacturing facility is a new source or an existing source?
63.5695 When must I comply with this subpart?

Standards for Open Molding Resin and Gel Coat Operations

63.5698 What emission limit must I meet for open molding resin and gel coat operations?
63.5701 What are my options for complying with the open molding emission limit?
63.5704 What are the general requirements for complying with the open molding emission limit?
63.5707 What is an implementation plan for open molding operations and when do I need to prepare one?
63.5710 How do I demonstrate compliance using emissions averaging?
63.5713 How do I demonstrate compliance using compliant materials?
63.5714 How do I demonstrate compliance if I use filled resins?

Demonstrating Compliance for Open Molding Operations Controlled by Add-on Control Devices

63.5715 What operating limits must I meet?
63.5716 When must I conduct a performance test?
63.5719 How do I conduct a performance test?
63.5722 How do I use the performance test data to demonstrate initial compliance?
63.5725 What are the requirements for monitoring and demonstrating continuous compliance?

Standards for Closed Molding Resin Operations

63.5728 What standards must I meet for closed molding resin operations?

Standards for Resin and Gel Coat Mixing Operations

63.5731 What standards must I meet for resin and gel coat mixing operations?

Standards for Resin and Gel Coat Application Equipment Cleaning Operations

63.5734 What standards must I meet for resin and gel coat application equipment cleaning operations?
63.5737 How do I demonstrate compliance with the resin and gel coat application equipment cleaning standards?

Standards for Carpet and Fabric Adhesive Operations

63.5740 What emission limit must I meet for carpet and fabric adhesive operations?

Standards for Aluminum Recreational Boat Surface Coating Operations

63.5743 What standards must I meet for aluminum recreational boat surface coating operations?
63.5746 How do I demonstrate compliance with the emission limits for aluminum wipedown solvents and aluminum coatings?
63.5749 How do I calculate the organic HAP content of aluminum wipedown solvents?
63.5752 How do I calculate the organic HAP content of aluminum recreational boat surface coatings?
63.5753 How do I calculate the combined organic HAP content of aluminum wipedown solvents and aluminum recreational boat surface coatings?
63.5755 How do I demonstrate compliance with the aluminum recreational boat surface coating spray gun cleaning work practice standards?

Methods for Determining Hazardous Air Pollutant Content

63.5758 How do I determine the organic HAP content of materials?

Notifications, Reports, and Records

63.5761 What notifications must I submit and when?
63.5764 What reports must I submit and when?
63.5767 What records must I keep?
63.5770 In what form and for how long must I keep my records?

Other Information You Need To Know

63.5773 What parts of the General Provisions apply to me?
63.5776 Who implements and enforces this subpart?

Definitions

63.5779 What definitions apply to this subpart?

Tables to Subpart VVVV

Table 1 to Subpart VVVV—Compliance Dates for New and Existing Boat Manufacturing Facilities
Table 2 to Subpart VVVV—Alternative HAP Content Requirements for Open Molding Resin and Gel Coat Operations
Table 3 to Subpart VVVV—MACT Model Point Value Formulas for Open Molding Operations
Table 4 to Subpart VVVV—Operating Limits If Using an Add-on Control Device for Open Molding Operations
Table 5 to Subpart VVVV—Default Organic HAP Contents of Solvents and Solvent Blends
Table 6 to Subpart VVVV—Default Organic HAP Contents of Petroleum Solvent Groups
Table 7 to Subpart VVVV—Applicability and Timing of Notifications
Table 8 to Subpart VVVV—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart VVVV

What the Subpart Covers

§ 63.5680 What is the purpose of this subpart?

(a) This subpart establishes national emission standards for hazardous air pollutants (HAP) for new and existing boat manufacturing facilities with resin and gel coat operations, carpet and fabric adhesive operations, or aluminum recreational boat surface coating operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.5683 Does this subpart apply to me?

(a) This subpart applies to you if you meet both of the criteria listed in paragraphs (a)(1) and (2) of this section.

(1) You are the owner or operator of a boat manufacturing facility that builds fiberglass boats or aluminum recreational boats.

(2) Your boat manufacturing facility is a major source of HAP either in and of itself, or because it is collocated with other sources of HAP, such that all sources combined constitute a major source.

(b) A boat manufacturing facility is a facility that manufactures hulls or decks of boats from fiberglass or aluminum, or assembles boats from premanufactured hulls and decks, or builds molds to make fiberglass hulls or decks. A facility that manufactures only parts of boats (such as hatches, seats, or lockers) or boat trailers is not considered a boat manufacturing facility for the purpose of this subpart.

(c) A major source is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or can potentially emit, considering controls, in the aggregate, 9.1 megagrams (10 tons) or more per year of a single HAP or 22.7 megagrams (25 tons) or more per year of a combination of HAP.

(d) This subpart does not apply to aluminum coating operations on aluminum boats intended for commercial or military (nonrecreational) use, antifoulant coatings, assembly adhesives, fiberglass hull and deck coatings, research and development activities, mold sealing and release agents, mold stripping and cleaning solvents, and wood coatings as defined in § 63.5779. This subpart does not apply to materials contained in handheld aerosol cans.

§ 63.5686 How do I demonstrate that my facility is not a major source?

You can demonstrate that your facility is not a major source by using the procedures in either paragraph (a) or (b) of this section.

(a) *Emission option.* You must demonstrate that your facility does not emit, and does not have the potential to emit as defined in § 63.2, considering federally enforceable permit limits, 9.1 megagrams (10 tons) or more per year of a single HAP or 22.7 megagrams (25 tons) or more per year of a combination of HAP. To calculate your facility's potential to emit, you must include emissions from the boat manufacturing facility and all other sources that are collocated and under common ownership or control with the boat manufacturing facility.

(b) *Material consumption option.* This option can be used if you manufacture either fiberglass boats or aluminum recreational boats at your facility. You must meet the criteria in paragraph (b)(1), (2), or (3) of this section and comply with the requirements in paragraph (c) of this section. If you initially rely on the limits and criteria specified in paragraph (b)(1), (2), or (3) of this section to become an area source, but then exceed the relevant limit (without first obtaining and complying with other limits that keep your potential to emit HAP below major source levels), your facility will then become a major source, and you must comply with all applicable provisions of this subpart beginning on the compliance date specified in § 63.5695. Nothing in this paragraph is intended to preclude you from limiting your facility's potential to emit through other federally enforceable mechanisms available through your permitting authority.

(1) If your facility is primarily a fiberglass boat manufacturing facility, you must demonstrate that you consume less than 45.4 megagrams per rolling 12-month period of all combined polyester- and vinylester-based resins and gel coats (including tooling and production resins and gel coats, and clear gel coats), and you must demonstrate that at least 90 percent of total annual HAP emissions at the facility (including emissions from aluminum recreational boat manufacturing or other source categories) originate from the fiberglass boat manufacturing materials.

(2) If your facility is primarily an aluminum recreational boat manufacturing facility, you must demonstrate that it consumes less than 18.2 megagrams per rolling 12-month period of all combined surface coatings, aluminum wipedown solvents, application gun cleaning solvents, and carpet and fabric adhesives; and you must demonstrate that at least 90 percent of total annual HAP emissions at the facility (including emissions from fiberglass boat manufacturing or other source categories) originate from the aluminum recreational boat manufacturing materials.

(3) If your facility is a fiberglass boat or an aluminum recreational boat manufacturing facility, you must demonstrate that the boat manufacturing materials consumed per rolling 12-month period contain a total of less than 4.6 megagrams of any single HAP and less than 11.4 megagrams of all combined HAP, and you must demonstrate that at least 90 percent of total annual HAP emissions at the facility (including emissions from other source categories) originate from these boat manufacturing materials.

(c) If you use the material consumption option described in paragraph (b) of this section to demonstrate that you are not a major source, you must comply with the requirements of paragraphs (c)(1) through (3) of this section.

(1) If your facility has HAP emissions that do not originate from boat manufacturing operations or materials described in paragraph (b), then you must keep any records necessary to demonstrate that the 90 percent criterion is met.

(2) A rolling 12-month period includes the previous 12 months of operation. You must maintain records of the total amount of materials described in paragraph (b) of this section used each month, and, if necessary, the HAP content of each material and the calculation of the total HAP consumed each month. Because records are needed for a 12-month period, you must keep records beginning no later than 12 months before the compliance date specified in § 63.5695. Records must be kept for 5 years after they are created.

(3) In determining whether the 90 percent criterion included in paragraph (b) of this section is met, you do not need to include materials used in routine janitorial, building, or facility grounds maintenance; personal uses by employees or other persons; or products used for maintaining motor vehicles operated by the facility.

§ 63.5689 What parts of my facility are covered by this subpart?

The affected source (the portion of your boat manufacturing facility covered by this subpart) is the combination of all of the boat manufacturing operations listed in paragraphs (a) through (f) of this section.

(a) Open molding resin and gel coat operations (including pigmented gel coat, clear gel coat, production resin, tooling gel coat, and tooling resin).

(b) Closed molding resin operations.

(c) Resin and gel coat mixing operations.

(d) Resin and gel coat application equipment cleaning operations.

(e) Carpet and fabric adhesive operations.

(f) Aluminum hull and deck coating operations, including solvent wipedown operations and paint spray gun cleaning operations, on aluminum recreational boats.

§ 63.5692 How do I know if my boat manufacturing facility is a new source or an existing source?

(a) A boat manufacturing facility is a new source if it meets the criteria in paragraphs (a)(1) through (3) of this section.

(1) You commence construction of the affected source after July 14, 2000.

(2) It is a major source.

(3) It is a completely new boat manufacturing affected source where no other boat manufacturing affected source existed prior to the construction of the new source.

(b) For the purposes of this subpart, an existing source is any source that is not a new source.

§ 63.5695 When must I comply with this subpart?

You must comply with the standards in this subpart by the compliance dates specified in Table 1 to this subpart.

Standards for Open Molding Resin and Gel Coat Operations

§ 63.5698 What emission limit must I meet for open molding resin and gel coat operations?

(a) You must limit organic HAP emissions from the five open molding operations listed in paragraphs (a)(1) through (5) of this section to the emission limit specified in paragraph (b) of this section. Operations listed in paragraph (d) are exempt from this limit.

(1) Production resin.

(2) Pigmented gel coat.
(3) Clear gel coat.
(4) Tooling resin.
(5) Tooling gel coat.

(b) You must limit organic HAP emissions from open molding operations to the limit specified by equation 1 of this section, based on a 12-month rolling average.

$$\text{HAP Limit} = \left[46(M_R) + 159(M_{PG}) + 291(M_{CG}) + 54(M_{TR}) + 214(M_{TG})\right] \quad \text{(Eq. 1)}$$

Where:

HAP Limit= total allowable organic HAP that can be emitted from the open molding operations, kilograms.

M_R = mass of production resin used in the past 12 months, excluding any materials exempt under paragraph (d) of this section, megagrams.

M_{PG} = mass of pigmented gel coat used in the past 12 months, excluding any materials exempt under paragraph (d) of this section, megagrams.

M_{CG} = mass of clear gel coat used in the past 12 months, excluding any materials exempt under paragraph (d) of this section, megagrams.

M_{TR} = mass of tooling resin used in the past 12 months, excluding any materials exempt under paragraph (d) of this section, megagrams.

M_{TG} = mass of tooling gel coat used in the past 12 months, excluding any materials exempt under paragraph (d) of this section, megagrams.

(c) The open molding emission limit is the same for both new and existing sources.

(d) The materials specified in paragraphs (d)(1) through (3) of this section are exempt from the open molding emission limit specified in paragraph (b) of this section.

(1) Production resins (including skin coat resins) that must meet specifications for use in military vessels or must be approved by the U.S. Coast Guard for use in the construction of lifeboats, rescue boats, and other life-saving appliances approved under 46 CFR subchapter Q or the construction of small passenger vessels regulated by 46 CFR subchapter T. Production resins for which this exemption is used must be applied with nonatomizing (non-spray) resin application equipment. You must keep a record of the resins for which you are using this exemption.

(2) Pigmented, clear, and tooling gel coat used for part or mold repair and touch up. The total gel coat materials included in this exemption must not exceed 1 percent by weight of all gel coat used at your facility on a 12-month rolling-average basis. You must keep a record of the amount of gel coats used per month for which you are using this exemption and copies of calculations showing that the exempt amount does not exceed 1 percent of all gel coat used.

(3) Pure, 100 percent vinylester resin used for skin coats. This exemption does not apply to blends of vinylester and polyester resins used for skin coats. The total resin materials included in the exemption cannot exceed 5 percent by weight of all resin used at your facility on a 12-month rolling-average basis. You must keep a record of the amount of 100 percent vinylester skin coat resin used per month that is eligible for this exemption and copies of calculations showing that the exempt amount does not exceed 5 percent of all resin used.

§ 63.5701 What are my options for complying with the open molding emission limit?

You must use one or more of the options listed in paragraphs (a) through (c) of this section to meet the emission limit in § 63.5698 for the resins and gel coats used in open molding operations at your facility.

(a) *Maximum achievable control technology (MACT) model point value averaging (emissions averaging) option.*

(1) Demonstrate that emissions from the open molding resin and gel coat operations that you average meet the emission limit in § 63.5698 using the procedures described in § 63.5710. Compliance with this option is based on a 12-month rolling average.

(2) Those operations and materials not included in the emissions average must comply with either paragraph (b) or (c) of this section.

(b) *Compliant materials option.* Demonstrate compliance by using resins and gel coats that meet the organic HAP content requirements in Table 2 to this subpart. Compliance with this option is based on a 12-month rolling average.

(c) *Add-on control option.* Use an enclosure and add-on control device, and demonstrate that the resulting emissions meet the emission limit in § 63.5698. Compliance with this option is based on control device performance testing and control device monitoring.

§ 63.5704 What are the general requirements for complying with the open molding emission limit?

(a) *Emissions averaging option.* For those open molding operations and materials complying using the emissions averaging option, you must demonstrate compliance by performing the steps in paragraphs (a)(1) through (5) of this section.

(1) Use the methods specified in § 63.5758 to determine the organic HAP content of resins and gel coats.

(2) Complete the calculations described in § 63.5710 to show that the organic HAP emissions do not exceed the limit specified in § 63.5698.

(3) Keep records as specified in paragraphs (a)(3)(i) through (iv) of this section for each resin and gel coat.

(i) Hazardous air pollutant content.

(ii) Amount of material used per month.

(iii) Application method used for production resin and tooling resin. This record is not required if all production resins and tooling resins are applied with nonatomized technology.

(iv) Calculations performed to demonstrate compliance based on MACT model point values, as described in § 63.5710.

(4) Prepare and submit the implementation plan described in § 63.5707 to the Administrator and keep it up to date.

(5) Submit semiannual compliance reports to the Administrator as specified in § 63.5764.

(b) *Compliant materials option.* For each open molding operation complying using the compliant materials option, you must demonstrate compliance by performing the steps in paragraphs (b)(1) through (4) of this section.

(1) Use the methods specified in § 63.5758 to determine the organic HAP content of resins and gel coats.

(2) Complete the calculations described in § 63.5713 to show that the weighted-average organic HAP content does not exceed the limit specified in Table 2 to this subpart.

(3) Keep records as specified in paragraphs (b)(3)(i) through (iv) of this section for each resin and gel coat.

(i) Hazardous air pollutant content.

(ii) Application method for production resin and tooling resin. This record is not required if all production resins and tooling resins are applied with nonatomized technology.

(iii) Amount of material used per month. This record is not required for an operation if all materials used for that operation comply with the organic HAP content requirements.

(iv) Calculations performed, if required, to demonstrate compliance based on weighted-average organic HAP content as described in § 63.5713.

(4) Submit semiannual compliance reports to the Administrator as specified in § 63.5764.

(c) *Add-on control option.* If you are using an add-on control device, you must demonstrate compliance by performing the steps in paragraphs (c)(1) through (5) of this section.

(1) Conduct a performance test of the control device as specified in §§ 63.5719 and 63.5722 to demonstrate initial compliance.

(2) Use the performance test results to determine control device parameters to monitor after the performance test as specified in § 63.5725.

(3) Comply with the operating limits specified in § 63.5715 and the control device and emission capture system monitoring requirements specified in § 63.5725 to demonstrate continuous compliance.

(4) Keep the records specified in § 63.5767.

(5) Submit to the Administrator the notifications and reports specified in §§ 63.5761 and 63.5764.

§ 63.5707 What is an implementation plan for open molding operations and when do I need to prepare one?

(a) You must prepare an implementation plan for all open molding operations for which you comply by using the emissions averaging option described in § 63.5704(a).

(b) The implementation plan must describe the steps you will take to bring the open molding operations covered by this subpart into compliance. For each operation included in the emissions average, your implementation plan must include the elements listed in paragraphs (b)(1) through (3) of this section.

(1) A description of each operation included in the average.

(2) The maximum organic HAP content of the materials used, the application method used (if any atomized resin application methods are used in the average), and any other methods used to control emissions.

(3) Calculations showing that the operations covered by the plan will comply with the open molding emission limit specified in § 63.5698.

(c) You must submit the implementation plan to the Administrator with the notification of compliance status specified in § 63.5761.

(d) You must keep the implementation plan on site and provide it to the Administrator when asked.

(e) If you revise the implementation plan, you must submit the revised plan with your next semiannual compliance report specified in § 63.5764.

§ 63.5710 How do I demonstrate compliance using emissions averaging?

(a) Compliance using the emissions averaging option is demonstrated on a 12-month rolling-average basis and is determined at the end of every month (12 times per year). The first 12-month rolling-average period begins on the compliance date specified in § 63.5695.

(b) At the end of the twelfth month after your compliance date and at the end of every subsequent month, use equation 1 of this section to demonstrate that the organic HAP emissions from those operations included in the average do not exceed the emission limit in § 63.5698 calculated for the same 12-month period. (Include terms in equation 1 of § 63.5698 and equation 1 of this section for only those operations and materials included in the average.)

$$\text{HAP emissions} = \left[(PV_R)(M_R) + (PV_{PG})(M_{PG}) + (PV_{CG})(M_{CG}) + (PV_{TR})(M_{TR}) + (PV_{TG})(M_{TG})\right] \quad \text{(Eq. 1)}$$

Where:

HAP emissions= Organic HAP emissions calculated using MACT model point values for each operation included in the average, kilograms.

PV_R= Weighted-average MACT model point value for production resin used in the past 12 months, kilograms per megagram.

M_R= Mass of production resin used in the past 12 months, megagrams.

PV_{PG}= Weighted-average MACT model point value for pigmented gel coat used in the past 12 months, kilograms per megagram.

M_{PG}= Mass of pigmented gel coat used in the past 12 months, megagrams.

PV_{CG}= Weighted-average MACT model point value for clear gel coat used in the past 12 months, kilograms per megagram.

M_{CG}= Mass of clear gel coat used in the past 12 months, megagrams.

PV_{TR}= Weighted-average MACT model point value for tooling resin used in the past 12 months, kilograms per megagram.

M_{TR}= Mass of tooling resin used in the past 12 months, megagrams.

PV_{TG}= Weighted-average MACT model point value for tooling gel coat used in the past 12 months, kilograms per megagram.

M_{TG}= Mass of tooling gel coat used in the past 12 months, megagrams.

(c) At the end of every month, use equation 2 of this section to compute the weighted-average MACT model point value for each open molding resin and gel coat operation included in the average.

$$PV_{OP} = \frac{\sum_{i=1}^{n}(M_i\ PV_i)}{\sum_{i=1}^{n}(M_i)} \quad \text{(Eq. 2)}$$

Where:

PV_{OP}=weighted-average MACT model point value for each open molding operation (PV_R, PV_{PG}, PV_{CG}, $PVPV_{TR}$, and $PVPV_{TG}$) included in the average, kilograms of HAP per megagram of material applied.

M_i=mass of resin or gel coat i used within an operation in the past 12 months, megagrams.

n=number of different open molding resins and gel coats used within an operation in the past 12 months.

PV_i=the MACT model point value for resin or gel coat i used within an operation in the past 12 months, kilograms of HAP per megagram of material applied.

(d) You must use the equations in Table 3 to this subpart to calculate the MACT model point value (PV_i) for each resin and gel coat used in each operation in the past 12 months.

(e) If the organic HAP emissions, as calculated in paragraph (b) of this section, are less than the organic HAP limit calculated in § 63.5698(b) for the same 12-month period, then you are in compliance with the emission limit in § 63.5698 for those operations and materials included in the average.

§ 63.5713 How do I demonstrate compliance using compliant materials?

(a) Compliance using the organic HAP content requirements listed in Table 2 to this subpart is based on a 12-month rolling average that is calculated at the end of every month. The first 12-month rolling-average period begins on the compliance date specified in § 63.5695.

If you are using filled material (production resin or tooling resin), you must comply according to the procedure described in § 63.5714.

(b) At the end of the twelfth month after your compliance date and at the end of every subsequent month, review the organic HAP contents of the resins and gel coats used in the past 12 months in each operation. If all resins and gel coats used in an operation have organic HAP contents no greater than the applicable organic HAP content limits in Table 2 to this subpart, then you are in compliance with the emission limit specified in § 63.5698 for that 12-month period for that operation. In addition, you do not need to complete the weighted-average organic HAP content calculation contained in paragraph (c) of this section for that operation.

(c) At the end of every month, you must use equation 1 of this section to calculate the weighted-average organic HAP content for all resins and gel coats used in each operation in the past 12 months.

$$\text{Weighted-Average HAP Content (\%)} = \frac{\sum_{i=1}^{n}(M_i\ HAP_i)}{\sum_{i=1}^{n}(M_i)} \qquad \text{(Eq. 1)}$$

Where:

M_i = mass of open molding resin or gel coat i used in the past 12 months in an operation, megagrams.

HAP_i = Organic HAP content, by weight percent, of open molding resin or gel coat i used in the past 12 months in an operation. Use the methods in § 63.5758 to determine organic HAP content.

n = number of different open molding resins or gel coats used in the past 12 months in an operation.

(d) If the weighted-average organic HAP content does not exceed the applicable organic HAP content limit specified in Table 2 to this subpart, then you are in compliance with the emission limit specified in § 63.5698.

§ 63.5714 How do I demonstrate compliance if I use filled resins?

(a) If you are using a filled production resin or filled tooling resin, you must demonstrate compliance for the filled material on an as-applied basis using equation 1 of this section.

$$PV_F = PV_u \times \frac{(100 - \%\ \text{Filler})}{100} \qquad \text{(Eq. 1)}$$

Where:

PV_F = The as-applied MACT model point value for a filled production resin or tooling resin, kilograms organic HAP per megagram of filled material.

PV_u = The MACT model point value for the neat (unfilled) resin, before filler is added, as calculated using the formulas in Table 3 to this subpart.

% Filler =The weight-percent of filler in the as-applied filled resin system.

(b) If the filled resin is used as a production resin and the value of PV_F calculated by equation 1 of this section does not exceed 46 kilograms of organic HAP per megagram of filled resin applied, then the filled resin is in compliance.

(c) If the filled resin is used as a tooling resin and the value of PV_F calculated by equation 1 of this section does not exceed 54 kilograms of organic HAP per megagram of filled resin applied, then the filled resin is in compliance.

(d) If you are including a filled resin in the emissions averaging procedure described in § 63.5710, then use the value of PV_F calculated using equation 1 of this section for the value of PV i in equation 2 of § 63.5710.

Demonstrating Compliance for Open Molding Operations Controlled by Add-On Control Devices

§ 63.5715 What operating limits must I meet?

(a) For open molding operations on which you use a thermal oxidizer as an add-on control device, you must meet the operating limits specified in Table 4 to this subpart that apply to the emission capture system and thermal oxidizer. You must establish the operating limits during the performance test according to the procedures in § 63.5725. You must meet the operating limits at all times after you establish them.

(b) If you use an add-on control device other than a thermal oxidizer, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.5716 When must I conduct a performance test?

(a) If your source is an existing source, you must complete the add-on control device performance test no later than the compliance date specified in § 63.5695.

(b) If your source is a new source, you must complete the add-on control device performance test no later than 180 days after the compliance date specified in § 63.5695.

(c) You must conduct a performance test every 5 years as part of renewing your 40 CFR part 70 or 71 operating permit.

§ 63.5719 How do I conduct a performance test?

(a) You must capture the emissions using a permanent enclosure (such as a spray booth or similar containment device) and direct the captured emissions to the add-on control device.

(b) You must measure emissions as specified in paragraph (b)(1) or (2) of this section.

(1) If the enclosure vented to the control device is a permanent total enclosure as defined in Method 204 of appendix M to 40 CFR part 51, then you may measure emissions only at the outlet of the control device.

(2) If the permanent enclosure vented to the control device is not a total enclosure, you must build a temporary total enclosure, as defined in Method 204 of appendix M to 40 CFR part 51, around the permanent enclosure. You must then simultaneously measure emissions from the control device outlet and the emissions from the temporary total enclosure outlet. You determine compliance from the combined emissions from the control device outlet and the temporary total enclosure outlet.

(c) You must conduct the control device performance test using the emission measurement methods specified in paragraphs (c)(1) through (4) of this section.

(1) Use either Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select the sampling sites.

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

(3) Use Method 18 of appendix A to 40 CFR part 60 to measure organic HAP emissions or use Method 25A of appendix A to 40 CFR part 60 to measure total gaseous organic emissions as a surrogate for total organic HAP emissions. If you use Method 25A, you must assume that all gaseous organic emissions measured as carbon are organic HAP emissions. If you use Method 18 and the number of organic HAP in the exhaust stream exceeds five, you must take into account the use of multiple chromatographic columns and analytical techniques to get an accurate measure of at least 90 percent of the total organic HAP mass emissions. Do not use Method 18 to measure organic HAP emissions from a combustion device; use instead Method 25A and assume that all gaseous organic mass emissions measured as carbon are organic HAP emissions.

(4) You may use American Society for Testing and Materials (ASTM) D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.) in lieu of Method 18 of 40 CFR part 60, appendix A, under the conditions specified in paragraphs (c)(4)(i) through (iii) of this section.

(i) If the target compound(s) is listed in Section 1.1 of ASTM D6420–99 and the target concentration is between 150 parts per billion by volume and 100 parts per million by volume.

(ii) If the target compound(s) is not listed in Section 1.1 of ASTM D6420–99, but is potentially detected by mass spectrometry, an additional system continuing calibration check after each run, as detailed in Section 10.5.3 of ASTM D6420–99, must be followed, met, documented, and submitted with the performance test report even if you do not use a moisture condenser or the compound is not considered soluble.

(iii) If a minimum of one sample/analysis cycle is completed at least every 15 minutes.

(d) The control device performance test must consist of three runs and each run must last at least 1 hour. The production conditions during the test runs must represent normal production conditions with respect to the types of parts being made and material application methods. The production conditions during the test must also represent maximum potential emissions with respect to the organic HAP content of the materials being applied and the material application rates.

(e) During the test, you must also monitor and record separately the amounts of production resin, tooling resin, pigmented gel coat, clear gel coat, and tooling gel coat applied inside the enclosure that is vented to the control device.

§ 63.5722 How do I use the performance test data to demonstrate initial compliance?

Demonstrate initial compliance with the open molding emission limit as described in paragraphs (a) through (c) of this section:

(a) Calculate the organic HAP limit you must achieve using equation 1 of § 63.5698. For determining initial compliance, the organic HAP limit is based on the amount of material used during the performance test, in megagrams, rather than during the past 12 months. Calculate the limit using the megagrams of resin and gel coat applied inside the enclosure during the three runs of the performance test and equation 1 of § 63.5698.

(b) Add the total measured emissions, in kilograms, from all three of the 1-hour runs of the performance test.

(c) If the total emissions from the three 1-hour runs of the performance test are less than the organic HAP limit calculated in paragraph (a) of this section, then you have demonstrated initial compliance with the emission limit in § 63.5698 for those operations performed in the enclosure and controlled by the add-on control device.

§ 63.5725 What are the requirements for monitoring and demonstrating continuous compliance?

(a) You must establish control device parameters that indicate proper operation of the control device.

(b) You must install, operate, and maintain a continuous parameter monitoring system as specified in paragraphs (b)(1) through (8) of this section.

(1) The continuous parameter monitoring system 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) You must have valid data from at least 90 percent of the hours during which the process operated.

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

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

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

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

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

(8) Any period for which the monitoring system is out-of-control, as defined in § 63.7(d)(7), or malfunctioning, and data are not available for required calculations is a deviation from the monitoring requirements. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the continuous parameter monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

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

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

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

well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure continuous monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the open molding operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the open molding operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the open molding operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.5764(d).

(d) *Thermal oxidizers.* If you are using a thermal oxidizer or incinerator as an add-on control device, you must comply with the requirements in paragraphs (d)(1) through (6) of this section.

(1) You must install a combustion temperature monitoring device in the firebox of the thermal oxidizer or incinerator, or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. You must meet the requirements in paragraphs (b) and (d)(1)(i) through (vii) of this section for each temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a minimum tolerance of 2.2° C or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a chart recorder is used, it must have a sensitivity in the minor division of at least 10° C.

(v) 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 16.7° C of the process temperature sensor's reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(2) Before or during the performance test, you must conduct a performance evaluation of the combustion temperature monitoring system according to § 63.8(e). Section 63.8(e) specifies the general requirements for continuous monitoring systems and requirements for notifications, the site-specific performance evaluation plan, conduct of the performance evaluation, and reporting of performance evaluation results.

(3) During the performance test required by § 63.5716, you must monitor and record the combustion temperature and determine the average combustion temperature for the three 1-hour test runs. This average temperature is the minimum operating limit for the thermal oxidizer.

(4) Following the performance test, you must continuously monitor the combustion temperature and record the average combustion temperature no less frequently than every 15 minutes.

(5) You must operate the incinerator or thermal oxidizer so that the average combustion temperature in any 3-hour period does not fall below the average combustion temperature recorded during the performance test.

(6) If the average combustion temperature in any 3-hour period falls below the average combustion temperature recorded during the performance test, or if you fail to collect the minimum data specified in paragraph (d)(4) of this section, it is a deviation for the operating limit in § 63.5715.

(e) *Other control devices.* If you are using a control device other a thermal oxidizer, then you must comply with alternative monitoring requirements and operating limits approved by the Administrator under § 63.8(f).

(f) *Emission capture system.* For each enclosure in the emission capture system, you must comply with the requirements in paragraphs (f)(1) through (5) of this section.

(1) You must install a device to measure and record either the flow rate or the static pressure in the duct from each enclosure to the add-on control device.

(2) You must install a device to measure and record the pressure drop across at least one opening in each enclosure.

(3) Each flow measurement device must meet the requirements in paragraphs (b) and (f)(3)(i) through (iv) of this section.

(i) Locate the flow sensor in a position that provides a representative flow measurement in the duct between each enclosure in the emission capture system and the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

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

(4) For each pressure measurement device, you must comply with the requirements in paragraphs (a) and (f)(4)(i) through (vii) of this section.

(i) Locate each pressure drop sensor in or as close to a position that provides a representative measurement of the pressure drop across each enclosure opening you are monitoring.

(ii) Locate each duct static pressure sensor in a position that provides a representative measurement of the static pressure in the duct between the enclosure and control device.

(iii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iv) Check the pressure tap for plugging daily.

(v) Use an inclined manometer with a measurement sensitivity of 0.0004 millimeters mercury (mmHg) to check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

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

(5) For each capture device that is not part of a permanent total enclosure as defined in Method 204 in appendix M to 40 CFR part 51, you must establish

an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(5)(i) and (ii) of this section. You must also establish an operating limit for pressure drop across at least one opening in each enclosure according to paragraphs (f)(5)(iii) and (iv) of this section. The operating limits for a permanent total enclosure are specified in Table 4 to this subpart.

(i) During the emission test required by § 63.5716 and described in § 63.5719, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate enclosure in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the enclosure and the add-on control device inlet.

(ii) Following the emission test, calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each enclosure. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific enclosure.

(iii) During the emission test required by § 63.5716 and described in § 63.5719, you must monitor and record the pressure drop across the opening of each enclosure in your emission capture system at least once every 15 minutes during each of the three test runs.

(iv) Following the emission test, calculate and record the average pressure drop for the three test runs for each enclosure. This average pressure drop is the minimum operating limit for that specific enclosure.

Standards for Closed Molding Resin Operations

§ 63.5728 What standards must I meet for closed molding resin operations?

(a) If a resin application operation meets the definition of closed molding specified in § 63.5779, there is no requirement to reduce emissions from that operation.

(b) If the resin application operation does not meet the definition of closed molding, then you must comply with the limit for open molding resin operations specified in § 63.5698.

(c) Open molding resin operations that precede a closed molding operation must comply with the limit for open molding resin and gel coat operations specified in § 63.5698. Examples of these operations include gel coat or skin coat layers that are applied before lamination is performed by closed molding.

Standards for Resin and Gel Coat Mixing Operations

§ 63.5731 What standards must I meet for resin and gel coat mixing operations?

(a) All resin and gel coat mixing containers with a capacity equal to or greater than 208 liters, including those used for on-site mixing of putties and polyputties, must have a cover with no visible gaps in place at all times.

(b) The work practice standard in paragraph (a) of this section does not apply when material is being manually added to or removed from a container, or when mixing or pumping equipment is being placed in or removed from a container.

(c) To demonstrate compliance with the work practice standard in paragraph (a) of this section, you must visually inspect all mixing containers subject to this standard at least once per month. The inspection should ensure that all containers have covers with no visible gaps between the cover and the container, or between the cover and equipment passing through the cover.

(d) You must keep records of which mixing containers are subject to this standard and the results of the inspections, including a description of any repairs or corrective actions taken.

Standards for Resin and Gel Coat Application Equipment Cleaning Operations

§ 63.5734 What standards must I meet for resin and gel coat application equipment cleaning operations?

(a) For routine flushing of resin and gel coat application equipment (e.g., spray guns, flowcoaters, brushes, rollers, and squeegees), you must use a cleaning solvent that contains no more than 5 percent organic HAP by weight. For removing cured resin or gel coat from application equipment, no organic HAP content limit applies.

(b) You must store organic HAP-containing solvents used for removing cured resin or gel coat in containers with covers. The covers must have no visible gaps and must be in place at all times, except when equipment to be cleaned is placed in or removed from the container. On containers with a capacity greater than 7.6 liters, the distance from the top of the container to the solvent surface must be no less than 0.75 times the diameter of the container. Containers that store organic HAP-containing solvents used for removing cured resin or gel coat are exempt from the requirements of 40 CFR part 63, subpart T. Cured resin or gel coat means resin or gel coat that has changed from a liquid to a solid.

§ 63.5737 How do I demonstrate compliance with the resin and gel coat application equipment cleaning standards?

(a) Determine and record the organic HAP content of the cleaning solvents subject to the standards specified in § 63.5734 using the methods specified in § 63.5758.

(b) If you recycle cleaning solvents on site, you may use documentation from the solvent manufacturer or supplier or a measurement of the organic HAP content of the cleaning solvent as originally obtained from the solvent supplier for demonstrating compliance, subject to the conditions in § 63.5758 for demonstrating compliance with organic HAP content limits.

(c) At least once per month, you must visually inspect any containers holding organic HAP-containing solvents used for removing cured resin and gel coat to ensure that the containers have covers with no visible gaps. Keep records of the monthly inspections and any repairs made to the covers.

Standards for Carpet and Fabric Adhesive Operations

§ 63.5740 What emission limit must I meet for carpet and fabric adhesive operations?

(a) You must use carpet and fabric adhesives that contain no more than 5 percent organic HAP by weight.

(b) To demonstrate compliance with the emission limit in paragraph (a) of this section, you must determine and record the organic HAP content of the carpet and fabric adhesives using the methods in § 63.5758.

Standards for Aluminum Recreational Boat Surface Coating Operations

§ 63.5743 What standards must I meet for aluminum recreational boat surface coating operations?

(a) For aluminum wipedown solvent operations and aluminum surface coating operations, you must comply with either the separate emission limits in paragraphs (a)(1) and (2) of this section, or the combined emission limit in paragraph (a)(3) of this section. Compliance with these limitations is based on a 12-month rolling average that is calculated at the end of every month.

(1) You must limit emissions from aluminum wipedown solvents to no more than 0.33 kilograms of organic HAP per liter of total coating solids applied from aluminum primers, clear coats, and top coats combined. No limit applies when cleaning surfaces are receiving decals or adhesive graphics.

(2) You must limit emissions from aluminum recreational boat surface coatings (including thinners, activators, primers, topcoats, and clear coats) to no

more than 1.22 kilograms of organic HAP per liter of total coating solids applied from aluminum primers, clear coats, and top coats combined.

(3) You must limit emissions from the combined aluminum surface coatings and aluminum wipedown solvents to no more than 1.55 kilograms of organic HAP per liter of total coating solids applied from aluminum primers, clear coats, and top coats combined.

(b) You must comply with the work practice standard in paragraph (b)(1), (2), (3), or (4) of this section when cleaning aluminum coating spray guns with solvents containing more than 5 percent organic HAP by weight.

(1) Clean spray guns in an enclosed device. Keep the device closed except when you place spray guns in or remove them from the device.

(2) Disassemble the spray gun and manually clean the components in a vat. Keep the vat closed when you are not using it.

(3) Clean spray guns by placing solvent in the pressure pot and forcing the solvent through the gun. Do not use atomizing air during this procedure. Direct the used cleaning solvent from the spray gun into a container that you keep closed when you are not using it.

(4) An alternative gun cleaning process or technology approved by the Administrator according to the procedures in § 63.6(g).

§ 63.5746 How do I demonstrate compliance with the emission limits for aluminum wipedown solvents and aluminum coatings?

To demonstrate compliance with the emission limits for aluminum wipedown solvents and aluminum coatings specified in § 63.5743(a), you must meet the requirements of paragraphs (a) through (f) of this section.

(a) Determine and record the organic HAP content (kilograms of organic HAP per kilogram of material, or weight fraction) of each aluminum wipedown solvent and aluminum coating (including primers, topcoats, clear coats, thinners, and activators). Use the methods in § 63.5758 to determine organic HAP content.

(b) Use the methods in § 63.5758(b) to determine the solids content (liters of solids per liter of coating, or volume fraction) of each aluminum surface coating, including primers, topcoats, and clear coats. Keep records of the solids content.

(c) Use the methods in § 63.5758(c) to determine the density of each aluminum surface coating and wipedown solvent.

(d) Compliance is based on a 12-month rolling average calculated at the end of every month. The first 12-month rolling-average period begins on the compliance date specified in § 63.5695.

(e) At the end of the twelfth month after your compliance date and at the end of every subsequent month, use the procedures in § 63.5749 to calculate the organic HAP from aluminum wipedown solvents per liter of coating solids, and use the procedures in § 63.5752 to calculate the kilograms of organic HAP from aluminum coatings per liter of coating solids.

(f) Keep records of the calculations used to determine compliance.

(g) *Approval of alternative means of demonstrating compliance.* You may apply to the Administrator for permission to use an alternative means (such as an add-on control system) of limiting emissions from aluminum wipedown solvent and coating operations and demonstrating compliance with the emission limits in § 63.5743(a).

(1) The application must include the information listed in paragraphs (g)(1)(i) through (iii) of this section.

(i) An engineering evaluation that compares the emissions using the alternative means to the emissions that would result from using the strategy specified in paragraphs (a) through (e) of this section. The engineering evaluation may include the results from an emission test that accurately measures the capture efficiency and control device efficiency achieved by the control system and the composition of the associated coatings so that the emissions comparison can be made.

(ii) A proposed monitoring protocol that includes operating parameter values to be monitored for compliance and an explanation of how the operating parameter values will be established through a performance test.

(iii) Details of appropriate recordkeeping and reporting procedures.

(2) The Administrator will approve the alternative means of limiting emissions if the Administrator determines that HAP emissions will be no greater than if the source uses the procedures described in paragraphs (a) through (e) of this section to demonstrate compliance.

(3) The Administrator's approval may specify operation, maintenance, and monitoring requirements to ensure that emissions from the regulated operations are no greater than those that would otherwise result from regulated operations in compliance with this subpart.

§ 63.5749 How do I calculate the organic HAP content of aluminum wipedown solvents?

(a) Use equation 1 of this section to calculate the weighted-average organic HAP content of aluminum wipedown solvents used in the past 12 months.

$$HAP_{WD} = \frac{\sum_{j=1}^{n}(Vol_j)(D_j)(W_j)}{\sum_{i=1}^{m}(Vol_i)(Solids_i)} \quad \text{(Eq. 1)}$$

Where:

HAP_{WD}= weighted-average organic HAP content of aluminum wipedown solvents, kilograms of HAP per liter of total coating solids from aluminum primers, top coats, and clear coats.

n = number of different wipedown solvents used in the past 12 months.

Vol_j= volume of aluminum wipedown solvent j used in the past 12 months, liters.

D_j= density of aluminum wipedown solvent j, kilograms per liter.

W_j= mass fraction of organic HAP in aluminum wipedown solvent j.

m = number of different aluminum surface coatings (primers, top coats, and clear coats) used in the past 12 months.

Vol_i = volume of aluminum primer, top coat, or clear coat i used in the past 12 months, liters.

$Solids_i$= solids content aluminum primer, top coat, or clear coat i, liter solids per liter of coating.

(b) Compliance is based on a 12-month rolling average. If the weighted-average organic HAP content does not exceed 0.33 kilograms of organic HAP per liter of total coating solids, then you are in compliance with the emission limit specified in § 63.5743(a)(1).

§ 63.5752 How do I calculate the organic HAP content of aluminum recreational boat surface coatings?

(a) Use equation 1 of this section to calculate the weighted-average HAP content for all aluminum surface coatings used in the past 12 months.

$$HAP_{SC} = \frac{\sum_{i=1}^{m}(Vol_i)(D_i)(W_i) + \sum_{k=1}^{D}(Vol_k)(D_k)(W_k)}{\sum_{i=1}^{m}(Vol_i)(Solids_i)} \quad \text{(Eq. 1)}$$

Where:

HAP_{SC} = weighted-average organic HAP content for all aluminum coating materials, kilograms of organic HAP per liter of coating solids.

m = number of different aluminum primers, top coats, and clear coats used in the past 12 months.

Vol_i = volume of aluminum primer, top coat, or clear coat i used in the past 12 months, liters.

D_i= density of coating i, kilograms per liter.

W_i= mass fraction of organic HAP in coating i, kilograms of organic HAP per kilogram of coating.

p = number of different thinners, activators, and other coating additives used in the past 12 months.

Vol_k= total volume of thinner, activator, or additive k used in the past 12 months, liters.

D_k= density of thinner, activator, or additive k, kilograms per liter.

W_k= mass fraction of organic HAP in thinner, activator, or additive k, kilograms of organic HAP per kilogram of thinner or activator.

$Solids_i$= solids content of aluminum primer, top coat, or clear coat i, liter solids per liter of coating.

(b) Compliance is based on a 12-month rolling average. If the weighted-average organic HAP content does not exceed 1.22 kilograms of organic HAP per liter of coating solids, then you are in compliance with the emission limit specified in § 63.5743(a)(2).

§ 63.5753 How do I calculate the combined organic HAP content of aluminum wipedown solvents and aluminum recreational boat surface coatings?

(a) Use equation 1 of this section to calculate the combined weighted-average organic HAP content of aluminum wipedown solvents and aluminum recreational boat surface coatings.

$$HAP_{Combined} = HAP_{WD} + HAP_{SC} \quad \text{(Eq. 1)}$$

Where:

HAP_{WD} = the weighted-average organic HAP content of aluminum wipedown solvents used in the past 12 months, calculated using equation 1 of § 63.5749.

HAP_{SC} = the weighted average organic HAP content of aluminum recreational boat surface coatings used in the past 12 months, calculated using equation 1 of § 63.5752.

(b) Compliance is based on a 12-month rolling average. If the combined organic HAP content does not exceed 1.55 kilograms of organic HAP per liter of total coating solids, then you are in compliance with the emission limit specified in § 63.5743(a)(3).

§ 63.5755 How do I demonstrate compliance with the aluminum recreational boat surface coating spray gun cleaning work practice standards?

You must demonstrate compliance with the aluminum coating spray gun cleaning work practice standards by meeting the requirements of paragraph (a) or (b) of this section.

(a) Demonstrate that solvents used to clean the aluminum coating spray guns contain no more than 5 percent organic HAP by weight by determining organic HAP content with the methods in § 63.5758. Keep records of the organic HAP content determination.

(b) For solvents containing more than 5 percent organic HAP by weight, comply with the requirements in paragraph (b)(1) or (b)(2), and paragraph (b)(3) of this section.

(1) If you are using an enclosed spray gun cleaner, visually inspect it at least once per month to ensure that covers are in place and the covers have no visible gaps when the cleaner is not in use, and that there are no leaks from hoses or fittings.

(2) If you are manually cleaning the gun or spraying solvent into a container that can be closed, visually inspect all solvent containers at least once per month to ensure that the containers have covers and the covers fit with no visible gaps.

(3) Keep records of the monthly inspections and any repairs that are made to the enclosed gun cleaners or the covers.

Methods for Determining Hazardous Air Pollutant Content

§ 63.5758 How do I determine the organic HAP content of materials?

(a) *Determine the organic HAP content for each material used.* To determine the organic HAP content for each material used in your open molding resin and gel coat operations, carpet and fabric adhesive operations, or aluminum recreational boat surface coating operations, you must use one of the options in paragraphs (a)(1) through (6) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when determining organic HAP content by Method 311.

(i) Include in the organic HAP total each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not need to include it in the organic HAP total. Express the mass fraction of each organic HAP you measure as a value truncated to four places after the decimal point (for example, 0.1234).

(ii) Calculate the total organic HAP content in the test material by adding up the individual organic HAP contents and truncating the result to three places after the decimal point (for example, 0.123).

(2) *Method 24 (appendix A to 40 CFR part 60).* You may use Method 24 to determine the mass fraction of non-aqueous volatile matter of aluminum coatings and use that value as a substitute for mass fraction of organic HAP.

(3) *ASTM D1259–85 (Standard Test Method for Nonvolatile Content of Resins).* You may use ASTM D1259–85 (available for purchase from ASTM) to measure the mass fraction of volatile

matter of resins and gel coats for open molding operations and use that value as a substitute for mass fraction of organic HAP.

(4) *Alternative method.* You may use an alternative test method for determining mass fraction of organic 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.

(5) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (4) of this section, such as manufacturer's formulation data, according to paragraphs (a)(5)(i) through (iii) of this section.

(i) Include in the organic HAP total each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to include it in the organic HAP total.

(ii) If the organic HAP content is provided by the material supplier or manufacturer as a range, then you must use the upper limit of the range for determining compliance. If a separate measurement of the total organic HAP content using the methods specified in paragraphs (a)(1) through (4) of this section exceeds the upper limit of the range of the total organic HAP content provided by the material supplier or manufacturer, then you must use the measured organic HAP content to determine compliance.

(iii) If the organic HAP content is provided as a single value, you may assume the value is a manufacturing target value and actual organic HAP content may vary from the target value. If a separate measurement of the total organic HAP content using the methods specified in paragraphs (a)(1) through (4) of this section is less than 2 percentage points higher than the value for total organic HAP content provided by the material supplier or manufacturer, then you may use the provided value to demonstrate compliance. If the measured total organic HAP content exceeds the provided value by 2 percentage points or more, then you must use the measured organic HAP content to determine compliance.

(6) *Solvent blends.* Solvent blends may be listed as single components for some regulated materials in certifications provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP content of the materials. When detailed organic HAP content data for solvent blends are not available, you may use the values for organic HAP content that are listed in Table 5 or 6 to this subpart. You may use Table 6 to this subpart only if the solvent blends in the materials you use do not match any of the solvent blends in Table 5 to this subpart and you know only whether the blend is either aliphatic or aromatic. However, if test results indicate higher values than those listed in Table 5 or 6 to this subpart, then the test results must be used for determining compliance.

(b) *Determine the volume fraction solids in aluminum recreational boat surface coatings.* To determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each aluminum recreational boat surface coating, you must use one of the methods specified in paragraphs (b)(1) through (3) of this section. If the results obtained with paragraphs (b)(2) or (3) of this section do not to agree with those obtained according to paragraph (b)(1) of this section, you must use the results obtained with paragraph (b)(1) of this section to determine compliance.

(1) *ASTM Method D2697–86(1998) or D6093–97.* You may use ASTM Method D2697–86(1998) or D6093–97 (available for purchase from ASTM) to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

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

(3) *Calculation of volume fraction of coating solids.* You may determine it using equation 1 of this section:

$$\text{Solids} = 1 - \frac{m_{volatiles}}{D_{avg}} \qquad \text{(Eq. 1)}$$

Where:

Solids=volume fraction of coating solids, liters coating solids per liter coating.

$m_{volatiles}$=Total volatile matter content of the coating, including organic HAP, volatile organic compounds, water, and exempt compounds, determined according to Method 24 in appendix A of 40 CFR part 60, grams volatile matter per liter coating.

D_{avg}=average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM Method D1475–90 (available for purchase from ASTM), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–90 test results and other information sources, the test results will take precedence.

(c) *Determine the density of each aluminum recreational boat wipedown solvent and surface coating.* Determine the density of all aluminum recreational boat wipedown solvents, surface coatings, thinners, and other additives from test results using ASTM Method D1475–90, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–90 test results and other information sources, you must use the test results to demonstrate compliance.

Notifications, Reports, and Records

§ 63.5761 What notifications must I submit and when?

(a) You must submit all of the notifications in Table 7 to this subpart that apply to you by the dates in the table. The notifications are described more fully in 40 CFR part 63, subpart A, General Provisions, referenced in Table 8 to this subpart.

(b) If you change any information submitted in any notification, you must submit the changes in writing to the Administrator within 15 calendar days after the change.

§ 63.5764 What reports must I submit and when?

(a) You must submit the applicable reports specified in paragraphs (b) through (e) of this section. To the extent possible, you must organize each report according to the operations covered by this subpart and the compliance procedure followed for that operation.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the dates in paragraphs (b)(1) through (5) of this section.

(1) If your source is not controlled by an add-on control device (i.e., you are complying with organic HAP content limits, application equipment requirements, or MACT model point value averaging provisions), the first compliance report must cover the period beginning 12 months after the compliance date specified for your source in § 63.5695 and ending on June

30 or December 31, whichever date is the first date following the end of the first 12-month period after the compliance date that is specified for your source in § 63.5695. If your source is controlled by an add-on control device, the first compliance report must cover the period beginning on the compliance date specified for your source in § 63.5695 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5695.

(2) The first compliance report must be postmarked or delivered no later than 60 calendar days after the end of the compliance reporting period specified in paragraph (b)(1) of this section.

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

(4) Each subsequent compliance report must be postmarked or delivered no later than 60 calendar days after 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 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 include the information specified in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the report.

(3) The date of the report and the beginning and ending dates of the reporting period.

(4) A description of any changes in the manufacturing process since the last compliance report.

(5) A statement or table showing, for each regulated operation, the applicable organic HAP content limit, application equipment requirement, or MACT model point value averaging provision with which you are complying. The statement or table must also show the actual weighted-average organic HAP content or weighted-average MACT model point value (if applicable) for each operation during each of the rolling 12-month averaging periods that end during the reporting period.

(6) If you were in compliance with the emission limits and work practice standards during the reporting period, you must include a statement to that effect.

(7) If you deviated from an emission limit or work practice standard during the reporting period, you must also include the information listed in paragraphs (c)(7)(i) through (iv) of this section in the semiannual compliance report.

(i) A description of the operation involved in the deviation.

(ii) The quantity, organic HAP content, and application method (if relevant) of the materials involved in the deviation.

(iii) A description of any corrective action you took to minimize the deviation and actions you have taken to prevent it from happening again.

(iv) A statement of whether or not your facility was in compliance for the 12-month averaging period that ended at the end of the reporting period.

(d) If your facility has an add-on control device, you must submit semiannual compliance reports and quarterly excess emission reports as specified in § 63.10(e). The contents of the reports are specified in § 63.10(e).

(e) If your facility has an add-on control device, you must complete a startup, shutdown, and malfunction plan as specified in § 63.6(e), and you must submit the startup, shutdown, and malfunction reports specified in § 63.10(e)(5).

§ 63.5767 What records must I keep?

You must keep the records specified in paragraphs (a) through (d) of this section in addition to records specified in individual sections of this subpart.

(a) You must keep a copy of each notification and report that you submitted to comply with this subpart.

(b) You must keep all documentation supporting any notification or report that you submitted.

(c) If your facility is not controlled by an add-on control device (i.e., you are complying with organic HAP content limits, application equipment requirements, or MACT model point value averaging provisions), you must keep the records specified in paragraphs (c)(1) through (3) of this section.

(1) The total amounts of open molding production resin, pigmented gel coat, clear gel coat, tooling resin, and tooling gel coat used per month and the weighted-average organic HAP contents for each operation, expressed as weight-percent. For open molding production resin and tooling resin, you must also record the amounts of each applied by atomized and nonatomized methods.

(2) The total amount of each aluminum coating used per month (including primers, top coats, clear coats, thinners, and activators) and the weighted-average organic HAP content as determined in § 63.5752.

(3) The total amount of each aluminum wipedown solvent used per month and the weighted-average organic HAP content as determined in § 63.5749.

(d) If your facility has an add-on control device, you must keep the records specified in § 63.10(b) relative to control device startup, shut down, and malfunction events; control device performance tests; and continuous monitoring system performance evaluations.

§ 63.5770 In what form and for how long must I keep my records?

(a) Your records must be readily available and in a form so they can be easily inspected and reviewed.

(b) You must keep each record for 5 years following the date that each record is generated.

(c) You must keep each record on site for at least 2 years after the date that each record is generated. You can keep the records offsite for the remaining 3 years.

(d) You can keep the records on paper or an alternative media, such as microfilm, computer, computer disks, magnetic tapes, or on microfiche.

Other Information You Need To Know

§ 63.5773 What parts of the General Provisions apply to me?

You must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A, as specified in Table 8 to this subpart.

§ 63.5776 Who implements and enforces this subpart?

(a) If the Administrator has delegated authority to your State or local agency, the State or local agency has the authority to implement and enforce this subpart.

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

(1) Under § 63.6(g), the authority to approve alternatives to the standards listed in paragraphs (b)(1)(i) through (vii) of this section is not delegated.

(i) § 63.5698—Emission limit for open molding resin and gel coat operations.

(ii) § 63.5728—Standards for closed molding resin operations.

(iii) § 63.5731(a)—Standards for resin and gel coat mixing operations.

(iv) § 63.5734—Standards for resin and gel coat application equipment cleaning operations.

(v) § 63.5740(a)—Emission limit for carpet and fabric adhesive operations.

(vi) § 63.5743—Standards for aluminum recreational boat surface coating operations.

(vii) § 63.5746(g)—Approval of alternative means of demonstrating compliance with the emission limits for aluminum recreational boat surface coating operations.

(2) Under § 63.7(e)(2)(ii) and (f), the authority to approve alternatives to the test methods listed in paragraphs (b)(2)(i) through (iv) of this section is not delegated.

(i) § 63.5719(b)—Method for determining whether an enclosure is a total enclosure.

(ii) § 63.5719(c)—Methods for measuring emissions from a control device.

(iii) § 63.5725(d)(1)—Performance specifications for thermal oxidizer combustion temperature monitors.

(iv) § 63.5758—Method for determining hazardous air pollutant content of regulated materials.

(3) Under § 63.8(f), the authority to approve major alternatives to the monitoring requirements listed in § 63.5725 is not delegated. A "major alternative" is defined in § 63.90.

(4) Under § 63.10(f), the authority to approve major alternatives to the reporting and recordkeeping requirements listed in §§ 63.5764, 63.5767, and 63.5770 is not delegated. A "major alternative" is defined in § 63.90.

Definitions

§ 63.5779 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Administrator means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or an authorized representative (for example, a State delegated the authority to carry out the provisions of this subpart).

Aluminum recreational boat means any marine or freshwater recreational boat that has a hull or deck constructed primarily of aluminum. A recreational boat is a vessel which by design and construction is intended by the manufacturer to be operated primarily for pleasure, or to be leased, rented or chartered to another for the latter's pleasure (rather than for commercial or military purposes); and whose major structural components are fabricated and assembled in an indoor, production-line manufacturing plant or similar land-side operation and not in a dry dock, graving dock, or marine railway on the navigable waters of the United States.

Aluminum recreational boat surface coating operation means the application of primers or top coats to aluminum recreational boats. It also includes the application of clear coats over top coats. Aluminum recreational boat surface coating operations do not include the application of wood coatings or antifoulant coatings to aluminum recreational boats.

Aluminum coating spray gun cleaning means the process of flushing or removing paints or coatings from the interior or exterior of a spray gun used to apply aluminum primers, clear coats, or top coats to aluminum recreational boats.

Aluminum wipedown solvents means solvents used to remove oil, grease, welding smoke, or other contaminants from the aluminum surfaces of a boat before priming or painting. Aluminum wipedown solvents contain no coating solids; aluminum surface preparation materials that contain coating solids are considered coatings for the purpose of this subpart and are not wipedown solvents.

Antifoulant coating means any coating that is applied to the underwater portion of a boat specifically to prevent or reduce the attachment of biological organisms and that is registered with EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, *et seq.*). For the purpose of this subpart, primers used with antifoulant coatings to prepare the surface to accept the antifoulant coating are considered antifoulant coatings.

Assembly adhesive means any chemical material used in the joining of one fiberglass, metal, foam, or wood parts to another to form a temporary or permanently bonded assembly. Assembly adhesives include, but are not limited to, methacrylate adhesives and putties made from polyester or vinylester resin mixed with inert fillers or fibers.

Atomized resin application means a resin application technology in which the resin leaves the application equipment and breaks into droplets or an aerosol as it travels from the application equipment to the surface of the part. Atomized resin application includes, but is not limited to, resin spray guns and resin chopper spray guns.

Boat means any type of vessel, other than a seaplane, that can be used for transportation on the water.

Boat manufacturing facility means a facility that manufactures the hulls or decks of boats from fiberglass or aluminum or assembles boats from premanufactured hulls and decks, or builds molds to make fiberglass hulls or decks. A facility that manufactures only parts of boats (such as hatches, seats, or lockers) or boat trailers, but no boat hulls or decks or molds for fiberglass boat hulls or decks, is not considered a boat manufacturing facility for the purpose of this subpart.

Carpet and fabric adhesive means any chemical material that permanently attaches carpet, fabric, or upholstery to any surface of a boat.

Clear gel coat means gel coats that are clear or translucent so that underlying colors are visible. Clear gel coats are used to manufacture parts for sale. Clear gel coats do not include tooling gel coats used to build or repair molds.

Closed molding means any molding process in which pressure is used to distribute the resin through the reinforcing fabric placed between two mold surfaces to either saturate the fabric or fill the mold cavity. The pressure may be clamping pressure, fluid pressure, atmospheric pressure, or vacuum pressure used either alone or in combination. The mold surfaces may be rigid or flexible. Closed molding includes, but is not limited to, compression molding with sheet molding compound, infusion molding, resin injection molding (RIM), vacuum-assisted resin transfer molding (VARTM), resin transfer molding (RTM), and vacuum-assisted compression molding. Processes in which a closed mold is used only to compact saturated fabric or remove air or excess resin from the fabric (such as in vacuum bagging), are not considered closed molding. Open molding steps, such as application of a gel coat or skin coat layer by conventional open molding prior to a closed molding process, are not closed molding.

Cured resin and gel coat means resin or gel coat that has been polymerized and changed from a liquid to a solid.

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 emission limit, operating limit, or work practice requirement;

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

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

Enclosure means a structure, such as a spray booth, that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Fiberglass boat means a vessel in which either the hull or deck is built from a composite material consisting of a thermosetting resin matrix reinforced with fibers of glass, carbon, aramid, or other material.

Fiberglass hull and deck coatings means coatings applied to the exterior or interior surface of fiberglass boat hulls and decks on the completed boat. Polyester and vinylester resins and gel coats used in building fiberglass parts are not fiberglass hull and deck coatings for the purpose of this subpart.

Filled resin means a resin to which an inert material has been added to change viscosity, density, shrinkage, or other physical properties.

Gel coat means a thermosetting resin surface coating containing styrene (Chemical Abstract Service or CAS No. 100–42–5) or methyl methacrylate (CAS No. 80–62–6), either pigmented or clear, that provides a cosmetic enhancement or improves resistance to degradation from exposure to the elements. Gel coat layers do not contain any reinforcing fibers and gel coats are applied directly to mold surfaces or to a finished laminate.

Hazardous air pollutant or HAP means any air pollutant listed in, or pursuant to section 112(b) of the Clean Air Act.

Hazardous air pollutant content or HAP content means the amount of HAP contained in a regulated material at the time it is applied to the part being manufactured. If no HAP is added to a material as a thinner or diluent, then the HAP content is the same as the HAP content of the material as purchased from the supplier. For resin and gel coat, HAP content does not include any HAP contained in the catalyst added to the resin or gel coat during application to initiate curing.

Hazardous air pollutant data sheet (HDS) means documentation furnished by a material supplier or an outside laboratory to provide the organic HAP content of the material by weight, measured using an EPA Method, manufacturer's formulation data, or an equivalent method. For aluminum coatings, the HDS also documents the solids content by volume, determined from the manufacturer's formulation data. The purpose of the HDS is to help the affected source in showing compliance with the organic HAP content limits contained in this subpart. The HDS must state the maximum total organic HAP concentration, by weight, of the material. It must include any organic HAP concentrations equal to or greater than 0.1 percent by weight for individual organic HAP that are carcinogens, as defined by the Occupational Safety and Health Administration Hazard Communication Standard (29 CFR part 1910), and 1.0 percent by weight for all other individual organic HAP, as formulated. The HDS must also include test conditions if EPA Method 311 is used for determining organic HAP content.

Maximum achievable control technology (MACT) model point value means a number calculated for open molding operations that is a surrogate for emissions and is used to determine if your open molding operations are in compliance with the provisions of this subpart. The units for MACT model point values are kilograms of organic HAP per megagram of resin or gel coat applied.

Manufacturer's certification means documentation furnished by a material supplier that shows the organic HAP content of a material and includes a HDS.

Mold means the cavity or surface into or on which gel coat, resin, and fibers are placed and from which finished fiberglass parts take their form.

Mold sealing and release agents means materials applied to a mold to seal, polish, and lubricate the mold to prevent parts from sticking to the mold. Mold sealers, waxes, and glazing and buffing compounds are considered mold sealing and release agents for the purposes of this subpart.

Mold stripping and cleaning solvents means materials used to remove mold sealing and release agents from a mold before the mold surface is repaired, polished, or lubricated during normal mold maintenance.

Month means a calendar month.

Neat resin means a resin to which no filler has been added.

Nonatomized resin application means any application technology in which the resin is not broken into droplets or an aerosol as it travels from the application equipment to the surface of the part. Nonatomized resin application technology includes, but is not limited to, flowcoaters, chopper flowcoaters, pressure fed resin rollers, resin impregnators, and hand application (for example, paint brush or paint roller).

Open molding resin and gel coat operation means any process in which the reinforcing fibers and resin are placed in the mold and are open to the surrounding air while the reinforcing fibers are saturated with resin. For the purposes of this subpart, open molding includes operations in which a vacuum bag or similar cover is used to compress an uncured laminate to remove air bubbles or excess resin, or to achieve a bond between a core material and a laminate.

Pigmented gel coat means opaque gel coats used to manufacture parts for sale. Pigmented gel coats do not include tooling gel coats used to build or repair molds.

Production resin means any resin used to manufacture parts for sale. Production resins do not include tooling resins used to build or repair molds, or assembly adhesives as defined in this section.

Recycled resin and gel coat application equipment cleaning solvent means cleaning solvents recycled on-site or returned to the supplier or another party to remove resin or gel coat residues so that the solvent can be reused.

Research and development activities means:

(1) Activities conducted at a laboratory to analyze air, soil, water, waste, or product samples for contaminants, environmental impact, or quality control;

(2) Activities conducted to test more efficient production processes or methods for preventing or reducing adverse environmental impacts, provided that the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit, except in a *de minimis* manner; and

(3) Activities conducted at a research or laboratory facility that is operated under the close supervision of technically trained personnel, the primary purpose of which is to conduct research and development into new processes and products and that is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a *de minimis* manner.

Resin means any thermosetting resin with or without pigment containing styrene (CAS No. 100–42–5) or methyl

methacrylate (CAS No. 80–62–6) and used to encapsulate and bind together reinforcement fibers in the construction of fiberglass parts.

Resin and gel coat application equipment cleaning means the process of flushing or removing resins and gel coats from the interior or exterior of equipment that is used to apply resin or gel coat in the manufacture of fiberglass parts.

Resin and gel coat mixing operation means any operation in which resin or gel coat, including the mixing of putties or polyputties, is combined with additives that include, but are not limited to, fillers, promoters, or catalysts.

Roll-out means the process of using rollers, squeegees, or similar tools to compact reinforcing materials saturated with resin to remove trapped air or excess resin.

Skin coat is a layer of resin and fibers applied over the gel coat to protect the gel coat from being deformed by the next laminate layers.

Tooling resin means the resin used to build or repair molds (also known as tools) or prototypes (also known as plugs) from which molds will be made.

Tooling gel coat means the gel coat used to build or repair molds (also known as tools) or prototypes (also known as plugs) from which molds will be made.

Vacuum bagging means any molding technique in which the reinforcing fabric is saturated with resin and then covered with a flexible sheet that is sealed to the edge of the mold and where a vacuum is applied under the sheet to compress the laminate, remove excess resin, or remove trapped air from the laminate during curing. Vacuum bagging does not include processes that meet the definition of closed molding.

Vinylester resin means a thermosetting resin containing esters of acrylic or methacrylic acids and having double-bond and ester linkage sites only at the ends of the resin molecules.

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Wood coatings means coatings applied to wooden parts and surfaces of boats, such as paneling, cabinets, railings, and trim. Wood coatings include, but are not limited to, primers, stains, sealers, varnishes, and enamels. Polyester and vinylester resins or gel coats applied to wooden parts to encapsulate them or bond them to other parts are not wood coatings.

Tables to Subpart VVVV

Table 1 to Subpart VVVV—Compliance Dates for New and Existing Boat Manufacturing Facilities

As specified in § 63.5695, you must comply by the dates in the following table:

If your facility is—	And—	Then you must comply by this date—
1. An existing source	Is a major source on or before August 22, 2001[1].	August 23, 2004.
2. An existng or new area source	Becomes a major source after August 22, 2001[1].	1 year after becoming a major source or August 22, 2002, whichever is later.
3. A new source	Is a major source at startup [1]	Upon startup or August 22, 2001, whichever is later.

[1]Your facility is a major source if it is a stationary source or group of stationary sources located within a contiguous area and under common control that emits or can potentially emit, considering controls, in the aggregate, 9.1 megagrams or more per year of a single hazardous air pollutant or 22.7 megagrams or more per year of a combination of hazardous air pollutants.

Table 2 to Subpart VVVV—Alternative Organic HAP Content Requirements for Open Molding Resin and Gel Coat Operations

As specified in §§ 63.5701(b), 63.5704(b)(2), and 63.5713(a), (b), and (d), you must comply with the requirements in the following table:

For this operation—	And this applicaton method—	You must not exceed this weighted-average organic HAP content (weight percent) requirement—
1. Production resin operations	Atomized (spray)	28 percent.
2. Production resin operations	Nonatomized (nonspray)	35 percent.
3. Pigmented gel coat operations	Any method	33 percent.
4. Clear gel coat operations	Any method	48 percent
5. Tooling resin operations	Atomized (spray)	30 percent.
6. Tooling resin operations	Nonatomized (nonspray)	39 percent.
7. Tooling gel coat operations	Any method	40 percent.

Table 3 to Subpart VVVV—MACT Model Point Value Formulas for Open Molding Operations [1]

As specified in §§ 63.5710(d) and 63.5714(a), you must calculate point values using the formulas in the following table:

For this operation—	And this application method—	Use this formula to calculate the MACT model plant value for each resin and gel coat—
1. Production resin, tooling resin	a. Atomized	$0.014 \times (\text{Resin HAP\%})^{2.425}$
	b. Atomized, plus vacumm bagging with roll-out	$0.01185 \times (\text{Resin HAP\%})^{2.425}$
	c. Atomized, plus vacuum bagging without roll-out	$0.00945 \times (\text{Resin HAP\%})^{2.425}$
	d. Nonatomized	$0.014 \times (\text{Resin HAP\%})^{2.275}$
	e. Nonatomized, plus vaccum bagging with roll-out	$0.0110 \times (\text{Resin HAP\%})^{2.275}$
	f. Nonatomized, plus vacuum bagging without roll-out.	$0.0076 \times (\text{Resin HAP\%})^{2.275}$

For this operation—	And this application method—	Use this formula to calculate the MACT model plant value for each resin and gel coat—
2. Pigmented gel coat, clear gel coat, tooling gel coat	All methods	0.445 × (Gel coat HAP%) [1.675]

[1]Equations calculate MACT model point value in kilograms of organic HAP per megagrams of resin or gel coat applied. The equations for vacuum bagging with roll-out are applicable when a facility rolls out the applied resin and fabric prior to applying the vacuum bagging materials. The equations for vacuum bagging without roll-out are applicable when a facility applies the vacuum bagging materials immediately after resin application without rolling out the resin and fabric. HAP% = organic HAP content as supplied, expressed as a weight-percent value between 0 and 100 percent.

Table 4 to Subpart VVVV—Operating Limits if Using an Add-on Control Device for Open Molding Operations

As specified in §§ 63.5715(a) and 63.5725(f)(5), you must meet the operating limits in the following table:

For the following device—	You must meet the following operating limit—	And you must demonstrate continuous compliance with the operating limit by—
1. Thermal oxidizer	The average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.5725(d).	a. Collecting the combustion temperature data according to § 63.5725(d); b. reducing the data to 3-hour block averages; and c. maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. Other control devices	An operating limit approved by the Administrator according to § 63.8(f).	a. Collecting parameter monitoring as approved by the Administrator according to § 63.8(f); and b. maintaining the parameters within the operating limits approved according to § 63.8(f).
3. Emission capture system that is a PTE according to § 63.5719(b).	a. The direction of the air flow at all times must be into the enclosure; and b. in any 3-hour period, either the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or c. the pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	i. Collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.5725(f)(3) or the pressure drop across the enclosure according to § 63.5725(f)(4); and ii. reducing the data for facial velocity or pressure drop to 3-hour block averages; and iii. maintaining the 3-hour average facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
4. Emission capture system that is not a PTE according to § 63.5719(b).	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.5725(f)(5); and b. the average pressure drop across an opening in each enclosure in any 3-hour period must not fall below the average pressure drop limit established for that capture device according to § 63.5725(f)(5).	i. Collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.5725(f)(1) and (3); ii. reducing the data to 3-hour block averages; iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit; iv. collecting data for the pressure drop across an opening in each enclosure according to § 63.5725(f)(2) and (4); v. reducing the data to 3-hour block averages; and vi. maintaining the 3-hour average pressure drop across the opening for each enclosure at or above the gas volumetric flow rate or duct static pressure limit.

Table 5 to Subpart VVVV—Default Organic HAP Contents of Solvents and Solvent Blends

As specified in § 63.5758(a)(6), when detailed organic HAP content data for solvent blends are not available, you may use the values in the following table:

Solvent/solvent blend	CAS No.	Average organic HAP content, percent by mass	Typical organic HAP, percent by mass
1. Toluene	108–88–3	100	Toluene.
2. Xylene(s)	1330–20–7	100	Xylenes, ethylbenzene.
3. Hexane	110–54–3	50	n-hexane.
4. n-hexane	110–54–3	100	n-hexane.
5. Ethylbenzene	100–41–4	100	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		2	1% xylene, 1% cumene.
8. Aromatic 150		9	Naphthalene.
9. Aromatic naptha	64742–95–6	2	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	10	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	1	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.

Solvent/solvent blend	CAS No.	Average organic HAP content, percent by mass	Typical organic HAP, percent by mass
17. Hydrotreated light distillate	64742–47–8	0.1	Toluene.
18. Stoddard solvent	8052–41–3	1	Xylenes.
19. Super high-flash naphtha	64742–95–6	5	Xylenes.
20. Varol® solvent	8052–49–3	1	0.5% xylenes, 0.5% ethyl benzene.
21. VM & P naphtha	64742–89–8	6	3% toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	8	4% naphthalene, 4% biphenyl.

Table 6 to Subpart VVVV—Default Organic HAP Contents of Petroleum Solvent Groups

As specified in § 63.5758(a)(6), when detailed organic HAP content data for solvent blends are not available, you may use the values in the following table:

Solvent type	Average organic HAP content, percent by mass	Typical organic HAP, percent by mass
Aliphatic (Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naptha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.).	3	1% Xylene, 1% Toluene, and 1% Ethylbenzene.
Aromatic (Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.).	6	4% Xylene, 1% Toluene, and 1% Ethylbenzene.

Table 7 to Subpart VVVV—Applicability and Timing of Notifications

As specified in § 63.5761(a), you must submit notifications according to the following table:

If your facility—	You must submit—	By this date—
1. Is an existing source subject to this subpart	An initial notification containing the information specified in § 63.9(b)(2).	No later than the dates specified in § 63.9(b)(2).
2. Is a new source subject to this subpart	The notifications specified in § 63.9(b) (3) to (5).	No later than the dates specified § 63.9(b)(4) and (5).
3. Qualifies for a compliance extension as specified in § 63.9(c).	A request for a compliance extension as specified in § 63.9(c).	No later than the dates specified in § 63.6(i).
4. Is complying with organic HAP content limits, application equipment requirements; or MACT model point value averaging provisions.	A notification of compliance status as specified in § 63.9(h).	No later than 30 calendar days after the end of the first 12-month averaging period after your facility's compliance date.
5. Is complying by using an add-on control device.	a. notification of intent to conduct a performance test as specified in § 63.9(e).	No later than the date specified in § 63.9(e).
	b. A notification of the date for the continuous monitoring system performance evaluation as specified in § 63.9(g).	With the notification of intent to conduct a performance test.
	c. A notification of compliance status as specified in § 63.9(h).	No later than 60 calendar days after the completion of the add-on control device performance test and continuous monitoring system performance evaluation.

Table 8 to Subpart VVVV—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart VVVV

As specified in § 63.5773, you must comply with the applicable requirements of the General Provisions according to the following table:

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.1(a)	General Applicability	Yes.	
§ 63.1(b)	Initial Applicability Determination	Yes.	
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)		Yes	Area sources are not regulated by subpart VVVV.
§ 63.1(c)(3)		No	[Reserved]
§ 63.1(c)(4)–(5)		Yes.	
§ 63.1(d)		No	[Reserved]
63.1(e)	Applicability of Permit Program	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.5779.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	

Citation	Requirement	Applies to subpart VVVV	Explanation
§63.5(c)		No	[Reserved]
§63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes.	
§63.5(e)	Approval of Construction/Reconstruction	Yes.	
§63.5(f)	Approval of Construction/Reconstruction Based on prior State Review.	Yes.	
§63.6(a)	Compliance with Standards and Maintenance Requirements—Applicability.	Yes.	
§63.6(b)	Compliance Dates for New and Reconstructed Sources.	Yes	§63.695 specifies compliance dates, including the compliance date for new area sources that become major sources after the effective date of the rule.
§63.6(c)	Compliance Dates for Existing Sources	Yes	§63.5695 specifies compliance dates, including the compliance date for existing area sources that become major sources after the effective date of the rule.
§63.6(d)		No	[Reserved]
§63.6(e)(1)–(2)	Operation and Maintenance Requirements.	No	Operating requirements for open molding operations with add-on controls are specified in §63.5725.
§63.6(e)(3)	Startup, Shut Down, and Malfunction Plans.	Yes	Only sources with add-on controls must complete startup, shutdown, and malfunction plans.
§63.6(f)	Compliance with Nonopacity Emission Standards.	Yes.	
§63.6(g)	Use of an Alternative Nonopacity Emission Standard.	Yes.	
§63.6(h)	Compliance with Opacity/Visible Emissions Standards.	No	Subpart VVVV does not specify opacity or visible emission standards.
§63.6(i)	Extension of Compliance with Emission Standards.	Yes.	
§63.6(j)	Exemption from Compliance with Emission Standards.	Yes.	
§63.7(a)(1)	Performance Test Requirements	Yes.	
§63.7(a)(2)	Dates for performance tests	No	§63.5716 specifies performance test dates.
§63.7(a)(3)	Performance testing at other times	Yes.	
§63.7(b)–(h)	Other performance testing requirements	Yes.	
§63.8(a)(1)–(2)	Monitoring Requirements—Applicability	Yes	All of §63.8 applies only to sources with add-on controls. Additional monitoring requirements for sources with add-on controls are found in §63.5725.
§63.8(a)(3)		No	[Reserved]
§63.8(a)(4)		No	Subpart VVVV does not refer directly or indirectly to §63.11.
§63.8(b)(1)	Conduct of Monitoring	Yes.	
§63.8(b)(2)–(3)	Multiple Effluents and Multiple Continuous Monitoring Systems (CMS).	Yes	Applies to sources that use a CMS on the control device stack.
§63.8(c)(1)–(4)	Continuous Monitoring System Operation and Maintenance.	Yes.	
§63.8(c)(5)	Continuous Opacity Monitoring Systems (COMS).	No	Subpart VVVV does not have opacity or visible emission standards.
§63.8(c)(6)–(8)	Continuous Monitoring System Calibration Checks and Out-of-Control Periods.	Yes.	
§63.8(d)	Quality Control Program	Yes.	
§63.8(e)	CMS Performance Evaluation	Yes.	
§63.8(f)(1)–(5)	Use of an Alternative Monitoring Method	Yes.	
§63.8(f)(6)	Alternative to Relative Accuracy Test	Yes	Applies only to sources that use continuous emission monitoring systems (CEMS).
§63.8(g)	Data Reduction	Yes	
§63.9(a)	Notification Requirements—Applicability	Yes.	
§63.9(b)	Initial Notifications	Yes	
§63.9(c)	Request for Compliance Extension	Yes.	
§63.9(d)	Notification That a New Source Is Subject to Special Compliance Requirements.	Yes.	
§63.9(e)	Notification of Performance Test	Yes	Applies only to sources with add-on controls.
§63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart VVVV does not have opacity or visible emission standards.

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.9(g)(1)	Additional CMS Notifications—Date of CMS Performance Evaluation.	Yes	Applies only to sources with add-on controls.
§ 63.9(g)(2)	Use of COMS Data	No	Subpart VVVV does not require the use of COMS.
§ 63.9(g)(3)	Alternative to Relative Accuracy Testing	Yes	Applies only to sources with CEMS.
§ 63.9(h)	Notification of Compliance Status	Yes.	
§ 63.9(i)	Adjustment of Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	§§ 63.567 and 63.5770 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Applies only to sources with add-on controls.
§ 63.10(b)(2)(xii)–(xiv)	General Recordkeeping Requirements	Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes	§ 63.5686 specifies applicability determinations for non-major sources.
§ 63.10(c)	Additional Recordkeeping for Sources with CMS.	Yes	Applies only to sources with add-on controls.
§ 63.10(d)(1)	General Reporting Requirements	Yes	§ 63.5764 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance Test Results	Yes	§ 63.5764 specifies additional requirements for reporting performance test results.
§ 63.10(d)(3)	Opacity or Visible Emissions Observations.	No	Subpart VVVV does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress Reports for Sources with Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to sources with add-on controls.
§ 63.10(e)(1)	Additional CMS Reports—General	Yes	Applies only to sources with add-on controls.
§ 63.10(e)(2)	Reporting Results of CMS Performance Evaluations.	Yes	Applies only to sources with add-on controls.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	Yes	Applies only to sources with add-on controls.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart VVVV does not specify opacity or visible emission standards.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements—Applicability.	No	Facilities subject to subpart VVVV do not use flares as control devices.
§ 63.12	State Authority and Delegations	Yes	§ 63.5776 lists those sections of subpart A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality	Yes.	

[FR Doc. 01–20895 Filed 8–21–01; 8:45 am]

BILLING CODE 6560–50–P

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, Ozone, Volatile organic compounds.

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

Dated: September 14, 2001.

Thomas V. Skinner,

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. 7401–7671q.

Subpart P—Indiana

2. Section 52.770, is amended by adding paragraph (c)(142) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(142) On June 8, 2000 the Indiana Department of Environmental Management submitted a State Implementation Plan (SIP) revision amending certain provisions of the Indiana vehicle inspection and maintenance (I/M) program in operation in Lake, Porter, Clark, and Floyd Counties. Among the most significant changes being made to the program include: the exemption of the current calendar year model vehicle plus the (3) previous model years vehicles from emission testing; the inclusion of language that allows the use of the IM93 alternative vehicle emission test currently being used in the program; language that updates the requirement to test vehicles equipped with second generation on-board diagnostics systems (OBDII); and the elimination of the off-cycle test, which is the emission test currently required when there is a change in possession of motor vehicle titles. The Air Pollution Control Board amended 326 IAC 13–1.1 and repealed 326 IAC 13–1.1–17, thereby putting in place the revisions to the I/M program.

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 13–1.1 adopted December 2, 1998, effective January 22, 1999.

(ii) Other material.

(A) June 8, 2000 letter and enclosures from the Indiana Department of Environmental Management (IDEM) Commissioner to the Regional Administrator of the United States Environmental Protection Agency (USEPA) submitting Indiana's revision to the ozone State Implementation Plan (SIP).

[FR Doc. 01–24200 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7067–9]

RIN 2060–AG91

National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On June 17, 1999, we issued the national emission standards for hazardous air pollutants from oil and natural gas production facilities and the national emission standards for hazardous air pollutants from natural gas transmission and storage facilities (64 FR 32610). On June 29, 2001, we issued technical corrections to clarify intent and correct errors in these national emission standards for hazardous air pollutants (NESHAP) (66 FR 34548). This action corrects an error in the June 29, 2001 technical corrections for the Natural Gas Transmission and Storage Facilities NESHAP. This technical correction does not change the level of health protection or the basic control requirements of the Natural Gas Transmission and Storage Facilities NESHAP, which requires new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impractible, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this error correction without prior proposal and opportunity for comment because the change to the rule is a minor technical correction, is noncontroversial in nature, and does not substantively change the requirements of the natural gas transmission and storage facilities NESHAP. Thus, notice and public procedure are unnessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(5).

EFFECTIVE DATE: September 27, 2001.

ADDRESSEES: Docket No. A–94–04 contains the supporting information used in the development of this rulemaking. The docket is located at the U.S. EPA in room M–1500, Waterside Mall (ground floor), 401 M Street SW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Waste and Chemical Processes Group, Emission Standards Division(MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–3078, facsimile: (919) 541–0246, electronic mail address: *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities that will potentially be affected by this correction are those that store or transport natural gas and are major sources of HAP as defined in section 112 of the Clean Air Act. The regulated categories and entities include:

Category	Examples of regulated entities
Industry	Glycol dehydration units and natural gas transmission and storage facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1270 of the natural gas transmission and storage facilities NESHAP. 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.

World Wide Web (WWW). The text of today's document 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 or promulgated rules *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.

I. Correction

Today's action consists of one error correction to the natural gas transmission and storage facilities NESHAP technical corrections notice that was published on June 29, 2001 (66 FR 34548). This error correction is minor in nature and noncontroversial.

This correction is being made to reinstate a portion of the first sentence in § 63.1270(a) that was mistakenly deleted during the editing process for the June 29, 2001 technical corrections. Reinstatement of this language will make it clear that the natural gas transmission and storage facilities NESHAP only applies to natural gas transmission and storage facilities that are major sources of HAP, and that transmission and storage systems are subject to the rule up to a final end user only when a local distribution company is not present.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This technical correction does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This technical correction also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply. This technical correction 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 technical correction, 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 this rule correction 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 technical correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 17, 1999 **Federal Register** document containing the Oil and Natural Gas Production final rule and Natural Gas Transmission and Storage final rule (64 FR 32610).

This technical correction is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 27, 2001. 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).

List of Subjects for 40 CFR Part 63

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

Dated: September 19, 2001.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

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

PART 63—[AMENDED]

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

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

Subpart HHH—[Amended]

2. Section 63.1270 is amended by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners and operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company), and that are major sources of hazardous air pollutants (HAP) emissions as defined in § 63.1271. * * *

* * * * *

[FR Doc. 01–24210 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301169; FRL–6801–5]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

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. section 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 December 14, 2001. 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 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur.

Dated: October 1, 2001.

William Rice,

Acting Regional Administrator, Region 7.

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 AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for "10–6.040" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.040	Reference	07/30/01	October 15, 2001, 66 FR 52361.	
*	*	*	*	*

* * * * *

[FR Doc. 01–25726 Filed 10–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7083–6]

RIN 2050–AE89

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On July 3, 2001, EPA promulgated amendments to the regulations for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). 66 FR 35087. EPA promulgated these amendments as direct final rules, with an accompanying proposed rule to supplant these rules in the event EPA received any adverse comment on the amendments. 66 FR 35124. Because we received adverse comments on some of the provisions, we are withdrawing the corresponding parts of that direct final rule.

DATES: As of October 15, 2001, EPA withdraws the amendments to § 63.1206(b)(6)(i), § 63.1206(b)(7)(i)(B), § 63.1206(b)(7)(ii)(B), § 63.1206(b)(13)(i), § 63.1206(c)(7)(ii), § 63.1207(c)(2)(i), § 63.1207(f)(1)(ii), and to add the definition of "Preheater tower combustion gas monitoring location" to § 63.1201(a) published at 66 FR 35087 on July 3, 2001.

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

SUPPLEMENTARY INFORMATION: On July 3, 2001, EPA published a direct final rule (66 FR 35087) and a notice of proposed rulemaking (66 FR 35124) promulgating and proposing amendments to provisions dealing largely with rules affecting implementation of the National Emission Standards for Hazardous Waste Combustors (subpart EEE of Part 63). EPA indicated that it was promulgating these amendments as direct final rules because it believed the amendments to be non-controversial. See 66 FR at 35088. However, the Agency further stated that if we received adverse comment by August 17, 2001 on one or more distinct provisions of the direct final rule, we would publish a timely withdrawal of those distinct provisions in the **Federal Register**, and deal with those provisions as proposed rules. We subsequently received adverse comment on four of the provisions: the

amendments to § 63.1201(a) and § 63.1206(b)(13)(i) (alternative hydrocarbon monitoring location for short cement kilns burning hazardous waste at locations other than the "hot" end of the kiln); the amendments to § 63.1206(b)(6)(i), § 63.1206(b)(7)(i)(B), § 63.1206(b)(7)(ii)(B), and § 63.1207(c)(2)(i) (use of destruction and removal efficiency data in lieu of testing); the amendments to § 63.1206(c)(7)(ii) (deletion of baghouse inspection requirements); and amendments to § 63.1207(f)(1)(ii) (feedstream analysis for organic hazardous air pollutants). We will address these comments in the future in a final action based on the proposed rule for these four provisions. We will not institute a second comment period on this action. The nine provisions for which we did not receive adverse comment will become effective on October 16, 2001 as provided in the July 3, 2001 direct final rule.

List of Subjects in 40 CFR Part 63

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

Dated: October 9, 2001.

Christine Todd Whitman,

Administrator.

PART 63—[AMENDED]

§§ 63.1201, 63.1206, and 63.1207 [Amended]

Accordingly, the amendments to § 63.1206(b)(6)(i), § 63.1206(b)(7)(i)(B), § 63.1206(b)(7)(ii)(B), § 63.1206(b)(13)(i), § 63.1206(c)(7)(ii), § 63.1207(c)(2)(i), § 63.1207(f)(1)(ii), and to add the definition of "Preheater tower combustion gas monitoring location" to § 63.1201(a) are withdrawn as of October 15, 2001.

[FR Doc. 01–25865 Filed 10–12–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 061896A]

RIN 0648–AK34

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendments.

SUMMARY: NMFS is making a correction to a final rule published on March 23, 1999.

DATES: Effective on October 15, 2001.

FOR FURTHER INFORMATION CONTACT: Therese A. Conant, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910; (ph. 301–713–1401, fax 301–713–0376, e-mail Therese.Conant@noaa.gov).

SUPPLEMENTARY INFORMATION:

Need for Correction

On March, 23, 1999 (64 FR 14052), NMFS published a final rule which consolidated and reorganized the Endangered Species Act regulations as part of the President's Regulatory Reinvention Initiative. With that publication, NMFS inadvertently added an 'and' between 50 CFR 223.206 (d)(2)(ii)(A)(3) and (4). This addition inappropriately links the conditions of both paragraphs when, in fact, they were separate prior to the publication of the March 23, 1999, final rule.

List of Subjects in 50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Dated: October 9, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR part 223 is corrected by making the following correcting amendments:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 223.206 (d)(2)(ii)(A)(3) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(A) * * *

(3) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing;

* * * * *

[FR Doc. 01–25900 Filed 10–12–01; 8:45 am]

BILLING CODE 3510–22–S

POSTAL SERVICE

39 CFR Part 960

Implementation of the Contract With America Advancement Act

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the rules implementing the Equal Access to Justice Act in Postal Service proceedings to reflect the statutory increase in the amount of the hourly fees payable.

EFFECTIVE DATE: November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Diane M. Mego, (703) 812–1905.

SUPPLEMENTARY INFORMATION: The Contract with America Advancement Act of 1996 (Pub. L. 104–121, 110 Stat. 857 (1996)) increased the maximum amount of attorney fees under the Equal Access to Justice Act from $75 per hour to $125 per hour. This rulemaking amends 39 CFR part 960 to conform with the statutory change. In addition, language specifying the allowable fees for expert witnesses is being deleted.

These are statutorily mandated changes in agency rules of procedure before the Judicial Officer and, therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 960

Administrative practice and procedure, Equal access to justice, Postal Service.

Accordingly, the Postal Service adopts amendments to 39 CFR part 960 as specifically set forth below:

PART 960—[AMENDED]

1. The authority citation for part 960 continues to read as follows:

Authority: 5 U.S.C. 504 (c) (1); 39 U.S.C. 204, 401 (2).

§ 960.6 [Amended]

2. Section 960.6(b) is amended by removing "$75.00 per hour" and adding $125.00 per hour, or such rate as prescribed by 5 U.S.C. 504".

3. Section 960.6(b) is further amended by removing ", which is generally $50.00 per hour".

§ 960.7 [Amended]

4. Section 960.7(a) is amended by removing "$75 per hour" and adding "$125.00 per hour, or such rate as prescribed by 5 U.S.C. 504,".

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–27626 Filed 11–1–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7096–1]

RIN 2060–AC28

Ethylene Oxide Emissions Standards for Sterilization Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: This action finalizes amendments to the emissions standards for sterilization facilities by eliminating maximum achievable control technology (MACT) requirements for chamber exhaust vents. This action reduces safety problems associated with the existing requirements. This action also amends testing and monitoring requirements for sterilization chamber, aeration, and chamber exhaust vents to correct technical problems associated with the existing requirements.

EFFECTIVE DATE: November 2, 2001.

ADDRESSES: Docket No. A–88–03 contains supporting information used in developing the standards for the ethylene oxide commercial sterilization source category. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Markwordt, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0837, facsimile (919) 541–0942, electronic mail address: *markwordt.david@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature, a copy of the rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules, *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.

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

Category	SIC [a]/NAICS [b]	Examples of regulated entities
Industry	3841, 3842 ...	Medical suppliers.
	2834, 5122, 2831, 2833	Pharmaceuticals.
	2099, 5149, 2034, 2035, 2046	Spice manufacturers.
	7399, 7218, 8091	Contract sterilizers.

[a] Standard Industrial Classification Code.
[b] North American Information 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 § 63.2131 of the final rule.

Judicial Review. Under section 307(b) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 2, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to these 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 today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

I. Background

On July 11, 1997, we learned of reports of explosions at several ethylene oxide sterilization facilities. Some of the explosions occurred at facilities affected by the ethylene oxide emissions standards. As a result, we took immediate steps to suspend the rule until December 1998 pending an investigation of the explosions and to notify facility owners.

We completed our investigation in 1998 to determine if the emission control equipment mandated by the emissions standards was in any way associated with the problems at these facilities. We agreed with industry that, in the cases where explosions occurred, the catalytic oxidizer units were overfed with ethylene oxide in concentrations above the safe operations limit due to abnormal activation of the chamber exhaust (backvent). In June 1998, the Ethylene Oxide Sterilization Association (EOSA) recommended "additional time to consider safe and economical control, installation, operation, and maintenance alternatives applicable to aeration and chamber exhaust (backvent) emissions." The EOSA provided a time line of approximately 12 months beyond December 1998 to enable implementation of the appropriate changes to ensure safe operation. We agreed with EOSA's recommendation and further extended the compliance date for chamber exhaust and aeration room vents for all sources affected by the ethylene oxide emissions standards by 1 year, until December 8, 1999. The two affected emission points, the chamber exhaust and aeration room vent, represent approximately 1 and 3 percent of the uncontrolled emissions, respectively.

In June 1999, the EOSA requested elimination of the requirement for chamber exhaust vent controls. In December 1999, we again suspended the compliance dates for chamber exhaust and aeration room vents. A 1-year suspension of control requirements for aeration room vents was based on the fact that many facilities are routing chamber exhaust emissions to the emission control device for aeration room vents. Since control of the aeration room vent by itself does not pose any known safety problems, we did not anticipate any further suspensions of requirements for aeration room vents beyond December 6, 2000. We provided a 2-year suspension of control requirements for chamber exhaust vent emissions based on the anticipated time required to propose and promulgate changes in the **Federal Register**. We committed to reconsidering the original MACT determination for chamber exhaust vents and proposing a course of action in the near future.

The use of existing technology by some sources in the relevant industry category presumes the ability to operate that technology in a proven safe manner. Nonetholess, at the time of promulgation (December 1994), state-of-the-art control technology for chamber exhaust vent emissions apparently involved safety hazards not known at that time. To date, solutions to the safety problems have not been developed, and there is no indication that resolution of the safety issues is forthcoming. Consequently, on March 6, 2001, we proposed eliminating the MACT requirements for chamber exhaust vents (66 FR 13464). We also proposed amendments to testing and monitoring requirements for sterilization chamber, aeration, and chamber exhaust vents.

II. What Are the Final Rule Amendments?

A. Chamber Exhaust Vents

We have removed the requirement to control the ethylene oxide emissions from the chamber exhaust vents. See the March 6, 2001 proposal preamble for the detailed reasons for this change. For all facilities (i.e., both major and area sources), we have removed the 5,300 parts per million per volume (ppmv) concentration limit requirement for chamber exhaust vents.

B. Catalytic Oxidizer Monitoring

We have removed the requirement to operate at the average temperature to demonstrate continuous compliance. We are now requiring facilities to maintain a minimum temperature for catalytic oxidizers based on manufacturer design and perform a work practice. Facilities can do either of the following work practices: periodically replace catalyst, or annually test control device performance and if necessary restore the catalyst.

We have made changes to the monitoring requirements to provide facilities an alternative to continuous catalyst temperature monitoring. Facilities can monitor either temperature or ethylene oxide concentration for catalytic oxidizers. In the final rule, we have added several additional test method to measure ethylene oxide concentration.

III. What Major Changes Have We Made to the Rule Since Proposal?

In response to comments received on the proposed amendments, we made several changes for the final rule. While some of the changes we made were clarifications designed to make our intentions more clear, some of the changes do alter the requirements as proposed. The substantive comments and/or changes and responses made since the proposal are summarized in the following sections. Our complete responses to public comments are contained in a memorandum that can be obtained from docket A–88–03.

A. Elimination of 5,300 ppmv Concentration Requirement

To ensure that the current amount of ethylene oxide being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, we proposed a concentration-based limit on emissions from major source chamber exhaust vents. In the original, existing rule, this requirement currently applies to area sources but not to major sources.

Comments: Commentors questioned "the Agency's reliance on the 5,300 ppmv empty chamber concentration as a suitable limitation when such test conditions have zero connection to the reality of operations in a commercial sterilization facility." The commentor also stated that their research showed "no reliable justification for the 5,300 ppmv MACT and we are convinced from our own experience that this level, however determined, was unfounded at the time the regulation was originally drafted."

One commentor stated that industry does not have knowledge of any proven instrumentation it could employ to comply with the proposed requirement to determine the concentration of ethylene oxide in the sterilization chamber immediately prior to the operation of the chamber exhaust. The commentor stated it is universally known and understood that a safe, reliable and accurate technology capable of providing a determination of the exhaust vent concentration is not available. The commentor also stated that a separate system (suitable for small exhaust, high concentration, for a short time period of 5 minutes or less) would be needed, probably for each chamber. If gas chromatography (GC)-based systems are used, costs are $60,000–$100,000 per chamber, provided some existing system could somehow be made safe, reliable, and accurate. Also,

units for area and process control are not satisfactory because they are set up differently and measure different concentration levels.

Response: As stated previously, the Agency is removing the control requirement for the major source chamber exhaust vent as proposed. The Agency had also proposed a 5,300 ppmv concentration limit on the chamber exhaust vent for larger facilities (i.e., major sources). The 5,300 ppmv concentration limit was required in the original rule for smaller facilities (i.e., area sources with 1 to 10 tons of ethylene oxide use) which were not required to control chamber exhaust vent emissions.

We agree with the commentor that the 5,300 ppmv concentration limit was based on "Agency modeling, not actual operating conditions." We also agree with the commentor that there is no proven instrumentation which could be employed to comply with the proposed requirement to determine the concentration of ethylene oxide in the sterilization chamber immediately prior to the operation of the chamber exhaust. For these reasons, we have reconsidered the proposed and existing concentration limit requirement.

The sterilization chamber vent emissions are currently controlled with add-on control devices; these devices are required to reduce inlet emissions by 99 percent. For small facilities, under the existing rule the MACT floor for new and existing source chamber exhaust vents requires no reduction in emissions from these vents. The purpose of the existing rule's 5,300 ppmv limitation on the small chamber exhaust vents is to ensure that the current amount of ethylene oxide being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent. The 5,300 ppmv requirement maintained the status quo for emissions from the chamber exhaust vent, and did not require the use of any control technologies. In promulgating the existing rule, the Administrator determined that the use of this limit did not constitute measures beyond the MACT floor for these sources (59 FR 10591). The chamber exhaust concentration limit was added to the rule as a precautionary measure; the Agency did not know of any plant operators by-passing main sterilization vent control devices.

Comment: One commentor recommended a 7,500 ppmv limit (25 percent of the lower explosive limit); the limit would be determined based on empty chamber cycle calculations for all cycles. This approach does not require test equipment. The commentor stated that it is common industry practice to analyze the safety of a sterilization cycle by calculating the residual sterilant in an empty sterilizer at the completion of the process. Most sterilization facilities require that the safety analysis be performed on every new sterilization cycle. The intent of the safety analysis is to demonstrate that the concentration of ethylene oxide gas in the sterilizer at the end of processing is below 1 percent (10,000 ppmv). This ensures that during routine processing the sterilizer environment is non-flammable when the door is opened and the exhaust vent is activated. The determination of this empty chamber concentration relies on simple dilution formulas and the ideal gas laws. Using partial pressure data of ethylene oxide in the sterilizer following the initial charge, one can determine concentration through the subsequent evacuation and purging sequences. The commentor stated that sterilization cycles in question are generally validated to meet the requirements of the Food and Drug Administration (FDA).

Another commentor believes the present regulations provide adequate assurance to ensure that ethylene oxide from the sterilization chamber vent continues to be routed through a control device. The EPA specifically defines sterilization chamber vent as "* * * the point (prior to the vacuum pump) through which the evacuation of ethylene oxide from the sterilization chamber occurs following sterilization or fumigation, including any subsequent air washes." The rule also specifically requires that sources using greater than 1 ton per year of ethylene oxide "* * * shall reduce ethylene oxide emissions to the atmosphere by at least 99 percent from each sterilization chamber vent."

Rerouting sterilization chamber vents to exhaust out the uncontrolled chamber exhaust vent would be in direct violation of the present regulation.

Response: After considering the comments and additional information, we decided that the concentration limit approach is not feasible because there is no known way to safely measure concentration. A gas chromatograph is a logical testing approach but it includes a flame source which introduces a safety issue.

Today, we have less concern regarding by-passing the main sterilization control equipment by routing ethylene oxide to the chamber exhaust vent. As stated previously, there were no data suggesting plant operators were by-passing the main control device. Since initial work on the rule in the 1980's, significant regulatory changes have occurred which have affected the sterilization industry. In response to the phase-out of chlorofluorocarbon production, industry switched from a mixture of chlorofluorocarbons and ethylene oxide to pure ethylene oxide for processing. The Occupational Safety and Health Administration (OSHA) tightened workplace ethylene oxide concentration exposure limits, and on October 7, 1996, the FDA revised the Current Good Manufacturing Practice (CGMP) requirements for medical devices and incorporated them into a quality system regulation.

Now that the use of pure ethylene oxide dominates industry practice, there are serious safety issues associated with by-passing the main control device. Venting pure ethylene oxide to the atmosphere could cause an explosion. Additionally, it is probable that venting would result in workplace exposure concentrations which would violate the OSHA limits. Industry is very aware of these safety concerns.

The FDA quality system regulation includes requirements related to the methods used in, and the facilities and controls used for, designing, manufacturing, packaging, labeling, storing, installing, and servicing of medical devices intended for human use. The action was necessary to add preproduction design controls and to achieve consistency with quality system requirements worldwide. The regulation sets forth the framework for device manufacturers to follow and gives them greater flexibility in achieving quality requirements (61 FR 52601).

These requirements apply to contract sterilization and specify quality system requirements including management controls, design controls, material controls, equipment controls, production and process controls, corrective and preventive action, and documentation. For sterilization operations, the objectives of the quality system regulation apply only to the safety and effectiveness of medical devices following sterilization. However, compliance with its requirements may also provide an assurance that processing will be performed in a way which meets concerns regarding vent emissions. For example, in meeting the requirement in the quality system regulation for a definition of specifications for all steps of the process, a sterilizing facility must specify the number of air washes in the ethylene oxide sterilization process. By meeting the requirements for documentation to demonstrate that each process step has been performed as specified, the facility will establish

procedures to document performance of the air washes. The requirements of the quality system are already in place; compliance with the quality system regulation will ensure that specifications for process steps are defined and met.

The Agency believes there are sufficient practical reasons (i.e., safety considerations as well as existing OSHA and FDA regulatory requirements) for eliminating our original presumptive need for the chamber exhaust emission limit. The Agency sees no practical benefit to adding additional requirements to accomplish the same thing. Therefore, because the concentration cannot be measured and there is now little or no value to the requirement, we are not promulgating the chamber exhaust concentration limit for large facilities and are withdrawing the requirement for small facilities.

B. Alternative to Catalyst Replacement Requirement

We proposed a requirement to replace catalytic oxidizer catalyst every 2 years to ensure that the catalyst remains active and in continuous compliance with the control device performance requirement. The proposed replacement of catalyst every 2 years was opposed by commentors because the practice was believed to be wasteful and costly. Some commentors stated that the compliance test should suffice to indicate compliance.

We agreed with the commentors that performance testing is a viable alternative to routine replacement of catalyst in ensuring continuous compliance. Therefore, we have added a test alternative to the rule. If test results show the control efficiency is below the performance standard, the facility will have to restore the catalyst as soon as practicable but no later than 180 days after the performance test.

IV. Summary of Environmental, Energy and Economic Impacts

There are negligible environmental, energy, and economic impacts associated with these amendments. Ethylene oxide emissions from the chamber exhaust vent comprise less than 1 percent of the uncontrolled emissions from the sterilization process.

V. Administrative Requirements

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 this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements of the ethylene oxide national emission standards for hazardous air pollutants (NESHAP) were submitted to and approved by OMB. A copy of the Information Collection Request (ICR) document (OMB control number 2060–0283) may be obtained from Ms. Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

Today's action has little or no impact on the information collection burden estimates made previously. Today's action eliminates requirements for chamber exhaust vents and clarifies testing and monitoring requirements for sterilization and aeration room vents. These changes revise existing requirements and do not impose new additional burdens; consequently, the ICR has not been revised.

C. 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."

These final rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule is mandated by statute and does not impose requirements on States; however, States will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. States will collect permit fees that will be used to offset the resource burden of implementing the rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, the EPA did consult with State and local officials in developing these rule amendments.

D. 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."

These final rule amendments do not have tribal implications. 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. This is because no tribal governments own or operate an ethylene oxide sterilization facility. Thus, Executive

Order 13175 does not apply to these rule amendments.

E. 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, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 as to 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.

Today's final rule amendments contain no 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. These amendments eliminate existing requirements. Thus, today's final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule amendments are not subject to the requirements of section 203 of the UMRA.

Because these final rule amendments do not include a Federal mandate and are estimated to result in expenditures less than $100 million in any 1 year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by these rule amendments, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule amendments on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) 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 final rule amendments on small entities, EPA has concluded that this action will not have a significant impact on a substantial number of small entities. We believe there will be little or no impact on any small entities because these amendments do not impose additional requirements but instead either eliminate or streamline some existing requirements of the ethylene oxide NESHAP. Based on the foregoing, the EPA concludes that these rule amendments will not have a significant impact on a substantial number of small businesses.

Although these final rule amendments will not have a significant impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact on small entities by providing alternatives to compliance and monitoring requirements.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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.

These final rule amendments provide technical corrections and minor technical amendments to the Ethylene Oxide Emissions Standards for Sterilization Facilities (40 CFR part 63, subpart O). These amendments include two technical standards: EPA Method 25A and PS–8. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods and performance specifications. No voluntary consensus standards were identified for PS–8. The search and review results have been documented and are placed in the Docket No. A–88–03 (see **ADDRESSES** section) for these rule amendments.

The search for emissions monitoring procedures identified two voluntary consensus standards, both for EPA Method 25A. The EPA determined that these two standards identified for measuring emissions of hazardous air pollutants or surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, detail, and/or quality assurance and/or quality control requirements. Therefore, we did not use this voluntary consensus standard in this rulemaking.

The two voluntary consensus standards, EN 12619:1999 "Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous

Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method," are impractical alternatives to EPA Method 25A for the purposes of this rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Section 63.365 of the NESHAP lists the EPA test methods and performance standards included in this rulemaking. Under 40 CFR 63.7(f) of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonable 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. These final rule amendments are not subject to Executive Order 13045 because they 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, these rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

I. 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 these 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 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). These amendments will be effective November 2, 2001.

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

This rule is not subject to Executive Order 13211 (66 FR 28355 May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

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

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

For 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 O—[Amended]

2. Section 63.360 is amended:

a. In Table 1 by revising the entry for "63.7(a)(2)";

b. Removing and reserving paragraphs (g)(7) through (10).

The revision reads as follows:

§ 63.360 Applicability.

(a) * * *

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O[a]	Applies to sources using 1 to 10 tons in subpart O[a]	Comment
* * *	Yes	*	* *
63.7(a)(2).			
* * *	*	*	* *

[a] See definition.

* * * * *

3. Section 63.361 is amended by removing the definition for "Parametric monitoring," revising the definition for "Baseline temperature," and adding a definition for "Thermal oxidizer" and "Deviation" in alphabetical order to read as follows:

§ 63.361 Definitions.

* * * * *

Baseline temperature means a minimum temperature at the outlet from the catalyst bed of a catalytic oxidation control device or at the exhaust point from the combustion chamber of a thermal oxidation control device.

* * * * *

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 emission limitation (including any operating limit) or work practice standard;

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

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

* * * * *

Thermal oxidizer means all combustion devices except flares.

4. Section 63.362 is amended by:

a. Revising Table 1 of paragraph (a);

b. Removing and reserving paragraph (e).

The revision reads as follows:

§ 63.362 Standards.

(a) * * *

TABLE 1 OF SECTION 63.362.—STANDARDS FOR ETHYLENE OXIDE COMMERCIAL STERILIZERS AND FUMIGATORS

Existing and new sources	Source type	Sterilization chamber vent	Aeration room vent	Chamber exhaust vent
Source size	<907 kg (<1 ton)	No control required; minimal recordkeeping requirements apply (see § 63.367(c)).		
	≥907 kg and <9,070 kg (≥1 ton and < 10 tons).	99% emission reduction (see § 63.362(c)).	No control	No control.
	≥9,070 kg (≥10 tons)	99% emission reduction (see § 63.362(c)).	1 ppm maximum outlet concentration or 99% emission reduction (see § 63.362(d)).	No control.

* * * * *

(e) [Reserved]

5. Section 63.363 is revised (including the section heading) to read as follows:

§ 63.363 Compliance and performance provisions.

(a)(1) The owner or operator of a source subject to emissions standards in § 63.362 shall conduct an initial performance test using the procedures listed in § 63.7 according to the applicability in Table 1 of § 63.360, the procedures listed in this section, and the test methods listed in § 63.365.

(2) The owner or operator of all sources subject to these emissions standards shall complete the performance test within 180 days after the compliance date for the specific source as determined in § 63.360(g).

(b) The procedures in paragraphs (b)(1) through (3) of this section shall be used to determine initial compliance with the emission limits under § 63.362(c), the sterilization chamber vent standard and to establish operating limits for the control devices:

(1) The owner or operator shall determine the efficiency of control devices used to comply with § 63.362(c) using the test methods and procedures in § 63.365(b).

(2) For facilities with acid-water scrubbers, the owner or operator shall establish as an operating limit either:

(i) The maximum ethylene glycol concentration using the procedures described in § 63.365(e)(1); or

(ii) The maximum liquor tank level using the procedures described in § 63.365(e)(2).

(3) For facilities with catalytic oxidizers or thermal oxidizers, the operating limit consists of the recommended minimum oxidation temperature provided by the oxidation unit manufacturer for an operating limit.

(4) Facilities with catalytic oxidizers shall comply with one of the following work practices:

(i) Once per year after the initial compliance test, conduct a performance test during routine operations, i.e., with product in the chamber using the procedures described in § 63.365(b) or (d) as appropriate. If the percent efficiency is less than 99 percent, restore the catalyst as soon as practicable but no later than 180 days after conducting the performance test; or

(ii) Once per year after the initial compliance test, analyze ethylene oxide

concentration data from § 63.364(e) or a continuous emission monitoring system (CEMS) and restore the catalyst as soon as practicable but no later than 180 days after data analysis; or,

(iii) Every 5 years, beginning 5 years after the initial compliance test (or by December 6, 2002, whichever is later), replace the catalyst bed with new catalyst material.

(c) The procedures in paragraphs (c)(1) through (3) of this section shall be used to determine initial compliance with the emission limits under § 63.362(d), the aeration room vent standard:

(1) The owner or operator shall comply with either paragraph (b)(2) or (3) of this section.

(2) Determine the concentration of ethylene oxide emitted from the aeration room into the atmosphere (after any control device used to comply with § 63.362(d)) using the methods in § 63.365(c)(1); or

(3) Determine the efficiency of the control device used to comply with § 63.362(d) using the test methods and procedures in § 63.365(d)(2).

(d) [Reserved]

(e) For facilities complying with the emissions limits under § 63.362 with a control technology other than acid-water scrubbers or catalytic or thermal oxidizers, the owner or operator of the facility shall provide to the Administrator or delegated authority information describing the design and operation of the air pollution control system, including recommendations for the operating parameters to be monitored to demonstrate continuous compliance. Based on this information, the Administrator will determine the operating parameter(s) to be measured during the performance test. During the performance test required in paragraph (a) of this section, using the methods approved in § 63.365(g), the owner or operator shall determine the site-specific operating limit(s)for the operating parameters approved by the Administrator.

(f) A facility must demonstrate continuous compliance with each operating limit and work practice standard required under this section, except during periods of startup, shutdown, and malfunction, according to the methods specified in § 63.364.

6. Section 63.364 is amended by:

a. Revising paragraph (b) introductory text;

b. Adding a sentence to the end of paragraph (b)(2);

c. Revising paragraph (c) introductory text;

d. Removing and reserving paragraphs (c)(1), (2) and (3);

e. Adding a sentence to the end of paragraph (c)(4);

f. Revising paragraph (d);

g. Revising paragraph (e); and

h. Removing and reserving paragraph (f).

The additions and revisions read as follows:

§ 63.364 Monitoring requirements.

* * * * *

(b) For sterilization facilities complying with § 63.363(b) or (d) through the use of an acid-water scrubber, the owner or operator shall either:

* * * * *

(2) * * * Monitoring is required during a week only if the scrubber unit has been operated.

(c) For sterilization facilities complying with § 63.363(b) or (c) through the use of catalytic oxidation or thermal oxidation, the owner or operator shall either comply with § 63.364(e) or continuously monitor and record the oxidation temperature at the outlet to the catalyst bed or at the exhaust point from the thermal combustion chamber using the temperature monitor described in paragraph (c)(4) of this section. Monitoring is required only when the oxidation unit is operated. From 15-minute or shorter period temperature values, a data acquisition system for the temperature monitor shall compute and record a daily average oxidation temperature. Strip chart data shall be converted to record a daily average oxidation temperature each day any instantaneous temperature recording falls below the minimum temperature.

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) * * * As an alternative, the accuracy temperature monitor may be verified in a calibrated oven (traceable to NIST standards).

(d) For sterilization facilities complying with § 63.363(b) or (c) through the use of a control device other than acid-water scrubbers or catalytic or thermal oxidizers, the owner or operator shall monitor the parameters as approved by the Administrator using the methods and procedures in § 63.365(g).

(e) Measure and record once per hour the ethylene oxide concentration at the outlet to the atmosphere after any control device according to the procedures specified in § 63.365(c)(1). The owner or operator shall compute and record a 24-hour average daily. The owner or operator will install, calibrate, operate, and maintain a monitor consistent with the requirements of performance specification (PS) 8 or 9 in 40 CFR part 60, appendix B, to measure ethylene oxide. The daily calibration requirements of section 7.2 of PS 9 or section 2.3 of PS 8 are required only on days when ethylene oxide emissions are vented to the control device.

(f) [Reserved]

7. Section 63.365 is amended by:

a. Revising paragraph (b)(1) introductory text;

b. Revising paragraph (b)(1)(iv)(B);

c. Removing and reserving paragraph (b)(1)(iv)(C);

d. Removing and reserving paragraph (b)(2);

e. Revising paragraph (c);

f. Revising paragraph (d);

g. Removing and reserving paragraph (f);

h. Revising paragraph (h).

The revisions read as follows:

§ 63.365 Test methods and procedures.

* * * * *

(b) * * *

(1) *First evacuation of the sterilization chamber.* These procedures shall be performed on an empty sterilization chamber, charged with a typical amount of ethylene oxide, for the duration of the first evacuation under normal operating conditions (i.e., sterilization pressure and temperature).

* * * * *

(iv) * * *

(B) Test Method 18 or 25A, 40 CFR part 60, appendix A (hereafter referred to as Method 18 or 25A, respectively), shall be used to measure the concentration of ethylene oxide.

(*1*) Prepare a graph of volumetric flow rate versus time corresponding to the period of the run cycle. Integrate the area under the curve to determine the volume.

(*2*) Calculate the mass of ethylene oxide by using the following equation:

$$W_o = C \times V \times \frac{MW}{SV} \times \frac{1}{10^6}$$

Where:

W_o = Mass of ethylene oxide, g (lb)

C = concentration of ethylene oxide in ppmv

V = volume of gas exiting the control device corrected to standard conditions, L (ft^3)

$1/10^6$ = correction factor $L_{EO}/10^6\ L_{TOTAL\ GAS}$ ($ft^3_{EO}/10^6\ ft^3_{TOTAL\ GAS}$)

(*3*) Calculate the efficiency by the equation in paragraph (b)(1)(v) of this section.

(C) [Reserved]

* * * * *

(2) [Reserved]

* * * * *

(c) *Concentration determination.* The following procedures shall be used to determine the ethylene oxide concentration.

(1) *Parameter monitoring.* For determining the ethylene oxide concentration required in § 63.364(e), follow the procedures in PS 8 or PS 9 in 40 CFR part 60, appendix B. Sources complying with PS 8 are exempt from the relative accuracy procedures in sections 2.4 and 3 of PS–8.

(2) *Initial compliance.* For determining the ethylene oxide concentration required in § 63.363(c)(2), the procedures outlined in Method 18 or Method 25 A (40 CFR part 60, appendix A) shall be used. A Method 18 or Method 25A test consists of three 1-hour runs. If using Method 25A to determine concentration, calibrate and report Method 25A instrument results using ethylene oxide as the calibration gas. The arithmetic average of the ethylene oxide concentration of the three test runs shall determine the overall outlet ethylene oxide concentration from the control device.

(d) *Efficiency determination at the aeration room vent (not manifolded).* The following procedures shall be used to determine the efficiency of a control device used to comply with § 63.362(d), the aeration room vent standard.

(1) Determine the concentration of ethylene oxide at the inlet and outlet of the control device using the procedures in Method 18 or 25A in 40 CFR part 60, appendix A. A test is comprised of three 1-hour runs.

(2) Determine control device efficiency (% Eff) using the following equation:

$$\% \text{ Eff} = \frac{W_i - W_o}{W_i} \times 100$$

Where:

% Eff = percent efficiency
W_i = mass flow rate into the control device
W_O = mass flow rate out of the control device

(3) Repeat the procedures in paragraphs (d)(1) and (2) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

* * * * *

(f) [Reserved]

* * * * *

(h) An owner or operator of a sterilization facility seeking to demonstrate compliance with the requirements of § 63.363 or § 63.364, with a monitoring device or procedure other than a gas chromatograph or a flame ionization analyzer, shall provide to the Administrator information describing the operation of the monitoring device or procedure and the parameter(s) that would demonstrate continuous compliance with each operating limit. The Administrator may request further information and will specify appropriate test methods and procedures.

8. Section 63.366 is amended by revising paragraph (a)(3) to read as follows:

§ 63.366 Reporting requirements.

(a) * * *

(3) Content and submittal dates for deviations and monitoring system performance reports. All deviations and monitoring system performance reports and all summary reports, if required per § 63.10(e)(3)(vii) and (viii), shall be delivered or postmarked within 30 days following the end of each calendar half or quarter as appropriate (see § 63.10(e)(3)(i) through (iv) for applicability). Written reports of deviations from an operating limit shall include all information required in § 63.10(c)(5) through (13), as applicable in Table 1 of § 63.360, and information from any calibration tests in which the monitoring equipment is not in compliance with PS 9 or the method used for temperature calibration. The written report shall also include the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no deviations have occurred or monitoring equipment has not been inoperative, repaired, or adjusted, such information shall be stated in the report.

* * * * *

9. Section 63.367 is revised to read as follows:

§ 63.367 Recordkeeping requirements.

(a) The owner or operator of a source subject to § 63.362 shall comply with the recordkeeping requirements in § 63.10(b) and (c), according to the applicability in Table 1 of § 63.360, and in this section. All records required to be maintained by this subpart or a subpart referenced by this subpart shall be maintained in such a manner that they can be readily accessed and are suitable for inspection. The most recent 2 years of records shall be retained onsite or shall be accessible to an inspector while onsite. The records of the preceding 3 years, where required, may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

(b) The owners or operators of a source using 1 to 10 tons not subject to § 63.362 shall maintain records of ethylene oxide use on a 12-month rolling average basis (until the source changes its operations to become a source subject to § 63.362).

(c) The owners or operators of a source using less than 1 ton shall maintain records of ethylene oxide use on a 12-month rolling average basis (until the source changes its operations to become a source subject to § 63.362).

(d) The owners or operators complying with § 63.363(b) (4) shall maintain records of the compliance test, data analysis, and if catalyst is replaced, proof of replacement.

[FR Doc. 01–27594 Filed 11–1–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301185; FRL–6806–4]

RIN 2070–AB78

Methoxyfenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of methoxyfenozide in or on field corn grain, stover and oil, aspirated grain fractions and soybean forage, hay, oil, and seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on field corn and soybeans. This regulation establishes a maximum permissible level for residues of methoxyfenozide in these food commodities. The tolerances will expire and are revoked on December 31, 2003.

DATES: This regulation is effective November 2, 2001. Objections and requests for hearings, identified by docket control number OPP–301185, must be received by EPA on or before January 2, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301185 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide

Dated: August 21, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–28162 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–15–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–1]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With this action, these plans will be due by March 23, 2002.

DATES: This direct final rule will be effective on December 21, 2001, without further notice, unless the EPA receives adverse comments by December 6, 2001. If we receive any adverse comments on the amendment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the amendment in this rule will not take effect.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

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 (express packages to 4930 Old Page Road, Research Triangle Park, NC 27709), telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (MD–C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. 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 this action will also be available through the WWW. Following signature, a copy of this action will be posted on the 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.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879.	Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

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

part 63, subpart MMM. If you have questions regarding the applicability of the amendment 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 of this 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 January 22, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

We are currently engaged in litigation settlement discussions with a number of pesticide manufacturers that would otherwise be required to file precompliance plans by December 23, 2001. In order to avoid potentially unnecessary filings and possible confusion related to compliance should we agree to make changes to the rule, we believe it is reasonable to grant a short extension of the precompliance reporting deadline to allow time for the settlement negotiations to conclude. This amendment does not change the actual compliance deadline for sources, but merely shortens the advance notice that these sources must provide the Agency. We believe 3 months advance notice is still adequate for purposes of implementing the rule and will not impair our ability to ensure compliance by June 23, 2002.

II. What Amendment Are We Making to the Rule?

Today's action changes the deadline for existing sources submitting precompliance plans under 40 CFR § 63.1368(e). Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With today's action, these plans will be due by March 23, 2002.

III. Why Are We Publishing the Amendment as a Direct Final Rule?

We are granting a short extension of the precompliance reporting deadline in an expeditious manner in order to avoid potentially unnecessary filings and possible confusion related to compliance. We view this amendment as noncontroversial and anticipate no adverse comments. Therefore, we are publishing this amendment in a direct final rule. If we receive an adverse comment on the amended definition, we will withdraw it. To withdraw the amended definition, we will publish a timely notice before the effective date of this amendment indicating that the amended definition is being withdrawn. In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendment in the event that we receive an adverse comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

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 this rule amendment is a not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. 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."

This direct final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. 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 direct final rule amendment does not have tribal implications. It will not have substantial direct effects on tribal governments, or 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 because no tribal governments own or operate PAI production facilities. Thus, Executive Order 13175 does not apply to this rule amendment.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA 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 this rule amendment 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. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment. The EPA has also determined that this direct final rule amendment will not have a significant impact on a substantial number of small entities. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) 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 (4) 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 amendment on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact on small entities" (5 U.S.C. Sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's amendment imposes no additional regulatory requirements on owners or operators of affected sources. We have, therefore, concluded that today's final rule amendment will have no impact on small entities.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus 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 methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not

use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. 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 adopting 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 amendment and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule amendment 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).

J. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

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

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: November 16, 2001.

Christine Todd Whitman,

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 MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1368 is amended by revising the first sentence of paragraph (e) introductory text as follows:

§ 63.1368 Reporting Requirements.

* * * * *

(e) *Precompliance plan.* The Precompliance plan shall be submitted at least 3 months prior to the compliance date of the standard. ***

* * * * *

[FR Doc. 01–29067 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–6]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: On June 23, 1999 (64 FR 33550), EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. On August 19, 20, and 23, 1999, petitions for review of the June 1999 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. This action is in response to issues raised by one of those petitioners—the American Coke and Coal Chemicals Institute (ACCCI). The EPA is taking direct final action to amend the NESHAP for PAI Production by revising the definition of the term "process tank" for clarity. We view this revision to be minor and noncontroversial, and we anticipate no adverse comment.

DATES: This direct final rule will be effective on February 4, 2002 without further notice, unless the EPA receives adverse comments by December 21, 2001, or by January 7, 2002 if a public hearing is requested. See the proposed rule in this **Federal Register** for information on the hearing. If we receive any adverse comments on the amended definition, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the revisions in this notice will not take effect.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available

POSTAL SERVICE

39 CFR Part 960

Implementation of the Contract With America Advancement Act

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the rules implementing the Equal Access to Justice Act in Postal Service proceedings to reflect the statutory increase in the amount of the hourly fees payable.

EFFECTIVE DATE: November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Diane M. Mego, (703) 812–1905.

SUPPLEMENTARY INFORMATION: The Contract with America Advancement Act of 1996 (Pub. L. 104–121, 110 Stat. 857 (1996)) increased the maximum amount of attorney fees under the Equal Access to Justice Act from $75 per hour to $125 per hour. This rulemaking amends 39 CFR part 960 to conform with the statutory change. In addition, language specifying the allowable fees for expert witnesses is being deleted.

These are statutorily mandated changes in agency rules of procedure before the Judicial Officer and, therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 960

Administrative practice and procedure, Equal access to justice, Postal Service.

Accordingly, the Postal Service adopts amendments to 39 CFR part 960 as specifically set forth below:

PART 960—[AMENDED]

1. The authority citation for part 960 continues to read as follows:

Authority: 5 U.S.C. 504 (c) (1); 39 U.S.C. 204, 401 (2).

§ 960.6 [Amended]

2. Section 960.6(b) is amended by removing "$75.00 per hour" and adding $125.00 per hour, or such rate as prescribed by 5 U.S.C. 504".

3. Section 960.6(b) is further amended by removing ", which is generally $50.00 per hour".

§ 960.7 [Amended]

4. Section 960.7(a) is amended by removing "$75 per hour" and adding "$125.00 per hour, or such rate as prescribed by 5 U.S.C. 504,".

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–27626 Filed 11–1–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7096–1]

RIN 2060–AC28

Ethylene Oxide Emissions Standards for Sterilization Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: This action finalizes amendments to the emissions standards for sterilization facilities by eliminating maximum achievable control technology (MACT) requirements for chamber exhaust vents. This action reduces safety problems associated with the existing requirements. This action also amends testing and monitoring requirements for sterilization chamber, aeration, and chamber exhaust vents to correct technical problems associated with the existing requirements.

EFFECTIVE DATE: November 2, 2001.

ADDRESSES: Docket No. A–88–03 contains supporting information used in developing the standards for the ethylene oxide commercial sterilization source category. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Markwordt, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0837, facsimile (919) 541–0942, electronic mail address: *markwordt.david@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature, a copy of the rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules, *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.

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

Category	SIC [a]/NAICS [b]	Examples of regulated entities
Industry	3841, 3842 ...	Medical suppliers.
	2834, 5122, 2831, 2833	Pharmaceuticals.
	2099, 5149, 2034, 2035, 2046	Spice manufacturers.
	7399, 7218, 8091	Contract sterilizers.

[a] Standard Industrial Classification Code.
[b] North American Information 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 § 63.2131 of the final rule.

Judicial Review. Under section 307(b) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 2, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to these 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 today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

I. Background

On July 11, 1997, we learned of reports of explosions at several ethylene oxide sterilization facilities. Some of the explosions occurred at facilities affected by the ethylene oxide emissions standards. As a result, we took immediate steps to suspend the rule until December 1998 pending an investigation of the explosions and to notify facility owners.

We completed our investigation in 1998 to determine if the emission control equipment mandated by the emissions standards was in any way associated with the problems at these facilities. We agreed with industry that, in the cases where explosions occurred, the catalytic oxidizer units were overfed with ethylene oxide in concentrations above the safe operations limit due to abnormal activation of the chamber exhaust (backvent). In June 1998, the Ethylene Oxide Sterilization Association (EOSA) recommended "additional time to consider safe and economical control, installation, operation, and maintenance alternatives applicable to aeration and chamber exhaust (backvent) emissions." The EOSA provided a time line of approximately 12 months beyond December 1998 to enable implementation of the appropriate changes to ensure safe operation. We agreed with EOSA's recommendation and further extended the compliance date for chamber exhaust and aeration room vents for all sources affected by the ethylene oxide emissions standards by 1 year, until December 8, 1999. The two affected emission points, the chamber exhaust and aeration room vent, represent approximately 1 and 3 percent of the uncontrolled emissions, respectively.

In June 1999, the EOSA requested elimination of the requirement for chamber exhaust vent controls. In December 1999, we again suspended the compliance dates for chamber exhaust and aeration room vents. A 1-year suspension of control requirements for aeration room vents was based on the fact that many facilities are routing chamber exhaust emissions to the emission control device for aeration room vents. Since control of the aeration room vent by itself does not pose any known safety problems, we did not anticipate any further suspensions of requirements for aeration room vents beyond December 6, 2000. We provided a 2-year suspension of control requirements for chamber exhaust vent emissions based on the anticipated time required to propose and promulgate changes in the **Federal Register**. We committed to reconsidering the original MACT determination for chamber exhaust vents and proposing a course of action in the near future.

The use of existing technology by some sources in the relevant industry category presumes the ability to operate that technology in a proven safe manner. Nonetheless, at the time of promulgation (December 1994), state-of-the-art control technology for chamber exhaust vent emissions apparently involved safety hazards not known at that time. To date, solutions to the safety problems have not been developed, and there is no indication that resolution of the safety issues is forthcoming. Consequently, on March 6, 2001, we proposed eliminating the MACT requirements for chamber exhaust vents (66 FR 13464). We also proposed amendments to testing and monitoring requirements for sterilization chamber, aeration, and chamber exhaust vents.

II. What Are the Final Rule Amendments?

A. Chamber Exhaust Vents

We have removed the requirement to control the ethylene oxide emissions from the chamber exhaust vents. See the March 6, 2001 proposal preamble for the detailed reasons for this change. For all facilities (i.e., both major and area sources), we have removed the 5,300 parts per million per volume (ppmv) concentration limit requirement for chamber exhaust vents.

B. Catalytic Oxidizer Monitoring

We have removed the requirement to operate at the average temperature to demonstrate continuous compliance. We are now requiring facilities to maintain a minimum temperature for catalytic oxidizers based on manufacturer design and perform a work practice. Facilities can do either of the following work practices: periodically replace catalyst, or annually test control device performance and if necessary restore the catalyst.

We have made changes to the monitoring requirements to provide facilities an alternative to continuous catalyst temperature monitoring. Facilities can monitor either temperature or ethylene oxide concentration for catalytic oxidizers. In the final rule, we have added several additional test method to measure ethylene oxide concentration.

III. What Major Changes Have We Made to the Rule Since Proposal?

In response to comments received on the proposed amendments, we made several changes for the final rule. While some of the changes we made were clarifications designed to make our intentions more clear, some of the changes do alter the requirements as proposed. The substantive comments and/or changes and responses made since the proposal are summarized in the following sections. Our complete responses to public comments are contained in a memorandum that can be obtained from docket A–88–03.

A. Elimination of 5,300 ppmv Concentration Requirement

To ensure that the current amount of ethylene oxide being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, we proposed a concentration-based limit on emissions from major source chamber exhaust vents. In the original, existing rule, this requirement currently applies to area sources but not to major sources.

Comments: Commentors questioned "the Agency's reliance on the 5,300 ppmv empty chamber concentration as a suitable limitation when such test conditions have zero connection to the reality of operations in a commercial sterilization facility." The commentor also stated that their research showed "no reliable justification for the 5,300 ppmv MACT and we are convinced from our own experience that this level, however determined, was unfounded at the time the regulation was originally drafted."

One commentor stated that industry does not have knowledge of any proven instrumentation it could employ to comply with the proposed requirement to determine the concentration of ethylene oxide in the sterilization chamber immediately prior to the operation of the chamber exhaust. The commentor stated it is universally known and understood that a safe, reliable and accurate technology capable of providing a determination of the exhaust vent concentration is not available. The commentor also stated that a separate system (suitable for small exhaust, high concentration, for a short time period of 5 minutes or less) would be needed, probably for each chamber. If gas chromatography (GC)-based systems are used, costs are $60,000–$100,000 per chamber, provided some existing system could somehow be made safe, reliable, and accurate. Also,

units for area and process control are not satisfactory because they are set up differently and measure different concentration levels.

Response: As stated previously, the Agency is removing the control requirement for the major source chamber exhaust vent as proposed. The Agency had also proposed a 5,300 ppmv concentration limit on the chamber exhaust vent for larger facilities (i.e., major sources). The 5,300 ppmv concentration limit was required in the original rule for smaller facilities (i.e., area sources with 1 to 10 tons of ethylene oxide use) which were not required to control chamber exhaust vent emissions.

We agree with the commentor that the 5,300 ppmv concentration limit was based on "Agency modeling, not actual operating conditions." We also agree with the commentor that there is no proven instrumentation which could be employed to comply with the proposed requirement to determine the concentration of ethylene oxide in the sterilization chamber immediately prior to the operation of the chamber exhaust. For these reasons, we have reconsidered the proposed and existing concentration limit requirement.

The sterilization chamber vent emissions are currently controlled with add-on control devices; these devices are required to reduce inlet emissions by 99 percent. For small facilities, under the existing rule the MACT floor for new and existing source chamber exhaust vents requires no reduction in emissions from these vents. The purpose of the existing rule's 5,300 ppmv limitation on the small chamber exhaust vents is to ensure that the current amount of ethylene oxide being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent. The 5,300 ppmv requirement maintained the status quo for emissions from the chamber exhaust vent, and did not require the use of any control technologies. In promulgating the existing rule, the Administrator determined that the use of this limit did not constitute measures beyond the MACT floor for these sources (59 FR 10591). The chamber exhaust concentration limit was added to the rule as a precautionary measure; the Agency did not know of any plant operators by-passing main sterilization vent control devices.

Comment: One commentor recommended a 7,500 ppmv limit (25 percent of the lower explosive limit); the limit would be determined based on empty chamber cycle calculations for all cycles. This approach does not require test equipment. The commentor stated that it is common industry practice to analyze the safety of a sterilization cycle by calculating the residual sterilant in an empty sterilizer at the completion of the process. Most sterilization facilities require that the safety analysis be performed on every new sterilization cycle. The intent of the safety analysis is to demonstrate that the concentration of ethylene oxide gas in the sterilizer at the end of processing is below 1 percent (10,000 ppmv). This ensures that during routine processing the sterilizer environment is non-flammable when the door is opened and the exhaust vent is activated. The determination of this empty chamber concentration relies on simple dilution formulas and the ideal gas laws. Using partial pressure data of ethylene oxide in the sterilizer following the initial charge, one can determine concentration through the subsequent evacuation and purging sequences. The commentor stated that sterilization cycles in question are generally validated to meet the requirements of the Food and Drug Administration (FDA).

Another commentor believes the present regulations provide adequate assurance to ensure that ethylene oxide from the sterilization chamber vent continues to be routed through a control device. The EPA specifically defines sterilization chamber vent as "* * * the point (prior to the vacuum pump) through which the evacuation of ethylene oxide from the sterilization chamber occurs following sterilization or fumigation, including any subsequent air washes." The rule also specifically requires that sources using greater than 1 ton per year of ethylene oxide "* * * shall reduce ethylene oxide emissions to the atmosphere by at least 99 percent from each sterilization chamber vent."

Rerouting sterilization chamber vents to exhaust out the uncontrolled chamber exhaust vent would be in direct violation of the present regulation.

Response: After considering the comments and additional information, we decided that the concentration limit approach is not feasible because there is no known way to safely measure concentration. A gas chromatograph is a logical testing approach but it includes a flame source which introduces a safety issue.

Today, we have less concern regarding by-passing the main sterilization control equipment by routing ethylene oxide to the chamber exhaust vent. As stated previously, there were no data suggesting plant operators were by-passing the main control device. Since initial work on the rule in the 1980's, significant regulatory changes have occurred which have affected the sterilization industry. In response to the phase-out of chlorofluorocarbon production, industry switched from a mixture of chlorofluorocarbons and ethylene oxide to pure ethylene oxide for processing. The Occupational Safety and Health Administration (OSHA) tightened workplace ethylene oxide concentration exposure limits, and on October 7, 1996, the FDA revised the Current Good Manufacturing Practice (CGMP) requirements for medical devices and incorporated them into a quality system regulation.

Now that the use of pure ethylene oxide dominates industry practice, there are serious safety issues associated with by-passing the main control device. Venting pure ethylene oxide to the atmosphere could cause an explosion. Additionally, it is probable that venting would result in workplace exposure concentrations which would violate the OSHA limits. Industry is very aware of these safety concerns.

The FDA quality system regulation includes requirements related to the methods used in, and the facilities and controls used for, designing, manufacturing, packaging, labeling, storing, installing, and servicing of medical devices intended for human use. The action was necessary to add preproduction design controls and to achieve consistency with quality system requirements worldwide. The regulation sets forth the framework for device manufacturers to follow and gives them greater flexibility in achieving quality requirements (61 FR 52601).

These requirements apply to contract sterilization and specify quality system requirements including management controls, design controls, material controls, equipment controls, production and process controls, corrective and preventive action, and documentation. For sterilization operations, the objectives of the quality system regulation apply only to the safety and effectiveness of medical devices following sterilization. However, compliance with its requirements may also provide an assurance that processing will be performed in a way which meets concerns regarding vent emissions. For example, in meeting the requirement in the quality system regulation for a definition of specifications for all steps of the process, a sterilizing facility must specify the number of air washes in the ethylene oxide sterilization process. By meeting the requirements for documentation to demonstrate that each process step has been performed as specified, the facility will establish

procedures to document performance of the air washes. The requirements of the quality system are already in place; compliance with the quality system regulation will ensure that specifications for process steps are defined and met.

The Agency believes there are sufficient practical reasons (i.e., safety considerations as well as existing OSHA and FDA regulatory requirements) for eliminating our original presumptive need for the chamber exhaust emission limit. The Agency sees no practical benefit to adding additional requirements to accomplish the same thing. Therefore, because the concentration cannot be measured and there is now little or no value to the requirement, we are not promulgating the chamber exhaust concentration limit for large facilities and are withdrawing the requirement for small facilities.

B. Alternative to Catalyst Replacement Requirement

We proposed a requirement to replace catalytic oxidizer catalyst every 2 years to ensure that the catalyst remains active and in continuous compliance with the control device performance requirement. The proposed replacement of catalyst every 2 years was opposed by commentors because the practice was believed to be wasteful and costly. Some commentors stated that the compliance test should suffice to indicate compliance.

We agreed with the commentors that performance testing is a viable alternative to routine replacement of catalyst in ensuring continuous compliance. Therefore, we have added a test alternative to the rule. If test results show the control efficiency is below the performance standard, the facility will have to restore the catalyst as soon as practicable but no later than 180 days after the performance test.

IV. Summary of Environmental, Energy and Economic Impacts

There are negligible environmental, energy, and economic impacts associated with these amendments. Ethylene oxide emissions from the chamber exhaust vent comprise less than 1 percent of the uncontrolled emissions from the sterilization process.

V. Administrative Requirements

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 this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements of the ethylene oxide national emission standards for hazardous air pollutants (NESHAP) were submitted to and approved by OMB. A copy of the Information Collection Request (ICR) document (OMB control number 2060–0283) may be obtained from Ms. Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

Today's action has little or no impact on the information collection burden estimates made previously. Today's action eliminates requirements for chamber exhaust vents and clarifies testing and monitoring requirements for sterilization and aeration room vents. These changes revise existing requirements and do not impose new additional burdens; consequently, the ICR has not been revised.

C. 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."

These final rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule is mandated by statute and does not impose requirements on States; however, States will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. States will collect permit fees that will be used to offset the resource burden of implementing the rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, the EPA did consult with State and local officials in developing these rule amendments.

D. 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."

These final rule amendments do not have tribal implications. 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. This is because no tribal governments own or operate an ethylene oxide sterilization facility. Thus, Executive

Order 13175 does not apply to these rule amendments.

E. 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, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 as to 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.

Today's final rule amendments contain no 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. These amendments eliminate existing requirements. Thus, today's final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule amendments are not subject to the requirements of section 203 of the UMRA.

Because these final rule amendments do not include a Federal mandate and are estimated to result in expenditures less than $100 million in any 1 year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by these rule amendments, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule amendments on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) 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 final rule amendments on small entities, EPA has concluded that this action will not have a significant impact on a substantial number of small entities. We believe there will be little or no impact on any small entities because these amendments do not impose additional requirements but instead either eliminate or streamline some existing requirements of the ethylene oxide NESHAP. Based on the foregoing, the EPA concludes that these rule amendments will not have a significant impact on a substantial number of small businesses.

Although these final rule amendments will not have a significant impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact on small entities by providing alternatives to compliance and monitoring requirements.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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.

These final rule amendments provide technical corrections and minor technical amendments to the Ethylene Oxide Emissions Standards for Sterilization Facilities (40 CFR part 63, subpart O). These amendments include two technical standards: EPA Method 25A and PS–8. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods and performance specifications. No voluntary consensus standards were identified for PS–8. The search and review results have been documented and are placed in the Docket No. A–88–03 (see **ADDRESSES** section) for these rule amendments.

The search for emissions monitoring procedures identified two voluntary consensus standards, both for EPA Method 25A. The EPA determined that these two standards identified for measuring emissions of hazardous air pollutants or surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, detail, and/or quality assurance and/or quality control requirements. Therefore, we did not use this voluntary consensus standard in this rulemaking.

The two voluntary consensus standards, EN 12619:1999 "Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous

Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method," are impractical alternatives to EPA Method 25A for the purposes of this rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Section 63.365 of the NESHAP lists the EPA test methods and performance standards included in this rulemaking. Under 40 CFR 63.7(f) of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonable 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. These final rule amendments are not subject to Executive Order 13045 because they 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, these rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

I. 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 these 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 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). These amendments will be effective November 2, 2001.

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

This rule is not subject to Executive Order 13211 (66 FR 28355 May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

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

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

For 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 O—[Amended]

2. Section 63.360 is amended:

a. In Table 1 by revising the entry for "63.7(a)(2)";

b. Removing and reserving paragraphs (g)(7) through (10).

The revision reads as follows:

§ 63.360 Applicability.

(a) * * *

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O [a]	Applies to sources using 1 to 10 tons in subpart O [a]	Comment
* * *	Yes	*	* *
63.7(a)(2).			
* * *	*	*	* *

[a] See definition.

* * * * *

3. Section 63.361 is amended by removing the definition for "Parametric monitoring," revising the definition for "Baseline temperature," and adding a definition for "Thermal oxidizer" and "Deviation" in alphabetical order to read as follows:

§ 63.361 Definitions.

* * * * *

Baseline temperature means a minimum temperature at the outlet from the catalyst bed of a catalytic oxidation control device or at the exhaust point from the combustion chamber of a thermal oxidation control device.

* * * * *

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 emission limitation (including any operating limit) or work practice standard;

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

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

* * * * *

Thermal oxidizer means all combustion devices except flares.

4. Section 63.362 is amended by:

a. Revising Table 1 of paragraph (a);

b. Removing and reserving paragraph (e).

The revision reads as follows:

§ 63.362 Standards.

(a) * * *

TABLE 1 OF SECTION 63.362.—STANDARDS FOR ETHYLENE OXIDE COMMERCIAL STERILIZERS AND FUMIGATORS

Existing and new sources	Source type	Sterilization chamber vent	Aeration room vent	Chamber exhaust vent
Source size	<907 kg (<1 ton)	No control required; minimal recordkeeping requirements apply (see § 63.367(c)).		
	≥907 kg and <9,070 kg (≥1 ton and < 10 tons).	99% emission reduction (see § 63.362(c)).	No control	No control.
	≥9,070 kg (≥10 tons)	99% emission reduction (see § 63.362(c)).	1 ppm maximum outlet concentration or 99% emission reduction (see § 63.362(d)).	No control.

* * * * *

(e) [Reserved]

5. Section 63.363 is revised (including the section heading) to read as follows:

§ 63.363 Compliance and performance provisions.

(a)(1) The owner or operator of a source subject to emissions standards in § 63.362 shall conduct an initial performance test using the procedures listed in § 63.7 according to the applicability in Table 1 of § 63.360, the procedures listed in this section, and the test methods listed in § 63.365.

(2) The owner or operator of all sources subject to these emissions standards shall complete the performance test within 180 days after the compliance date for the specific source as determined in § 63.360(g).

(b) The procedures in paragraphs (b)(1) through (3) of this section shall be used to determine initial compliance with the emission limits under § 63.362(c), the sterilization chamber vent standard and to establish operating limits for the control devices:

(1) The owner or operator shall determine the efficiency of control devices used to comply with § 63.362(c) using the test methods and procedures in § 63.365(b).

(2) For facilities with acid-water scrubbers, the owner or operator shall establish as an operating limit either:

(i) The maximum ethylene glycol concentration using the procedures described in § 63.365(e)(1); or

(ii) The maximum liquor tank level using the procedures described in § 63.365(e)(2).

(3) For facilities with catalytic oxidizers or thermal oxidizers, the operating limit consists of the recommended minimum oxidation temperature provided by the oxidation unit manufacturer for an operating limit.

(4) Facilities with catalytic oxidizers shall comply with one of the following work practices:

(i) Once per year after the initial compliance test, conduct a performance test during routine operations, i.e., with product in the chamber using the procedures described in § 63.365(b) or (d) as appropriate. If the percent efficiency is less than 99 percent, restore the catalyst as soon as practicable but no later than 180 days after conducting the performance test; or

(ii) Once per year after the initial compliance test, analyze ethylene oxide

concentration data from § 63.364(e) or a continuous emission monitoring system (CEMS) and restore the catalyst as soon as practicable but no later than 180 days after data analysis; or,

(iii) Every 5 years, beginning 5 years after the initial compliance test (or by December 6, 2002, whichever is later), replace the catalyst bed with new catalyst material.

(c) The procedures in paragraphs (c)(1) through (3) of this section shall be used to determine initial compliance with the emission limits under § 63.362(d), the aeration room vent standard:

(1) The owner or operator shall comply with either paragraph (b)(2) or (3) of this section.

(2) Determine the concentration of ethylene oxide emitted from the aeration room into the atmosphere (after any control device used to comply with § 63.362(d)) using the methods in § 63.365(c)(1); or

(3) Determine the efficiency of the control device used to comply with § 63.362(d) using the test methods and procedures in § 63.365(d)(2).

(d) [Reserved]

(e) For facilities complying with the emissions limits under § 63.362 with a control technology other than acid-water scrubbers or catalytic or thermal oxidizers, the owner or operator of the facility shall provide to the Administrator or delegated authority information describing the design and operation of the air pollution control system, including recommendations for the operating parameters to be monitored to demonstrate continuous compliance. Based on this information, the Administrator will determine the operating parameter(s) to be measured during the performance test. During the performance test required in paragraph (a) of this section, using the methods approved in § 63.365(g), the owner or operator shall determine the site-specific operating limit(s)for the operating parameters approved by the Administrator.

(f) A facility must demonstrate continuous compliance with each operating limit and work practice standard required under this section, except during periods of startup, shutdown, and malfunction, according to the methods specified in § 63.364.

6. Section 63.364 is amended by:

a. Revising paragraph (b) introductory text;

b. Adding a sentence to the end of paragraph (b)(2);

c. Revising paragraph (c) introductory text;

d. Removing and reserving paragraphs (c)(1), (2) and (3);

e. Adding a sentence to the end of paragraph (c)(4);

f. Revising paragraph (d);

g. Revising paragraph (e); and

h. Removing and reserving paragraph (f).

The additions and revisions read as follows:

§ 63.364 Monitoring requirements.

* * * * *

(b) For sterilization facilities complying with § 63.363(b) or (d) through the use of an acid-water scrubber, the owner or operator shall either:

* * * * *

(2) * * * Monitoring is required during a week only if the scrubber unit has been operated.

(c) For sterilization facilities complying with § 63.363(b) or (c) through the use of catalytic oxidation or thermal oxidation, the owner or operator shall either comply with § 63.364(e) or continuously monitor and record the oxidation temperature at the outlet to the catalyst bed or at the exhaust point from the thermal combustion chamber using the temperature monitor described in paragraph (c)(4) of this section. Monitoring is required only when the oxidation unit is operated. From 15-minute or shorter period temperature values, a data acquisition system for the temperature monitor shall compute and record a daily average oxidation temperature. Strip chart data shall be converted to record a daily average oxidation temperature each day any instantaneous temperature recording falls below the minimum temperature.

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) * * * As an alternative, the accuracy temperature monitor may be verified in a calibrated oven (traceable to NIST standards).

(d) For sterilization facilities complying with § 63.363(b) or (c) through the use of a control device other than acid-water scrubbers or catalytic or thermal oxidizers, the owner or operator shall monitor the parameters as approved by the Administrator using the methods and procedures in § 63.365(g).

(e) Measure and record once per hour the ethylene oxide concentration at the outlet to the atmosphere after any control device according to the procedures specified in § 63.365(c)(1). The owner or operator shall compute and record a 24-hour average daily. The owner or operator will install, calibrate, operate, and maintain a monitor consistent with the requirements of performance specification (PS) 8 or 9 in 40 CFR part 60, appendix B, to measure ethylene oxide. The daily calibration requirements of section 7.2 of PS 9 or section 2.3 of PS 8 are required only on days when ethylene oxide emissions are vented to the control device.

(f) [Reserved]

7. Section 63.365 is amended by:

a. Revising paragraph (b)(1) introductory text;

b. Revising paragraph (b)(1)(iv)(B);

c. Removing and reserving paragraph (b)(1)(iv)(C);

d. Removing and reserving paragraph (b)(2);

e. Revising paragraph (c);

f. Revising paragraph (d);

g. Removing and reserving paragraph (f);

h. Revising paragraph (h).

The revisions read as follows:

§ 63.365 Test methods and procedures.

* * * * *

(b) * * *

(1) *First evacuation of the sterilization chamber.* These procedures shall be performed on an empty sterilization chamber, charged with a typical amount of ethylene oxide, for the duration of the first evacuation under normal operating conditions (i.e., sterilization pressure and temperature).

* * * * *

(iv) * * *

(B) Test Method 18 or 25A, 40 CFR part 60, appendix A (hereafter referred to as Method 18 or 25A, respectively), shall be used to measure the concentration of ethylene oxide.

(*1*) Prepare a graph of volumetric flow rate versus time corresponding to the period of the run cycle. Integrate the area under the curve to determine the volume.

(*2*) Calculate the mass of ethylene oxide by using the following equation:

$$W_o = C \times V \times \frac{MW}{SV} \times \frac{1}{10^6}$$

Where:

W_o = Mass of ethylene oxide, g (lb)

C = concentration of ethylene oxide in ppmv

V = volume of gas exiting the control device corrected to standard conditions, L (ft^3)

$1/10^6$ = correction factor $L_{EO}/10^6\ L_{TOTAL\ GAS}$ ($ft^3_{EO}/10^6\ ft^3_{TOTAL\ GAS}$)

(*3*) Calculate the efficiency by the equation in paragraph (b)(1)(v) of this section.

(C) [Reserved]

* * * * *

(2) [Reserved]

* * * * *

(c) *Concentration determination.* The following procedures shall be used to determine the ethylene oxide concentration.

(1) *Parameter monitoring.* For determining the ethylene oxide concentration required in § 63.364(e), follow the procedures in PS 8 or PS 9 in 40 CFR part 60, appendix B. Sources complying with PS 8 are exempt from the relative accuracy procedures in sections 2.4 and 3 of PS–8.

(2) *Initial compliance.* For determining the ethylene oxide concentration required in § 63.363(c)(2), the procedures outlined in Method 18 or Method 25 A (40 CFR part 60, appendix A) shall be used. A Method 18 or Method 25A test consists of three 1-hour runs. If using Method 25A to determine concentration, calibrate and report Method 25A instrument results using ethylene oxide as the calibration gas. The arithmetic average of the ethylene oxide concentration of the three test runs shall determine the overall outlet ethylene oxide concentration from the control device.

(d) *Efficiency determination at the aeration room vent (not manifolded).* The following procedures shall be used to determine the efficiency of a control device used to comply with § 63.362(d), the aeration room vent standard.

(1) Determine the concentration of ethylene oxide at the inlet and outlet of the control device using the procedures in Method 18 or 25A in 40 CFR part 60, appendix A. A test is comprised of three 1-hour runs.

(2) Determine control device efficiency (% Eff) using the following equation:

$$\% \text{ Eff} = \frac{W_i - W_o}{W_i} \times 100$$

Where:

% Eff = percent efficiency
W_i = mass flow rate into the control device
W_o = mass flow rate out of the control device

(3) Repeat the procedures in paragraphs (d)(1) and (2) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

* * * * *

(f) [Reserved]

* * * * *

(h) An owner or operator of a sterilization facility seeking to demonstrate compliance with the requirements of § 63.363 or § 63.364, with a monitoring device or procedure other than a gas chromatograph or a flame ionization analyzer, shall provide to the Administrator information describing the operation of the monitoring device or procedure and the parameter(s) that would demonstrate continuous compliance with each operating limit. The Administrator may request further information and will specify appropriate test methods and procedures.

8. Section 63.366 is amended by revising paragraph (a)(3) to read as follows:

§ 63.366 Reporting requirements.

(a) * * *

(3) Content and submittal dates for deviations and monitoring system performance reports. All deviations and monitoring system performance reports and all summary reports, if required per § 63.10(e)(3)(vii) and (viii), shall be delivered or postmarked within 30 days following the end of each calendar half or quarter as appropriate (see § 63.10(e)(3)(i) through (iv) for applicability). Written reports of deviations from an operating limit shall include all information required in § 63.10(c)(5) through (13), as applicable in Table 1 of § 63.360, and information from any calibration tests in which the monitoring equipment is not in compliance with PS 9 or the method used for temperature calibration. The written report shall also include the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no deviations have occurred or monitoring equipment has not been inoperative, repaired, or adjusted, such information shall be stated in the report.

* * * * *

9. Section 63.367 is revised to read as follows:

§ 63.367 Recordkeeping requirements.

(a) The owner or operator of a source subject to § 63.362 shall comply with the recordkeeping requirements in § 63.10(b) and (c), according to the applicability in Table 1 of § 63.360, and in this section. All records required to be maintained by this subpart or a subpart referenced by this subpart shall be maintained in such a manner that they can be readily accessed and are suitable for inspection. The most recent 2 years of records shall be retained onsite or shall be accessible to an inspector while onsite. The records of the preceding 3 years, where required, may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

(b) The owners or operators of a source using 1 to 10 tons not subject to § 63.362 shall maintain records of ethylene oxide use on a 12-month rolling average basis (until the source changes its operations to become a source subject to § 63.362).

(c) The owners or operators of a source using less than 1 ton shall maintain records of ethylene oxide use on a 12-month rolling average basis (until the source changes its operations to become a source subject to § 63.362).

(d) The owners or operators complying with § 63.363(b) (4) shall maintain records of the compliance test, data analysis, and if catalyst is replaced, proof of replacement.

[FR Doc. 01–27594 Filed 11–1–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301185; FRL–6806–4]

RIN 2070–AB78

Methoxyfenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of methoxyfenozide in or on field corn grain, stover and oil, aspirated grain fractions and soybean forage, hay, oil, and seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on field corn and soybeans. This regulation establishes a maximum permissible level for residues of methoxyfenozide in these food commodities. The tolerances will expire and are revoked on December 31, 2003.

DATES: This regulation is effective November 2, 2001. Objections and requests for hearings, identified by docket control number OPP–301185, must be received by EPA on or before January 2, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301185 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide

Dated: August 21, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–28162 Filed 11–20–01; 8:45 am]

BILLING CODE 4910–15–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–1]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With this action, these plans will be due by March 23, 2002.

DATES: This direct final rule will be effective on December 21, 2001, without further notice, unless the EPA receives adverse comments by December 6, 2001. If we receive any adverse comments on the amendment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the amendment in this rule will not take effect.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

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 (express packages to 4930 Old Page Road, Research Triangle Park, NC 27709), telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (MD–C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. 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 this action will also be available through the WWW. Following signature, a copy of this action will be posted on the 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.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879.	Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

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

part 63, subpart MMM. If you have questions regarding the applicability of the amendment 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 of this 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 January 22, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

We are currently engaged in litigation settlement discussions with a number of pesticide manufacturers that would otherwise be required to file precompliance plans by December 23, 2001. In order to avoid potentially unnecessary filings and possible confusion related to compliance should we agree to make changes to the rule, we believe it is reasonable to grant a short extension of the precompliance reporting deadline to allow time for the settlement negotiations to conclude. This amendment does not change the actual compliance deadline for sources, but merely shortens the advance notice that these sources must provide the Agency. We believe 3 months advance notice is still adequate for purposes of implementing the rule and will not impair our ability to ensure compliance by June 23, 2002.

II. What Amendment Are We Making to the Rule?

Today's action changes the deadline for existing sources submitting precompliance plans under 40 CFR § 63.1368(e). Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With today's action, these plans will be due by March 23, 2002.

III. Why Are We Publishing the Amendment as a Direct Final Rule?

We are granting a short extension of the precompliance reporting deadline in an expeditious manner in order to avoid potentially unnecessary filings and possible confusion related to compliance. We view this amendment as noncontroversial and anticipate no adverse comments. Therefore, we are publishing this amendment in a direct final rule. If we receive an adverse comment on the amended definition, we will withdraw it. To withdraw the amended definition, we will publish a timely notice before the effective date of this amendment indicating that the amended definition is being withdrawn. In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendment in the event that we receive an adverse comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

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 this rule amendment is a not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. 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."

This direct final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. 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 direct final rule amendment does not have tribal implications. It will not have substantial direct effects on tribal governments, or 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 because no tribal governments own or operate PAI production facilities. Thus, Executive Order 13175 does not apply to this rule amendment.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA 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 this rule amendment 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. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment. The EPA has also determined that this direct final rule amendment will not have a significant impact on a substantial number of small entities. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) 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 (4) 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 amendment on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact on small entities" (5 U.S.C. Sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's amendment imposes no additional regulatory requirements on owners or operators of affected sources. We have, therefore, concluded that today's final rule amendment will have no impact on small entities.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus 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 methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not

use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. 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 adopting 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 amendment and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule amendment 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).

J. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

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

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: November 16, 2001.

Christine Todd Whitman,

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 MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1368 is amended by revising the first sentence of paragraph (e) introductory text as follows:

§ 63.1368 Reporting Requirements.

* * * * *

(e) *Precompliance plan.* The Precompliance plan shall be submitted at least 3 months prior to the compliance date of the standard. ***

* * * * *

[FR Doc. 01–29067 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–6]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: On June 23, 1999 (64 FR 33550), EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. On August 19, 20, and 23, 1999, petitions for review of the June 1999 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. This action is in response to issues raised by one of those petitioners—the American Coke and Coal Chemicals Institute (ACCCI). The EPA is taking direct final action to amend the NESHAP for PAI Production by revising the definition of the term "process tank" for clarity. We view this revision to be minor and noncontroversial, and we anticipate no adverse comment.

DATES: This direct final rule will be effective on February 4, 2002 without further notice, unless the EPA receives adverse comments by December 21, 2001, or by January 7, 2002 if a public hearing is requested. See the proposed rule in this **Federal Register** for information on the hearing. If we receive any adverse comments on the amended definition, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the revisions in this notice will not take effect.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available

to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. 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 this action will also be available through the WWW. Following signature, a copy of this action will be posted on the 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.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

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 part 63, subpart MMM. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this 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 January 22, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

On June 23, 1999, we promulgated NESHAP for Pesticide Active Ingredient Production as subpart MMM in 40 CFR part 63 (64 FR 33550). On August 23, 1999, ACCCI filed a petition for review of the promulgated PAI Production NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *ACCCI* v. *EPA*, No. 99–1339 (consolidated with *American Crop Protection Association* v. *EPA*, No. 99–1332) (D.C. Circuit). On June 15, 2001, ACCCI and EPA signed a settlement agreement which provides that EPA will undertake a rulemaking to revise the definition of the term "process tank." The settlement agreement also provides that EPA will sign final rule amendments no later than 12 months after the signature date of the settlement.

II. What Amendments Are We Making to the Rule?

This direct final rule revises the definition of the term "process tank" in 40 CFR 63.1361 because the current definition is ambiguous and internally inconsistent. The current provision defines "process tank" as:

> * * * a tank that is used to collect material discharged from a feedstock storage vessel or equipment within the process and transfer of this material to other equipment within the process or a product storage vessel. Processing steps occur both upstream and downstream of the tank within a given process unit. Surge control vessels and bottoms receivers that fit these conditions are considered process tanks.

According to the first sentence of the current definition, tanks that transfer material to other equipment within the process or to a product storage vessel are process tanks. At the same time, according to the second sentence of the current definition, processing steps are required upstream and downstream of the tank for it to be a process tank. Some tanks covered by the first sentence would not seem to be covered by the second sentence because the downstream storage vessels would not provide the downstream processing that the second sentence seems to require. To eliminate this inconsistency, we are revising the definition by deleting the reference to processing upstream and downstream of the process tank. In addition, we are revising the definition to clarify that process tanks may include both tanks used for certain unit operations (*e.g.*, reactions and blending), and tanks that are not used for unit operations (*e.g.*, a surge control vessel or bottom receiver). Tanks that are clearly omitted from the definition of a process tank include feedstock and product storage vessels.

III. Why Are We Publishing These Amendments as a Direct Final Rule?

In this direct final rule, we are revising the definition of the term "process tank." The revised definition is consistent with our original intent, and we believe that the revision will not change the number of affected sources, the number of emission points subject to control, or the required level of control. The clearer definition also may preclude the need for certain applicability determinations, thereby reducing the burden on State and local agencies implementing the rule.

We view this amendment as noncontroversial and anticipate no adverse comments. Therefore, we are publishing this amendment in a direct final rule. If we receive an adverse comment on the amended definition, we will withdraw it. To withdraw the amended definition, we will publish a timely notice before the effective date of this rule indicating that the amended definition is being withdrawn. In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amended definition in the event that we receive an adverse

comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

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 this rule amendment is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. 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."

This direct final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. 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 direct final rule amendment does not have tribal implications. It will not have substantial direct effects on tribal governments, or 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 because no tribal governments own or operate PAI production facilities. Thus, Executive Order 13175 does not apply to this rule amendment.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA 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 this rule amendment 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 one year. For

existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment. The EPA has also determined that this direct final rule amendment will not have a significant impact on a substantial number of small entities. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) 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 (4) 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 amendment on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact on small entities" (5 U.S.C. sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's amendment only clarifies the definition of one term; no additional regulatory requirements are imposed on owners or operators of affected sources. We have, therefore, concluded that today's final rule amendment will have no impact on small entities.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus 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 methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. 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 adopting 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 amendment and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule amendment 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).

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

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

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: November 15, 2001.

Christine Todd Whitman,

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 MMM—National Emission Standards for Pesticide

Active Ingredient Production

2. Section 63.1361 is amended by revising the definition for *process tank* to read as follows:

§ 63.1361 Definitions.

* * * * *

Process tank means a tank that is used within a process to collect material discharged from a feedstock storage vessel or equipment within the process before the material is transferred to other equipment within the process or a product storage vessel. In many

process tanks, unit operations such as reactions and blending are conducted. Other process tanks, such as surge control vessels and bottom receivers, however, may not involve unit operations.

* * * * *

[FR Doc. 01–29098 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[VA–T5–2001–01a; FRL–7106–3]

Clean Air Act Full Approval of Operating Permit Program; Virginia; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule fully approving the operating permit program of the Commonwealth of Virginia. In the direct final rule published on October 10, 2001 (66 FR 51581), we stated that if we received adverse comment by November 9, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comments received in a subsequent final action based upon the proposed action also published on October 10, 2001 (66 FR 51620). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of November 21, 2001.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at campbell.dave@.epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 13, 2001.

James W. Newsom,

Regional Administrator, Region III.

Accordingly, the addition of 40 CFR part 70, Appendix A, "Virginia", paragraph (b) is withdrawn as of November 21, 2001.

[FR Doc. 01–29102 Filed 11–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301190; FRL–6809–3]

RIN 2070–AB78

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises a time-limited tolerance for combined residues of azoxystrobin in or on the crop group Brassica leafy vegetables by limiting the listing to Head and Stem (Brassica) subgroup (subgroup 5A) and raising the residue level from 25 parts per million (ppm) to 30 ppm. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cabbage. This regulation establishes a maximum permissible level for residues of azoxystrobin in this food commodity. The tolerance will expire and is revoked on December 31, 2003.

DATES: This regulation is effective November 21, 2001. Objections and requests for hearings, identified by docket control number OPP–301190, must be received by EPA on or before January 22, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301190 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9364; and e-mail address: pemberton.libby@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 categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301190. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

2. Section 62.1500 is amended by adding paragraph (b)(2) to read as follows:

§ 62.1500 Identification of plan.

* * * * *

(b) * * *

(2) Revisions to Plan for Implementing the Municipal Waste Combustor Guidelines and New Source Performance Standards, submitted by the Connecticut Department of Environmental Protection on October 15, 2001 and including Connecticut DEP's revised regulation 22a–174–38. Certain provisions of the revised regulation 22a–174–38 submitted with the MWC Plan are stricken from the regulatory text. The stricken provisions include standards for MWC units constructed after September 20, 1994, more stringent mercury emission standards, and shutdown provisions for mass burn refractory MWC units.

* * * * *

[FR Doc. 01–30098 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7114–6]

RIN 2050–AE79

NESHAP: Emergency Extension of the Compliance Date for Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to extend for one year the compliance date for regulations for incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste, promulgated on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). We are taking this action in response to the Court's opinion in *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d 855, 872 (D.C. Cir. 2001) issued on July 24, 2001, where the Court vacated the emission standards known as the hazardous waste combustor "floors" and remanded for further proceedings. 255 F.3d at 871. The rules are still in effect, however, because the Court has issued an order (at the request of the parties to the proceeding) which stays issuance of the mandate and vacature does not occur until the Courts issue a mandate. These existing regulations require sources to take actions based on the current compliance date, September 30, 2002. Deadlines for some of these actions are imminent. Given that some delay in compliance will be necessitated as a result of the uncertainty created by the Court's opinion, and that action is needed now because of imminent deadlines which are keyed to the compliance date, it is not appropriate to require sources to comply with the current regulatory schedule. Consequently, EPA is extending the compliance date for one year.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information, contact Rhonda Minnick at 703–308–8771, minnick.rhonda@epa.gov, or write her at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Part One: Overview and Background for This Final Rule

I. Regulatory Information

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because a change in the compliance date is necessitated by the Court's opinion. There are imminent deadlines which are keyed to the existing compliance date, yet affected sources presently lack information to make necessary compliance decisions. Some immediate change of the compliance date is needed. Thus, notice and public procedure are impracticable. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). EPA also finds that good cause exists under U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**.

II. What Is the Purpose of This Final Rule?

Today's action extends for one year the compliance date for the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). We are taking this action in response to the Court's opinion in *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d 855, 872 (D.C. Cir. 2001) issued on July 24, 2001, where the Court vacated the emission standards known as the hazardous waste combustor "floors" and remanded for further proceedings. 255 F.3d at 871. "Vacature", however, only actually takes effect when the Court issues an order called a mandate. In this case, the Court has stayed issuance of the mandate (until February 14, 2002) in response to a joint motion from all parties to the case requesting such action. The rules thus are still in effect. These existing regulations require sources to take actions based on the current compliance date, September 30, 2002. Deadlines for some of these actions are imminent. Given that some delay in compliance will be necessitated as a result of the uncertainty created by the Court's opinion, and that action is needed now because of imminent deadlines which are keyed to the compliance date, it is not appropriate to require sources to comply with the current regulatory schedule. Consequently, EPA is extending the compliance date for one year.

III. What Is the Phase I Rule?

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

Section 112(d) of the Clean Air Act (CAA) requires emissions standards for hazardous air pollutants to be based on

the performance of the Maximum Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's action, we refer to these three categories collectively as hazardous waste combustors (HWC).

Additionally, the Phase I HWC MACT rule satisfies our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. 64 FR at 52833, 52839–41. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

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

IV. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the HWC MACT rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 "Fast Track" final rule (63 FR 33783). Additionally, specific to the HWC MACT rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the HWC MACT rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 "Fast Track" final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association* v. *EPA,* 217 F. 3d 861 (D.C. Cir. No. 99–1236). The Court held that EPA had the legal authority to promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending to comply with the MACT emission standards. However, the Court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the Court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the Court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of § 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in § 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The Court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the HWC MACT rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the HWC MACT rule from the *Code of Federal Regulations* (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

On July 3, 2001, we published a direct final rule (66 FR 35087) and a notice of proposed rulemaking (66 FR 35124) promulgating and proposing thirteen amendments to several compliance, testing, and monitoring provisions of the HWC MACT rule. We promulgated these amendments as direct final rules, with an accompanying proposed rule to supplant these rules in the event we received any adverse comment on the amendments. We subsequently received adverse comment on four of the amendments. On October 15, 2001, we published a withdrawal notice (66 FR 52361) removing those parts of the direct final rule that received adverse comment. The nine amendments for which we did not receive adverse comment became effective on October 16, 2001.

On July 3, 2001, we also issued a separate proposed rule soliciting comment on twenty amendments to several compliance, testing, and monitoring provisions of the HWC MACT rule (66 FR 35126). We will address comments to the proposed rule in the future in a final action.

On July 24, 2001, the D.C. Circuit Court issued an opinion vacating the HWC MACT emission standards known as the "floors" and remanded for further proceedings. See *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 872 (D.C. Cir. 2001). The Court also invited any party to file a motion asking that issuance of the mandate be stayed:

> Because this decision leaves EPA without standards regulating HWC emissions, EPA (or any of the parties to this proceeding) may file a motion to delay issuance of the mandate to request either that the current standards remain in place or that EPA be allowed reasonable time to develop interim standards.

255 F.3d at 872.

Part Two: Rationale for Today's Action

I. Why Is a One-Year Extension of the Compliance Date Needed?

In response to the Court's opinion that the Phase I HWC MACT rule be vacated, the Agency and litigants are investigating options to retain some form of the current rules, or issuing some type of interim revised rules. Notwithstanding those efforts, however, and until the Court issues a mandate putting the opinion into force, sources must continue to comply with the rule. The compliance date for the rule is September 30, 2002, three years after the promulgation date.

To meet that compliance date, sources must take steps to comply with the rule prior to that date, and regulatory officials must respond to many of those actions. For example, sources must have submitted by September 30, 2001 requests to extend the compliance date because of inability to meet the emission standards by that date for reasons beyond their control. Regulatory officials should respond to those requests within 30 days of receipt of a complete application. See §§ 63.1206(b)(4), 63.6(i), and 63.1213. In addition, sources must submit the performance test plan to permit officials for review and approval by March 30, 2002, one year prior to the deadline for conducting the initial comprehensive performance test. See § 63.1206(c) and (e). Most sources were planning to submit their test plan and conduct the test in advance of the deadline to facilitate review and approval of the plan and ensure availability of stack testing personnel.

Given the uncertainty created by the opinion as to what standards will ultimately be in place and when sources will have to comply, it is appropriate to delay the compliance date.[1] Quite

[1] If the Agency were not to promulgate an interim rule prior to the Court's issuance of a mandate

simply, sources are (legitimately) unwilling to make the substantial commitments in time, effort, and capital to comply with standards when they no longer know what those standards will be. We believe a one-year delay of the compliance date is warranted. Many sources reasonably stopped most efforts to comply with the rule when the Court issued its opinion on July 24, 2001 because the rule's status was so uncertain. Further, although the Agency plans to promulgate interim rules prior to the Court's issuance of the vacature mandate, the interim rules will not be promulgated until approximately February 14, 2002. That hiatus would justify a six month delay in the compliance date, but the requirements of an interim rule will differ from the current rule to address concerns of litigants and the Court. Thus, sources may need additional time to address such differences. Consequently, we believe a one-year delay in the compliance date is within the range of time extensions that are appropriate.

Should EPA promulgate replacement rules, those rules would, of course, have their own compliance dates (to be determined as part of that rulemaking). Our action today deals only with the status of the existing rule, which date clearly needs to change as a result of the *Cement Kiln Recycling Coalition* opinion.

To implement the one-year delay in the compliance date, we are revising dates in several regulatory provisions. We are revising the compliance date provided by § 63.1206(a)(1) from September 30, 2002 to September 30, 2003. In addition, we are making conforming revisions to several paragraphs that establish deadlines based on the compliance date.

II. Why Is This Rule Issued Without Notice and Opportunity for Public Comment?

EPA finds that there is good cause to issue this rule without prior notice and opportunity for comment (although EPA notes that all of the litigants in the *Cement Kiln Recycling Coalition* proceedings have had actual notice of this action as a result of the on-going discussions following issuance of that opinion, and have had the opportunity to present their views to the appropriate EPA officials). First, as explained above, source owners and operators presently lack the information to make necessary compliance decisions: they do not know what the standards will be, or if there will be any national standards at all. The only thing that is clear is that the current rules, as a result of the Court's opinion and vacature remedy, will require some alteration. Yet there are imminent deadlines (September, 2001 and March, 2002) which are keyed to the September, 2002 compliance date. Some immediate change of the compliance date is thus needed. Second, EPA regards a change in the compliance date as necessitated by the Court's opinion in any case, and thus that this action is essentially non-discretionary. For all of these reasons, EPA finds that there is good cause to issue this rule without notice and opportunity for comment pursuant to 5 U.S.C. section 553(b)(B) (which applies to CAA rulemakings, see section 307(d)(1), final sentence), as well as good cause for this rule to take effect immediately pursuant to 5 U.S.C. section 553(d).

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866: Regulatory Planning and Review

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

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, the Agency has determined that this rule is not a "significant regulatory action" and is therefore not subject to OMB review.

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

A. Why Is This Final Rule Necessary?

See Part Two, Section I of this Preamble.

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, "to the extent permitted by law, and where applicable." The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s). The consideration of non-regulatory alternatives is not applicable to today's final rule.

C. What Regulatory Options Were Considered?

Alternative regulatory options are not applicable to this action.

II. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC–NAICS code(s) the firm is primarily classified in; (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

vacating the rule, today's action to delay the compliance date for one year becomes moot. This is because vacature of the emission standards would as a practical matter vacate the compliance date for those standards.

operated and is not dominant in its field.

Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Part Two, Section II), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

III. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks'

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, the Agency does not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

IV. Executive Order 12898: Environmental Justice

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

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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 single year. The final rule may result in modified annualized incremental costs from those presented in the Assessment[2], due primarily to baseline adjustments over the one year extension period. However, no significant cost adjustments are anticipated. Because the Agency has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see Part Two, Section II of this action), it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

VI. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this rule.

VII. Executive Order 13175: Consultation and Coordination with 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."

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

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 the Order. Today's rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

VIII Executive Order 13211: Energy Impact Analysis

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

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

IX. 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.*). Because there are no paperwork requirements as part of this final rule, we are not required to prepare an Information Collection Request in support of today's action.

X. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking 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.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing Agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to public interest (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding. We have established an effective date of December 6, 2001.

EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: November 29, 2001.

Christine Todd Whitman,

Administrator.

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

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

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

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

2. Section 63.1206 is amended by:

a. Revising paragraphs (a)(1), (a)(2)(ii), and (a)(4).

b. Revising paragraphs (b)(6)(i), (b)(7)(i)(B), and (b)(7)(ii)(B).

The revisions read as follows:

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

(a) * * * (1) *Compliance date for existing sources.* You must comply with the standards of this subpart no later than the compliance date, September 30, 2003, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(2) * * *

(ii) For a standard in this subpart that is more stringent than the standard proposed on April 19, 1996, you may achieve compliance no later than September 30, 2003 if you comply with the standard proposed on April 19, 1996 after September 30, 1999. This exception does not apply, however, to new or reconstructed area source hazardous waste combustors that become major sources after September 30, 1999. As provided by § 63.6(b)(7), such sources must comply with this subpart at startup.

(4) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to September 30, 2003, your compliance date is the date you postmark the Notification of Compliance under § 63.1207(j)(1).

(b) * * *

(6) * * *

(i) If a DRE test performed after March 30, 1999 is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during those DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is a test that was used to support successful issuance or reissuance of an operating permit under part 270 of this chapter.

* * * * *

(7) * * *

(i) * * *

(B) You may use DRE testing performed after March 30, 1999 for purposes of issuance or reissuance of a RCRA permit under part 270 of this chapter to document conformance with the DRE standard if you have not modified the design or operation of the source since the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

(ii) * * *

(B) You may use DRE testing performed after March 30, 1999 for purposes of issuance or reissuance of a RCRA permit under part 270 of this chapter to document conformance with

the DRE standard in lieu of DRE testing during the initial comprehensive performance test if you have not modified the design or operation of the source since the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

* * * * *

3. Section 63.1207 is amended by:

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

b. Revising paragraph (l) introductory text by designating the text after the heading as (l)(1) and revising newly designated paragraph (l)(1).

The revision read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Initiated after March 30, 1999;

* * * * *

(l) Failure of performance text—(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2003 (or a later compliance date approved under § 63.6(i)).

* * * * *

[FR Doc. 01–30267 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–002; FRL–7113–6]

Clean Air Act Full Approval of Operating Permits Program; State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating full approval of the Operating Permit Program submitted by the Texas Natural Resource Conservation Commission (TNRCC or Commission) based on the revisions submitted on June 12, 1998, and June 1, 2001, which satisfactorily address the program deficiencies identified in EPA's June 7, 1995, and June 25, 1996, Interim Approval (IA) Rulemakings. *See* 60 FR 30037 and 61 FR 32693. The TNRCC revised its program to satisfy the conditions for full approval, and EPA proposed full approval in the **Federal Register** on October 11, 2001 (66 FR 51895). This notice only takes action on issues related to correcting interim approval issues. We will address other issues at a later date as described in sections V.C and V.D of this document.

EFFECTIVE DATE: This rule is effective on November 30, 2001.

ADDRESSES: Copies of documents relevant to this action are available inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two days in advance.

Environmental Protection Agency, Region 6, Air Permitting Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permitting Section (6PD-R), EPA, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212 or e-mail at *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" means EPA.

Table of Contents

I. What is the Operating Permit Program?
II. What Is Being Addressed in This Document?
III. What Is Our Response to Comments?
IV. Did Texas Submit Other Title V Program Revisions?
V. What is Involved in This Final Action?
VI. What is the Effective Date of EPA's Full Approval of the Texas Title V Program?
VII. Administrative Requirements

I. What Is the Operating Permit Program?

Title V of the Clean Air Act (the "Act") Amendments of 1990 required all States to develop Operating Permit Programs that meet certain Federal criteria. In implementing the title V Operating Permit Programs, permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the Act. The focus of the title V Operating Permit Program is to facilitate compliance and improve enforcement by issuing each source a permit that consolidates all of the applicable requirements of the Act into a federally enforceable document. This consolidation of all applicable requirements enables the source, the public, and the permitting authority to readily determine which of the Act's requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution as defined by title V and certain other sources specified in the Act or in EPA's implementing regulations. This includes all sources regulated under the acid rain program, regardless of size, which must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (tpy) or more of volatile organic compounds (VOC), carbon monoxide (CO), lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM–10); those that emit 10 tpy of any single hazardous air pollutant (HAP) specifically listed under the Act; or those that emit 25 tpy or more of a combination of HAP. In areas that are not meeting the National Ambient Air Quality Standards for ozone, CO, or PM–10, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tpy or more of VOC or NO_X.

II. What Is Being Addressed in This Document?

Where a title V Operating Permit Program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, we granted IA contingent on the State revising its program to correct the deficiencies. Because Texas's Operating Permit Program substantially, but not fully, met the requirements of part 70, we granted a source category-limited IA to the program in a rulemaking published on June 25, 1996 (61 FR 32693). The IA notice stipulated numerous conditions that had to be met in order for the State's program to receive full approval. Texas submitted revisions to its interim approved Operating Permit Program dated June 12, 1998, and June 1, 2001. Texas also submitted supplementary information to EPA on August 22, 2001, August 23, 2001, and September 20, 2001. On November 5, 2001, EPA received a Statement by the Attorney General of Texas stating that the laws of Texas provide adequate authority to carry out all aspects of the program.

On October 11, 2001 (66 FR 51895), we proposed full approval of Texas's title V Operating Permits Program based on our determination that Texas had corrected the IA deficiencies identified in our June 7, 1995 and June 25, 1996 actions. On November 13, 2001, we received comments on our proposal. Our response to the comments are in section III of this action.

Federal Register

Monday,
December 17, 2001

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7118–7]

RIN 2060–AE44

National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants

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 phosphoric acid manufacturing plants and the NESHAP for phosphate fertilizers production plants which were promulgated on June 10, 1999 under authority of section 112 of the Clean Air Act (CAA). The NESHAP apply to owners and operators of phosphoric acid and phosphate fertilizers production facilities that are major sources of hazardous air pollutants (HAP). The EPA is amending specific provisions in the NESHAP to resolve issues and questions raised after promulgation of the final rules. The amendments do not significantly change EPA's original projections for the environmental benefits, compliance costs, and burden on industry, and do not affect the number of affected facilities.

DATES: The direct final rule will be effective on February 15, 2002 without further notice, unless significant adverse comments are received by January 16, 2002.

If significant material adverse comments are received by January 16, 2002, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposed rule. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on February 15, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–94–02, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–94–02, Room M–1500, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests a separate copy of the comments also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ms. Tanya Medley, Minerals and Inorganic Chemicals Group, Emission Standards Division (MC–C504–05), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541–5422, facsimile number (919) 541–5600, electronic mail (e-mail) address: medley.tanya@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. We are publishing this 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 in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. 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.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this direct final rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–94–02.

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.

Regulated Entities. Today's action applies to process components at new and existing phosphoric acid manufacturing plants and phosphate fertilizers production plants. Regulated categories and entities include:

Source category	SIC	NAICS	Examples of regulated entities
Industrial	2874	325314	Phosphoric acid manufacturing facilities (wet process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, phosphate rock calciner, purified phosphoric acid process line).
Industrial	2874	325314	Phosphate fertilizers production (diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, granular triple superphosphate storage building).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria of the rules. 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.

Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this 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 February 15, 2002. 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 this direct

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. Background
II. Amendments Specific to Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
A. Standards for Existing Sources
B. Standards for New Sources
C. Monitoring Requirements
III. Amendments to Both Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
A. Applicability
B. Monitoring Requirements
C. Applicability of General Provisions
IV. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background

The EPA, under 40 CFR part 63, subparts AA and BB, promulgated NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants. The NESHAP established standards to control HAP emissions from facilities producing phosphoric acid and phosphate fertilizers. The standards were promulgated on June 10, 1999 (64 FR 31358).

On August 4, 1999, The Fertilizer Institute filed for judicial review of the NESHAP, as provided for in CAA section 307(b), with respect to certain provisions regarding emissions standards for phosphate rock calciners, monitoring requirements in general, and applicability of the general provisions.

II. Amendments Specific to Subpart AA—National Emissions Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

The EPA is amending 40 CFR part 63, subpart AA, to correct errors, to revise the emissions limit for phosphate rock calciners, to clarify certain monitoring requirements, and to clarify applicability of certain parts of the general provisions.

A. Standards for Existing Sources

The EPA promulgated standards for phosphate rock calciners based on performance of the floor technology which was identical wet scrubbing technology installed on six identical calciners at one facility, plus data from a calciner with wet scrubbers at a second facility. The promulgated standard under 40 CFR 63.602 for existing calciners of 0.1380 grams per dry standard cubic meter (g/dscm)(0.060 grains per dry standard cubic foot (gr/dscf)) was based on emissions data for the floor technology which was available to EPA at that time. Subsequent to the petition, additional emissions and operating data from compliance tests of those same scrubbers over a 7-year period were submitted to EPA. The data covered a range that exceeded the promulgated standards. Therefore, upon review of the operating and emission data from the same scrubbers upon which the promulgated standards were based, the EPA is changing the emission standard under 40 CFR 63.602 for existing calciners to 0.1810 g/dscm (0.080 gr/dscf).

B. Standards for New Sources

The standards for new phosphate rock dryers in 40 CFR 63.603(c) are being revised to correct an error in the units of the standards. The promulgated rule included units of kilogram/metric ton per megagram of phosphate rock feed. The standards are being corrected to units of kilogram/megagram of phosphate rock feed.

C. Monitoring Requirements

The promulgated monitoring requirements under 40 CFR 63.605 require the owner or operator of each new or existing phosphate rock dryer or phosphate rock calciner to install a system to permanently record the mass flow of feed material to the process. Due to process variations and available measurement techniques, it is easier to accurately measure the rock dryer and calciner outputs than to measure the input. Therefore, the EPA is revising 40 CFR 63.605 to specify that the phosphate rock dryer and phosphate rock calciner output rates be monitored and recorded. That change does not affect the stringency of the standards for those sources. Since the standards for rock dryers under 40 CFR 63.602 and 63.603 are in the format of kilogram/megagram or metric ton (pounds/ton) of rock feed, the owner/operator of the source will either need to measure the feed rate and production rate during compliance tests, or measure the product rate and the moisture contents of the feed and output product to then calculate the feed rate and show compliance.

III. Amendments to Both Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

The EPA is amending 40 CFR part 63, subparts AA and BB, for applicability, monitoring requirements, and applicability of the general provisions.

A. Applicability

The applicability criteria in 40 CFR 63.600 and 63.620 are being clarified to state that excursions from applicable emissions limits and operating parameter ranges during periods of startup, shutdown or malfunction are not violations of the standards, provided the source is operated in accordance with the Startup, Shutdown, and Malfunction Plan submitted pursuant to 40 CFR 63.6(e)(3) and complies with the duty pursuant to 40 CFR 63.6(e)(i) to operate in a manner consistent with good air pollution control practices for minimizing emissions.

B. Monitoring Requirements

The monitoring requirements in 40 CFR 63.605(d) and 63.625(f) are being clarified to specifically identify the averaging period as a daily average. The monitoring requirements in 40 CFR 63.605(d) and 63.625(f) are being clarified to allow a source to retain a previously established parameter range if the last compliance test shows compliance with the emissions limits and the operating parameters fall within the established range.

The monitoring requirements in 40 CFR 63.605(d) and 63.625(f) are being changed to correct an error. Those sections as promulgated require compliance with new operating parameter ranges the day after a new compliance emissions test. That cannot be done as test samples need to be analyzed, and any new parameter ranges need to be established. Therefore, those

sections are being changed to allow 30 days after submittal of test results to the permitting Agency before compliance with any new operating limits is required.

C. Applicability of General Provisions

The applicability of the general provisions requirements in 40 CFR 63.608 and 63.628 both refer to an appendix A in each rule. Both appendices list 40 CFR part 63, subpart A citations to § 63.6(e)(1) and (2), (e)(3), and (f) in the first column of each table and show a comment column with comments regarding additional requirements. The comments portion for the citations was erroneously included in the promulgated rules and are deleted under this action.

IV. Administrative Requirements

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 "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the 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. Executive Order 13132, Federalism

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

The rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule amendments would not impose directly enforceable requirements on States, nor would they preempt them from adopting their own more stringent programs to control emissions. Thus, the requirements of section 6 of the Executive Order do not apply to these rule amendments.

C. 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" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments are known to own or operate phosphoric acid manufacturing facilities or phosphate fertilizers production facilities. Thus, Executive Order 13175 does not apply to the rule amendments.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the rule amendments have been determined

not to be "economically significant" as defined under Executive Order 12866.

E. 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 significant regulatory actions under Executive Order 12866.

F. 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, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because today's amendments do not add new requirements or costs, the EPA has determined that the 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 amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's rule amendments are not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this direct final rule on small entities, the EPA found that 2 of the 21 firms that potentially could be subject to the standards are small firms. Of the two, data indicate that one is an area source which would not be covered by the standards. The second source could be major and subject to the requirements of the standards. Information available to EPA shows, however, that the second source is able to achieve the control levels associated with the promulgated rules using existing equipment. The second source would not be significantly impacted by this proposed action because it clarifies and makes corrections to the promulgated rules but imposes no additional regulatory requirements.

Because today's rule amendments impose no additional regulatory requirements on owners or operators of phosphoric acid manufacturing plants or phosphate fertilizers production plants, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the phosphoric acid manufacturing and phosphate fertilizers production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB Control No. 2060–0361. An Information Collection Request (ICR) document has been prepared by EPA, and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740.

The amendments contained in this direct final rule will have no net impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113 (March 7, 1996), 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 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 EPA does not use available and applicable voluntary consensus standards.

This action does not involve the use of any new technical standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to this direct final rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as NESHAP for Phosphoric Acid Manufacturing Phosphate Fertilizers Production 22 added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this direct final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this 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 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

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 10, 2001

Christine Todd Whitman,

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 AA—[Amended]

2. Section 63.600 is amended by revising paragraph (a) and by adding new paragraph (e) to read as follows:

§ 63.600 Applicability.

(a) Except as provided in paragraphs (c), (d), and (e) of this section, the requirements of this subpart apply to the owner or operator of each phosphoric acid manufacturing plant.

* * * * *

(e) The emission limitations and operating parameter requirements of this subpart do not apply during periods of startup, shutdown, or malfunction, as those terms are defined in § 63.2, provided that the source is operated in accordance with § 63.6(e)(1)(i) and the Startup, Shutdown, and Malfunction Plan submitted pursuant to § 63.6(e)(3).

3. Section 63.602 is amended by revising paragraph (d) to read as follows:

§ 63.602 Standards for existing sources.

* * * * *

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.1810 gram per dry standard cubic meter (g/dscm) (0.080 grains per dry standard cubic foot (gr/dscf)).

* * * * *

4. Section 63.603 is amended by revising paragraph (c) to read as follows:

§ 63.603 Standards for new sources.

* * * * *

(c) *Phosphate rock dryer.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.030 kilogram/megagram of phosphate rock feed (0.060 lb/ton).

* * * * *

5. Section 63.605 is amended by:

a. Redesignating paragraph (a) as paragraph (a)(1) and revising newly designated paragraph (a)(1);

b. Adding new paragraph (a)(2);

c. Revising paragraph (b)(2); and

d. Revising paragraphs(d)(1) and (2).

The revisions and additions read as follows:

§ 63.605 Monitoring requirements.

(a)(1) Each owner or operator of a new or existing wet-process phosphoric acid process line or superphosphoric acid process line subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record the mass flow of phosphorus-bearing feed material to the process. The monitoring system shall have an accuracy of ±5 percent over its operating range.

(2) Each owner or operator of a new or existing phosphate rock dryer or phosphate rock calciner subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record either the mass flow of phosphorus-bearing feed material to the dryer or calciner, or the mass flow of product from the dryer or calciner. The monitoring system shall have an accuracy of ±5 percent over its operating range. Since the emissions limits under §§ 63.602(c) and 63.603(c) for the phosphate rock dryer are in the format of kilogram/megagram (lb/ton) of phosphate rock feed, during performance testing required in § 63.606, the owner or operator that chooses to operate a monitoring system to determine and permanently record the mass flow of product from the dryer must either simultaneously monitor the dryer feed rate and dryer output rate, or monitor the dryer output rate and the dryer input and output moisture contents and calculate the corresponding dryer input rate.

(b)(1) * * *

(2) Each owner or operator of a new or existing phosphate rock calciner or phosphate rock dryer subject to the provisions of this subpart shall maintain a daily record of the following:

(i) For owners and operators that monitor the mass flow of phosphorus-bearing feed material to the dryer or calciner, a daily record of phosphate rock feed by determining the total mass rate in metric ton/hour of phosphorus-bearing feed using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a)(2) of this section.

(ii) For owners and operators that monitor the mass flow of product from the dryer or calciner, a daily record of product by determining the total mass rate in metric ton/hour of product using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a)(2) of this section.

* * * * *

(d) * * *

(1) The allowable range for the daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system is ±20 percent of the baseline average value determined as a requirement of § 63.606(c)(4), (d)(4), or (e)(2). The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard, but, in no instance shall the adjustment be reduced to less than ±10 percent. The owner or operator must notify the Administrator of the baseline average value and must notify the Administrator each time that the baseline value is changed as a result of the most recent performance test. When a source using the methodology of this paragraph is retested, the owner or operator shall determine whether new allowable ranges of baseline average values will be based upon the new performance test or (if the new performance test results are within the previously established range) whether there will be no change in the operating parameters derived from previous tests. When a source using the methodology of this paragraph is retested and the performance test results are submitted to the Administrator pursuant to §§ 63.607(c)(1), 63.7(g)(1), and/or 63.10(d)(2), the owner or operator will indicate whether the operating range will be based on the new performance test or the previously established range. If the Administrator has not denied approval of the new operating ranges within 30 days of submission of the

performance test results, the new ranges shall be deemed approved and the new baseline value shall then be effective on the 31st day following submission.

(2) The owner or operator of any new or existing affected source shall establish, and provide to the Administrator for approval, allowable ranges for the daily averages of the pressure drop across and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with this subpart. Allowable ranges may be based upon baseline average values recorded during previous performance tests using the test methods required in § 63.606(c)(4), (d)(4), or (e)(2). As an alternative, the owner or operator can establish the allowable ranges using the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.606(c)(4), (d)(4), or (e)(2). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to establish the allowable ranges were obtained. The allowable ranges developed pursuant to the provisions of this paragraph must be submitted to the Administrator for approval. The owner or operator must request and obtain approval of the Administrator for changes to the allowable ranges. When a source using the methodology of this paragraph is retested, the owner or operator shall determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters outside the previously established ranges. If the Administrator has not denied approval of the new operating ranges within 30 days of submission of the performance test results, the new ranges shall be deemed approved and the new baseline value shall then be effective on the 31st day following submission.

* * * * *

6. Appendix A to subpart AA is amended by revising the entries "63.6(e)(1) and (2)," "63.6(e)(3)," and "63.6(f)" to read as follows:

APPENDIX A TO SUBPART AA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA

40 CFR citation	Requirement	Applies to subpart AA	Comment
* *	* * *	*	*
63.6(e)(1) and (2)	Operation & Maintenance Requirements	Yes.	
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes.	
63.6(f)	Compliance with Emission Standards	Yes.	
* *	* * *	*	*

Subpart BB—[Amended]

7. Section 63.620 is amended by revising paragraph (a) and by adding new paragraph (e) to read as follows:

§ 63.620 Applicability.

(a) Except as provided in paragraphs (c), (d), and (e) of this section, the requirements of this subpart apply to the owner or operator of each phosphate fertilizers production plant.

* * * * *

(e) The emission limitations and operating parameter requirements of this subpart do not apply during periods of startup, shutdown, or malfunction, as those terms are defined in § 63.2, provided that the source is operated in accordance with § 63.6(e)(1)(i) and the Startup, Shutdown, and Malfunction Plan submitted pursuant to § 63.6(e)(3).

8. Section 63.625 is amended by revising paragraphs (f)(1) and (2) to read as follows:

§ 63.625 Monitoring requirements.

* * * * *

(f) * * *

(1) The allowable range for the daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system is ±20 percent of the baseline average value determined as a requirement of § 63.626(c)(4) or (d)(4). The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard, but in no instance shall the adjustment be reduced to less than ±10 percent. The owner or operator must notify the Administrator of the baseline average value and must notify the Administrator each time that the baseline value is changed as a result of the most recent performance test. When a source using the methodology of this paragraph is retested, the owner or operator shall determine whether new allowable ranges of baseline average values will be based upon the new performance test or (if the new performance test results are within the previously established range) whether there will be no change in the operating parameters derived from previous tests. When a source using the methodology of this paragraph is retested and the performance test results are submitted to the Administrator pursuant to §§ 63.627(c)(1), 63.7(g)(1), and/or 63.10(d)(2), the owner or operator will indicate whether the operating range will be based on the new performance test or the previously established range. If the Administrator has not denied approval of the new operating ranges within 30 days of submission of the performance test results, the new ranges shall be deemed approved and the new baseline value shall then be effective on the 31st day following submission.

(2) The owner or operator of any new or existing affected source shall establish, and provide to the Administrator for approval, allowable ranges for the daily averages of the pressure drop across and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with this subpart. Allowable ranges may be based upon baseline average values recorded during previous performance tests using the test methods required in § 63.626(c)(4) or (d)(4). As an alternative, the owner or operator can establish the allowable ranges using the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.626(c)(4) or (d)(4). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to

establish the allowable ranges were obtained. The allowable ranges developed pursuant to the provisions of this paragraph must be submitted to the Administrator for approval. The owner or operator must request and obtain approval of the Administrator for changes to the allowable ranges. When a source using the methodology of this paragraph is retested, the owner or operator shall determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters outside the previously established ranges. If the Administrator has not denied approval of the new operating ranges within 30 days of submission of the performance test results, the new ranges shall be deemed approved and the new baseline value shall then be effective on the 31st day following submission.

9. Appendix A to subpart BB is amended by revising the entries "63.6(e)(1) and (2)," "63.6(e)(3)," and "63.6(f)" to read as follows:

APPENDIX A TO SUBPART BB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB

40 CFR citation	Requirement	Applies to subpart BB	Comment
* *	* * *	*	*
63.6(e)(1) and (2)	Operation & Maintenance Requirements	Yes.	
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes.	
63.6(f)	Compliance with Emission Standards	Yes.	
* *	* * *	*	*

[FR Doc. 01–31009 Filed 12–14–01; 8:45 am]
BILLING CODE 6560–50–P



Federal Register

Wednesday,
February 13, 2002

Part II

Environmental Protection Agency

40 CFR Part 63 et al.

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

ENVIRONMENTAL PROTECTION AGENCY

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

[FRL–7143–3]

RIN 2050–AE79

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Acronyms Used in the Rule

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

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

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

Table of Contents

Part One—What Events Led Up to This Rule?

I. What Is the Background?
  A. What Is the Phase I Rule?
  B. How Did the Court's Opinion To Vacate Challenged Portions of the Rule and the Parties' Joint Motion To Stay the Mandate Affect Phase I and Today's Rule?
II. Good Cause for Issuing the Rule
  A. Failure to Control Area Sources
  B. No National Standards for Major Sources for a Long Period
  C. Case-by-Case Permit Standards Delaying Compliance With More Stringent National Standards
  D. Inconsistent Permit Standards
  E. Adverse Consequences to Regulated Sources
  F. Administrative Burdens
III. What Is Included in This Rule?

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

I. What Are the Interim Standards?
  A. New and Existing Incinerators
  B. New and Existing Cement Kilns
  C. New and Existing Lightweight Aggregate Kilns
II. What Are the Revisions to the Startup, Shutdown, and Malfunction Requirements?
  A. What Are the Revised Requirements for Malfunctions?
  B. Why Does the Revised Rule Require You To Include the Automatic Waste Feed Cutoff Requirements in the Startup, Shutdown, and Malfunction Plan?

C. What Are the Revised Requirements for Burning Hazardous Waste During Startup and Shutdown?
D. What Are the Conforming Revisions to the Emergency Safety Vent Opening Requirements?
III. What Changes Are We Making to the Performance Testing Requirements for the Interim Standards Rule?
A. Why Are We Revising the Data in Lieu Provisions?
B. Why Are We Waiving Periodic Comprehensive Performance Testing Under the Interim Standards?
C. Why Are We Waiving the Dioxin/Furan Confirmatory Test Under the Interim Standards?
IV. Why Are We Deleting the Minimum Power Requirement for Ionizing Wet Scrubbers?
V. What Are the Monitoring Requirements for Carbon Beds?
VI. Can a Source Be Granted an Extension of Compliance for the Interim Standards?
VII. Why Are We Repromulgating the Hourly Rolling Average Temperature Limit at a Dry Particulate Matter Control Device To Control Dioxin/Furan Emissions?

Part Three—What Are the Analytical and Regulatory Requirements?

I. Executive Order 12866: Regulatory Planning and Review
II. What Are the Potential Costs and Benefits of Today's Final Rule?
III. What Consideration Was Given to Small Entities under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.?
IV. Was the Unfunded Mandates Reform Act Considered in This Final Rule?
V. Were Equity Issues and Children's Health Considered in This Final Rule?
VI. What Consideration Was Given to Tribal Governments in This Final Rule?
VII. Were Federalism Implications Considered in Today's Final Rule?
VIII. Were Energy Impacts Considered?
IX. Paperwork Reduction Act
X. National Technology Transfer and Advancement Act of 1995
XI. Is Today's Rule Subject to Congressional Review?

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

I. What Is the Authority for the Interim Standards Rule?
II. How Is This Rule Delegated Under the CAA?
III. How Would States Become Authorized Under RCRA?

Part One—What Events Led Up to This Rule?

I. What Is the Background?

A. What Is the Phase I Rule?

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

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

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

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

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

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

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

II. Good Cause for Issuing the Rule

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

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

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

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

A. Failure To Control Area Sources

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

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

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

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

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

D. Inconsistent Permit Standards

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

E. Adverse Consequences to Regulated Sources

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

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

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

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

Recovery Act (RCRA) permit conditions for air emissions.

F. Administrative Burdens

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

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

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

III. What Is Included in This Rule?

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

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

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

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

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

I. What Are the Interim Standards?

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

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

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

A. New and Existing Incinerators

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

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

The interim emission standards are summarized below.

INTERIM STANDARDS FOR EXISTING AND NEW INCINERATORS

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

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

B. New and Existing Cement Kilns

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

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

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

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

The interim emission standards are summarized below.

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

INTERIM STANDARDS FOR EXISTING AND NEW CEMENT KILNS

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

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

C. New and Existing Lightweight Aggregate Kilns

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

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

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

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

INTERIM STANDARDS FOR EXISTING AND NEW LIGHTWEIGHT AGGREGATE KILNS

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

INTERIM STANDARDS FOR EXISTING AND NEW LIGHTWEIGHT AGGREGATE KILNS—Continued

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

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

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

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

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

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

A. What Are the Revised Requirements for Malfunctions?

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

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

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

1. Facilities With Existing RCRA Permits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Interim Status Facilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. What Are the Monitoring Requirements for Carbon Beds?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part Three—What Are the Analytical and Regulatory Requirements?

I. Executive Order 12866: Regulatory Planning and Review

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

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The aggregate annualized social costs for this final rule are less than $100 million. Furthermore, this rule is not expected to adversely effect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The benefits to human health and the environment resulting from today's final action have not been fully monetized but are believed to be less than $100 million per year. Overall, the costs and benefits associated with this final Interim Standards Rule are essentially the same as those estimated for the September 30, 1999 rule. These impacts are discussed below in more detail.

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

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

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

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

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

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

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

The aggregate annualized social cost impacts associated with the interim standards reflect only a marginal reduction from the impacts associated with the September 30, 1999 rule. The total annualized social costs resulting from today's interim standards are estimated to range from $47 million to $60 million, with a high-end estimate of $74 million. The annualized social cost impacts of the September 30, 1999 rule were estimated to range from $50 to $61 million, with a high-end estimate of $75 million (See *Addendum* tables ADD–6, ADD–7, and ADD–8). All benefits associated with today's final rule have not been monetized. The *Addendum* estimated average monetized human health benefits of approximately $20 million per year[23] for selected primary pollutants. Approximately 90 percent of this total was derived from reductions in particulate matter emission levels. Since the particulate matter emission standard for each source category for the interim standards is unchanged, these estimated average monetized human health benefits are retained. Although not monetized, reduced lead exposure to children was another projected benefit. Ecological and waste minimization benefits were also anticipated as a result of the September 30, 1999 final rule[24]. While full monetization of all benefits (human health, ecological, waste minimization) is not feasible, we believe that these benefits justify the aggregate social costs. Overall, when projected from the September 30, 1999 baseline, aggregate annualized social costs for all sources are projected to decline by no more than 6 percent, while annual monetized plus non-monetized benefits may be only marginally reduced[25].

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

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

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

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

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

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

[23] Undiscounted estimate for future cases avoided.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's final rule is not subject to the Executive Order (EO) because it is not economically significant, as defined by EO 12866.

(2) Executive Order 12898: Environmental Justice

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

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

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

governments, nor impose substantial direct compliance costs on them.

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

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

Today's final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this rule.

VIII. Were Energy Impacts Considered?

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

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

IX. Paperwork Reduction Act

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

The public burden associated with this final rule (which is under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 4.3 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $252 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

X. National Technology Transfer and Advancement Act of 1995

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

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

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

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

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

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

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

II. How Is This Rule Delegated Under the CAA?

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

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

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

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

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

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

III. How Would States Become Authorized Under RCRA?

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

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

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

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

List of Subjects

40 CFR Part 63

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

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 266

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

40 CFR Part 270

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

40 CFR Part 271

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

Dated: February 7, 2002.

Christine Todd Whitman,

Administrator.

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

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

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

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

2. Section 63.1203 is revised to read as follows:

§ 63.1203 What are the standards for hazardous waste incinerators?

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

(1) For dioxins and furans:

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

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

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

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

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

(5) For carbon monoxide and hydrocarbons, either:

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

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

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

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

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

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

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

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

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

(5) For carbon monoxide and hydrocarbons, either:

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

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

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

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

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

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

Where:

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

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

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

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

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

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

3. Section 63.1204 is revised to read as follows:

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

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

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

(1) For dioxins and furans:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where:

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

C_s = concentration of particulate matter, kg/dscm;

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

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

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

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

Where:

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

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

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

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

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

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

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

(1) For dioxins and furans:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where:

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

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

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

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

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

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

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

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

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

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

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

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

Where:

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

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

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

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

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

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

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

submit the initial notification of compliance.

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

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

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

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

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

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

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

Where:

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

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

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

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

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

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

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

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

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

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

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

(g) [Reserved].

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

4. Section 63.1205 is revised to read as follows:

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

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

(1) For dioxins and furans:

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

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

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

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

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

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

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

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

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

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

(1) For dioxins and furans:

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

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

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

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

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

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

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

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

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

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

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

Where:

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

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

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

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

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

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

5. Section 63.1206 is amended by:

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

b. Adding paragraph (b)(15).

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

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

The revisions and additions read as follows:

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

* * * * *

(b) * * *

(1) * * *

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

(c) * * *

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

* * * * *

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

* * * * *

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

* * * * *

6. Section 63.1207 is amended by:

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

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

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

d. Adding paragraph (d)(4).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) * * *

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

* * * * *

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

* * * * *

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

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

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

* * * * *

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

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

* * * * *

7. Section 63.1209 is amended by:

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

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

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

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

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

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

* * * * *

(7) * * *

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

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

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

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

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

* * * * *

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

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

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

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

§ 264.340 Applicability.

* * * * *

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

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

* * * * *

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

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

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

* * * * *

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

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

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

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

§ 265.340 Applicability.

* * * * *

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

* * * * *

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

* * * * *

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

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

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

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

§ 266.100 Applicability.

* * * * *

(b) * * *

(2) * * *

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

* * * * *

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

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

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

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

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

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

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

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

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

* * * * *

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

§ 270.62 Hazardous waste incinerator permits.

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

* * * * *

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

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

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

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

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

[FR Doc. 02–3346 Filed 2–12–02; 8:45 am]

BILLING CODE 6560–50–P



Federal Register

Thursday,
February 14, 2002

Part II

Environmental Protection Agency

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63, 266, and 270

[FRL–7143–4]

RIN 2050–AE79

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Acronyms Used in the Rule

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

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

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

Table of Contents

Part One—What Events Led Up to This Rule?

I. What Is the Background of This Rule?
  A. What Is the Phase I Rule?
  B. How Did the Court's Opinion To Vacate the Rule and Petitioners Joint Motion To Stay the Mandate Affect Phase I and Today's Rule?
II. Which Proposed Amendments Are Included in This Rule?

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

I. What Previous DRE Test Results May You Use To Demonstrate Compliance With the MACT DRE Standard?
II. What Are the Hydrocarbon Monitoring Requirements for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln?
III. Why Are We Deleting the Baghouse Inspection Requirements?
IV. What Are the Requirements for Feedstream Analysis of Organic HAPs?

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

I. What Revisions Are We Making to the Combustion System Leak Provisions?
  A. What Did We Propose to Change?
  B. What Were Commenters' Reactions to the Proposed Amendments?
  C. What Were Commenters' Objections to Instantaneous Pressure Limits?
II. What Revisions Are We Making to the Operator Training and Certification Requirements?
III. What Time Extensions for Testing Are Available If the Comprehensive Performance Test Plan Has Not Been Approved?
IV. What Flexibility Is Provided in Operations During Confirmatory Testing for Dioxin/Furans?
V. How Can You Waive Operating Parameter Limits During Performance Testing and Pretesting?
  A. How Can You Waive OPLs during the Initial Comprehensive Performance Test?
  B. How Can You Waive OPLs During Subsequent Comprehensive Performance Tests?
VI. What Are the Calibration Requirements for Temperature Measurement Devices?
VII. What Changes Are We Making to the Particulate Matter Operating Requirements for Sources Using Activated Carbon Injection and Carbon Beds?
VIII. How May You Comply Temporarily With Alternative, Otherwise Applicable MACT Standards?
  A. What Are the Implications of Being an Affected Source Only Under Subpart EEE?
  B. How Are Rolling Averages Calculated When Changing Modes of Operation?
IX. What Are the Procedures for Allowing Use of Less Sensitive Bag Leak Detection Systems?

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

I. What Corrections Are We Making to part 63, Subpart EEE?
  A. Several Typographical Errors Are Corrected
  B. Several Citations Are Corrected
II. What Correction Are We Making to § 266.100?
III. What Correction Are We Making to § 270.42(j)(1): Combustion Facility

Changes to Meet part 63 MACT Standards?
IV. What Correction Are We Making to Table 1 to Subpart EEE—General Provisions Applicable to Subpart EEE?

Part Five—What Are the Analytical and Regulatory Requirements?

I. Executive Order 12866: Regulatory Planning and Review
II. What Economic and Equity Analyses Were Completed in Support of the Proposed Rule?
III. What Substantive Comments Were Received on the Cost/Economic Aspects of Proposed Rule?
IV. What Are the Potential Costs and Benefits of Today's Final Rule?
V. What Consideration Was Given to Small Entities under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 *et. seq.*?
VI. Was the Unfunded Mandates Reform Act Considered in this Final Rule?
VII. Were Equity Issues and Children's Health Considered in this Final Rule?
VIII. What Consideration Was Given to Tribal Governments in this Final Rule?
IX. Were Federalism Implications Considered in Today's Final Rule?
X. Were Energy Impacts Considered?
XI. Paperwork Reduction Act
XII. National Technology Transfer and Advancement Act of 1995
XIII. The Congressional Review Act (5 U.S.C. 801 *et seq.*, as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

Part Six—Delegation Implications

I. What Is the Authority for the Final Amendment Rule?
II. Why Should I Apply for Delegation of this Rule?

Part One—What Events Led up to This Rule?

I. What Is the Background of This Rule?

A. What Is the Phase I Rule?

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

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

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

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

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

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

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

II. Which Proposed Amendments Are Included in This Rule?

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

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

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

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

COMBUSTION MACT AMENDMENTS: DIRECT FINAL RULE

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

COMBUSTION MACT AMENDMENTS

Proposed Rule

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

COMBUSTION MACT AMENDMENTS—Continued

Proposed Rule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Why Are We Deleting the Baghouse Inspection Requirements?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. What Did We Propose To Change?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Many commenters believe instantaneous pressure monitoring

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

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

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

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

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

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

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

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

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

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

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

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

Continued

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. How Does the Retrieval Approach Work?

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

2. How Does the Start Anew Approach Work?

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

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

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

3. How Does the Seamless Transition Approach Work?

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

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

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

IX. What Are the Procedures for Allowing Use of Less Sensitive Bag Leak Detection Systems?

In the July 2001 proposed rule, we requested comment on whether the bag leak detection system requirements should be revised to explicitly allow sources to petition the Administrator to use bag leak detection monitors that have detection limits higher than 1.0 milligrams per actual cubic meter as required by the September 1999 final rule. See 66 FR at 35134. We reasoned that less sensitive bag leak detectors would be acceptable in situations where the detector could nonetheless detect subtle changes in baseline, normal mass emissions of particulate matter. In determining whether the detector is sensitive enough to detect subtle changes in baseline, normal mass emissions, the permitting authority could consider information such as results of site-specific tests that document the detector provides a measurable and repeatable change in opacity output with an increase in particulate matter mass emissions at normal emission levels.

All commenters support this revision, saying that we should explicitly allow a source to petition the Agency using the alternative monitoring provisions under § 63.1209(g)(1) to use a less sensitive bag leak detector. Therefore, we are revising new § 63.1206(c)(7)(ii)(A)(1) by appending it with the following phrase: "* * * unless a source demonstrates, pursuant to the procedures in § 63.1209(g)(1), that a higher sensitivity would adequately detect bag leaks."

Part Four-What Technical Corrections Are Being Made in Today's Rule?

I. What Corrections Are We Making to Part 63, Subpart EEE?

We are making several corrections to 40 CFR part 63, Subpart EEE, published on September 30, 1999.

A. Several Typographical Errors Are Corrected

In today's rule, we correct a typographical error shown in entry (2) in Table 1 to § 63.1200 by replacing the word "extent" with "extend."

We also revise by italicizing several paragraph numbers and headings that will make the regulatory text easier to read. The paragraphs revised include §§ 63.1206(b)(5)(i)(C)(1), 63.1209(g)(1)(B)(1) through (3), 63.1209(g)(1)(C)(1) and (2), 63.1209(l)(1), 63.1209(m)(3), 63.1209(n)(4), and 63.1209(o)(1).

We also correct several typographical errors. We correct § 63.1207(f)(1)(x) by removing an extra ")" from the paragraph. Section 63.1207(m)(4)(i) is corrected by capitalizing "Notification of Compliance." We correct a typographical error in the first sentence of § 63.1209(b)(5)(iii)(A) by removing the word "to" before the word "monitoring." The typographical error in the heading of paragraph § 63.1209(k)(8)(ii) is also corrected. We revise the paragraph heading from "mum time in-use" to "Maximum time in-use." Finally, we correct a typographical error in the first sentence of § 63.1213(a) by replacing the word "data" with "date."

B. Several Citations Are Corrected

In the May 14, 2001 rule, we removed the Notice of Intent to Comply (NIC) provisions that were vacated in *Chemical Manufacturers Association* v. *EPA*, 217 F.3d 861 (D.C. Cir. 2000). When we removed the NIC requirements from §§ 63.1210 and 63.1211 and redesignated follow-on paragraphs in those sections, we did not also revise several references to the redesignated paragraphs of §§ 63.1210 and 63.1211. The paragraphs revised include §§ 63.1206(b)(11), 63.1206(c)(1)(i), 63.1207(j)(1)(ii), 63.1207(j)(3), 63.1209(a)(1)(ii)(A), 63.1209(f)(1), and 266.100(b)(1).

In the May 14, 2001 rule, we also made changes to the compliance dates provisions of § 63.1206(a). However, when we redesignated paragraph (a)(3) to (a)(2) in that rule, we inadvertently failed also to revise a cite within old paragraph (a)(3). Today's rule corrects the reference in § 63.1206(a)(2) from paragraph (a)(3)(ii) to (a)(2)(ii).

We also correct an incorrect citation in § 63.1207(f)(1)(xvii). This paragraph inadvertently refers to § 63.1209(m)(5)(i) instead of § 63.1209(n)(5)(i). We make that correction today.

Finally, we correct an incorrect citation in § 63.1207(m)(4)(ii). This paragraph inadvertently refers to § 63.1207(m)(3)(iv) instead of § 63.1207(m)(4)(i). We make that correction today.

II. What Correction Are We Making to § 266.100?

We are making two corrections to § 266.100(d) to correct errors made when we promulgated the September 30, 1999 final rule. When we added § 266.100(b) to address integration of the MACT standards and redesignated paragraphs (b), (c), (d), (e), and (f), as (c), (d), (e), (f), and (g), respectively, we did not revise several references within these paragraphs. Today's rule revises the reference to old paragraph (c)(2) in paragraph (d)(1)(i)(B) to (d)(2); the reference to old paragraph (c)(1)(iii) in paragraph (d)(2)(i) to (d)(1)(iii); the reference to old paragraph (c)(1)(iii) in paragraph (d)(2)(ii) to (d)(1)(iii); the reference to old paragraphs (c)(1) and (c)(3) in paragraph (d)(3) to (d)(1) and (d)(3), respectively; the reference to old paragraph (c)(1) in paragraph (d)(3)(i) to (d)(1); and the reference to old paragraphs (c)(3) and (c)(1)(ii) in paragraph (d)(3)(i)(D) to (d)(3) and (d)(1)(ii), respectively.

In addition, when we added § 266.100(h) in the September 30, 1999 final rule to provide reduced sampling and analysis and notification and recordkeeping requirements for secondary lead smelters complying with the Secondary Lead Smelting NESHAP, we inadvertently deleted regulatory language in old paragraph (c)(3) that was redesignated paragraph (d)(3). We restore that regulatory language in (d)(3) today.

Finally, we correct a reference in § 266.100(a) from paragraphs (b), (c), (d), and (f) to paragraphs (b), (c), (d), (g), and (h).

III. What Correction Are We Making to § 270.42(j)(1): Combustion Facility Changes To Meet Part 63 MACT Standards?

We are correcting an error in the RCRA permitting regulations relating to the vacature of the Notification of Intent to Comply (NIC) and its associated requirements. On October 11, 2000, the D.C. Circuit issued a mandate to vacate the Notification of Intent to Comply provisions of 40 CFR part 63, Subpart EEE (Chemical Manufacturers Association v. EPA, 217 F. 3d 861, D.C.

Cir. 2000). We subsequently directed the Office of the Federal Register to remove those provisions from the Code of Federal Regulations on May 14, 2001 (66 FR 24270). Since sources were required to comply with the NIC requirements in order to be eligible for the RCRA Streamlined Permit Modification procedure, we also modified § 270.42(j)(1) to address the court's mandate.

Previously, § 270.42(j)(1) required owners or operators to first comply with the NIC requirements of § 63.1210 before requesting a streamlined RCRA permit modification. Sources were required to submit their final NICs by October 2, 2000. Since the court's mandate was not issued until after existing sources were required to submit their NICs, we determined that the court's action did not impact the sources' eligibility for a streamlined RCRA permit modification, provided, of course, that they submitted their NICs by October 2, 2000, as required by the rule. To clarify this in the regulatory language, we revised § 270.42(j)(1) to state that owners or operators must have complied with the Notification of Intent to Comply requirements of § 63.1210 that were in effect prior to May 14, 2001 in order to request a streamlined permit modification. In doing so, we incorrectly referred to the date that we removed the NIC provisions from the federal regulations (May 14, 2001) as the date on which those provisions were no longer in effect. Instead, we should have referenced the date of the court's mandate (October 11, 2000). The removal of the requirements from the federal regulations was only a ministerial action in acknowledgment of the court's October 11, 2000 order to vacate. Thus, in today's rulemaking, we are correcting the referenced date in § 270.42(j)(1) from May 14, 2001 to October 11, 2000.

IV. What Correction Are We Making to Table 1 to Subpart EEE—General Provisions Applicable to Subpart EEE?

Table 1 to Subpart EEE identifies which General Provisions provided under Subpart A, Part 63, are not applicable to hazardous waste combustors. We are amending that table to: (1) conform to revisions to Subpart EEE promulgated in a related final rule establishing interim emission standards and which was published in the **Federal Register** on February 13, 2002; (2) to make several other technical corrections; and (3) to clarify the explanation of the applicability of the General Provisions.

We are making the following specific corrections to Table 1 to Subpart EEE:

a. The applicability explanations for §§ 63.6(e), (f), and (h), and 63.7(e) are corrected to acknowledge that the emission standards and operating requirements of Subpart EEE do not apply during startup, shutdown, and malfunctions;

b. The applicability explanation for § 63.7(a) is clarified to note that § 63.1207(e)(3) allows you to petition the Administrator under § 63.7(h) to provide an extension of time to conduct a performance test;

c. The applicability explanation for § 63.8(c) is revised to correct the reference to § 63.1211(c) rather than § 63.1211(d);

d. The applicability explanations for §§ 63.8(c) and (g) are revised to delete the reference to applicability only to cement kilns because it is self-evident that only cement kilns are subject to an opacity emission standard under Subpart EEE. Further, if other sources were to use a COMS under alternative monitoring or other provisions, those sources would be required to comply with § 63.8(c); and

e. The applicability explanation for § 63.9(f) is corrected to require compliance with that paragraph for sources that are allowed under § 63.1209(a)(1)(v) to use visible determinations of opacity for compliance in lieu of a COMS.

Part Five—What Are the Analytical and Regulatory Requirements?

I. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Today's final action was submitted to OMB for review and confirmation. Pursuant to the terms of the Executive Order, the Agency, in conjunction with OMB has determined that today's final amendments rule does not represent a "significant regulatory action." Today's final action does not meet any of the criteria identified above. Changes to this section of the Preamble made in response to OMB suggestions or recommendations are documented in the public record.

The aggregate annualized social cost for this final rule are less than $100 million. Furthermore, this rule is not expected to adversely effect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The benefits to human health and the environment resulting from today's final rule have not been monetized but are believed to be less than $100 million per year.

II. What Economic and Equity Analyses Were Completed in Support of the Proposed Rule?

We prepared two economic support documents for the July 3, 2001 proposed rule: Assessment of Potential Costs, Benefits and Other Impacts, NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments to the Final Rule: NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, September 30, 1999, dated May, 2001, and Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors Technical Amendments to the Final Rule; NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, September 30, 1999, dated May, 2001. Both documents are available in the docket established for the July 3, 2001 action.

The Assessment document addressed both the thirteen direct final amendments and the twenty proposed amendments. Three of the proposed amendments in the direct final rule are finalized in today's rule and are projected to result in cost savings. Our analysis found that the amendment revising the alternative to the particulate matter standard for incinerators resulted in the single most significant projected cost savings. This amendment accounted for an estimated 77 percent, or $707,500, of the total quantifiable annual cost savings of $918,500. The direct final amendment addressing

feedstream analysis was projected to result in annual cost savings of $180,000, while the amendment on deletion of one-time notification of compliance accounted for the remaining cost savings. The total projected cost burden associated with the July 3, 2001 direct final amendments was estimated at $8,700 per year. The analysis found that most of the cost burdens are easily quantifiable, whereas many of the cost savings were not readily quantifiable and, are therefore not included in the aggregate estimate.

We were able to develop a quantified cost savings estimate for only one of the twenty proposed amendments in the Assessment. The amendment addressing method 23 as an alternative to method 0023A for dioxin/furans was projected to result in cost savings of $102,600 per year. Five of the twenty proposed amendments were projected to result in an aggregate quantifiable cost burden of $361,100 per year. Approximately 45 percent of this increased cost burden would be on the government. The proposed amendment revising the operator training and certification provisions was estimated to account for 84 percent of the total estimated cost burden.

No measurable impacts were projected in any of the following categories related to equity and regulatory concerns: environmental justice; children's health protection; unfunded mandates; tribal governments; and regulatory takings.

The RFSA document prepared in support of the July 3, 2001 actions analyzed potential impacts to small entities associated with both the direct final and proposed amendments. Based on our worst-case scenario, we found that there would not be a significant economic impact on any of the small business combustor companies subject to rule (amendment) requirements.

III. What Substantive Comments Were Received on the Cost/Economic Aspects of Proposed Rule?

We received no substantive comments on the cost/economic issues associated with either the direct final or proposed amendments. Selected commenters, however, incorporated minor references to cost issues as part of their comments on other issues. One commenter indicated that unnecessary testing cost increases and complications would result without the flexibility to use DRE data in lieu of testing. The incorporation of this amendment into today's final rule relieves this cost concern. Two commenters indicated support for the Agency's proposed amendment that would allow use of site-specific operator training and certification programs. This flexibility was supported as a means of avoiding the burden and complications associated with training requirements established under the final rule. The incorporation of this amendment into today's final rule addresses this cost concern.

Four commenters referenced cost issues associated with the amendment addressing the time extension for performance testing. These commenters generally supported the amendment but felt, in some cases, that it did not go far enough to address unforeseen circumstances and to mitigate the concerns associated with the potential for unnecessary performance testing and related costs. We are sensitive to these concerns; however, we continue to believe that an open-ended test date will not provide an incentive for either sources or regulatory officials to resolve differences related to the test plan. We believe that this stimulus will help mitigate unnecessary cost impacts.

IV. What Are the Potential Costs and Benefits of Today's Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. A rule that generates positive net welfare would be advantageous to society and should be promulgated. A rule that results in negative net welfare to society should be avoided, assuming all other factors are equal.

We have assessed the impacts of this final rule in our economic support document: Assessment of Potential Costs, Benefits and Other Impacts, and, Regulatory Flexibility Screening Analysis (RFSA) for NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule—Amendments to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors: Final Rule, September 30, 1999, dated January 2, 2002. This document is available in the docket established in support of today's action. A brief summary of findings is presented below.

Today's rule revises several requirements promulgated in the September 30, 1999 rule. Cost impacts associated with the final amendments are not fully quantifiable. All amendments, however, are projected to result in zero cost impacts or national annual net cost savings to industry, as projected from the baseline of the September 30, 1999 rule. The total cost burden to government associated with the final amendments is estimated at $160,000 per year. No quantifiable benefits and/or environmental implications have been identified.

V. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.?

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each NAICS code by the Small Business Administration (SBA).

The Agency has examined the potential effects today's final rule may have on small entities, as required by the RFA/SBREFA. We have found that four of the final amendments are projected to result in measurable cost impacts. The amendment addressing feedstream analysis for organic HAPs would result in cost savings but we expect that only larger operations would be impacted. The other three final amendments are projected to result in a measurable cost burden. Of these three, only the amendment addressing operator training and certification may potentially result in a cost burden to small hazardous waste combustors. Under an assumed worst-case, or high end cost scenario, we estimate maximum total costs on each "small" hazardous waste combustor company to average $25,700 ($154,000/6 = $25,700 per "small" source). Based on this high cost scenario, impacts on an individual small company basis would be no more than 0.71 percent of the annual gross sales. This figure is less than our threshold of 1 percent for determination of potentially significant economic impact. This amendment, however, was designed to ultimately provide regulatory relief. The lack of available data prevented us from quantifying cost savings potentially associated with this amendment. Overall impacts are likely to be considerably less than the 0.71 percent "high-end" estimate presented here. Based on this analysis we believe that it is reasonable to conclude that

there would not be a significant economic impact to any of the small business combustor companies potentially subject to rule requirements. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Full details of the small entity analysis are presented in our report: Assessment of Potential Costs, Benefits and Other Impacts, and, Regulatory Flexibility Screening Analysis (RFSA) for NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule—Amendments to the NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors: Final Rule, September 30, 1999, dated January 2, 2002. This document is available in the docket established in support of today's action.

VI. Was the Unfunded Mandates Reform Act Considered In This Final Rule?

Executive Order 12875, "Enhancing the Intergovernmental Partnership" (October 26, 1993), calls on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments. Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule is not subject to the requirements of UMRA. Today's final rule will not result in $100 million or more in expenditures. The aggregate annualized social costs for today's final rule are projected to be less than one million dollars. Furthermore, today's rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. We have determined that this rule will not significantly or uniquely affect small governments.

VII. Were Equity Issues and Children's Health Considered In This Final Rule?

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

(1) Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks'

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's final rule is not subject to the Executive Order because it is not economically significant, as defined in Executive Order 12866.

(2) Executive Order 12898: Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

VIII. What Consideration Was Given to Tribal Governments In This Final Rule?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on

the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

IX. Were Federalism Implications Considered in Today's Final Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this rule.

X. Were Energy Impacts Considered?

Executive Order 13211, "Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use" (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse affects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule is not likely to have any significant adverse impact on factors affecting energy supply. We believe that Executive Order 13211 is not relevant to this action.

XI. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.07) listing the information collection requirements of this final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050–0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environment Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or by calling (202) 260–2740.

The public burden associated with this final rule (which is under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 7.6 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $440 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

XII. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not require the implementation of technical standards, as defined above; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

XIII. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

Is Today's Final Action Subject to Congressional Review?

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major Rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). This final rule will become effective on February 14, 2002.

Part Six—Delegation Implications

I. What Is the Authority for the Final Amendment Rule?

Unlike the September 30, 1999 Final HWC NESHAP rule, this rule does not include any significant changes or additions affecting the RCRA program. This Final Amendment Rule amends the promulgated standards located in 40 CFR part 63, subpart EEE. Therefore, this discussion pertains only to delegation of amendments to State, Local, and Tribal (S/L/T) agencies pursuant to the CAA program.

Section 112(l) of the CAA allows us to delegate the authority to S/L/T programs to implement and enforce emission standards for pollutants subject to section 112 regulations. Thus, a S/L/T agency that receives 112(l) delegation can implement and enforce the amendments being made today. A S/L/T agency also can implement the amendments for Title V major sources (see 40 CFR 70.2) via their Title V authority because it is independent of their delegation status. By having an approved Title V program, the S/L/T agency has demonstrated that it has the legal authority, resources, and expertise to implement and enforce standards for section 112 pollutants.

As before, we encourage S/L/T agencies to apply for and receive 112(l) delegation for this rule. The key advantages afforded to S/L/T agencies

who receive delegation are that they become the primary enforcement authority and can exercise delegable provision authorities. Additionally, it ensures clear and consistent requirements for affected sources and regulators. For example, a source need only report compliance assurance monitoring to its primary enforcement authority.

State, Local, and Tribal agencies still have the ability to choose which delegation options to use when applying for delegation of Federal authorities for this rule. The 112(l) delegation process begins when the S/L/T agency applies for delegation of a section 112 rule without changes (straight delegation), by rule adjustment, substitution of requirements, state program approval (SPA), or equivalency by permit (EBP).[11] Also, the partial approval option is available for any S/L/T who cannot or chooses not to take full delegation of an entire standard. The drawback to this option is that it can create inconsistent requirements since the S/L/T agency will enforce portions of the standard, while we will enforce the remaining portions.

II. Why Should I Apply for Delegation of This Rule?

This rule will be effective upon promulgation. As with the Phase I NESHAP, a S/L/T agency will need to incorporate the amendments of this rule into a major source's new, renewed, or revised Title V permit regardless of whether it has received delegation. However, by receiving delegation of 112(l), a S/L/T agency can approve minor changes to a Federal NESHAP. For instance, it can substitute an emission limitation that is more stringent than a Federal standard.

In light of the benefits afforded to a S/L/T agency if it receives 112(l) delegation, we recognize that the process of applying for and receiving delegation can be a lengthy one. This may be especially true for those agencies that do not have established agreements in place to receive automatic delegation of unchanged standards. There are agencies who choose to utilize the delegation options provided under 112(l), which are not as straightforward as the unchanged standards. In these cases, the review period required when applying for one of the delegation options combined with a state's legislative proceedings, are factors that can prolong the delegation process. Therefore, we encourage the S/L/T agency to do what makes sense given circumstances relevant to timing issues and resource needs.

List of Subjects

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference Reporting and recordkeeping requirements.

40 CFR Part 266

Energy, Environmental Protection Agency, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Environmental Protection Agency, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: February 7, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.14 is amended by adding paragraph (i) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) *ASME standard number QHO–1–1994 and QHO–1a–1996 Addenda.* This standard is titled as "Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators." The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this document from the American Society of Mechanical Engineers, 345 East 47th Street, New York, N.Y. 10017. You may inspect a copy at the RCRA Information Center, Crystal Gateway One, 1235 Jefferson Davis Highway, Arlington, VA 22202, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

3. Section 63.1200 is amended by revising entry (2) in Table 1 in paragraph (b) to read as follows:

§ 63.1200 Who is subject to these regulations?

* * * * *

(b) * * *

TABLE 1 TO § 63.1200.—HAZARDOUS WASTE COMBUSTORS EXEMPT FROM SUBPART EEE

If * * *	And If * * *	Then * * *
* * * * * * *		
(2) You are a research, development, and demonstration source.	You operate for no longer than one year after first burning hazardous waste (Note that the Administrator can extend this one-year restriction on a case-by-case basis upon your written request documenting when you first burned hazardous waste and the justification for needing additional time to perform research, development, or demonstration operations).	You are not subject to this subpart (Subpart EEE). This exemption applies even if there is a hazardous waste combustor at the plant site that is regulated under this subpart. You still, however, remain subject to § 270.65 of this chapter.
* * * * * * *		

[11] Refer to Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities; Final Rule at 65 FR 55810 or the CAA Delegation for the HWC NESHAP fact sheet at *www.epa.gov/epaoswer/hazwaste/combust/toolkit/coverpage.htm* for further information on delegation procedures.

* * * * *

4. Section 63.1201 is amended by adding the definition of "Preheater tower combustion gas monitoring location" to paragraph (a) in alphabetical order to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Preheater tower combustion gas monitoring location means a location within the preheater tower of a dry process cement kiln downstream (in terms of gas flow) of all hazardous waste firing locations and where a representative sample of combustion gas to measure combustion efficiency can be monitored.

* * * * *

5. Section 63.1204 is amended by revising paragraph (d)(1)(iii) to read as follows:

§ 63.1204 What are the standards for hazardous waste burning cement kilns?

* * * * *

(d) * * *

(1) * * *

(iii) You must calculate rolling averages for operating parameter limits as provided by § 63.1209(q)(2).

* * * * *

6. Section 63.1206 is amended by:

a. Revising the first sentence of paragraph (a)(2)(i).

b. Redesignating paragraph (a)(4) as (a)(3).

c. Revising paragraphs (b)(5)(i)(C)(*1*), (b)(6)(i) and (b)(6)(ii), (b)(7), (b)(11), and (b)(13)(i).

d. Revising paragraphs (c)(1)(i) introductory text, (c)(5)(i)(C), (c)(6), and (c)(7)(ii).

e. Adding paragraph (c)(5)(i)(D).

The revisions and additions read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(2) * * *

(i) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraph (a)(2)(ii) of this section. * * *

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) * * *

(*1*) Except as provided by paragraph (b)(5)(i)(C)(*2*) of this section, after the change and prior to submitting the notification of compliance, you must not burn hazardous waste for more than a total of 720 hours (renewable at the discretion of the Administrator) and only for the purposes of pretesting or comprehensive performance testing. Pretesting is defined at § 63.1207(h)(2)(i) and (ii).

* * * * *

(6) * * *

(i) If a DRE test performed pursuant to § 63.1207(c)(2) is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

(ii) If during this acceptable DRE test you did not obtain hydrocarbon emissions data sufficient to document compliance with the hydrocarbon standard, you must either:

(A) Perform, as part of the performance test, an "equivalent DRE test" to document compliance with the hydrocarbon standard. An equivalent DRE test is comprised of a minimum of three runs each with a minimum duration of one hour during which you operate the combustor as close as reasonably possible to the operating parameter limits that you established based on the initial DRE test. You must use the highest hourly rolling average hydrocarbon emission level achieved during the equivalent DRE test to document compliance with the hydrocarbon standard; or

(B) Perform a DRE test as part of the performance test.

(*7*) *Compliance with the DRE standard.* (i) Except as provided in paragraphs (b)(7)(ii) and (b)(7)(iii) of this section:

(A) You must document compliance with the Destruction and Removal Efficiency (DRE) standard under §§ 63.1203 through 63.1205 only once provided that you do not modify the source after the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(*1*) You have not modified the design or operation of your source in a manner that could effect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(*2*) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) Sources that feed hazardous waste at a location in the combustion system other than the normal flame zone must demonstrate compliance with the DRE standard during each comprehensive performance test;

(iii) For sources that do not use DRE previous testing to document conformance with the DRE standard pursuant to § 63.1207(c)(2), you must perform DRE testing during the initial comprehensive performance test.

* * * * *

(11) *Calculation of hazardous waste residence time.* You must calculate the hazardous waste residence time and include the calculation in the performance test plan under § 63.1207(f) and the operating record. You must also provide the hazardous waste residence time in the Documentation of Compliance under § 63.1211(c) and the Notification of Compliance under §§ 63.1207(j) and 63.1210(b).

* * * * *

(13) * * *

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of § 63.1204 as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(*1*) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*2*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average

(monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(*1*) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*2*)(*i*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

(*ii*) Hydrocarbons in the main stack, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*)(*i*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7).

(*ii*) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

* * * * *

(c)* * * (1) * * * (i) You must operate only under the operating requirements specified in the Documentation of Compliance under § 63.1211(c) or the Notification of Compliance under §§ 63.1207(j) and 63.1210(b), except:

* * * * *

(5) * * *

(i) * * *

(C) Upon prior written approval of the Administrator, an alternative means of control to provide control of combustion system leaks equivalent to maintenance of combustion zone pressure lower than ambient pressure; or

(D) Upon prior written approval of the Administrator, other technique(s) which can be demonstrated to prevent fugitive emissions without use of instantaneous pressure limits; and

* * * * *

(6) *Operator training and certification.* (i) You must establish training programs for all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants from the source. Such persons include, but are not limited to, chief facility operators, control room operators, continuous monitoring system operators, persons that sample and analyze feedstreams, persons that manage and charge feedstreams to the combustor, persons that operate emission control devices, and ash and waste handlers. Each training program shall be of a technical level commensurate with the person's job duties specified in the training manual. Each commensurate training program shall require an examination to be administered by the instructor at the end of the training course. Passing of this test shall be deemed the "certification" for personnel, except that, for control room operators, the training and certification program shall be as specified in paragraphs (c)(6)(iii) through (c)(6)(vi) of this section.

(ii) You must ensure that the source is operated and maintained at all times by persons who are trained and certified to perform these and any other duties that may affect emissions of hazardous air pollutants. A certified control room operator must be on duty at the site at all times the source is in operation.

(iii) Hazardous waste incinerator control room operators must:

(A) Be trained and certified under a site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) Be trained under the requirements of, and certified under, the American Society of Mechanical Engineers Standard Number QHO–1–1994 and QHO–1a–1996 Addenda (incorporated by reference—see § 63.14(e)). If you choose to use the ASME program:

(*1*) Control room operators must, prior to the compliance date, achieve provisional certification, and must submit an application to ASME and be scheduled for the full certification exam. Within one year of the compliance date, control room operators must achieve full certification;

(*2*) New operators and operators of new sources must, before assuming their

duties, achieve provisional certification, and must submit an application to ASME, and be scheduled for the full certification exam. Within one year of assuming their duties, these operators must achieve full certification; or

(C) Be trained and certified under a State program.

(iv) Cement kiln and lightweight aggregate kiln control room operators must be trained and certified under:

(A) A site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) A State program.

(v) Site-specific, source developed and implemented training programs for control room operators must include the following elements:

(A) Training on the following subjects:

(*1*) Environmental concerns, including types of emissions;

(*2*) Basic combustion principles, including products of combustion;

(*3*) Operation of the specific type of combustor used by the operator, including proper startup, waste firing, and shutdown procedures;

(*4*) Combustion controls and continuous monitoring systems;

(*5*) Operation of air pollution control equipment and factors affecting performance;

(*6*) Inspection and maintenance of the combustor, continuous monitoring systems, and air pollution control devices;

(*7*) Actions to correct malfunctions or conditions that may lead to malfunction;

(*8*) Residue characteristics and handling procedures; and

(*9*) Applicable Federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards; and

(B) An examination designed and administered by the instructor; and

(C) Written material covering the training course topics that may serve as reference material following completion of the course.

(vi) To maintain control room operator qualification under a site-specific, source developed and implemented training program as provided by paragraph (c)(6)(v) of this section, control room operators must complete an annual review or refresher course covering, at a minimum, the following topics:

(A) Update of regulations;

(B) Combustor operation, including startup and shutdown procedures, waste firing, and residue handling;

(C) Inspection and maintenance;

(D) Responses to malfunctions or conditions that may lead to malfunction; and

(E) Operating problems encountered by the operator.

(vii) You must record the operator training and certification program in the operating record.

(7) * * *

(ii) *Bag leak detection system requirements for baghouses at lightweight aggregate kilns and incinerators.* If you own or operate a hazardous waste incinerator or hazardous waste burning lightweight aggregate kiln equipped with a baghouse (fabric filter), you must continuously operate a bag leak detection system that meets the specifications and requirements of paragraph (c)(7)(ii)(A) of this section and you must comply with the corrective measures requirements of paragraph (c)(7)(ii)(B) of this section:

(A) *Bag leak detection system specification and requirements. (1)* The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligrams per actual cubic meter unless you demonstrate, pursuant to procedures in § 63.1209(a)(1), that a higher sensitivity would adequately detect bag leaks;

(*2*) The bag leak detection system shall provide output of relative particulate matter loadings;

(*3*) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(*4*) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(*5*) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(*6*) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7)(i) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(*7*) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(*8*) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(B) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7)(i) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a bag leak detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified below. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(*1*) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(*2*) You must alleviate the cause of the alarm by taking the necessary corrective measure(s) which may include, but are not to be limited to, the following measures:

(*i*) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(*ii*) Sealing off defective bags or filter media;

(*iii*) Replacing defective bags or filter media, or otherwise repairing the control device;

(*iv*) Sealing off a defective baghouse compartment;

(*v*) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(*vi*) Shutting down the combustor.

7. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i).

b. Adding paragraph (c)(2)(iv).

c. Adding paragraph (e)(3).

d. Revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ii)(C), (f)(1)(x) introductory text, and (f)(1)(xvii).

e. Adding paragraph (f)(1)(ii)(D).

f. Removing and reserving paragraph (f)(1)(xv).

g. Revising paragraphs (g)(2)(i) and (g)(2)(ii).

h. Adding paragraph (g)(2)(v).

i. Revising paragraphs (h)(1) and (h)(2) introductory text.

j. Revising paragraphs (j)(1)(ii) and (j)(3).

k. Revising paragraphs (m)(4)(i) and (m)(4)(ii).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * * (i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Was initiated after 54 months prior to the compliance date, except as provided by paragraphs (c)(2)(iii) or (c)(2)(iv) of this section;

(B) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results demonstrate compliance with the applicable standards;

(C) Was in conformance with the requirements of paragraph (g)(1) of this section; and

(D) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

* * * * *

(iv) The data in lieu test age restriction provided in paragraph (c)(2)(i)(A) of this section does not apply to DRE data provided you do not feed hazardous waste at a location in the combustion system other than the normal flame zone.

* * * * *

(e) * * *

(3) *Petitions for time extension if Administrator fails to approve or deny test plans.* You may petition the Administrator under § 63.7(h) to obtain a "waiver" of any performance test—initial or periodic performance test; comprehensive or confirmatory test. The "waiver" would be implemented as an extension of time to conduct the performance test at a later date.

(i) *Qualifications for the waiver.* (A) You may not petition the Administrator for a waiver under this section if the Administrator has issued a notification of intent to deny your test plan(s) under § 63.7(c)(3)(i)(B);

(B) You must submit a site-specific emissions testing plan and a continuous monitoring system performance evaluation test plan at least one year before a comprehensive performance test is scheduled to begin as required by paragraph (c)(1) of this section, or at least 60 days before a confirmatory performance test is scheduled to begin as required by paragraph (d) of this section. The test plans must include all required documentation, including the substantive content requirements of paragraph (f) of this section and § 63.8(e); and

(C) You must make a good faith effort to accommodate the Administrator's comments on the test plans.

(ii) *Procedures for obtaining a waiver and duration of the waiver:* (A) You must submit to the Administrator a waiver petition or request to renew the petition under § 63.7(h) separately for each source at least 60 days prior to the scheduled date of the performance test;

(B) The Administrator will approve or deny the petition within 30 days of receipt and notify you promptly of the decision;

(C) The Administrator will not approve an individual waiver petition for a duration exceeding 6 months;

(D) The Administrator will include a sunset provision in the waiver ending the waiver within 6 months;

(E) You may submit a revised petition to renew the waiver under § 63.7(h)(3)(iii) at least 60 days prior to the end date of the most recently approved waiver petition;

(F) The Administrator may approve a revised petition for a total waiver period up to 12 months.

(iii) *Content of the waiver.* (A) You must provide documentation to enable the Administrator to determine that the source is meeting the relevant standard(s) on a continuous basis as required by § 63.7(h)(2). For extension requests for the initial comprehensive performance test, you must submit your Documentation of Compliance to assist the Administrator in making this determination.

(B) You must include in the petition information justifying your request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test, as required by § 63.7(h)(3)(iii).

(iv) *Public notice.* You must notify the public (e.g., distribute public mailing list) of your petition to waive a performance test.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standard of § 63.1203, § 63.1204, or § 63.1205, continue to be representative of the organic hazardous air pollutants in your hazardous waste feedstreams;

* * * * *

(x) If you are requesting to extrapolate metal feedrate limits from comprehensive performance test levels under §§ 63.1209(l)(1)(i) or 63.1209(n)(2)(ii)(A):

* * * * *

(xvii) If you propose to use a surrogate for measuring or monitoring gas flowrate, you must document in the comprehensive performance test plan that the surrogate adequately correlates with gas flowrate, as required by paragraph (m)(7) of this section, and § 63.1209(j)(2), (k)(3), (m)(2)(i), (n)(5)(i), and (o)(2)(i).

* * * * *

(g) * * *

(2) * * *

(i) Carbon monoxide (or hydrocarbon) CEMS emissions levels must be within the range of the average value to the maximum value allowed, except as provided by paragraph (g)(2)(iv) of this section. The average value is defined as the sum of the hourly rolling average values recorded (each minute) over the previous 12 months, divided by the number of rolling averages recorded during that time. The average value must not include calibration data, startup data, shutdown data, malfunction data, and data obtained when not burning hazardous waste;

(ii) Each operating limit (specified in § 63.1209) established to maintain

compliance with the dioxin/furan emission standard must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed, except as provided by paragraph (g)(2)(iv) of this section. The average value is defined as the sum of the rolling average values recorded over the previous 12 months, divided by the number of rolling averages recorded during that time. The average value must not include calibration data, startup data, shutdown data, malfunction data, and data obtained when not burning hazardous waste;

* * * * *

(v) The Administrator may approve an alternative range to that required by paragraphs (g)(2)(i) and (ii) of this section if you document in the confirmatory performance test plan that it may be problematic to maintain the required range during the test. In addition, when making the finding of compliance, the Administrator may consider test conditions outside of the range specified in the test plan based on a finding that you could not reasonably maintain the range specified in the test plan and considering factors including whether the time duration and level of the parameter when operations were out of the specified range were such that operations during the confirmatory test are determined to be reasonably representative of normal operations. In addition, the Administrator will consider the proximity of the emission test results to the standard.

* * * * *

(h) * * * (1) Current operating parameter limits established under § 63.1209 are waived during subsequent comprehensive performance testing.

(2) Current operating parameter limits are also waived during pretesting prior to comprehensive performance testing for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Administrator) under an approved test plan or if the source records the results of the pretesting. Pretesting means:

* * * * *

(j) * * *

(1) * * *

(ii) Upon postmark of the Notification of Compliance, you must comply with all operating requirements specified in the Notification of Compliance in lieu of the limits specified in the Documentation of Compliance required under § 63.1211(c).

* * * * *

(3) See §§ 63.7(g), 63.9(h), and 63.1210(b) for additional requirements pertaining to the Notification of Compliance (*e.g.*, you must include results of performance tests in the Notification of Compliance).

* * * * *

(m) * * *

(4) * * *

(i) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride from all feedstreams that ensures the MTEC as calculated in paragraph (m)(2)(iii) of this section is below the applicable emission standard; and

(ii) Interlock the minimum gas flowrate limit and maximum feedrate limit of paragraph (m)(4)(i) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride feedrate exceeds the limits of paragraph (m)(4)(i) of this section.

* * * * *

8. Section 63.1209 is amended by:

a. Revising paragraph (a)(1)(ii)(A).

b. Revising paragraphs (b)(2)(i) and (b)(5)(iii)(A).

c. Revising paragraph (f)(1).

d. Revising paragraphs (g)(1)(iii)(B)(*1*), (g)(1)(iii)(B)(*2*), (g)(1)(iii)(B)(*3*), (g)(1)(iii)(C)(*1*), and (g)(1)(iii)(C)(*2*).

e. Revising paragraphs (k)(5) and (k)(8)(ii).

f. Revising paragraphs (l)(1) introductory text, (l)(3), and (l)(4).

g. Revising paragraph (m)(3).

h. Revising paragraph (n)(4).

i. Revising paragraph (o)(1).

j. Revising paragraph (q).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

(a) * * *

(1) * * *

(ii) * * *

(A) You must maintain and operate each COMS in accordance with the requirements of § 63.8(c) except for the requirements under § 63.8(c)(3). The requirements of § 63.1211(c) shall be complied with instead of § 63.8(c)(3); and

* * * * *

(b) * * *

(2) * * *

(i) *Calibration of thermocouples and pyrometers.* The calibration of thermocouples must be verified at a frequency and in a manner consistent with manufacturer specifications, but no less frequent than once per year. You must operate and maintain optical pyrometers in accordance with manufacturer specifications unless otherwise approved by the Administrator. You must calibrate optical pyrometers in accordance with the frequency and procedures recommended by the manufacturer, but no less frequent than once per year, unless otherwise approved by the Administrator. And,

* * * * *

(5) * * *

(iii) * * * (A) Except as provided by paragraph (b)(5)(iii)(B) of this section, you must continue monitoring operating parameter limits with a CMS when the hazardous waste feed is cutoff if the source is operating. You must not resume feeding hazardous waste if an operating parameter exceeds its limit.

* * * * *

(f) * * *

(1) *Section 63.8(c)(3).* The requirements of § 63.1211(c), that requires CMSs to be installed, calibrated, and operational on the compliance date, shall be complied with instead of section 63.8(c)(3);

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) * * *

(*1*) Data or information justifying your request for an alternative monitoring requirement (or for a waiver of an operating parameter limit), such as the technical or economic infeasibility or the impracticality of using the required approach;

(*2*) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach/technique (*e.g.*, type of detector, monitoring location), the averaging period for the limit, and how the limit is to be calculated; and

(*3*) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard, or that it is the monitoring requirement that best assures compliance with the standard and that is technically and economically practicable.

(C) * * *

(*1*) Notice of the information and findings on which the intended disapproval is based; and

(*2*) Notice of opportunity for you to present additional information to the Administrator before final action on the request. At the time the Administrator notifies you of intention to disapprove the request, the Administrator will specify how much time you will have after being notified of the intended

disapproval to submit the additional information.

* * * * *

(k) * * *

(5) *Particulate matter operating limit.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits on the particulate matter control device as specified by paragraph (m)(1) of this section;

* * * * *

(8) * * *

(ii) *Maximum time in-use.* You must replace a catalytic oxidizer with a new catalytic oxidizer when it has reached the maximum service time specified by the manufacturer.

* * * * *

(l) * * *

(1) *Feedrate of total mercury.* You must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages, unless mercury feedrate limits are extrapolated from performance test feedrate levels under the following provisions.

* * * * *

(3) *Activated carbon injection.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits prescribed by paragraphs (k)(5) and (k)(6) of this section.

(4) *Activated carbon bed.* If your combustor is equipped with an activated carbon bed system, you must comply with the requirements of (k)(7) of this section to assure compliance with the mercury emission standard.

(m) * * *

(3) *Maximum ash feedrate.* Owners and operators of hazardous waste incinerators must establish a maximum ash feedrate limit as the average of the test run averages.

(n) * * *

(4) *Maximum total chlorine and chloride feedrate.* You must establish a 12-hour rolling average limit for the feedrate of total chlorine and chloride in all feedstreams as the average of the test run averages.

* * * * *

(o) * * *

(1) *Feedrate of total chlorine and chloride.* You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages.

* * * * *

(q) *Operating under different modes of operation.* If you operate under different modes of operation, you must establish operating parameter limits for each mode. You must document in the operating record when you change a mode of operation and begin complying with the operating limits for an alternative mode of operation.

(1) *Operating under otherwise applicable standards after the hazardous waste residence time has transpired.* As provided by § 63.1206(b)(1)(ii), you may operate under otherwise applicable requirements promulgated under sections 112 and 129 of the Clean Air Act in lieu of the substantive requirements of this subpart.

(i) The otherwise applicable requirements promulgated under sections 112 and 129 of the Clean Air Act are applicable requirements under this subpart.

(ii) You must specify (e.g., by reference) the otherwise applicable requirements as a mode of operation in your Documentation of Compliance under § 63.1211(c), your Notification of Compliance under § 63.1207(j), and your title V permit application. These requirements include the otherwise applicable requirements governing emission standards, monitoring and compliance, and notification, reporting, and recordkeeping.

(2) *Calculating rolling averages under different modes of operation.* When you transition to a different mode of operation, you must calculate rolling averages as follows:

(i) *Retrieval approach.* Calculate rolling averages anew using the continuous monitoring system values previously recorded for that mode of operation (i.e., you ignore continuous monitoring system values subsequently recorded under other modes of operation when you transition back to a mode of operation); or

(ii) *Start anew.* Calculate rolling averages anew without considering previous recordings.

(A) Rolling averages must be calculated as the average of the available one-minute values for the parameter until enough one-minute values are available to calculate hourly or 12-hour rolling averages, whichever is applicable to the parameter.

(B) You may not transition to a new mode of operation using this approach if the most recent operation in that mode resulted in an exceedance of an applicable emission standard measured with a CEMS or operating parameter limit prior to the hazardous waste residence time expiring; or

(iii) *Seamless transition.* Continue calculating rolling averages using data from the previous operating mode provided that both the operating limit and the averaging period for the parameter are the same for both modes of operation.

9. Section 63.1210 is amended by revising paragraph (a) to read as follows:

§ 63.1210 What are the notification requirements?

(a) *Summary of requirements.* (1) You must submit the following notifications to the Administrator:

Reference	Notification
63.9(b)	Initial notifications that you are subject to Subpart EEE of this Part.
63.9(d)	Notification that you are subject to special compliance requirements.
63.9(j)	Notification and documentation of any change in information already provided under § 63.9.
63.1206(b)(5)(i)	Notification of changes in design, operation, or maintenance.
63.1207(e), 63.9(e), 63.9(g)(1) and (3)	Notification of performance test and continuous monitoring system evaluation, including the performance test plan and CMS performance evaluation plan.[1]
63.1210(b), 63.1207(j), 63.1207(k), 63.1207(l), 63.9(h), 63.10(d)(2), 63.10(e)(2).	Notification of compliance, including results of performance tests and continuous monitoring system performance evaluations.

[1] You may also be required on a case-by-case basis to submit a feedstream analysis plan under § 63.1209(c)(3).

(2) You must submit the following notifications to the Administrator if you request or elect to comply with alternative requirements:

Reference	Notification, request, petition, or application
63.9(i)	You may request an adjustment to time periods or postmark deadlines for submittal and review of required information.

Reference	Notification, request, petition, or application
63.10(e)(3)(ii)	You may request to reduce the frequency of excess emissions and CMS performance reports.
63.10(f)	You may request to waive recordkeeping or reporting requirements.
63.1204(d)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(iii)	Notification that you elect to comply with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(4), 63.1213, 63.6(i), 63.9(c)	You may request an extension of the compliance date for up to one year.
63.1206(b)(5)(i)(C)	You may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting after making a change in the design or operation that could affect compliance with emission standards and prior to submitting a revised Notification of Compliance.
63.1206(b)(8)(iii)(B)	If you elect to conduct particulate matter CEMS correlation testing and wish to have federal particulate matter and opacity standards and associated operating limits waived during the testing, you must notify the Administrator by submitting the correlation test plan for review and approval.
63.1206(b)(8)(v)	You may request approval to have the particulate matter and opacity standards and associated operating limits and conditions waived for more than 96 hours for a correlation test.
63.1206(b)(9)	Owners and operators of lightweight aggregate kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrochloric acid/chlorine gas under certain conditions.
63.1206(b)(10)	Owners and operators of cement kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrochloric acid/chlorine gas under certain conditions.
63.1206(b)(14)	Owners and operators of incinerators may elect to comply with an alternative to the particulate matter standard.
63.1206(b)(15)	Owners and operators of cement and lightweight aggregate kilns may request to comply with the alternative to the interim standards for mercury.
63.1206(c)(2)(ii)(C)	You may request to make changes to the startup, shutdown, and malfunction plan.
63.1206(c)(5)(i)(C)	You may request an alternative means of control to provide control of combustion system leaks.
63.1206(c)(5)(i)(D)	You may request other techniques to prevent fugitive emissions without use of instantaneous pressure limits.
63.1207(c)(2)	You may request to base initial compliance on data in lieu of a comprehensive performance test.
63.1207(d)(3)	You may request more than 60 days to complete a performance test if additional time is needed for reasons beyond your control.
63.1207(e)(3), 63.7(h)	You may request a time extension if the Administrator fails to approve or deny your test plan.
63.1207(h)(2)	You may request to waive current operating parameter limits during pretesting for more than 720 hours.
63.1207(f)(1)(ii)(D)	You may request a reduced hazardous waste feedstream analysis for organic hazardous air pollutants if the reduced analysis continues to be representative of organic hazardous air pollutants in your hazardous waste feedstreams.
63.1207(g)(2)(v)	You may request to operate under a wider operating range for a parameter during confirmatory performance testing.
63.1207(i)	You may request up to a one-year time extension for conducting a performance test (other than the initial comprehensive performance test) to consolidate testing with other state or federally-required testing.
63.1207(j)(4)	You may request more than 90 days to submit a Notification of Compliance after completing a performance test if additional time is needed for reasons beyond your control.
63.1207(l)(3)	After failure of a performance test, you may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting.
63.1209(a)(5), 63.8(f)	You may request: (A.) Approval of alternative monitoring methods for compliance with standards that are monitored with a CEMS; and (B.) approval to use a CEMS in lieu of operating parameter limits.
63.1209(g)(1)	You may request approval of: (A.) Alternative monitoring methods, except for standards that you must monitor with a continuous emission monitoring system (CEMS) and except for requests to use a CEMS in lieu of operating parameter limits; or (B.) a waiver of an operating parameter limit.
63.1209(l)(1)	You may request to extrapolate mercury feedrate limits.
63.1209(n)(2)(ii)	You may request to extrapolate semivolatile and low volatile metal feedrate limits.
63.1211(d)	You may request to use data compression techniques to record data on a less frequent basis than required by § 63.1209.

* * * * * * *

10. Section 63.1211 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.1211 What are the recordkeeping and reporting requirements?

(a) *Summary of reporting requirements.* You must submit the following reports to the Administrator:

Reference	Report
63.10(d)(4)	Compliance progress reports, if required as a condition of an extension of the compliance date granted under § 63.6(i).
63.10(d)(5)(i)	Periodic startup, shutdown, and malfunction reports.
63.10(d)(5)(ii)	Immediate startup, shutdown, and malfunction reports.
63.10(e)(3)	Excessive emissions and continuous monitoring system performance report and summary report.
63.1206(c)(2)(ii)(B)	Startup, shutdown, and malfunction plan.
63.1206(c)(3)(vi)	Excessive exceedances reports.
63.1206(c)(4)(iv)	Emergency safety vent opening reports.

(b) *Summary of recordkeeping requirements.* You must retain the following in the operating record:

Reference	Document, data, or information
63.1200, 63.10(b) and (c)	General. Information required to document and maintain compliance with the regulations of Subpart EEE, including data recorded by continuous monitoring systems (CMS), and copies of all notifications, reports, plans, and other documents submitted to the Administrator.
63.1204(d)(1)(ii)	Documentation of mode of operation changes for cement kilns with in-line raw mills.
63.1204(d)(2)(ii)	Documentation of compliance with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(ii)	Documentation of compliance with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(1)(ii)	If you elect to comply with all applicable requirements and standards promulgated under authority of the Clean Air Act, including Sections 112 and 129, in lieu of the requirements of Subpart EEE when not burning hazardous waste, you must document in the operating record that you are in compliance with those requirements.
63.1206(b)(5)(ii)	Documentation that a change will not adversely affect compliance with the emission standards or operating requirements.
63.1206(b)(11)	Calculation of hazardous waste residence time.
63.1206(c)(2)	Startup, shutdown, and malfunction plan.
63.1206(c)(2)(v)(A)	Documentation of your investigation and evaluation of excessive exceedances during malfunctions.
63.1206(c)(3)(v)	Corrective measures for any automatic waste feed cutoff that results in an exceedance of an emission standard or operating parameter limit.
63.1206(c)(3)(vii)	Documentation and results of the automatic waste feed cutoff operability testing.
63.1206(c)(4)(ii)	Emergency safety vent operating plan.
63.1206(c)(4)(iii)	Corrective measures for any emergency safety vent opening.
63.1206(c)(5)(ii)	Method used for control of combustion system leaks.
63.1206(c)(6)	Operator training and certification program.
63.1206(c)(7)(i)(D)	Operation and maintenance plan.
63.1209(c)(2)	Feedstream analysis plan.
63.1209(k)(6)(iii), 63.1209(k)(7)(ii), 63.1209(k)(9)(ii), 63.1209(o)(4)(iii).	Documentation that a substitute activated carbon, dioxin/furan formation reaction inhibitor, or dry scrubber sorbent will provide the same level of control as the original material.
63.1209(k)(7)(i)(C)	Results of carbon bed performance monitoring.
63.1209(q)	Documentation of changes in modes of operation.
63.1211(c)	Documentation of compliance.

* * * * *

11. Section 63.1213 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 63.1213 How can the compliance date be extended to install pollution prevention or waste minimization controls?

(a) *Applicability.* You may request from the Administrator or State with an approved title V program an extension of the compliance date of up to one year. * * *

* * * * *

12. Table 1 to Subpart EEE is amended to read as follows:

TABLE 1 TO SUBPART EEE.—GENERAL PROVISIONS APPLICABLE TO SUBPART EEE

Reference	Applies to subpart EEE	Explanation
63.1	Yes.	
63.2	Yes.	
63.3	Yes.	
63.4	Yes..	
63.5	Yes.	

TABLE 1 TO SUBPART EEE.—GENERAL PROVISIONS APPLICABLE TO SUBPART EEE—Continued

Reference	Applies to subpart EEE	Explanation
63.6(a), (b), (c), (d), and (e).	Yes.	
63.6(f)	Yes	Except that the performance test requirements of Sec. 63.1207 apply instead of §63.6(f)(2)(iii)(B).
63.6(g) and (h)	Yes.	
63.6(i)	Yes	Section 63.1213 specifies that the compliance date may also be extended for inability to install necessary emission control equipment by the compliance date because of implementation of pollution prevention or waste minimization controls.
63.6(j)	Yes.	
63.7(a)	Yes	Except §63.1207(e)(3) allows you to petition the Administrator under §63.7(h) to provide an extension of time to conduct a performance test.
63.7(b)	Yes	Except §63.1207(e) requires you to submit the site-specific test plan for approval at least one year before the comprehensive performance test is scheduled to begin.
63.7(c)	Yes	Except §63.1207(e) requires you to submit the site-specific test plan (including the quality assurance provisions under §63.7(c)) for approval at least one year before the comprehensive performance test is scheduled to begin.
63.7(d)	Yes.	
63.7(e)	Yes	Except §63.1207 prescribes operations during performance testing and §63.1209 specifies operating limits that will be established during performance testing (such that testing is likely to be representative of the extreme range of normal performance).
63.7(f)	Yes.	
63.7(g)	Yes	Except §63.1207(j) requiring that you submit the results of the performance test (and the notification of compliance) within 90 days of completing the test, unless the Administrator grants a time extension, applies instead of §63.7(g)(1).
63.7(h)	Yes	Except §63.1207(c)(2) allows data in lieu of the initial comprehensive performance test, and §63.1207(m) provides a waiver of certain performance tests. You must submit requests for these waivers with the site-specific test plan.
63.8(a) and (b)	Yes.	
63.8(c)	Yes	Except: (1) §63.1211(c) that requires you to install, calibrate, and operate CMS by the compliance date applies instead of §63.8(c)(3); and (2) the performance specifications for CO, HC, and O2 CEMS in subpart B, of this chapter requiring that the detectors measure the sample concentration at least once every 15 seconds for calculating an average emission level once every 60 seconds apply instead of §63.8(c)(4)(ii).
63.8(d)	Yes.	
63.8(e)	Yes	Except §63.1207(e) requiring you to submit the site-specific comprehensive performance test plan and the CMS performance evaluation test plan for approval at least one year prior to the planned test date applies instead of §§63.8(e)(2) and (3)(iii).
63.8(f) and (g)	Yes.	
63.9(a)	Yes.	
63.9(b)	Yes	*Note:* Section 63.9(b)(1)(ii) pertains to notification requirements for area sources that become a major source, and §63.9(b)(2)(v) requires a major source determination. Although area sources are subject to all provisions of this subpart (Subpart EEE), these sections nonetheless apply because the major source determination may affect the applicability of part 63 standards or title V permit requirements to other sources (i.e., other than a hazardous waste combustor) of hazardous air pollutants at the facility.
63.9(c) and (d)	Yes.	
63.9(e)	Yes	Except §63.1207(e) which requires you to submit the comprehensive performance test plan for approval one year prior to the planned performance test date applies instead of §63.9(e).
63.9(f)	Yes	Section 63.9(f) applies if you are allowed under §63.1209(a)(1)(v) to use visible determination of opacity for compliance in lieu of a COMS.
63.9(g)	Yes	Except §63.9(g)(2) pertaining to COMS does not apply.
63.9(h)	Yes	Except §63.1207(j) requiring you to submit the notification of compliance within 90 days of completing a performance test unless the Administrator grants a time extension applies instead of §63.9(h)(2)(iii). Note: Even though area sources are subject to this subpart, the major source determination required by §63.9(h)(2)(i)(E) is applicable to hazardous waste combustors for the reasons discussed above.
63.9(i) and (j)	Yes.	
63.10	Yes	Except reports of performance test results required under §63.10(d)(2) may be submitted up to 90 days after completion of the test.
63.11	No.	
63.12–63.15	Yes.	

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

2. Section 266.100 is amended by:

a. Revising the first sentence of paragraph (a).

b. Revising the first sentence of paragraph (b)(1).

c. Revising paragraphs (d)(1)(i)(B), (d)(2)(i), (d)(2)(ii), (d)(3) introductory text, (d)(3)(i) introductory text, and (d)(3)(i)(D).

The revisions read as follows:

§ 266.100 Applicability.

(a) The regulations of this subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this chapter) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), (g), and (h) of this section.* * *

* * * * *

(b) * * * (1) Except as provided by paragraph (b)(2) of this section, the standards of this part no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.* * *

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) The hazardous waste is burned solely for metal recovery consistent with the provisions of paragraph (d)(2) of this section;

* * * * *

(2) * * *

(i) The hazardous waste has a total concentration of organic compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (d)(1)(iii) of this section; or

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (d)(1)(iii) of this section.

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP) or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (d)(1) of this section. The owners or operator must comply with the requirements of paragraph (d)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph (d)(3).

(i) The hazardous wastes listed in appendices XI, XII, and XIII, part 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (d)(1) of this section, provided that:

* * * * *

(D) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of paragraph (d)(3) of this section and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph (d)(1)(ii) of this section and records to document compliance with paragraph (d)(3) of this section shall be kept for at least three years.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.42 is amended by revising paragraph (j)(1) to read as follows:

§ 270.42 Permit modifications at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000, (See 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

* * * * *

[FR Doc. 02–3373 Filed 2–13–02; 8:45 am]

BILLING CODE 6560–50–P

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: February 4, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, 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 L—Georgia

2. Section 52.569 is removed and reserved.

3. Section 52.570 is amended by:

a. Adding in the table to paragraph (c) a new entry in numerical order for 391–3–1–.02(2)(bbb); and

b. Adding two new entries 16 and 17 in numerical order to the table in paragraph (e).

The additions read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
391–3–1–.02(2)(bbb)	Gasoline Marketing Rule	07/18/01	2/22/02	
*	*	*	*	

(e) * * *

EPA APPROVED GEORGIA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
*	*	*	*
16. Preemption Waiver Request for Low-RVP, Low-Sulfur Gasoline Under Air Quality Control Rule 391–3–1–.02(2)(bbb).	Atlanta Metropolitan Area	May 31, 2000	February 22, 2002
17. Technical Amendment to the Georgia Fuel Waiver Request of May 31, 2000.	Atlanta Metropolitan Area	November 9, 2001	February 22, 2002

* * * * *

[FR Doc. 02–4142 Filed 2–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7148–7]

RIN 2060–AE34

National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On June 17, 1999, we issued the national emission standards for hazardous air pollutants (NESHAP) from Oil and Natural Gas Production Facilities and the national emission standards for hazardous air pollutants from Natural Gas Transmission and Storage Facilities (Oil and Gas NESHAP). On June 29, 2001, we issued technical corrections to clarify intent and correct errors in the Oil and Gas NESHAP. This technical correction will correct an error that was made in the technical correction for the Natural Gas Transmission and Storage Facilities NESHAP and will not change the level of health protection the Natural Gas Transmission and Storage Facilities NESHAP provide or the basic control requirements of the Natural Gas Transmission and Storage Facilities NESHAP. The NESHAP require new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impractible, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this error correction without prior proposal and opportunity for comment because the change to the rule is a minor technical correction, is noncontroversial in nature, and does not substantively change the requirements of the Natural Gas Transmission and Storage Facilities NESHAP. Thus, notice and public procedure are unnessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(5).

EFFECTIVE DATE: February 22, 2002.

ADDRESSEES: Docket No. A–94–04 contains the supporting information used in the development of this rulemaking. The docket is located at the U.S. EPA in room M–1500, Waterside Mall (ground floor), 401 M Street SW., Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m.,

Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Waste and Chemical Processes Group, Emission Standards Division(C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–3078, facsimile: (919) 541–0246, electronic mail address: *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities that will potentially be affected by this correction are those that store or transport natural gas and are major sources of HAP as defined in section 112 of the Clean Air Act. The regulated categories and entities include:

Category	Examples of regulated entities
Industry	Glycol dehydration units and natural gas transmission and storage facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1270 of the Natural Gas Transmission and Storage Facilities NESHAP. 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.*World Wide Web (WWW).* The text of today's document 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 or promulgated rules *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.

I. Correction

Today's action consists of one error correction to the Natural Gas Transmission and Storage Facilities NESHAP technical corrections that were published on June 29, 2001 (66 FR 34548). This error correction is minor in nature and noncontroversial. We have deleted a subparagraph that was intended to have been deleted from the applicability section of the Natural Gas Transmission and Storage Facilities NESHAP.

The correction in today's action is being made to remove subparagraph § 63.1270(a)(1)(iv) that mistakenly remained in the June 29, 2001 technical corrections. In that action a single equation was added to simplify a four-step process to calculate natural gas throughput. The deletion of this subparagraph will avoid confusion and make it clear that only the single equation added in the June 29, 2001 action is used in determining natural gas throughput.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This technical correction does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This technical correction also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This technical correction 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 technical correction, 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 this rule amendment in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This technical correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 17, 1999 (64 FR 32610) **Federal Register** publication containing the Oil and Natural Gas Production final rule and Natural Gas Transmission and Storage final rule.

This technical correction is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 22, 2002. 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).

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations,

Reporting and recordkeeping requirements.

Dated: February 14, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart HHH—[Amended]

2. Section 63.1270 is amended by removing paragraph (a)(1)(iv).

[FR Doc. 02–4301 Filed 2–21–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–299; MM Docket No. 98–159; RM–9290]

Radio Broadcasting Services; Wallace, ID, and Bigfork, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Bee Broadcasting, Inc. directed to the *Report and Order* in this proceeding. *See* 66 FR 29726, published May 17, 2001. Specifically, that action reallotted Channel 264C to Bigfork, Montana, and modified the Station KSIL construction permit accordingly.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 98–159, adopted February 6, 2002, and released February 8,2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–4219 Filed 2–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–296; MM Docket No. 01–250, RM–10273; MM Docket No. 01–251, RM–10274 and MM Docket No. 01–253, RM–10276]

Radio Broadcasting Services; Cheyenne Wells, Flagler, and Stratton, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants three proposals that allot new FM channels to Cheyenne Wells, Flagler, and Stratton, Colorado. Filing windows for Channel 224C1 at Cheyenne Wells, Colorado, Channel 283C3 at Flagler, Colorado, and Channel 246C1 at Stratton, Colorado, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order. *See* Supplementary Information.

DATES: Effective March 25, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 01–250, MM Docket No. 01–251, and MM Docket No. 01–253, adopted January 30, 2002, and released February 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

The Commission, at the request of Cheyenne Wells Broadcasting, allots Channel 224C1 at Cheyenne Wells, Colorado, as the community's first local aural transmission service. *See* 66 FR 50602 (October 4, 2001). Channel 224C1 can be allotted at Cheyenne Wells in compliance with the Commission's minimum distance separation requirements with no site restrictions. The coordinates for Channel 224C1 at Cheyenne Wells are 38–49–16 North Latitude and 102–21–09 West Longitude.

The Commission, at the request of Flagler Broadcasting, allots Channel 283C3 at Flagler, Colorado, as the community's first local aural transmission service. *See* 66 FR 50602 (October 4, 2001). Channel 283C3 can be allotted to Flagler in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4.1 miles) west of Flagler. The coordinates for Channel 283C3 at Flagler are 39–17–17 North Latitude and 103–08–32 West Longitude.

The Commission, at the request of Stratton Broadcasting, allots Channel 246C1 at Stratton, Colorado, as the community's first local aural transmission service. *See* 66 FR 50602 (October 4, 2001). Channel 246C1 can be allotted to Stratton in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) east of Stratton, Colorado. The coordinates for Channel 246C1 at Stratton are 39–18–34 North Latitude and 102–33–17 West Longitude.

List of Subjects in 47 CFR part 73

Radio broadcasting.

Part 73 of Title 47 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, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Cheyenne Wells, Channel 224C1; Flagler, Channel 283C3; and Stratton, Channel 246C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–4218 Filed 2–21–02; 8:45 am]

BILLING CODE 6712–01–P



Federal Register

Wednesday,
February 27, 2002

Part VII

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7147–8]

RIN 2060–AH17

National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations. The EPA has identified these facilities as major sources of emissions of hazardous air pollutants (HAP), such as glycol ethers, toluene, and xylene. These NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all leather finishing operations that are major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). We estimate the final NESHAP will reduce nationwide emissions of HAP from leather finishing operations by 375 tons per year (tpy). In addition, the final NESHAP will reduce non-HAP emissions of volatile organic compounds (VOC) by 750 tpy. The emissions reductions achieved by these final NESHAP, when combined with the emissions reductions achieved by other similar standards, will provide protection to the public and achieve a primary goal of the CAA.

EFFECTIVE DATE: The effective date is February 27, 2002. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of February 27, 2002.

ADDRESSES: *Docket.* Docket No. A–99–38 contains the information considered by EPA in developing the NESHAP. This docket is located at the U.S. EPA, Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Room M–1500, Waterside Mall, Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For 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 § 63.13. For information concerning the analyses performed in developing these NESHAP, contact Mr. William Schrock, Organic Chemicals Group, Emission Standards Division, (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5032; facsimile number (919) 541–3470; electronic mail address: *schrock.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public Comments. The NESHAP for leather finishing operations were proposed on October 2, 2000 (65 FR 58702) and seven comment letters were received on the proposal. The comment letters are available in Docket A–99–38, along with a summary of the comment letters and EPA's responses to the comments. In response to the public comments, EPA adjusted the final NESHAP where appropriate.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or final 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.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC Code	NAICS Code	Examples of regulated entities
Industry	3111	3161	Leather finishing operations.
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. Not all facilities classified under the NAICS or SIC codes are affected. Other types of entities not listed could be affected. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.5285 of the final 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.

Judicial Review. The NESHAP for leather finishing operations were proposed on October 2, 2000 (65 FR 58702). This action announces the EPA's final decision on the NESHAP. Under section 307(b)(1) of the CAA, judicial review of these NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 29, 2002. Only those objections to this rule which 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 today's final NESHAP 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. What are the environmental, energy and economic impacts?
II. What changes and clarifications did we make since proposal?
A. Product Process Operations
B. MACT Floor Determination
C. Definitions
D. Clarifications

III. How did we respond to significant comments?
A. Rule Applicability
B. MACT Floor Determination
C. Product Process Operations
D. Definitions
IV. What are the Administrative Requirements for this rule?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act of 1995
I. Congressional Review Act
J. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

I. What Are the Environmental, Energy, and Economic Impacts?

The nationwide environmental and cost impacts for today's final rule are the same as for the proposed rule. For all affected sources, we determined the total capital cost associated with the MACT level of control is approximately $5.6 million, and a total annualized cost of approximately $440,000 per year. The total annualized costs include the annualized capital costs and the costs associated with compliance monitoring, recordkeeping, and reporting.

We determined the overall cost associated with the MACT level of control to be about $1,300 per ton of HAP emissions reduced. The MACT level of control will reduce HAP emissions from existing sources by approximately 375 tpy, a reduction of approximately 51 percent. We do not expect any significant secondary air emissions, wastewater, solid waste, or energy impacts resulting from the final rule.

Additional information on the costs and environmental impacts of control options are discussed in the following four documents, which can be found in docket A–99–38:

(1) National Emission Standards for Hazardous Air Pollutants: Leather Finishing Operations, proposed rule (65 FR 58702, October 2, 2000).

(2) "Public Comments and EPA Responses to the Proposed NESHAP for Leather Finishing Operations," memorandum dated July 17, 2001.

(3) "Environmental and Energy Impacts for Leather Tanning and Finishing MACT Floor Regulatory Option," memorandum dated September 30, 1999.

(4) "Cost Impacts Associated with HAP Emissions Reductions for Leather Tanning and Finishing Operations," September 2, 1999.

The economic impacts of the MACT floor are discussed in the proposed rule and in the document, "Economic Impact Analysis of Leather Tanning and Finishing Operations NESHAP." The major findings regarding the economic impacts of the rule have not changed as a result of public comments on the proposed rule. The total annualized costs associated with these final NESHAP are approximately $440,000 in 1997 dollars. This cost represents only 0.014 percent of total industry revenues based on 1996 value of shipments. Because the total annualized costs associated with complying with the final NESHAP are such a small percentage of total market revenues (value of shipments), it is unlikely that market prices or production will change as a result of these final NESHAP. As an alternative to performing a market analysis, we evaluated the cost impacts on facility and firm revenues. The calculation of cost-to-sales ratios projects that only one firm (owning one facility) will have an impact that is greater than 1 percent of revenues (1.52 percent). All other firms have impacts well below 1/10th of 1 percent and range from 0.00 percent to 0.09 percent of firm revenues. Given that overall costs represent a small fraction of industry revenues, and individual firm revenues experience minimal impacts, we conclude that economic impacts associated with this final rule will be negligible.

II. What Changes and Clarifications Did We Make Since Proposal?

This section describes the major changes made in response to public comments and several clarifications that did not change any of the proposed regulatory requirements.

A. Product Process Operations

In the final rule, we have assigned the same HAP emission limit to the water-resistant leather product process operations and specialty leather finishing product process operations. Thus, the product process operation is now referred to as "water-resistant/specialty." In the final rule, we have also added a definition for "specialty leather." Under the proposed rule, specialty leather finishing had been categorized as a nonwater-resistant leather product process operation with a corresponding lower HAP emission limit.

B. MACT Floor Determination

In the final rule, we revised the MACT emission limits as follows:

(1) The MACT emission limit for existing sources with upholstery leather (less than 4 grams finish add-on per square foot) product process operations was decreased from 7.1 to 6.8 pounds of HAP per 1,000 square feet of leather processed.

(2) The MACT emission limit for new sources with upholstery leather (less than 4 grams finish add-on per square foot) product process operations was decreased from 2.9 to 2.5 pounds of HAP per 1,000 square feet of leather processed.

(3) The MACT emission limit for existing sources with water-resistant/specialty leather product process operations was decreased from 5.9 to 5.6 pounds of HAP per 1,000 square feet of leather processed. The revised definition of water-resistant product process operations to include specialty leather increases the emission limit for specialty leather product process operations from 3.4 to 5.6 pounds of HAP per 1,000 square feet of leather processed.

(4) The MACT emission limit for existing sources with nonwater-resistant leather product process operations was increased from 3.4 to 3.7 pounds of HAP per 1,000 square feet of leather processed.

C. Definitions

We have revised the definition of "leather finishing" to include dyes or other non film-forming coatings. We have also included a definition to describe a new term, "specialty leather."

D. Clarifications

In the final rule, we have clarified the following points:

(1) Facilities that finish leather solely for research and development purposes are not subject to this rule.

(2) The quantity of leather shipped can be used as a surrogate for the quantity of leather processed in a particular month.

(3) The quantity of leather processed cannot be recounted when the leather needs additional finishing or reworking, unless the piece of leather is completely stripped of all applied finishes and reprocessed through the entire finishing operation as if it were a new piece of leather.

(4) Paper or cardstock may be used as a substrate material for determining the mass of finish add-on.

(5) We updated the Maeser Flexes standard testing method to ASTM Standard D2099–00.

(6) A total of 36 samples (i.e., three sections of leather substrate from at least 12 sides of leather) must be tested to determine the water-resistant characteristics of the leather.

III. How Did We Respond to Significant Comments?

This section presents a summary of our responses to significant public comments received on the proposed rule. A comprehensive summary of public comments and responses can be found in the document entitled "Public Comments and EPA Responses to the Proposed NESHAP for Leather Finishing Operations" (Docket No. A–99–38).

A. Rule Applicability

Comment: One commenter requested that provisions in the rule should clarify that the "once in, always in" policy for MACT standards will not apply in certain cases. Primarily, this provision would apply to sources that have subsequently implemented pollution-prevention techniques to reduce HAP emissions from the source. If the source is able to reduce its emission level such that the source is no longer considered a major source, the source can then be excluded from the MACT requirements.

Response: EPA has been working to develop regulatory options that would allow qualifying sources to satisfy the MACT requirements through innovative, streamlined approaches, if, after a source achieves compliance with an applicable MACT rule, it achieves HAP emissions reductions equivalent to or better than MACT levels of control through pollution-prevention measures. The regulatory options under consideration will include components that meet the legal requirements of the CAA and still resolve the issues regarding pollution prevention. We plan to develop rule language to propose to amend either the NESHAP General Provisions or existing MACT rules. We project proposing these amendments later in 2002.

B. MACT Floor Determination

Comment: One commenter stated that the original HAP emission data submitted by the source for 1997 operations did not include ethylene glycol monobutyl ether acetate (EGBE) (CAS No. 112–07–2). The total HAP emissions including EGBE is nearly twice the value of their original HAP emissions submission. The commenter is concerned that other leather finishing operations may have excluded EGBE from their respective total HAP emissions estimated. The commenter also requested that the MACT floor be determined only from sources that have included EGBE in their total HAP emissions estimate.

Response: In 1999, we distributed a second industry survey to ensure that all leather finishing operations had reported all 1997 HAP emissions, including glycol ethers and specifically, EGBE. Initially, we decided not to use the glycol ethers data gathered from the second industry survey in the MACT floor determinations for the proposed rule because of some observed inconsistencies with the reported data. Upon further evaluation of the glycol ether data, we have been able to resolve the inconsistencies. As a result, the total HAP emissions reported from six sources have been adjusted. Four sources resulted in higher total HAP emissions and two sources resulted in lower HAP emissions. The total HAP emissions adjustments affected the MACT determination for existing sources with any of the following three product process operations: (1) Upholstery leather (less than 4 grams finish add-on per square foot), (2) water-resistant/specialty leather, and (3) nonwater-resistant leather. In addition, the total HAP emissions adjustments affected the MACT determination for new sources with upholstery leather (less than 4 grams finish add-on per square foot) product process operations.

We revised the MACT determinations for existing and new sources with upholstery leather (less than 4 grams finish add-on per square foot) product process operations as a sole result of adjustments to reported total HAP emissions. The MACT emission limit for existing sources in the upholstery leather (less than 4 grams finish add-on per square foot) product process operations decreased from 7.1 to 6.8 pounds of HAP per 1,000 square feet of leather processed. The MACT emission limit for new sources in the upholstery leather (less than 4 grams finish add-on per square foot) product process operations decreased from 2.9 to 2.5 pounds of HAP per 1,000 square feet of leather processed.

We revised the MACT determinations for existing sources with water-resistant/specialty leather and nonwater-resistant leather product process operations as a result of adjustments to the reported total HAP emissions and modifications to the definitions of these two product process operations. We reassigned specialty leather processes from the nonwater-resistant product process operation to the water-resistant product process operation based on greater similarities in applied coatings. Both specialty and water-resistant leather require the application of resins to produce the special color, texture, and water-resistant qualities.

Comment: Two commenters requested a recalculation of the MACT floor to exclude leather finishing operations that have closed since the initial survey of industry data in 1998. The commenters noted that four leather finishing operations have closed since 1998. One commenter also noted that one operation was recently sold to another company.

Response: The commenters are correct that four leather finishing operations have closed. The determination of a MACT floor is based on a single period in time. For the leather finishing operations NESHAP, the MACT floor performance levels are based on industry performance data for calendar year 1997. Emissions and production rates are dynamic and may change since the selected performance period. Since the data obtained from the industry were considered representative for calendar year 1997, we have decided to make no changes to the MACT floor HAP emission limits to account for recent facility closings. In this regard, we note that no commenter suggested that the emission information from these now-closed facilities was inaccurate or unrepresentative. We are not aware of any such deficiencies. Our view is the data are both accurate and representative, thus we do not see any technical reason for not including this information in a calculation of emissions reductions reflecting MACT.

C. Product Process Operations

Comment: Two commenters requested that we establish an additional leather product process operation and corresponding MACT floor performance level for "specialty" leather finishing. The commenters stated that no suitable method has been developed to replace the solvents necessary for the finishing of specialty leathers. At the sources' current HAP emission rates, the sources will be unable to achieve the MACT performance levels. In addition, one commenter requested that the additional product process operation be assigned a HAP emission limit of no less than 6.0 pounds of HAP per 1,000 square feet of leather processed.

Response: Based on a review of additional information provided by one of the commenters on specialty leather processing operations, we have decided to modify and expand the definition of the water-resistant leather product process operations to specifically include specialty leather finishing.

Under the proposed rule, we categorized specialty leather finishing as a nonwater-resistant leather product process operation. The two sources identified with specialty leather finishing operations have now shifted from the nonwater-resistant product process operation to the water-resistant/specialty product process operation. Thus, we have revised the MACT determination for these two product process operations to reflect the updated set of affected sources with each product process operation. However, we cannot arbitrarily assign a MACT performance level to a product process operation such as the 6.0 pounds of HAP per 1,000 square feet of leather processed, as suggested by commenters, especially without providing any supporting information. The MACT floor for existing sources in each leather product process operation must be determined as the average emission limitation achieved by the best performing 12 percent. In cases where 30 or fewer sources exist in a source category, or subcategory (the situation here for nonwater-resistant leather product process operations), the MACT floor is defined as the average emission limitation achieved by the best performing five sources.

The MACT emission limits for the water-resistant/specialty and nonwater-resistant leather product process operations are based on the top five sources included in the revised definition of these two product process operations. The revised emission limits include all appropriate adjustments for variability and glycol ethers data from the second industry survey, as discussed in a previous comment concerning EGBE. As a result of the revised process definitions and adjustments for glycol ethers, the MACT emission limit for existing sources in the modified water-resistant/specialty leather product process operations has decreased from 5.9 to 5.6 pounds of HAP per 1,000 square feet of leather processed. The MACT emission limit for existing sources in the nonwater-resistant leather product process operations increased from 3.4 to 3.7 pounds of HAP per 1,000 square feet of leather processed. Under the proposed rule, specialty leather operations were established with an emission limit of 3.4 pounds of HAP per 1,000 square feet of leather processed as a nonwater-resistant product process operation. Under the final rule, specialty leather operations are now established with an increased emission limit of 5.6 pounds of HAP per 1,000 square feet of leather processed as a water-resistant/specialty product process operation.

D. Definitions

Comment: One commenter requested that the definition of leather "finishing" be expanded to include coatings, such as dyes and pigments, that are not film-forming materials.

Response: The EPA agrees with the commenter and the final rule reflects a revised definition of leather finishing. The definition now states "Leather finishing adjusts and improves the physical and aesthetic characteristics of the leather surface through the multistage application of a coating comprising dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers."

IV. What Are the Administrative Requirements for This Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal 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 today's final rule is not a "significant regulatory action" because it will not have an annual effect on the economy of $100 million and is therefore not subject to OMB review.

B. 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 rules 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 rule 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 rule. The EPA also may not issue a rule 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 rule.

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 the Agency's position supporting the need to issue the rule, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because today's final rule applies to affected sources in the leather finishing industry, not to States or local governments. Nor will State law be preempted, or any mandates be imposed on States or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule. The EPA notes, however, that although not required to do so by this Executive Order (or otherwise), it did consult with State

governments during development of today's final rule.

C. 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 rules that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. Today's final rule is not subject to Executive Order 13045 because it establishes environmental standards based on technology, not 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, today's final rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on 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 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 our 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 this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total annual cost of this final rule for any 1 year has been estimated at $440,000 per year. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have determined that today's final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires us to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. We must prepare a regulatory flexibility analysis unless we determine 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 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; 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, we have determined that this action will not have a significant economic impact on a substantial number of small entities. There are currently a total of 16 facilities that are major sources of HAP emissions and affected by this final rule. The industry is characterized as having some finishing operations that are relatively small, often specializing in the manufacture of leather with unique attributes, while others employ several hundred people and produce a wide variety of leathers. However, many of the smaller leather finishing operations are owned by ultimate parent firms that are classified as large corporations. Also, this industry typically operates with more than 300 establishments, so only a small fraction of the firms in the industry are impacted by the final rule. We determined that the 16 affected facilities are owned by 14 parent firms, and only three of these firms are classified as small by the previously mentioned definition. Nearly all of the firms (small and large) have very minimal impacts which range from 0.00

percent to 0.09 percent of firm revenues. Only one firm of the 14 will experience compliance costs that exceed 1 percent of firm revenues (1.52 percent), and this firm is a small business. This impact, however, is not considered significant for this industry. Typical profit margins for the leather industry average 3.5 percent.

Although this final rule will not have a significant economic impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of this final rule on small entities. We have worked closely with the Leather Industry of America in determining the form of the standard and establishing methods for minimizing the compliance burden. This outreach included a series of meetings over a 2-year period and our attendance at the industry's annual regulatory meeting of the Leather Industry of America. These meetings and outreach provided updates to the industry on the progress of the final rule and also forecasting the timeline for compliance with the final rule. In addition, these meetings provided us with useful information that we used in developing the final rule. For instance, currently no facilities use add-on control devices, and we anticipate that no facilities will need to install a device to achieve compliance with the final rule. This will minimize costs to achieve compliance as well as simplify demonstrating compliance since already maintained purchase and usage records are all that will be needed to demonstrate compliance. We are also requiring that compliance demonstrations be conducted monthly, rather than on a daily basis, which we believe will reduce the amount of records necessary to demonstrate compliance with the final rule. Furthermore, we require the minimum monitoring, recordkeeping, and reporting requirements specified in the NESHAP General Provisions (40 CFR part 63, subpart A).

G. Paperwork Reduction Act

The information collection requirements in today's final rule will be submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 1985–02), and you may obtain a copy from Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective 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 EPA policies set forth in 40 CFR part 2, subpart B.

The annual monitoring, reporting, and recordkeeping burden for this collection for all affected facilities, as averaged over the first 3 years after the effective date of the rule, is estimated to be 485 labor hours per year at a total annual cost of $21,600. The total 3-year burden of monitoring, recordkeeping, and reporting for this collection for all affected facilities is estimated at 1,455 labor hours at a total annual cost of $64,700. There are no required capital and operations and maintenance costs for the leather finishing operations NESHAP. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources people spend to generate, maintain, keep, or disclose to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems to collect, validate, and verify information; process, maintain, disclose, and provide information; adjust ways to comply with any previously applicable instructions and requirements; train people to respond to a collection of information; search data sources; collect and review 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 rules are in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act of 1995

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113), all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

Consistent with the NTTAA, the EPA conducted a search for EPA Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph) and found no candidate VCS for use in identifying glycol ethers, toluene, and xylene. This final rule references the National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR part 63, subpart SS). Since there are no new technical standard requirements resulting from specifying subpart SS in this final rule, and no candidate consensus standards were identified for EPA Method 311 (glycol ethers, toluene, and xylene), EPA is not adopting any VCS in today's final rule.

Section 63.5290(a) of today's final rule lists EPA Method 311. The EPA Method 311 has been used by States and industry for approximately 5 years. Nevertheless, under § 63.7(f) of 40 CFR part 63, subpart A, today's final rule allows any State or source to apply to EPA for permission to use an alternative method in lieu of EPA Method 311 listed in § 63.5290(a).

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, 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 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**. 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), and therefore will be effective February 27, 2002.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

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 13, 2002.

Christine Todd Whitman,

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 A—[Amended]

2. Section 63.14 is amended by adding and reserving paragraphs (b)(19) and (b)(20), and adding paragraph (b)(21) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(19) [Reserved]

(20) [Reserved]

(21) ASTM D2099–00, Standard Test Method for Dynamic Water Resistance of Shoe Upper Leather by the Maeser Water Penetration Tester, IBR approved for § 63.5350.

* * * * *

3. Part 63 is amended by adding subpart TTTT to read as follows:

Subpart TTTT—National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

Sec.

What This Subpart Covers

63.5280 What is the purpose of this subpart?
63.5285 Am I subject to this subpart?
63.5290 What parts of my facility does this subpart cover?
63.5295 When do I have to comply with this subpart?

Standards

63.5305 What emission standards must I meet?

Compliance Requirements

63.5320 How does my affected major source comply with the HAP emission standards?
63.5325 What is a plan for demonstrating compliance and when must I have one in place?
63.5330 How do I determine the compliance ratio?
63.5335 How do I determine the actual HAP loss?
63.5340 How do I determine the allowable HAP loss?
63.5345 How do I distinguish between the two upholstery product process operations?
63.5350 How do I distinguish between the water-resistant/specialty and nonwater-resistant leather product process operations?
63.5355 How do I monitor and collect data to demonstrate continuous compliance?
63.5360 How do I demonstrate continuous compliance with the emission standards?

Testing and Initial Compliance Requirements

63.5375 When must I conduct a performance test or initial compliance demonstration?
63.5380 How do I conduct performance tests?
63.5385 How do I measure the quantity of finish applied to the leather?
63.5390 How do I measure the HAP content of a finish?
63.5395 How do I measure the density of a finish?
63.5400 How do I measure the quantity of leather processed?

Notifications, Reports, and Records

63.5415 What notifications must I submit and when?
63.5420 What reports must I submit and when?
63.5425 When must I start recordkeeping to determine my compliance ratio?
63.5430 What records must I keep?
63.5435 In what form and how long must I keep my records?

Other Requirements and Information

63.5450 What parts of the General Provisions apply to me?
63.5455 Who administers this subpart?
63.5460 What definitions apply to this subpart?

Figure to Subpart TTTT of Part 63

Figure 1 to Subpart TTTT of Part 63—Example Logs for Recording Leather Finish Use and HAP Content

Tables to Subpart TTTT of Part 63

Table 1 to Subpart TTTT of Part 63—Leather Finishing HAP Emission Limits for Determining the Allowable HAP Loss
Table 2 to Subpart TTTT of Part 63—Applicability of General Provisions to Subpart TTTT

What This Subpart Covers

§ 63.5280 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations. These standards limit HAP emissions from specified leather finishing operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.5285 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a leather finishing operation that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions. A leather finishing operation is defined in § 63.5460. In general, a leather finishing operation is a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers.

(b) You are a major source of HAP emissions if you own or operate a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

(c) You are not subject to this subpart if your source finishes leather solely for the purpose of research and development.

§ 63.5290 What parts of my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at leather finishing operations.

(b) The affected source subject to this subpart is the collection of all equipment and activities used for the multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of the leather surface. This subpart applies to the leather finishing operations listed in paragraphs (b)(1) through (4) of this section and as defined in § 63.5460, whether or not the operations are collocated with leather tanning operations:

(1) Upholstery leather with greater than or equal to 4 grams finish add-on per square foot of leather;

(2) Upholstery leather with less than 4 grams finish add-on per square foot of leather;

(3) Water-resistant/specialty leather; and

(4) Nonwater-resistant leather.

(c) An affected source does not include portions of your leather finishing operation that are listed in paragraphs (c)(1) and (2) of this section:

(1) Equipment used solely with leather tanning operations; and

(2) That portion of your leather finishing operation using a solvent degreasing process, such as in the manufacture of leather chamois, that is already subject to the Halogenated Solvent Cleaning NESHAP (40 CFR part 63, subpart T).

(d) An affected source is a new affected source if you commenced construction of the affected source on or after October 2, 2000, and you meet the applicability criteria at the time you commenced construction.

(e) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.5295 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 paragraphs (a)(1) and (2) of this section:

(1) If you startup your affected source before February 27, 2002, then you must comply with the emission standards for new and reconstructed sources in this subpart no later than February 27, 2002.

(2) If you startup your affected source after February 27, 2002, then you must comply with the emission standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission standards for existing sources no later than February 28, 2005.

(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 and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) An area source that meets the criteria of a new affected source, as specified at § 63.5290(d), or a reconstructed affected source, as specified at § 63.5290(e), must be in compliance with this subpart upon becoming a major source.

(2) An area source that meets the criteria of an existing affected source, as specified at § 63.5290(f), must be in compliance with this subpart no later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.5415 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission standards in this subpart.

Standards

§ 63.5305 What emission standards must I meet?

The emission standards limit the number of pounds of HAP lost per square foot of leather processed. You must meet each emission limit in Table 1 of this subpart that applies to you.

Compliance Requirements

§ 63.5320 How does my affected major source comply with the HAP emission standards?

(a) All affected sources must be in compliance with the requirements of this subpart at all times, including 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 must perform all of the items listed in paragraphs (c)(1) through (10) of this section:

(1) Submit the necessary notifications in accordance with § 63.5415.

(2) Develop and implement a plan for demonstrating compliance in accordance with § 63.5325.

(3) Submit the necessary reports in accordance with § 63.5420.

(4) Keep a finish inventory log, as specified at § 63.5335(b), to record monthly the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish. You may be required to start recordkeeping prior to the compliance dates specified at § 63.5295.

(5) Keep an inventory log, as specified at § 63.5430(f), to record monthly the surface area of leather processed in 1,000's of square feet for each product process operation. You may be required to start recordkeeping prior to the compliance dates specified at § 63.5295.

(6) Determine the actual HAP loss from your affected source in accordance with § 63.5335.

(7) Determine the allowable HAP loss for your affected source in accordance with § 63.5340.

(8) Determine the compliance ratio for your affected source each month as specified at § 63.5330. The compliance ratio compares your actual HAP loss to your allowable HAP loss for the previous 12 months.

(9) Maintain the compliance ratio for your affected source at or below 1.00 in accordance with § 63.5330.

(10) Maintain all the necessary records you have used to demonstrate compliance with this subpart in accordance with § 63.5430.

§ 63.5325 What is a plan for demonstrating compliance and when must I have one in place?

(a) You must develop and implement a written plan for demonstrating compliance that provides the detailed procedures you will follow to monitor and record data necessary for demonstrating compliance with this subpart. Procedures followed for quantifying HAP loss from the source and amount of leather processed vary from source to source because of site-specific factors such as equipment design characteristics and operating conditions. Typical procedures include one or more accurate measurement methods such as weigh scales and volumetric displacement. Because the industry does not have a uniform set of procedures, you must develop and implement your own site-specific plan for demonstrating compliance not later than the compliance date for your source. You must also incorporate the plan for demonstrating compliance by reference in the source's title V permit. The plan for demonstrating compliance must include the items listed in paragraphs (a)(1) through (7) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Provide a detailed description of all methods of measurement your source will use to determine your finish usage, HAP content of each finish, quantity of leather processed, and leather product process operation type.

(4) Specify when each measurement will be made.

(5) Provide examples of each calculation you will use to determine your compliance status. Include examples of how you will convert data measured with one parameter to other terms for use in compliance determination.

(6) Provide example logs of how data will be recorded.

(7) Provide a quality assurance/quality control plan to ensure that the data continue to meet compliance demonstration needs.

(b) You may be required to revise your plan for demonstrating compliance. We may require reasonable revisions if the procedures lack detail, are inconsistent, or do not accurately determine finish usage, HAP content of each finish, quantity of leather processed, or leather product process operation type.

§ 63.5330 How do I determine the compliance ratio?

(a) When your source has processed leather for 12 months, you must determine the compliance ratio for your affected source by the fifteenth of each month for the previous 12 months.

(b) You must determine the compliance ratio using Equation 1 of this section as follows:

$$\text{Compliance Ratio} = \frac{\text{Actual HAP Loss}}{\text{Allowable HAP Loss}} \qquad \text{(Eq. 1)}$$

Where:

Actual HAP Loss = Pounds of actual HAP loss for the previous 12 months, as determined in § 63.5335.

Allowable HAP Loss = Pounds of allowable HAP loss for the previous 12 months, as determined in § 63.5340.

(1) If the value of the compliance ratio is less than or equal to 1.00, your affected source was in compliance with the applicable HAP emission limits of this subpart for the previous month.

(2) If the value of the compliance ratio is greater than 1.00, your affected source was deviating from compliance with the applicable HAP emission limits of this subpart for the previous month.

§ 63.5335 How do I determine the actual HAP loss?

(a) This section describes the information and procedures you must use to determine the actual HAP loss from your leather finishing operation. By the fifteenth of each month, you must determine the actual HAP loss in pounds from your leather finishing operation for the previous month.

(b) 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) through (7) of this section:

(1) Finish type.

(2) Pounds (or density and volume) of each finish applied to the leather.

(3) Mass fraction of HAP in each applied finish.

(4) Date of the recorded entry.

(5) Time of the recorded entry.

(6) Name of the person recording the entry.

(7) Product process operation type.

(c) To determine the pounds of HAP loss for the previous month, you must first determine the pounds of HAP loss from each finish application according to paragraph (c)(1) or (2) of this section.

(1) For facilities not using add-on emission control devices, the entire HAP content of the finishes are assumed to be released to the environment. Using the finish inventory log, multiply the pounds of each recorded finish usage by the corresponding mass fraction of HAP in the finish. The result is the HAP loss in pounds from each finish application. Sum the pounds of HAP loss from all finish applications recorded during the previous month to determine the total monthly HAP loss in pounds from your finishing operation.

(2) For facilities using add-on emission control devices, the finish inventory log and the emission reduction efficiency of the add-on capture and control devices can be used to determine the net HAP loss in pounds. The emission reduction efficiency for a control device must be determined from a performance test conducted in accordance with §§ 63.5375 and 63.5380. Using the finish inventory log, multiply the pounds of each recorded finish usage by the corresponding mass fraction of HAP in the finish. The result is the gross HAP loss in pounds from each finish application prior to the add-on control device. Multiply the gross HAP loss by the percent emission reduction achieved by the add-on control device and then subtract this amount from the gross HAP loss. The result is the net HAP loss in pounds from each finish application. Sum the pounds of net HAP loss from all finish applications recorded during the previous month to determine the total monthly net HAP loss in pounds from your finishing operation.

(d) After collecting HAP loss data for 12 months, you must also determine by the fifteenth of each month the annual HAP loss in pounds by summing the monthly HAP losses for the previous 12 months. The annual HAP loss is the "actual HAP loss," which is used in Equation 1 of § 63.5330 to calculate your compliance ratio, as described in § 63.5330.

§ 63.5340 How do I determine the allowable HAP loss?

(a) By the fifteenth of each month, you must determine the allowable HAP loss in pounds from your leather finishing operation for the previous month.

(b) To determine the allowable HAP loss for your leather finishing operation, you must select the appropriate HAP emission limit, expressed in pounds of HAP loss per 1,000 square feet of leather processed, from Table 1 of this subpart, for each type of leather product process operation performed during the previous 12 months. Under the appropriate existing or new source column, select the HAP emission limit that corresponds to each type of product process operation performed during the previous 12 months. Next, determine the annual total of leather processed in 1,000's of square feet for each product process operation in accordance with § 63.5400. Then, multiply the annual total of leather processed in each product process operation by the corresponding HAP emission limit to determine the allowable HAP loss in pounds for the corresponding leather product process operation. Finally, sum the pounds of HAP loss from all leather product process operations performed in the previous 12 months. Equation 1 of this section illustrates the calculation of allowable HAP loss as follows:

$$\text{Allowable HAP Loss} = \sum_{i=1}^{n} \left(\begin{array}{c} \text{Annual Total} \\ \text{of Leather} \\ \text{Processed}_i \end{array} * \begin{array}{c} \text{HAP} \\ \text{Emission} \\ \text{Limit}_i \end{array} \right) \qquad \text{(Eq. 1)}$$

Where:

Annual Total of Leather Processed = 1,000's of square feet of leather processed in the previous 12 months in product process operation "i".

HAP Emission Limit = From Table 1 of this subpart, the HAP emission limit in pounds of HAP loss per 1,000 square feet of leather processed for product process operation "i".

n = Number of leather product process operation types performed during the previous 12 months.

(c) The resulting "allowable HAP loss" is used in Equation 1 of § 63.5330 to calculate your compliance ratio, as described in § 63.5330.

§ 63.5345 How do I distinguish between the two upholstery product process operations?

(a) Product process operations that finish leather for use in automobile and furniture seat coverings are categorized as an upholstery product process operation. There are two upholstery product process operations subject to the requirements of this subpart—operations with less than 4 grams of finish add-on per square foot, and operations with 4 grams or more of finish add-on per square foot. You must distinguish between the two upholstery product process operations so that you can determine which HAP emission limit in Table 1 of this subpart applies to your affected source.

(b) You must determine finish add-on by calculating the difference in mass before and after the finishing process. You may use an empirical method to determine the amount of finish add-on applied during the finishing process, as described in paragraphs (b)(1) through (4) of this section:

(1) Weigh a one square foot representative section of polyester film, paper, cardstock, or equivalent material substrate to be finished. This will provide an initial mass and surface area prior to starting the finishing process.

(2) Use a scale with an accuracy of at least 5 percent of the mass in grams of the representative section of substrate.

(3) Upon completion of these measurements, process the representative section of substrate on the finishing line as you would for a typical section of leather.

(4) After the finishing and drying process, weigh the representative section of substrate to determine the final mass. Divide the net mass in grams gained on the representative section by its surface area in square feet to determine grams per square foot of finish add-on. Equation 1 of this section illustrates this calculation, as follows:

$$\text{Finish Add-On} = \frac{(\text{Final Mass} - \text{Initial Mass})}{(\text{Surface Area})} \qquad \text{(Eq. 1)}$$

Where:

Finish Add-On = Grams per square foot of finish add-on applied to a representative section of polyester film or equivalent material substrate.

Final Mass = Final mass in grams of representative section of polyester film or equivalent material substrate, after finishing and drying.

Initial Mass = Initial mass in grams of representative section of polyester film or equivalent material substrate, prior to finishing.

Surface Area = Surface area in square feet of a representative section of polyester film or equivalent material substrate.

(c) Any appropriate engineering units may be used for determining the finish add-on. However, finish add-on results must be converted to the units of grams of finish add-on per square foot of leather processed. If multiple representative leather sections are analyzed, then use the average of these measurements for selecting the appropriate product process operation.

§ 63.5350 How do I distinguish between the water-resistant/specialty and nonwater-resistant leather product process operations?

(a) Product process operations that finish leather for nonupholstery use are categorized as either water-resistant/specialty or nonwater-resistant product process operations. You must distinguish between the water-resistant/specialty and nonwater-resistant product process operations so that you can determine which HAP emission limit in Table 1 of this subpart applies to your affected source. Water-resistant and nonwater-resistant product process operations for nonupholstery use can be distinguished using the methods described in paragraph (b) of this section. Specialty leather product process operations for nonupholstery use can be distinguished using the criteria described in paragraph (c) of this section.

(b) To determine whether your product process operation produces water-resistant or nonwater-resistant leather, you must conduct the Maeser Flexes test method according to American Society for Testing and Materials (ASTM) Designation D2099–00 (incorporated by reference-see § 63.14) or a method approved by the Administrator.

(1) Statistical analysis of initial water penetration data performed to support ASTM Designation D2099–00 indicates that poor quantitative precision is associated with this testing method. Therefore, at a minimum, 36 leather substrate samples (*i.e.*, three sections of leather substrate from at least 12 sides of leather), must be tested to determine the water-resistant characteristics of the leather. You must average the results of these tests to determine the final number of Maeser Flexes prior to initial water penetration.

(2) Results from leather samples indicating an average of 5,000 Maeser Flexes or more is considered a water-resistant product process operation, and results indicating less than 5,000 Maeser Flexes is considered a nonwater-resistant product process operation. However, leather samples resulting in less than 5,000 Maeser Flexes may be categorized as specialty leather in paragraph (c) of this section.

(c) To determine whether your product process operation produces specialty leather, you must meet the criteria in paragraphs (c)(1) and (2) of this section:

(1) The leather must be a select grade of chrome tanned, bark retanned, or fat liquored leather.

(2) The leather must be retanned through the application of greases, waxes, and oils in quantities greater than 25 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 not limited to, specialty shoe leather and top grade football leathers.

§ 63.5355 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) You must collect data at all required intervals as specified in your plan for demonstrating compliance as specified at § 63.5325.

(c) For emission control devices, 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.

(d) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities 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 compliance ratio, and, if an emission control device is used, in assessing the operation of the control device.

§ 63.5360 How do I demonstrate continuous compliance with the emission standards?

(a) You must demonstrate continuous compliance with the emission standards in § 63.5305 by following the requirements in paragraphs (a)(1) and (2) of this section:

(1) You must collect and monitor data according to the procedures in your plan for demonstrating compliance as specified in § 63.5325.

(2) If you use an emission control device, you must collect the monitoring data according to 40 CFR part 63, subpart SS.

(3) You must maintain your compliance ratio less than or equal to 1.00, as specified at § 63.5330.

(b) You must report each instance in which you did not meet the emission standards in § 63.5305. This includes periods of startup, shutdown, and malfunction. These deviations must be reported according to the requirements in § 63.5420(b).

(c) You must conduct the initial compliance demonstration before the compliance date that is specified for your source in § 63.5295.

Testing and Initial Compliance Requirements

§ 63.5375 When must I conduct a performance test or initial compliance demonstration?

You must conduct performance tests after the installation of any emission control device that reduces HAP emissions and can be used to comply with the HAP emission requirements of this subpart. You must complete your performance tests not later than 60 calendar days before the end of the 12-month period used in the initial compliance determination.

§ 63.5380 How do I conduct performance tests?

(a) Each performance test must be conducted according to the requirements in § 63.7(e) and the procedures of § 63.997(e)(1) and (2).

(b) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(c) 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.

§ 63.5385 How do I measure the quantity of finish applied to the leather?

(a) To determine the amount of finish applied to the leather, you must measure the mass, or density, and volume of each applied finish.

(b) Determine the mass of each applied finish with a scale calibrated to an accuracy of at least 5 percent of the amount measured. The quantity of all finishes used for finishing operations must be weighed or have a predetermined weight.

(c) Determine the density and volume of each applied finish according to the criteria listed in paragraphs (c)(1) through (3) of this section:

(1) Determine the density of each applied finish in pounds per gallon in accordance with § 63.5395. The finish density will be used to convert applied finish volumes from gallons into mass units of pounds.

(2) Volume measurements of each applied finish can be obtained with a flow measurement device. For each flow measurement device, you must perform the items listed in paragraphs (c)(2)(i) through (v) of this section:

(i) Locate the flow sensor and other necessary equipment such as straightening vanes in or as close to a position that provides a representative flow.

(ii) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(iii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iv) Conduct a flow sensor calibration check at least semiannually.

(v) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(3) Volume measurements of each applied finish can be obtained with a calibrated volumetric container with an accuracy of at least 5 percent of the amount measured.

§ 63.5390 How do I measure the HAP content of a finish?

(a) To determine the HAP content of a finish, the reference method is EPA Method 311 of appendix A of 40 CFR part 63. You may use EPA Method 311, an alternative method approved by the Administrator, or any other reasonable means for determining the HAP content. Other reasonable means of determining HAP content include, but are not limited to, a material safety data sheet (MSDS) or a manufacturer's hazardous air pollutant data sheet. If the HAP content is provided on a MSDS or a manufacturer's data sheet as a range of values, then the highest HAP value of the range must be used for the determination of compliance to this standard. This value must be entered on the finish log for each type of finish applied. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or another approved method) to confirm the reported HAP content. However, if the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(b) You may use the weighted average of the HAP content analysis as determined in paragraph (a) of this section for each finish when you perform one of the actions listed in paragraphs (b)(1) and (2) of this section:

(1) Mix your own finishes on site.

(2) Mix new quantities of finish with previous quantities of finish that may have a different HAP content.

§ 63.5395 How do I measure the density of a finish?

(a) To determine the density of a finish, the reference method is EPA Method 24 of appendix A of 40 CFR part 60. You may use EPA Method 24, an alternative method approved by the Administrator, or any other reasonable means for determining the density of a finish. Other reasonable means of determining density include, but are not

limited to, an MSDS or a manufacturer's hazardous air pollutant data sheet. If the density is provided on a MSDS or a manufacturer's data sheet as a range of values, then the highest density value of the range must be used for the determination of compliance to this standard. This value must be entered on the finish log for each type of finish applied. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 24 (or another approved method) to confirm the reported density. However, if the results of an analysis by EPA Method 24 are different from the density determined by another means, the EPA Method 24 results will govern compliance determinations.

(b) You may use the weighted average of finish densities as determined in paragraph (a) of this section for each finish when you perform one of the actions listed in paragraphs (b)(1) and (2) of this section:

(1) Mix your own finishes on site.

(2) Mix new quantities of finish with previous quantities of finish that may have different densities.

(c) Equation 1 of this section may be used to determine the weighted average of finish densities, as follows:

$$\text{Average Weighted Density} = \frac{\sum_{i=1}^{n} \text{Mass}_i * \text{Density}_i}{\sum_{i=1}^{n} \text{Mass}_i} \quad \text{(Eq. 1)}$$

Where:

Average Weighted Density = The average weighted density of applied finishes in pounds per gallon.

Mass = Pounds of finish "i" applied.

Density = The density of finish "i" in pounds per gallon.

n = Number of finish types applied.

§ 63.5400 How do I measure the quantity of leather processed?

(a) This section describes the information and procedures you must use to determine the quantity of leather processed at your affected source.

(1) To determine the surface area (i.e., quantity) of leather substrate processed each month at your source for each product process operation, follow the procedures in your plan for demonstrating compliance. You must consistently measure the surface area of processed leather substrate at one of the manufacturing locations listed in paragraph (a)(1)(i) or (ii) of this section:

(i) Measure the surface area of processed leather upon exiting the leather finishing operation.

(ii) Measure the surface area of processed leather upon shipment from the source.

(2) By the fifteenth of each month, you must determine the quantity of leather processed in 1,000's of square feet for each product process operation during the previous month. After collecting data on the amount of leather processed for 12 months, you must also determine by the fifteenth of each month the annual total of leather processed in 1,000's of square feet for each product process operation by summing the monthly quantities of leather processed in each product process operation for the previous 12 months. The "annual total of leather processed" in each product process operation is used in Equation 1 of § 63.5340 to calculate your allowable HAP loss as described in § 63.5340. Your allowable HAP loss is then subsequently used to calculate your compliance ratio as described in § 63.5330.

(b) To determine the surface area of leather processed at your source for each product process operation, you must use one of the methods listed in paragraphs (b)(1) and (2) of this section:

(1) Premeasured leather substrate sections being supplied by another manufacturer as an input to your finishing process.

(2) Measure the surface area of each piece of processed or shipped leather with a computer scanning system accurate to 0.1 square feet. The computer scanning system must be initially calibrated for minimum accuracy to the manufacturer's specifications. For similar leather production runs, use an average based on a minimum of 500 pieces of leather in lieu of individual measurements.

(c) Except as provided in paragraph (d) of this section, you must include the surface area of each piece of processed leather only once when determining the monthly quantity of leather processed, regardless of the number of times a piece of leather is reprocessed through a portion of the finishing operations.

(d) If a piece of leather is completely stripped of all applied finishes and reprocessed through the entire finishing operation as if it were a new piece of leather, you may recount the surface area of leather reprocessed when determining the monthly quantity of leather processed.

Notifications, Reports, and Records

§ 63.5415 What notifications must I submit and when?

(a) In accordance with §§ 63.7(b) and (c) and 63.9(b) and (h) of the General Provisions, you must submit the one-time notifications listed in paragraphs (b) through (g) of this section.

(b) As specified in § 63.9(b)(2), if you start up your affected source before February 27, 2002, you must submit an Initial Notification not later than June 27, 2002.

(c) In the Initial Notification, include the items in paragraphs (c)(1) through (4) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Identification of the relevant standard, such as the Leather Finishing Operations NESHAP, and compliance date.

(4) A brief description of the source including the types of leather product process operations and nominal operating capacity.

(d) As specified in § 63.9(b)(1) and (2), if you startup your new or reconstructed affected source on or after February 27, 2002, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(e) If you are required to conduct a performance test, you must submit a Notification of Intent to Conduct a Performance Test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(f) You must submit a Notification of Compliance Status report not later than 60 calendar days after determining your initial 12-month compliance ratio. The notification of compliance status must contain the items in paragraphs (f)(1) through (5) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Each type of leather product process operation performed during the previous 12 months.

(4) Each HAP identified under § 63.5390 in finishes applied during the 12-month period used for the initial compliance determination.

(5) A compliance status certification indicating whether the source complied with all of the requirements of this subpart throughout the 12-month period used for the initial source compliance determination. This certification must include the items in paragraphs (f)(5)(i) through (iii) of this section:

(i) The plan for demonstrating compliance, as described in § 63.5325, is complete and available on site for inspection.

(ii) You are following the procedures described in the plan for demonstrating compliance.

(iii) The compliance ratio value was determined to be less than or equal to 1.00, or the value was determined to be greater than 1.00.

(g) If your source becomes a major source on or after February 27, 2002, you must submit an initial notification not later than 120 days after you become subject to this subpart.

§ 63.5420 What reports must I submit and when?

(a) You must submit the first annual compliance status certification 12 months after you submit the Notification of Compliance Status. Each subsequent annual compliance status certification is due 12 months after the previous annual compliance status certification. The annual compliance status certification provides the compliance status for each month during the 12-month period ending 60 days prior to the date on which the report is due. Include the information in paragraphs (a)(1) through (5) of this section in the annual certification:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Each type of leather product process operation performed during the 12-month period covered by the report.

(4) Each HAP identified under § 63.5390, in finishes applied during the 12-month period covered by the report.

(5) A compliance status certification indicating whether the source complied with all of the requirements of this subpart throughout the 12-month period covered by the report. This certification must include the items in paragraphs (a)(5)(i) and (ii) of this section:

(i) You are following the procedures described in the plan for demonstrating compliance.

(ii) The compliance ratio value was determined to be less than or equal to 1.00, or the value was determined to be greater than 1.00.

(b) You must submit a Deviation Notification Report for each compliance determination you make in which the compliance ratio exceeds 1.00, as determined under § 63.5330. Submit the deviation report by the fifteenth of the following month in which you determined the deviation from the compliance ratio. The Deviation Notification Report must include the items in paragraphs (b)(1) through (4) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Each type of leather product process operation performed during the 12-month period covered by the report.

(4) The compliance ratio comprising the deviation. You may reduce the frequency of submittal of the Deviation Notification Report if the responsible agency of these NESHAP does not object.

§ 63.5425 When must I start recordkeeping to determine my compliance ratio?

(a) If you have a new or reconstructed affected source, you must start recordkeeping to determine your compliance ratio according to one of the schedules listed in paragraphs (a)(1) and (2) of this section:

(1) If the startup of your new or reconstructed affected source is before February 27, 2002, then you must start recordkeeping to determine your compliance ratio no later than February 27, 2002.

(2) If the startup of your new or reconstructed affected source is after February 27, 2002, then you must start recordkeeping to determine your compliance ratio upon startup of your affected source.

(b) If you have an existing affected source, you must start recordkeeping to determine your compliance ratio no later than February 27, 2004.

(c) If you have a source that becomes a major source of HAP emissions after February 27, 2002, then you must start recordkeeping to determine your compliance ratio immediately upon submitting your Initial Notification, as required at § 63.5415(g).

§ 63.5430 What records must I keep?

You must satisfy the recordkeeping requirements in paragraphs (a) through (g) of this section by the compliance date specified in § 63.5295.

(a) You must keep the plan for demonstrating compliance as required at § 63.5325 onsite and readily available as long as the source is operational. If you make any changes to the plan for demonstrating compliance, then you must keep all previous versions of the plan and make them readily available for inspection for at least 5 years after each revision.

(b) You must keep a copy of each notification and report that you are required to submit in accordance with this subpart.

(c) You must keep records of performance tests in accordance with this subpart.

(d) You must record and maintain a continuous log of finish usage as specified at § 63.5335(b).

(e) You must maintain all necessary records to document the methods you used and the results of all HAP content measurements of each applied finish.

(f) For each leather product process operation, you must maintain a monthly log of the items listed in paragraphs (f)(1) and (2) of this section:

(1) Dates for each leather product process operation.

(2) Total surface area of leather processed for each leather product process operation.

(g) If you use an emission control device, you must keep records of monitoring data as specified at subpart SS of this part.

§ 63.5435 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 onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.5450 What parts of the General Provisions apply to me?

Table 2 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.5455 Who administers this subpart?

(a) This subpart can be administered by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to

your State, local, or tribal agency, then that agency has the primary authority to administer and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if the authority to implement and enforce 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 subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the emission standards in § 63.5305 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.5460 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, § 63.2, and in this section as follows:

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Compliance ratio means the ratio of the actual HAP loss from the previous 12 months to the allowable HAP loss from the previous 12 months. Equation 1 in § 63.5330 is used to calculate this value. If the value is less than or equal to 1.00, the source is in compliance. If the value is greater than 1.00, the source is deviating from compliance.

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 emission limits or work practice standards.

(2) Fails to meet any emission limits, operating limits, or work practice standards in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Drying means the process of removing all but equilibrium moisture from the leather. Drying methods currently in use include: toggling, hanging, pasting, and vacuum drying.

Finish add-on means the amount of solid material deposited on the leather substrate due to finishing operations. Typically, the solid deposition is a dye or other chemical used to enhance the color and performance of the leather. Finish add-on is quantified as mass per surface area of substrate, such as grams of finish add-on per square foot of leather substrate.

Hazardous air pollutants (HAP) means any substance or mixture of substances listed as a hazardous air pollutant under section 112(b) of the Clean Air Act.

Leather means the pelt or hide of an animal which has been transformed by a tanning process into a nonputrescible and useful material.

Leather finishing means a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through the multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers.

Leather substrate means a nonputrescible leather surface intended for the application of finishing chemicals and materials. The leather substrate may be a continuous piece of material such as side leather or may be a combination of smaller leather pieces and leather fibers, which when joined together, form a integral composite leather material.

Leather tanning means the processes, commonly referred to as wet operations, used to purify and stabilize the collagen content of the hide. Wet operations are divided into three phases, the beamhouse (includes soaking and unhairing); the tanyard (includes bating, pickling, tanning, trimming/siding, and splitting); and the coloring department (includes retanning, coloring, and atliquoring operations).

Month means that all references to a month in this subpart refer to a calendar month.

Nonwater-resistant leather means nonupholstery leather that is not treated with any type of waterproof finish and, thus, cannot withstand 5,000 Maeser Flexes with a Maeser Flex Testing Machine or a method approved by the Administrator prior to initial water penetration. This leather is typically used for dress shoes, handbags, and garments.

Product process operation means any one of the four leather production classifications developed for ease of compliance with this subpart. The four leather product process operations are as follows: upholstery leather with greater than or equal to 4 grams finish add-on per square foot, upholstery leather with less than 4 grams finish add-on per square foot, water-resistant/specialty leather, and nonwater-resistant leather.

Specialty leather means 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. 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.

Upholstery leather (greater than or equal to 4 grams finish add-on per square foot) means an upholstery leather with a final finish add-on to leather ratio of 4 or more grams of finish per square foot of leather. These types of finishes are used primarily for automobile seating covers. These finishes tend to be aqueous-based.

Upholstery leather (less than 4 grams finish add-on per square foot) means an upholstery leather with a final finish add-on to leather ratio of less than 4 grams of finish per square foot of leather. These types of finishes are typically used for furniture seating covers. The finishes tend to be solvent-based and leave a thinner, softer, and more natural leather texture.

Water-resistant leather means nonupholstery leather that has been treated with one or more waterproof finishes such that the leather can withstand 5,000 or more Maeser Flexes with a Maeser Flex Testing Machine or a method approved by the Administrator prior to initial water penetration. This leather is used for outerwear, boots and outdoor applications.

Figure to Subpart TTTT of Part 63

Figure 1 to Subpart TTTT of Part 63—Example Logs for Recording Leather Finish Use and HAP Content

Month:_____
Year:_____

FINISH INVENTORY LOG

Finish type	Finish usage (pounds)	HAP Content (mass fraction)	Date and time	Operator's name	Product process operation

MONTHLY SUMMARY OF FINISH USAGE

	Upholstery leather (≥4 grams)	Upholstery leather (<4 grams)	Water-resistant/ specialty leather	Nonwater-resistant leather
Number of Entries				
Total Finish Usage (pounds)				
Total HAP Usage (pounds)				

Tables to Subpart TTTT of Part 63

As required in §§ 63.5305 and 63.5340(b), you must meet the appropriate emission limits in the following table:

TABLE 1 TO SUBPART TTTT OF PART 63—LEATHER FINISHING HAP EMISSION LIMITS FOR DETERMINING THE ALLOWABLE HAP LOSS

Type of Leather Product Process Operation	HAP Emission Limit (pounds of HAP loss per 1,000 square feet of leather processed)	
	Existing sources	New sources
1. Upholstery Leather (≥4 grams add-on/square feet)	2.6	0.5
2. Upholstery Leather (<4 grams add-on/square feet)	6.8	2.5
3. Water-resistant (≥5,000 Maeser Flexes)/Specialty Leather	5.6	4.9
4. Nonwater-resistant Leather (<5,000 Maeser Flexes)	3.7	2.1

As required in § 63.5450, you must meet the appropriate NESHAP General Provision requirements in the following table:

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT OF PART 63

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes	
§ 63.2	Definitions	Definitions for Part 63 standards	Yes	Except as specifically provided in this subpart.
§ 63.3	Units and abbreviations	Units and abbreviations for Part 63 standards.	Yes	
§ 63.4	Prohibited activities and circumvention.	Prohibited activities; compliance date; circumvention, severability.	Yes	
§ 63.5	Construction/reconstruction.	Applicability; applications; approvals.	Yes	Except for paragraphs of § 63.5 as listed below.
§ 63.5(c)	[Reserved]			
§ 63.5(d)(1)(ii)(H)	Application for approval	Type and quantity of HAP, operating parameters.	No	All sources emit HAP. Subpart TTTT does not require control from specific emission points.
§ 63.5(d)(1)(i)	[Reserved]			

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT OF PART 63—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§63.5(d)(1)(iii), (d)(2), (d)(3)(ii)		Application for approval	No	The requirements of the application for approval for new and reconstructed sources are described in §63.5320(b). General provision requirements for identification of HAP emission points or estimates of actual emissions are not required. Descriptions of control and methods, and the estimated and actual control efficiency of such do not apply. Requirements for describing control equipment and the estimated and actual control efficiency of such equipment apply only to control equipment to which the subpart TTTT requirements for quantifying solvent destroyed by an add-on control device would be applicable.
§63.6	Applicability of general provisions.	Applicability of general provisions	Yes	Except for paragraphs of §63.6 as listed below.
§63.6(b)(1)–(3)	Compliance dates, new and reconstructed sources.		No	Section §63.5283 specifies the compliance dates for new and reconstructed sources.
§63.6(b)(6)	[Reserved]			
§63.6(c)(3)–(4)	[Reserved]			
§63.6(d)	[Reserved]			
§63.6(e)	Operation and maintenance requirements.		Yes	Except for subordinate paragraphs of §63.6(e) as listed below.
§63.6(e)(3)	Operation and maintenance requirements.	Startup, shutdown, and malfunction plan requirements.	No	Subpart TTTT does not have any startup, shutdown, and malfunction plan requirements.
§63.6(f)–(g)	Compliance with nonopacity emission standards except during SSM.	Comply with emission standards at all times except during SSM.	No	Subpart TTTT does not have nonopacity requirements.
§63.6(h)	Opacity/visible emission (VE) standards.		No	Subpart TTTT has no opacity or visual emission standards.
§63.6(i)	Compliance extension	Procedures and criteria for responsible agency to grant compliance extension.	Yes	
§63.6(j)	Presidential compliance exemption.	President may exempt source category from requirement to comply with subpart.	Yes	
§63.7	Performance testing requirements.	Schedule, conditions, notifications and procedures.	Yes	Except for paragraphs of §63.7 as listed below. Subpart TTTT requires performance testing only if the source applies additional control that destroys solvent. §63.5311 requires sources to follow the performance testing guidelines of the General Provisions if a control is added.
§63.7(a)(2) (i) and (iii)	Performance testing requirements.	Applicability and performance dates.	No	§63.5310(a) of subpart TTTT specifies the requirements of performance testing dates for new and existing sources.
§63.8	Monitoring requirements		No	Subpart TTTT does not require monitoring other than as specified therein.
§63.9	Notification requirements	Applicability and State delegation	Yes	Except for paragraphs of §63.9 as listed below.
§63.9(e)	Notification of performance test.	Notify responsible agency 60 days ahead.	Yes	Applies only if performance testing is performed.

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT OF PART 63—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§63.9(f)	Notification of VE/opacity observations.	Notify responsible agency 30 days ahead.	No	Subpart TTTT has no opacity or visual emission standards.
§63.9(g)	Additional notifications when using a continuous monitoring system (CMS).	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	No	Subpart TTTT has no CMS requirements.
§63.9(h)	Notification of compliance status.	Contents	No	§63.5320(d) specifies requirements for the notification of compliance status.
§63.10	Recordkeeping/reporting	Schedule for reporting, record storage.	Yes	Except for paragraphs of §63.10 as listed below.
§63.10(b)(2)	Recordkeeping	Record startup, shutdown, and malfunction events.	No	Subpart TTTT has no recordkeeping requirements for startup, shutdown, and malfunction events.
§63.10(c)	Recordkeeping	Additional CMS recordkeeping	No	Subpart TTTT does not require CMS.
§63.10(d)(2)	Reporting	Reporting performance test results.	Yes	Applies only if performance testing is performed.
§63.10(d)(3)	Reporting	Reporting opacity or VE observations.	No	Subpart TTTT has no opacity or visible emission standards.
§63.10(d)(4)	Reporting	Progress reports	Yes	Applies if a condition of compliance extension.
§63.10(d)(5)	Reporting	Startup, shutdown, and malfunction reporting.	No	Subpart TTTT has no startup, shutdown, and malfunction reporting requirements.
§63.10(e)	Reporting	Additional CMS reports	No	Subpart TTTT does not require CMS.
§63.11	Control device requirements.	Requirements for flares	Yes	Applies only if your source uses a flare to control solvent emissions. Subpart TTTT does not require flares.
§63.12	State authority and delegations.	State authority to enforce standards.	Yes	
§63.13	State/regional 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 and confidentiality.	Public and confidential information.	Yes	

[FR Doc. 02–4064 Filed 2–26–02; 8:45 am]
BILLING CODE 6560–50–P



Federal Register

Friday,
March 22, 2002

Part VI

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–7]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: We are taking final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date as currently promulgated for existing sources subject to the PAI NESHAP by 60 days. Without this amendment, the compliance date under the rule would be June 23, 2002. With this action, existing sources will be required to comply with the rule by August 22, 2002.

DATES: March 22, 2002.

ADDRESSES: Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

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 (express packages to 4930 Old Page Road, Research Triangle Park, North Carolina 27709), telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. 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 this action will also be available through the WWW. Following signature, a copy of this action will be posted on the 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.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in onsite production of an active ingredient used in herbicides, insecticides, or fungicides.

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 part 63, subpart MMM. If you have questions regarding the applicability of the amendment 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 of this rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by May 21, 2002.

I. What Amendment Are We Making to the Rule?

Today's action extends the compliance deadline for existing sources under the PAI NESHAP by 60 days. Without this amendment, 40 CFR 63.1364(a)(1) would require existing affected sources to comply with the provisions of subpart MMM by June 23, 2002. With today's action, existing sources must be in compliance by August 22, 2002.

This amendment will result in deferring the deadline for submitting precompliance plans pursuant to 40 CFR 63.1368(e). Sources are required to submit these precompliance plans 3 months prior to the compliance date of the standard (66 FR 58393, November 21, 2001). Without this amendment, precompliance plans would be due March 23, 2002. As a result of this amendment, precompliance plans will now be due May 22, 2002, unless and until the compliance deadline is further extended.

II. Why Are We Amending the Rule?

We are promulgating an interim 60-day extension of the compliance deadline for the PAI NESHAP in order to avoid unnecessary and potentially confusing submittals of the precompliance plans currently due March 23, 2002. Submittal of the precompliance plans on March 23, 2002 would be premature and unnecessary because EPA is currently in the process of proposing amendments to the PAI NESHAP, including an extension of the compliance deadline. These other amendments are the result of a settlement agreement between EPA and the American Crop Protection Association (ACPA) and BASF

Corporation signed January 18, 2002.[1] Under the settlement agreement, EPA is to take final action on the proposed amendments by September 6, 2002.

Pursuant to the settlement agreement, EPA is publishing a direct final rulemaking and parallel proposal that would extend the compliance deadline in 40 CFR 63.1364(a)(1) to December 23, 2003. These actions, however, will not be effective before March 23, 2002.

Thus, in order to minimize confusion and potentially unnecessary paperwork, we believe an immediate short-term extension of the compliance deadline is necessary while the direct final rulemaking process is completed.

III. Why Are We Relying on the Good Cause Exemption to Promulgate This Final Rule?

Clean Air Act section 307(d) generally requires EPA to provide notice and an opportunity for public comment on actions promulgating or revising regulations under CAA section 112(d). Section 307(d)(2), however, exempts rulemakings where the Agency, pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), finds for good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.

The EPA finds that good cause is warranted to forgo notice and opportunity for comment for this action to provide a short, interim extension of the compliance deadline. The EPA is publishing a direct final rule and parallel proposal to extend the compliance deadline further, but the public review process will not be completed before the current March 23, 2002 precompliance plan deadline. The EPA believes it is in the interest of all parties to avoid the unnecessary paperwork burden associated with submitting precompliance plans that need to be revised and resubmitted if the PAI NESHAP are amended according to the settlement agreement with ACPA and BASF. The interim extension is of limited duration to allow EPA time to complete the public review process on the direct final rule extending the compliance deadline to December 23, 2003.

IV. What Are the Administrative Requirements for This Final Rule?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see Summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10,1999). This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This final rule amendment 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 final rule amendment also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This final rule amendment does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This direct final rule amendment is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 23, 1999 final rule (64 FR 33550).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 22, 2002. 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).

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: March 19, 2002.

Christine Todd Whitman,

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 MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising the paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by August 22, 2002.

* * * * *

[FR Doc. 02–6974 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

[1] Notice of this agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116).



Federal Register

Friday,
March 22, 2002

Part V

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Direct Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–5]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date of the PAI Production NESHAP as currently promulgated by 18 months. Under the promulgated rule, the compliance date is June 23, 2002. With this action, existing sources will be required to comply with the rule by December 23, 2003.

DATES: This direct final rule will be effective May 21, 2002 without further notice, unless the EPA receives adverse comments by April 22, 2002. If we receive any adverse comments on the amendment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the amendment in this rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 401 M Street, SW., Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (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:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. 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 this action will also be available through the WWW. Following signature, a copy of this action will be posted on the 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.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879 ..	Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. Producers of any integral intermediate used in onsite production of an active ingredient used in herbicides, insecticides, or fungicides.

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 part 63, subpart MMM. If you have questions regarding the applicability of the amendment 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 of this 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 May 21, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

Today's action is necessary to extend the compliance deadline of the PAI Production NESHAP pending review and approval of a proposed Settlement Agreement between EPA and the American Crop Protection Association (ACPA) and BASF Corporation and promulgation of rule amendments described in that Settlement Agreement. The ACPA and BASF, as well as the American Coke and Coal Chemicals Institute and Eastman Chemical Company, filed petitions for judicial review of the PAI Production NESHAP promulgated on June 23, 1999 (64 FR 33550). On January 18, 2002, EPA entered into a Settlement Agreement with ACPA and BASF, resolving petitioners' litigation. Notice of that Agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116). The Agreement calls for EPA to propose a number of amendments to the PAI Production NESHAP.

Upon final approval of the Settlement Agreement, EPA will publish a notice of proposed rulemaking with the agreed upon amendments to the PAI Production NESHAP in the **Federal Register.**

Today's direct final rulemaking extends the compliance date for existing sources from June 23, 2002 to December 23, 2003. We believe this extension reasonably allows sources time to assess the compliance impacts of proposed Settlement Agreement and the agreed upon rule amendments included in that Settlement Agreement. While we believe the 18-month extension of the compliance date will be sufficient for all sources to come into compliance with the amendments to be proposed, should a source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, that source may request an extension of up to 1 year in accordance with 40 CFR 63.1364(a)(2).

II. What Amendment Are We Making to the Rule Today?

Today's action extends the compliance date by 18 months. Under the promulgated PAI Production NESHAP, existing affected sources would be required to be in compliance by June 23, 2002. With today's action, existing sources must be in compliance by December 23, 2003.

III. Why Are We Publishing the Amendment as a Direct Final Rule?

We are taking separate direct final action on the compliance date extension in order to ensure that this change can be completed before the current June 23, 2002 compliance deadline for existing sources. We believe this 18-month extension is a noncontroversial change because it provides a reasonable extension to allow sources to assess the compliance impacts of the agreed upon rule amendments included in the Settlement Agreement. As a result, we anticipate no adverse comments.

If we receive an adverse comment on this action, we will publish a timely notice before the effective date of this amendment indicating that the rule is being withdrawn. In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendment in the event that we receive an adverse comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

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 this rule amendment is a not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. 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."

This direct final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. 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. Thus, Executive Order 13175 does not apply to the rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA 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 this rule amendment 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. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) 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 (4) 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 amendment 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 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. Today's amendment imposes no additional regulatory requirements on owners or operators of affected sources. The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. 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 adopting 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 amendment and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule amendment 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).

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This direct final rule amendment is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

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: March 19, 2002.

Christine Todd Whitman,

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 MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by December 23, 2003.

* * * * *

[FR Doc. 02–6975 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 63 (§ 63.1200 to End), revised as of July 1, 2001, in § 63.1257, on page 134, redesignate paragraph (d)(4)(iii) as paragraph (d)(3)(iii), and on page 140, remove the second definition of ρ following equation 47.

[FR Doc. 02–55509 Filed 4–1–02; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[WV001–1000a; FRL–7166–6]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; State of West Virginia; Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation.

SUMMARY: EPA is taking direct final action to approve West Virginia Department of Environmental Protection's (WVDEP's) request for delegation of authority to implement and enforce its hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, and secondary lead smelting which have been adopted by reference from the Federal requirements set forth in the Code of Federal Regulations. This approval will automatically delegate future amendments to these regulations once WVDEP incorporates these amendments into its regulations. In addition, EPA is taking direct final action to approve of WVDEP's mechanism for receiving delegation of future hazardous air pollutant regulations. This mechanism entails WVDEP's incorporation by reference of the unchanged Federal standard into its hazardous air pollutant regulation and WVDEP's notification to EPA of such incorporation. EPA is not waiving its notification and reporting requirements under this approval; therefore, sources will need to send notifications and reports to both WVDEP and EPA. This action pertains only to affected sources, as defined by the Clean Air Act's (CAA's or the Act's) hazardous air pollutant program, which are not located at major sources, as defined by the Act's operating permit program. The WVDEP's request for delegation of authority to implement and enforce its hazardous air pollutant regulations at affected sources which are located at major sources, as defined by the Act's operating permit program, was initially approved on March 19, 2001. EPA is taking this action in accordance with the CAA.

DATES: This direct final rule will be effective June 3, 2002, unless EPA receives adverse or critical comments by May 2, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and John A. Benedict, West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE, Charleston, WV 25304–2943. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE, Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Dianne J. McNally, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street (3AP11), Philadelphia, PA 19103–2029, *mcnally.dianne@epa.gov* (telephone 215–814–3297). Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the Act and 40 Code of Federal Regulations (CFR) part 63, subpart E authorize EPA to approve of State rules and programs to be implemented and enforced in place of certain CAA requirements, including the National Emission Standards for Hazardous Air Pollutants set forth at 40 CFR part 63. EPA promulgated the program approval regulations on November 26, 1993 (58 FR 62262) and subsequently amended these regulations on September 14, 2000 (65 FR 55810). An approvable State program must contain, among other criteria, the following elements:

(a) A demonstration of the state's authority and resources to implement and enforce regulations that are at least as stringent as the NESHAP requirements;

(b) a schedule demonstrating expeditious implementation of the regulation; and

(c) a plan that assures expeditious compliance by all sources subject to the regulation.

On November 18, 1999, WVDEP submitted to EPA a request to receive delegation of authority to implement and enforce the hazardous air pollutant regulations for the affected sources defined in 40 CFR part 63. On March 19, 2001, WVDEP received delegation of authority to implement all emission standards promulgated in 40 CFR part 63, as they apply to major sources, as defined by 40 CFR part 70. On June 15, 2001, WVDEP supplemented their November 18, 1999 request with information necessary to address delegation of the hazardous air pollutant regulations for affected sources which are not located at major sources, as defined by 40 CFR part 70. At the present time, the delegation request pertaining to affected sources which are not located at major sources, as defined by 40 CFR part 70, includes the regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, and secondary lead smelting which have been adopted by reference from the Federal requirements set forth in 40 CFR part 63, subparts M, N, O, T, and X, respectively. The WVDEP also requested that EPA automatically delegate future amendments to these regulations and approve WVDEP's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails WVDEP's incorporation by reference of the unchanged Federal standard into its regulation for hazardous air pollutant sources at 45CSR34 and WVDEP's notification to EPA of such incorporation.

II. EPA's Analysis of WVDEP's Submittal

Based on WVDEP's program approval request and its pertinent laws and regulations, EPA has determined that

Federal Register

Friday,
April 5, 2002

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7155–8]

RIN 2060—AF31

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On March 16, 1994, the EPA promulgated General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements that are established under section 112 of the Clean Air Act (CAA). In today's action, we are promulgating amendments to the General Provisions that revise and clarify several of the current provisions.

We are promulgating these amendments, in part, as a result of decisions reached in settlement negotiations conducted between petitioners who filed for review of the General Provisions and the EPA, as well as internal EPA discussions on issues regarding implementation of the General Provisions. The promulgated amendments also reflect our response to public comments.

In a separate action in today's **Federal Register**, we are also amending regulations on National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, in a direct final rule in order to resolve inconsistencies between that rule and these amendments to the General Provisions.

In addition, in today's action, we are promulgating amendments to the rule that establishes equivalent emission limitations by permit under section 112(j) of the CAA. The "section 112(j)" rule establishes requirements and procedures for owners or operators of major sources of hazardous air pollutants (HAP) and permitting authorities to comply with section 112(j). The section 112(j) rule was promulgated on May 20, 1994.

These amendments have been developed in response to settlement negotiations conducted between petitioners who filed for review of the section 112(j) rule and the EPA, as well as internal EPA discussions regarding implementation of the section 112(j) rule. The promulgated amendments to the section 112(j) rule also reflect our response to public comments.

EFFECTIVE DATE: April 5, 2002.

ADDRESSES: Docket No. A–2001–02, Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments, contains supporting information used in developing these amendments. This docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and is available for public inspection and copying from 8:30 a.m. through 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local permitting agency representative or the appropriate EPA Regional Office representative. For further information concerning the development of these rule amendments, contact Mr. Rick Colyer, U.S. EPA, Office of Air Quality Planning and Standards, Minerals and Inorganic Chemicals Group, C504–05, Research Triangle Park, North Carolina, 27711, telephone (919) 541–5262, *e-mail colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of the record compiled by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the background information document and the proposal and promulgation preamble and standards for this rulemaking, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) All these materials are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. 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 today's promulgated rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules: *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.

Regulated Entities. Categories and entities potentially regulated by this action include all section 112 source categories listed under section 112(c) of the CAA.

Industry Group: Source Category

Fuel Combustion

Combustion Turbines
Engine Test Facilities
Industrial Boilers
Institutional/Commercial Boilers
Process Heaters
Reciprocating Internal Combustion Engines
Rocket Testing Facilities

Non-Ferrous Metals Processing

Primary Aluminum Production
Primary Copper Smelting
Primary Lead Smelting
Primary Magnesium Refining
Secondary Aluminum Production
Secondary Lead Smelting

Ferrous Metals Processing

Coke By-Product Plants
Coke Ovens: Charging, Top Side, and Door Leaks
Coke Ovens: Pushing, Quenching, Battery Stacks
Ferroalloys Production: Silicomanganese and Ferromanganese
Integrated Iron and Steel Manufacturing
Iron Foundries Electric Arc Furnace (EAF) Operation
Steel Foundries
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

Mineral Products Processing

Alumina Processing
Asphalt Concrete Manufacturing
Asphalt Processing
Asphalt Roofing Manufacturing
Asphalt/Coal Tar Application—Metal Pipes
Clay Products Manufacturing
Lime Manufacturing
Mineral Wool Production
Portland Cement Manufacturing
Refractories Manufacturing
Taconite Iron Ore Processing
Wool Fiberglass Manufacturing

Petroleum and Natural Gas Production and Refining

Oil and Natural Gas Production
Natural Gas Transmission and Storage
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units
Petroleum Refineries—Other Sources Not Distinctly Listed

Liquids Distribution

Gasoline Distribution (Stage 1)
Marine Vessel Loading Operations
Organic Liquids Distribution (Non-Gasoline)

Surface Coating Processes

Aerospace Industries
Auto and Light Duty Truck
Large Appliance
Magnetic Tapes
Manufacture of Paints, Coatings, and Adhesives
Metal Can
Metal Coil
Metal Furniture
Miscellaneous Metal Parts and Products
Paper and Other Webs
Plastic Parts and Products
Printing, Coating, and Dyeing of Fabrics
Printing/Publishing
Shipbuilding and Ship Repair
Wood Building Products
Wood Furniture

Waste Treatment and Disposal

Hazardous Waste Incineration
Municipal Landfills
Off-Site Waste and Recovery Operations
Publicly Owned Treatment Works (POTW) Emissions
Sewage Sludge Incineration
Site Remediation
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)

Agricultural Chemicals Production

Pesticide Active Ingredient Production

Fibers Production Processes

Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production

Food and Agriculture Processes

Manufacturing of Nutritional Yeast
Cellulose Food Casing Manufacturing
Vegetable Oil Production

Pharmaceutical Production Processes

Pharmaceuticals Production

Polymers and Resins Production

Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nitrile Resins Production
Non-Nylon Polyamides Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production

Production of Inorganic Chemicals

Ammonium Sulfate Production—Caprolactam By-Product Plants
Carbon Black Production
Chlorine Production
Cyanide Chemicals Manufacturing
Fumed Silica Production
Hydrochloric Acid Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Uranium Hexafluoride Production

Production of Organic Chemicals

Ethylene Processes
Quaternary Ammonium Compounds Production
Synthetic Organic Chemical

Miscellaneous Processes

Benzyltrimethylammonium Chloride Production
Butadiene Dimers Production
Carbonyl Sulfide Production
Cellulosic Sponge Manufacturing
Chelating Agents Production
Chlorinated Paraffins
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Dry Cleaning (Petroleum Solvent)
Ethylidene Norbornene Production
Explosives Production
Flexible Polyurethane Foam Fabrication Operations
Friction Products Manufacturing
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Process Cooling Towers
Leather Tanning and Finishing Operations
OBPA/1,3-Diisocyanate Production
Paint Stripping Operations
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood and Composite Wood Products
Polyether Polyols Production
Pulp and Paper Production
Rubber Chemicals Manufacturing
Rubber Tire Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production

Categories of Area Sources

Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Secondary Lead Smelting

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you are regulated by this action, you should examine the section 112(d) regulation for your source category. 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. Only source categories for which standards have not been promulgated by May 15, 2002, are affected by the section 112(j) regulation.

Judicial Review. The amendments to the General Provisions and the section 112(j) provisions were proposed on March 23, 2001 (66 FR 16318). Today's action announces EPA's final decision on the amendments. Under section 307(b)(1) of the CAA, judicial review of these 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 4, 2002. Under section 307(d)(7)(B) of the CAA, only those objections to this rule that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged separately 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
A. General Provisions
B. Section 112(j) Provisions
II. What significant comments did we consider and what are the major changes to the proposed amendments to the General Provisions?
A. Comments and Changes in Response to Our Requests for Comments
B. Other Comments and Changes
III. What significant comments did we consider and what are the major changes to the proposed amendments to the section 112(j) provisions?
A. Impact of Missing the Section 112(j) Deadline
B. Comments and Changes in Response to our Requests for Comments
C. Other Comments and Changes
IV. What is the section 112(j) process?
A. If I am an owner or operator of a source, what must I do?

B. If I am the permitting authority for a source subject to section 112(j), what must I do?
C. What happens when a rule comes out after the hammer date for a given source category?
V. What are the environmental, energy, cost, and economic impacts of this rule?
VI. What are the administrative requirements for this rule?
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Executive Order 13132, Federalism
D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. National Technology Transfer and Advancement Act of 1995
H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
I. Congressional Review Act
J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Background

A. General Provisions

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. Major sources of HAP are those that have the potential to emit greater than 10 tons per year of any one HAP or 25 tons per year of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit greater than 10 tons per year of any one HAP and 25 tons per year of any combination of HAP. The General Provisions to 40 CFR part 63 establish the framework for emission standards and other requirements developed pursuant to section 112(d) of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA (or delegated authorities) must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing national standards for controlling toxic air pollutants. The General Provisions become applicable to a section 112(d) source category rule when the source category rule is promulgated and becomes effective.

The General Provisions to part 63 were developed in a collaborative process that included input from industry and other interested parties. On August 11, 1993, we proposed the General Provisions in the **Federal Register** (58 FR 42760). We received numerous comments on that proposal from industry groups, environmental groups, and State and local agencies. Those comments addressed a wide range of issues and requirements in the proposed rulemaking. We published our final decisions regarding the General Provisions in the **Federal Register** on March 16, 1994 (59 FR 12408). In the preamble to the promulgated rule, we discussed major comments on the proposal and our responses to those comments. We addressed other comments in the Background Information Document (BID) for the promulgated rulemaking (EPA–450/3–91–019b). In responding to comments, we made some changes and some clarifications to the final package and retained other provisions where the Agency believed it was appropriate to do so.

On May 16, 1994, six petitioners filed for review of the General Provisions. They cited a variety of issues raised in comments on the proposed rule whose resolution they believed to be inappropriate. In addition, we identified other changes that would clarify the EPA's original intent. On March 23, 2001 (66 FR 16318), we proposed changes to the General Provisions based on the outcome of settlement negotiations between the EPA and the petitioners, as well as on other internal EPA deliberations. We received 27 public comment letters in response to our proposal. In section II of this preamble, we discuss our responses to these public comments and the specific changes that were made to the proposed amendments to reflect our responses. The amendments to the General Provisions being promulgated today reflect decisions which we made in connection with settlement negotiations between the EPA and the petitioners, and our responses to the public comments on the proposed amendments.

In a separate action, we are promulgating changes to the Vegetable Oil NESHAP in response to public comments on the proposed amendments to the General Provisions. These changes are discussed briefly in section II of this preamble and more extensively in the preamble to the direct final action on the Vegetable Oil NESHAP.

The amendments finalized with today's action clarify and alter certain sections of the General Provisions.

B. Section 112(j) Provisions

The 1990 Amendments to section 112 of the CAA included a new section 112(j) which is entitled "Equivalent Emission Limitation by Permit." Section 112(j)(2) provides that the provisions of section 112(j) apply if the EPA misses a deadline for promulgation of a standard under section 112(d) established in the source category schedule for standards. After the effective date of a title V permit program in a State, section 112(j)(3) requires the owner or operator of a major source in a source category for which the EPA failed to promulgate a section 112(d) standard to submit a permit application 18 months after the missed promulgation deadline. Section 112(j)(5) also specifies that if the applicable criteria for voluntary early reductions established under section 112(i)(5) are met, then this alternative emission limit satisfies the requirements of section 112(j), provided that the emissions reductions are achieved by the missed promulgation date.

The rule proposing to implement section 112(j) of the CAA was published on July 13, 1993 (58 FR 37778). Public comments received on the proposed rule were considered, and changes we deemed appropriate were made in developing a final rule.

On May 20, 1994 (59 FR 26429), we issued a final rule for implementing section 112(j). That rule requires major source owners or operators to submit a permit application by the date 18 months after a missed date on the regulatory schedule. As required under section 112(j) of the CAA, the section 112(j) rule establishes requirements for the content of permit applications, contains provisions governing the establishment of the maximum achievable control technology (MACT)-equivalent emission limitations by the permitting authority, includes the criteria for the reviewing authority to determine completeness, and allows the applicant up to 6 months to revise and resubmit the application. As required in section 112(j)(5) of the CAA, the rule also establishes compliance dates:

> No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

Several petitioners filed for review of several provisions of the section 112(j) rule that they believed needed to be clarified or streamlined. On March 23, 2001 (66 FR 16318), we proposed changes to the section 112(j) rule based on the outcome of settlement negotiations between the EPA and the petitioners, as well as on other internal EPA deliberations. We received 27 public comment letters in response to our proposal. In section III of this preamble, we discuss our responses to these public comments and the specific changes that were made to the proposed section 112(j) amendments to reflect those public comments. The amendments to the section 112(j) rule being promulgated today reflect decisions which we made in connection with settlement negotiations between the EPA and the litigants, as well as our response to the public comments on the proposed amendments.

II. What Significant Comments Did We Consider and What Are the Major Changes to the Proposed Amendments to the General Provisions?

While we received many comments on the proposed amendments to the General Provisions, most commenters expressed general support for the proposed changes. For this reason, the majority of amendments were promulgated as proposed. A comprehensive summary of public comments and responses can be found in "National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)—Background Information for Standards," (EPA 453/R–02–002). This preamble discusses the significant comments received and major changes made. Additional minor changes and clarifications are discussed in the Background Information Document (BID) cited above. In the proposed amendments to the General Provisions, we specifically discussed and solicited comments on certain issues. In addition, we received comments on other proposed amendments to the General Provisions.

A. Comments and Changes in Response to Our Requests for Comments

In the proposal preamble, we discussed the presumptive applicability of the General Provisions, which has been an issue of concern for industry petitioners. We believe that the presumptive applicability of the General Provisions serves an important and valid purpose by eliminating the repetition of common provisions in individual NESHAP. While we reiterated that the General Provisions do apply unless specifically overridden, we acknowledged the potential for confusion regarding the actual requirements for sources when General Provisions requirements are not tailored to specific source categories. For several years, we have included a table for most part 63 subparts that indicates the applicability of each provision of the General Provisions to a particular subpart. To codify this practice, we proposed to amend the General Provisions to require individual subparts to explicitly state which General Provisions requirements are included in the relevant standard and which are not.

In addition, we requested comment on "any conflicts * * * that result solely from applying these proposed amendments to the General Provisions to promulgated part 63 subparts." One commenter identified such a conflict between the startup, shutdown, malfunction (SSM) provisions of the Vegetable Oil Production NESHAP and those provisions in the General Provisions. Specifically, the commenter noted that proposed 40 CFR 63.6(e)(3)(iv), which requires reporting of actions inconsistent with the Startup, Shutdown, and Malfunction Plan (SSMP) if the emissions exceed the relevant standard, does not comport with subpart GGGG. The Vegetable Oil NESHAP require reporting of such actions regardless of whether the standard was exceeded. The commenter also specifically noted that proposed 40 CFR 63.6(e)(3)(viii), the requirement to report modifications to the SSMP in the semiannual report, should not apply to sources subject to subpart GGGG, as subpart GGGG does not require a semiannual report.

We agree that the proposed amendments would have had a substantive impact on the Vegetable Oil NESHAP. However, the commenter has misinterpreted the intent of the changes, which was to reduce burden.

We agree with the commenter's assessment that certain SSM provisions in the proposed amendments are inconsistent with the promulgated Vegetable Oil NESHAP. We had previously reviewed the existing rules and did not identify any substantive problems. However, the Vegetable Oil NESHAP were promulgated after our review and subsequent proposal of the amendments. We have discussed the implications with the commenter and as a result, we are amending, in a separate **Federal Register** notice, several provisions in the Vegetable Oil NESHAP related to SSM requirements to eliminate unintended inconsistencies. The Vegetable Oil NESHAP include specifically tailored SSM provisions and, thus, sources covered by the Vegetable Oil NESHAP should look to that rule for their applicable SSM provisions.

Specifically, we are correcting the explanation column of Table 1 of 40 CFR 63.2870 as it applies to 40 CFR 63.6(e) to state, "implement your plan as specified in § 63.2852." Table 1 also now indicates specifically that 40 CFR 63.6(e)(3)(iii), (iv), and (viii) do not apply to Vegetable Oil NESHAP affected sources; this clarifies that not all of 40 CFR 63.6(e) applies, as the rule was originally promulgated.

We are also amending the first sentence of 40 CFR 63.2861(d) to clarify that owners or operators must submit an immediate SSM report if an SSM is handled differently from the procedures in the SSM plan and the emission standards are exceeded. We are also amending the third sentence of 40 CFR 63.2852 to clarify that the SSMP does not have to be incorporated into the title V permit, consistent with the General Provisions amendments.

These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil NESHAP affected sources.

B. Other Comments and Changes

1. Substantially Equivalent State Preconstruction Review

We proposed substantive amendments to the preconstruction review program, which were designed to clarify and streamline existing requirements. Included in these amendments was a provision that allows States or local agencies to use preconstruction review procedures used for other purposes for purposes of 40 CFR 63.5, provided their procedures are "substantially equivalent."

While one commenter generally supported this concept, a few commenters disagreed with the specific provisions in proposed 40 CFR 63.5(f)(1)(i) and (ii), which they interpreted as requiring each owner or operator to demonstrate that the State or local agency review is substantially equivalent to the relevant requirements in 40 CFR 63.5. The commenters instead believed that EPA should determine which State or local air permit programs have substantially equivalent preconstruction review requirements. One commenter noted that if EPA has

delegated authority to a State or local agency to implement subpart A of part 63 and part 70, then EPA has already agreed that the preconstruction review and approval process is substantially equivalent to the Federal requirements.

We agree that a State or local agency that has taken delegation of part 63 standards has already demonstrated that their preconstruction review process is substantially equivalent to the Federal requirements. When a State is the delegated authority, the State implements 40 CFR 63.5; we do not require two preconstruction review processes.

The intent of the provisions of 40 CFR 63.5(f) is not to place the burden on the source to demonstrate equivalency of a State preconstruction review program. The intent of the provisions is to allow owners or operators of affected sources to notify the EPA's Regional Office of a State's finding that their preconstruction review program requirements are substantially equivalent to the General Provisions' preconstruction review requirements. We agree that the proposed language in 40 CFR 63.5(f)(1) could lead to potential confusion. Therefore, in order to eliminate any potential for confusion, we have amended 40 CFR 63.5(f)(1) to no longer require that an owner or operator demonstrate to the Administrator's satisfaction that the conditions of 40 CFR 63.5(f)(1)(i) and (ii) are met. Instead, 40 CFR 63.5(f)(1) specifies that the Administrator will approve an application for construction or reconstruction if an owner or operator meets the conditions of 40 CFR 63.5(f)(1)(i) and (ii). Additionally, 40 CFR 63.5(f)(1)(ii) has been amended to require that an owner or operator provide a statement from "the State or other evidence (such as State regulations) that it considered the factors specified in 40 CFR 63.5(e)(1)" rather than requiring "the State (in it's finding) consider factors substantially equivalent to those specified in § 63.5(e)(1)."

Paragraph (f)(1) of 40 CFR 63.5 states that preconstruction review procedures that a State utilizes for other purposes may be utilized if the procedures are substantially equivalent to those specified in the General Provisions. We believe this adequately refers to 40 CFR 63.5(e)(1) where the criteria for approval of construction or reconstruction are described.

Finally, we do not agree with the suggestion that we should determine which State or local programs have substantially equivalent preconstruction review requirements. Individual States or local agencies are in a better position to make such a determination.

2. Revisions to the Startup, Shutdown, and Malfunction Plan

We received several comments regarding SSM and SSMP reporting requirements. A few commenters opposed the requirement in 40 CFR 63.6(e)(3)(viii) that revisions to the SSMP be reported to the permitting authority in the semiannual report. Another commenter considered the new requirements in 40 CFR 63.6(e)(3)(viii) to be burdensome and duplicative. The commenter believed that the requirements to submit reports of actions taken that are consistent or inconsistent with the SSMP, to revise the SSMP, and to keep copies of superseded SSMP on site were sufficient to ensure that the permitting authority is kept informed of changes to the SSMP.

One commenter stated that if the owner or operator of a source can revise the plan without prior approval, it makes no sense to require an owner or operator to send a file copy to EPA. The commenter expressed that the requirement for plan revisions to be maintained on site in 40 CFR 63.6(e)(3)(v) should suffice. The commenter suggested that if the EPA wants a revised SSMP to be submitted, they should provide more details on how it should be formatted, including how the specific procedure or methodology relates to a particular SSM event. The commenter also recommended that the date on the new SSMP be its effective date. If the EPA only wants a notice that the SSMP has been revised in the semiannual report, the commenter suggested that 40 CFR 63.6(e)(3)(viii) be revised to state that. The commenter also requested clarification on what the "scope of activities" in 40 CFR 63.6(e)(3)(viii) means.

We disagree with the commenters that the requirements in 40 CFR 63.6(e)(3)(viii) are burdensome. This section requires that EPA be notified in the semiannual report that revisions were made to the SSMP, but it does not require that a file copy of the entire revised plan be submitted.

We also disagree with the suggestion that a clarification in the rule of the meaning of "scope of activities" is necessary. It is the owner or operator's responsibility to define the specific scope of activities that the SSMP covers, as this is source-dependent. Moreover, these provisions are designed to give the source owner or operator flexibility. Generally, the scope of activities would include all operations and equipment specified by the owner or operator that should be included in the SSMP. To the extent that these activities are changed in the plan, we are requiring that the permitting authority be notified.

One commenter recommended that we explain how malfunctions that meet the definition of SSM under 40 CFR 63.2, but are not covered in the existing SSMP, should be reported. The commenter believed that we should add language to 40 CFR 63.6(e)(3)(viii) to cover this situation. Another commenter requested that EPA require that facilities provide the number and a description of malfunctions that occurred in the semiannual report. The commenter stated that this information would be necessary to evaluate a facility's compliance with the SSMP, as regular site visits are infeasible due to limited resources.

To comply with the rule, sources must either meet the standard or comply with the SSMP. If a malfunction not covered by the SSMP occurs and the source meets the standard, there is no need to report. If a malfunction not covered by the SSMP occurs and the source does not meet the standard, the deviation must be reported. In any case, when a malfunction occurs that was not included in the SSMP, the plan should be revised to include the previously unincluded malfunction.

However, we agree with the commenter who suggested that the number and description of malfunctions is necessary to evaluate compliance with the SSMP. Therefore, we have modified the provisions at 40 CFR 63.10(d)(5)(i) to state "Periodic startup, shutdown, and malfunction reports. * * * Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they shall include the number, duration, and a brief description of each startup, shutdown, and malfunction. * * *" This change provides the implementing agency with adequate information without placing an undue additional burden on the source. The types of malfunctions will already have been identified in the SSMP so a brief description could consist of simply identifying which types of malfunctions occurred during the reporting period, as well as the number and the duration of each.

Also, two commenters requested that we remove the last sentence of the proposed 40 CFR 63.6(e)(3)(ix), which states that none of the SSMP procedures fall within the permit shield. The commenter believed the sentence could be misconstrued to mean that the SSMP is part of the title V permit and yet ineligible for the permit shield.

Concerning the applicability of the permit shield, these commenters have misinterpreted the provisions of the rule. The proposed amendments to the General Provisions concerning SSM plans were intended in part to address concerns expressed by the petitioners, who believe that the language in the current General Provisions requiring that the SSM plan be "incorporated by reference into the source's Title V permit" could be construed to require that permit revision procedures be followed whenever an SSM plan is revised. We do not construe the existing General Provisions in this manner, but we understand the concern expressed by the petitioners. The amendments indicate that the permit must require that the owner or operator adopt an SSM plan and then operate and maintain the source in accordance with the plan, but they cannot reasonably be construed as requiring that each element of the SSM plan be made an element of the permit. The provisions within the SSM plan will not be terms and conditions of the permit except in the limited instance where a permitting authority elects to incorporate them. Since the SSM plan is not itself part of the operating permit, and it can be revised without revision of the permit, the SSM plan is not eligible for the permit shield.

A few commenters strongly opposed the statements in the proposal preamble that the SSMP must be submitted to the permitting authority and made publicly available if someone requests it. One of the commenters believed it would be burdensome to prepare a SSMP without Confidential Business Information (CBI) in it. The commenter also expressed that such a plan would be uninformative without CBI. Two other commenters stated that they preferred that the rule specifically state that the permitting agency has the authority to request a copy of the facility's SSMP and to review and comment on it. One commenter also preferred that State and local agencies have discretion to approve or disapprove the SSMP.

We believe that the proposal preamble discussion accurately reflects 40 CFR 70.4(b)(3)(viii) of the title V permit program, which requires that the permitting authority has legal authority to: "Make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 114(c) of the Act." For this reason, we do not agree with the commenters who oppose the requirements for the SSMP to be made publicly available if requested. Owners or operators may still identify the portions of the SSMP that are considered CBI; material claimed as CBI would not be available for public disclosure except as provided under the process established by 40 CFR Part 2. We further believe, pursuant to 40 CFR 70.4(b)(3)(viii), that the authority for permitting agencies to request a facility's SSMP already exists. Therefore, we do not believe it is appropriate at the present time to revise the rule as the commenters requested.

3. Compliance Extension Request 120 Days Before Compliance Date

The proposed amendments to the compliance extension provisions were met with favor by commenters. Several commenters supported the change to allow compliance extension requests to be submitted as late as 120 days before the compliance date, rather than 1 year in advance.

One commenter expressed that this change would reduce the number of compliance extension requests. Another commenter outlined circumstances that could arise that would necessitate a late request for a compliance extension (e.g., vendor strikes, acts of God, or damaged equipment).

One commenter specifically supported the proposed provision in 40 CFR 63.6(i)(4)(i)(B) postponing the applicability of MACT standards until the permitting authority either approves or denies a compliance extension request. This commenter noted that the proposed compliance extension revisions were particularly important for sources subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Incinerators. Amendments to the performance test requirements of Hazardous Waste Incinerators rule have not been completed. The commenter noted that the amendments would have had to be promulgated by December 2001 for facilities to complete their comprehensive performance test plans by the March 2002 deadline. The ability to apply for a compliance extension would be critical if the amendments were not final by December 2001.

4. Readily Accessible Readout

The proposed amendments clarified the owner or operator's obligations with respect to the accessibility of readouts from monitoring systems required for compliance. Two commenters supported the requirement for such readouts to be readily accessible. However, several commenters proposed deleting the requirement that the readout from the monitoring equipment be "readily accessible onsite for operational control or inspection by the operator of the equipment." One commenter maintained that the provision was unnecessary because 40 CFR 63.10(b) already requires files of all information to be readily available. A few of the commenters maintained that this requirement was technically infeasible, as the readout depends on the configuration of the source, type of control equipment, frequency, and whether monitoring data are read in central control booths or computers. One commenter stated that the optimal location of the readout should be left to the source. Another commenter stated that if EPA does not remove the phrase, it should be reworded to change the regulatory text from "readout" to "indication of operation," as audible or visual alarms may also alert the operator that a problem has occurred with the continuous monitoring system (CMS). The commenter further suggested removing the terms "in plain view" and "close proximity," as CMS readouts may be readily accessible but may not meet these requirements. For example, they may be in the control room but not in the line-of-sight of an operator, in the process unit operating block but not where the "operators are normally operated," or operated by a different process unit and monitoring unit.

We recognize the commenters' concerns with the provisions governing the availability of information from monitoring equipment. To address this issue, we have revised 40 CFR 63.8(c)(2)(ii) to refer to "readout or other indication of operation." This addresses the point that audible or visual alarms may be in use rather than a "readout." The terms "plain view" and "close proximity" were used in the proposal preamble, although not in the regulatory text, to explain what was meant by readily accessible and to assure that inspectors would have easy access to monitoring information. However, we agree with the commenter that the required information may be readily accessible although not in plain view. "Readily accessible" is the source owner or operator's responsibility to ensure that monitoring information is easily available. For this reason, we made no further rule changes to explain "readily accessible."

5. Zero and High Level Calibration Checks

A few commenters suggested that EPA revise 40 CFR 63.8(c)(6) to clarify that

the zero and high-level calibration checks only apply to continuous emission monitoring Systems (CEMS) and continuous opacity monitoring systems (COMS), not to all CMS. Some continuous parameter monitoring systems (CPMS), such as thermocouples and weight devices, cannot be automatically calibrated.

One commenter requested that EPA delete 40 CFR 63.8(c)(6), as promulgated MACT standards already contain calibration requirements and daily system checks for CPMS. The commenter cited §§ 63.118(a)(2) and 63.152(f) of 40 CFR part 63.

To address the commenters' concern about CPMS that cannot be automatically calibrated, we have revised 40 CFR 63.8(c)(6) as follows: "The owner or operator of a CMS that is not a CPMS, which is installed in accordance with the provisions of this part. . . . " The calibration specifications for a CPMS are described in the last sentence of this paragraph.

We do not agree it is appropriate to delete 40 CFR 63.8(c)(6) as requested by one of the commenters. Individual standards may change this as appropriate or necessary, but these monitoring provisions will remain in the General Provisions.

6. Definition of Affected Source and New Affected Source

We proposed a new process for defining "affected source" and "new affected source" in future MACT standards. Over the period that EPA has been promulgating MACT standards, we have typically used the term "affected source" as an indication of the collection of processes, activities, or equipment to which each MACT standard will apply. We have adopted a broader or narrower definition of affected source depending on the nature of particular MACT requirements and the strategies available for meeting them. In some instances, we have adopted a definition as narrow as a single machine and in others, we have defined all processes, activities, and equipment at a source within the specified category or subcategory as the affected source. A broader definition of affected source permits emission requirements to apply to a larger group of processes, activities, and equipment, and may thereby facilitate more innovative and economically efficient control strategies.

In those instances where we have previously adopted a broader definition of affected source, we have sometimes established a narrower definition of the processes, activities, or equipment to which new source MACT will apply. In some instances, we believe it is both practicable and reasonable to apply new source MACT controls to a narrower set of constructed or reconstructed equipment or activities and retaining a broad definition would operate to subvert the statutory intent to require more stringent controls for new sources.

When we have adopted a broader definition of affected source, we have still determined the MACT floor for the entire affected source by evaluating emissions and the feasibility of controls separately for particular types of "emission units" within the affected source. This approach can afford owners and operators the option of demonstrating separate compliance by individual emission units within the affected source or by adopting more flexible control strategies and demonstrating compliance for the affected source as a whole. Moreover, a standard for a larger affected source may still be a composite of sublimits or other elements expressly directed at particular types of equipment or activities.

In light of this flexibility, we agreed with the industry petitioners that it would be feasible to adopt a broader definition of affected source on a more consistent basis. Thus, we proposed to change the General Provisions to indicate that future MACT standards will generally adopt a definition of affected source which consists of all existing HAP-emitting equipment and activities which are at a single contiguous site and are within a specific category or subcategory. We do not believe we are required to adopt this policy, but we agree with the industry petitioners that it will foster greater predictability and consistency in regulatory outcomes.

We also proposed to permit a narrower definition of affected source in particular future MACT standards when a broad definition will result in significant administrative, practical, or implementation problems, and a narrower definition would resolve these problems. For example, in some instances, the facilities within a category or subcategory which must develop appropriate compliance strategies may consider a broader definition of affected source to be confusing. In other instances, the facilities may operate dissimilar equipment or processes which do not emit the same HAP or type of HAP, and a broader definition will have little or no utility in promoting more flexible or efficient control strategies. These examples are only illustrative and are not intended to limit our discretion to adopt a narrower affected source definition in particular future MACT standards. However, when we adopt a narrower definition of "affected source," we will identify the specific problems created by the broader definition and specify why a narrower definition will resolve them.

We also proposed to develop and adopt a separate definition of "new affected source" for each future MACT standard after evaluating facilities in the category or subcategory according to eight factors. These eight factors are: (1) Emission reduction impacts of controlling individual sources versus groups of sources, (2) cost effectiveness of controlling individual equipment, (3) flexibility to accommodate common control strategies, (4) cost/benefits of emissions averaging, (5) incentives for pollution prevention, (6) feasibility and cost of controlling processes that share common equipment, (7) feasibility and cost of monitoring, and (8) other relevant factors. Under this process, the definition of "new affected source" for a particular MACT standard may be the same as "affected source" or it may differ. The factors which we deem most important in this assessment will differ from standard to standard. When we deem it appropriate based on our evaluation of the eight factors to establish a definition of "new affected source" less inclusive than "affected source," we will do so.

We did not receive any comments opposing the new definitions and procedures for specifying the affected source and new affected source for future MACT standards. Accordingly, we have decided to adopt these definitions and procedures as proposed.

Each future MACT standard subject to these new procedures will explicitly define "affected source" and "new affected source." Any decision to adopt a narrower definition of affected source or to adopt a definition of new affected source differing from the definition of affected source will be explained in the individual standard.

Our proposal made it clear that we only intend to apply this new approach prospectively. We will not reconsider or revise previously promulgated MACT standards according to the new definitions and procedures. However, our proposal did not specify an effective date or a specific transitional process for implementation of these new definitions and procedures. We anticipated that there could be inconsistencies between some of the new General Provisions and previously promulgated MACT standards, and that a variety of provisions might need to be solely prospective in application or require some sort of transitional process. We specifically solicited comment on this

issue. However, the only other problem in applying the new rule to existing MACT standards which was identified in comments concerns the provisions for SSM plans in this rule and in our previously promulgated vegetable oil MACT rule, which we discuss elsewhere in this preamble.

In selecting an appropriate effective date for the new definitions and procedures for specifying the affected source and new affected source, we note that our past practice has been considerably less uniform than the one we are adopting today. While we believe it is appropriate to bring greater clarity and consistency to this process in future MACT standards, we also note that EPA typically begins working with affected facilities to devise an appropriate structure for MACT standards well before they are proposed, and that this process is well advanced for many MACT standards currently under development. We do not believe it would be practicable to require all such standards to immediately conform to the new definitions and procedures we are adopting today. Therefore, we have decided that these new definitions and procedures will be mandatory only with respect to those MACT standards which are proposed after June 30, 2002. However, we note that many standards presently in development already utilize a similar approach, and that it may also be feasible to adopt a similar approach for additional standards during the pendency of future rulemakings on individual MACT standards.

III. What Significant Comments Did We Consider and What Are the Major Changes to the Proposed Amendments to the Section 112(j) Provisions?

A comprehensive summary of public comments on the proposed section 112(j) provisions can be found in "National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)—Background Information for Standards," (EPA 453/R–02–002). This section discusses the significant comments received on and major changes made to the section 112(j) provisions.

A. Impact of Missing the Section 112(j) Deadline

Several commenters expressed serious concern over the potential impact of EPA's failure to promulgate the 10-year MACT standards by the section 112(j) hammer date. Some commenters noted that there would be significant effort expended to develop the Parts 1 and 2 permit applications and case-by-case permits and observed that this effort would be for naught if the standards were issued prior to the permit. Others offered suggestions on how to extend or delay applications such that the burden is minimized. All commenters urged EPA to issue the MACT standards prior to the hammer date to eliminate the impact of section 112(j).

We appreciate the commenters' concerns, and we are making every effort to promulgate the remaining MACT standards as soon as possible. However, we note that the previous permit application extensions for the 4- and 7-year MACT rules were established because the standards were to be issued very shortly after the deadline. This is not the situation now, with a significant number of the 10-year MACT standards not scheduled for promulgation until well after the deadline. The intent of the 2-part section 112(j) application process which we proposed was to alleviate unnecessary burdens by deferring the collection of the more detailed information necessary for a complete case-by-case MACT application until after the "hammer" date had passed. However, it is now apparent that the process for submission of section 112(j) applications as we proposed it will not significantly alleviate the burden on sources and permitting authorities.

Section 112(j) of the CAA was designed to be a "backstop" to our failure to issue MACT standards. Clearly, we will not complete promulgation of all MACT standards in the 10-year bin by the section 112(j) deadline of May 15, 2002, and in fact, we will miss the schedule for numerous source categories. The task to develop MACT standards on schedule to cover all the listed source categories has been enormous, and our past schedules projecting issuance by the hammer date have proved to be unduly optimistic. However, we are still committed to completing all MACT standards in as timely a manner as practicable. Although numerous standards will be late, we currently anticipate that many of the remaining standards in the 10-year bin will be proposed before the hammer date, and that all standards in that bin will be promulgated before any case-by-case MACT determinations would be required under the 24 month timetable for permit issuance which we proposed (consisting of 6 months for submission of the Part 2 application and 18 additional months for action by the permitting authority).

We agree with the commenters that a process in which the source must gather detailed information and then prepare and submit a Part 2 title V permit application and the permitting authorities must then review each of the submitted applications and prepare for issuance of a case-by-case MACT determination represents an unnecessary burden if all MACT standards will be promulgated before any actual permits will be issued. We conclude that such resources would be better spent preparing for and implementing the MACT standards when they are promulgated. Thus, we have decided to revise the proposed rule to extend the amount of time between the Part 1 and Part 2 section 112(j) application to 24 months which coincides with the time period in which we expect to promulgate MACT standards for the remaining categories.

As the preamble to our proposal makes clear, we based our proposal to provide a 6 month period between the Part 1 and Part 2 applications in part on the concept that every applicant would automatically be given the maximum extension to supplement an incomplete application which is explicitly provided for by CAA section 112(j)(4). However, as one commenter noted, there is another provision in the statute which may be construed as providing authority to establish an incremental process for the submission of section 112(j) applications. The hammer provision in section 112(j)(2) itself establishes the requirement to submit permit applications "beginning 18 months after" the statutory date for promulgation of a standard. Reading this provision in context, we believe that the statute can be reasonably construed as authorizing us to provide a period of time after the hammer date in which the information necessary for a fully informative section 112(j) application can be compiled. This alternate construction also makes more practical sense because it retains the statutory process in which the permit authority can determine whether or not an application is complete and provides the applicant the extension of up to 6 months contemplated by section 112(j)(4). This assures that the time required to supplement an incomplete application will not be deducted from the time in which the permitting authority must complete its work.

While we recognize that compilation of the information needed for a Part 2 application is not likely to take 24 months, we are nevertheless reluctant to mandate that significant resources be devoted to an exercise which will ultimately be futile and unproductive. The burden of compiling a Part 2 application for simple sources containing only a small number of

emission points may not be particularly onerous, but the burden on more complex sources containing numerous sources and emission points could be significant. The sheer number of affected sources that would have to submit a Part 2 application by November 15, 2002, under the rule as proposed is very large, estimated at over 80,000. Such an exercise would also needlessly divert resources needed for other critical tasks at already overworked permitting authorities. We do not believe such an outcome was envisioned or intended by the drafters of section 112(j), particularly in the circumstance where the Federal MACT standards will actually be issued prior to the deadline for issuance of the case-by-case MACT determinations by the permitting authorities.

Accordingly, we have decided to revise our proposal to provide for a 24-month period between submission of the Part 1 application and submission of the Part 2 application. The 18-month period for issuance of the permit after receipt of a complete application which is provided by the current section 112(j) rule and by section 503(c) of title V will be retained. We are also restoring the statutory process in which the permitting authority may review the application for completeness and grant an extension of up to 6 months to remedy any deficiencies.

We received no adverse comment on requiring that the first portion (Part 1) of the section 112(j) application be due on the hammer date. We think that this is the minimum required by the statute. The Part 1 application is very short and simple, and we believe the burden is minimal. The Part 1 application will also help permitting authorities to identify sources potentially subject to the upcoming MACT standards. Sources must note that our decision to extend the time between the Part 1 and Part 2 applications is no excuse for not submitting a Part 1 application if the source can reasonably determine it is in one of the source categories or subcategories subject to the section 112(j) requirements. Failure to meet the section 112(j) requirements, including failure to make a timely Part 1 application, can lead to enforcement action. If a source is unsure about its applicability, it should submit a Part 1 application requesting an applicability determination to the permitting authority, which will then make a determination of MACT applicability.

B. Comments and Changes in Response to Our Requests for Comments

1. Notification by Permitting Authority Within 120 Days of Section 112(j) Hammer Date

In the preamble to the proposed section 112(j) amendments, we discussed changes made to clarify obligations for sources and permitting agencies when the section 112(j) deadline passes. Among the provisions included was the requirement that an owner or operator submit a Part 1 permit application within 30 days of being notified by the permitting agency that one or more sources at the major source belong to a section 112(j) category or subcategory. The permitting authority would have been required to make any such notification within 120 days after the section 112(j) deadline. We specifically requested comment on whether 120 days was sufficient time for permitting authorities to act.

In response, a few commenters expressed serious concerns about this requirement. These commenters noted that States do not always have up-to-date information on sources and that 120 days is not sufficient time for such notifications. Furthermore, these commenters recommended that this requirement be deleted because States may choose to identify and notify affected sources but should not be required to do so. A few commenters recommended that the final rule specify that owners or operators of affected sources must submit a title V permit application whether or not they receive notification.

We agree with the commenters that it is the responsibility of the affected source to submit a title V permit application regardless of notification if it can reasonably determine that it falls within a source category for which a standard has not been promulgated by the section 112(j) deadline. We believe, in most instances, that the owner or operator will be able to reasonably determine whether the source is in the category or subcategory subject to section 112(j) from provisions specified in the proposed rule for the category or subcategory. If an owner or operator is unable to make this determination, they may at their discretion contact the permitting authority for assistance in making the determination or submit a Part 1 applicability determination request. If there is doubt, the owner or operator should submit the Part 1 application. Most MACT standards will be proposed by the section 112(j) deadline of May 15, 2002, and applicability criteria will be specified in those proposals. In addition, we are posting applicability criteria on EPA's Air Toxics Website for all source categories for which MACT standards have not yet been proposed (see *www.epa.gov/ttn/atw/eparules.html*). The EPA project leads may also be directly contacted for additional information. Thus, owners or operators should know for all source categories whether or not their sources will be subject to the section 112(j) requirements. Therefore, we are retaining 40 CFR 63.52(a)(1) as proposed, which requires an owner or operator to submit an application for a title V permit or permit revision if the owner or operator can reasonably determine that one or more sources at the major source belong in the category or subcategory subject to section 112(j). The obligation is on the source owner or operator to submit the application. Failure to submit a Part 1 application when it can reasonably be determined the source is in an applicable source category would be considered a violation.

Moreover, we also agree with the commenters that 120 days may not be sufficient time to notify owners or operators of affected sources subject to section 112(j) if those sources did not submit a title V permit application because they could not reasonably determine if they were part of a source category on which the section 112(j) "hammer" fell. As the commenter pointed out, State agencies do not necessarily have this information and would not be able to identify each and every affected source within 120 days, especially those in source categories that contain thousands of sources. We do not want to create an opportunity to potentially circumvent the requirements of the rule when the State fails to notify the source owner or operator by a specified time because it does not have adequate information. Therefore, in the final rule amendments, we have removed the requirement that the permitting authority must notify the owner or operator that one or more sources at the major source belong to such category or subcategory within 120 days after the section 112(j) deadline. States may still choose to identify and notify affected sources, and we encourage them to do so when they have the available information.

The Part 1 application is intentionally brief so that completing it will not be a complicated, burdensome requirement. If there are isolated instances where a Part 1 application is erroneously submitted where none is required, it would be the responsibility of the permitting authority to notify the owner or operator that the source is not in a

category or subcategory subject to section 112(j). In addition, permitting authorities have the obligation to determine MACT applicability if requested in a Part 1 application.

2. Prohibition on Backsliding

Several commenters disagreed with EPA's proposed prohibition on backsliding, which prevents a State from adopting any section 112(d) emission limitations that are less stringent than the case-by-case MACT determinations by the permitting authority under section 112(j). The commenters maintained that this policy is inconsistent with the plain language of the CAA and prior EPA policy. The commenters stated that this policy should not be adopted. Instead, one commenter proposed that the rule be revised to require States to revise permits to conform to MACT standards issued after other emission limitations have been adopted. This commenter believed that the prohibition on backsliding would create unnecessary burden and uncertainty because permitting authorities and sources would have to spend significant time and resources to determine when a MACT standard is less stringent. One commenter maintained that implementing the anti-backsliding policy would result in uneven requirements for similar industries in different States and would also require Federal enforcement of regulations that were not subject to national review.

The current section 112(j) rule does not include any prohibition on backsliding, and the current 40 CFR 63.56(c) allows the permitting authority to exercise its discretion in determining whether or not to retain more stringent provisions from a prior section 112(j) MACT determination in the operating permit. Similarly, the rule governing case-by-case MACT determinations under section 112(g) does not contain any prohibition on backsliding, and 40 CFR 63.44(c) provides that the permitting authority may exercise its discretion in deciding whether or not to retain more stringent provisions from a section 112(g) case-by-case MACT determination as applicable requirements in the operating permit.

After considering the concerns raised by the commenters, we have decided that it is best to retain this basic policy in the amended section 112(j) rule. As reflected by the provisions in the existing section 112(j) rule, we do not agree with the argument by some commenters that the statute requires the permitting authority to backslide, but we do believe that the decision whether or not to retain any more stringent provisions of a section 112(j) determination as applicable legal requirements following issuance of a section 112(d) standard should be committed to the discretion of the permitting authority that made the case-by-case determination in the first place. Accordingly, we have amended the proposed language to delete the prohibition on backsliding and to afford the permitting authority the discretion to determine whether or not backsliding is appropriate. The revisions in the language we proposed make it essentially identical to the language we adopted previously for section 112(g) determinations.

C. Other Comments and Changes

A few commenters strongly encouraged EPA to continue striving to meet all the section 112(d) or (h) deadlines so that the provisions of section 112(j) might never be necessary. A few commenters specifically urged EPA to meet the deadlines for promulgating the section 112(d) standards for various combustion sources before the "hammer" drops for these standards. One commenter emphasized that meeting the deadlines for standards would be the most efficient use of EPA resources with the greatest public benefit and that avoiding use of section 112(j) should be the EPA's top priority. One commenter hoped that these provisions might never be implemented, but expressed concerns about their implementation if they are necessary.

We appreciate the commenters' concerns, and we are making every effort to meet the statutory deadlines so that section 112(j) is not triggered. Nevertheless, at this point, it will not be feasible for us to complete all the MACT standards by the section 112(j) deadline. For an update on the status of section 112 rulemakings, see our website at *http://www.epa.gov/ttn/atw/eparules.html.*

One commenter maintained that most agencies would want to receive the information listed in 40 CFR 63.53(b)(2) and wondered why EPA had designated it as an optional part of the Part 2 MACT application.

The information listed in 40 CFR 63.53(b)(2) includes information about appropriate emission limitations and control technologies to meet those limitations. While the source owner or operator may choose to submit this information, it is not their responsibility to conduct the research and analysis necessary to make MACT determinations. This responsibility resides with the State or other designated permitting authority. For this reason, it is appropriate that the information listed in this paragraph be an optional part of the Part 2 MACT application.

IV. What Is the Section 112(j) Process?

Since we proposed amendments to section 112(j), we have received many questions regarding the provisions. The following paragraphs provide a general overview of the section 112(j) program.

A. If I Am an Owner or Operator of a Source, What Must I Do?

If you are an owner or operator of a major source in a source category or subcategory for which the statutory deadline for a section 112(d) emission standard is missed by 18 months, you are subject to the provisions of section 112(j). If you are unsure whether you are subject to section 112(j), you should review the appropriate proposed MACT rule to which you may be subject, you should review information on EPA's Air Toxics Website at *http://www.epa.gov/ttn/atw/eparules.html,* you may contact the EPA project lead directly, or you may submit a Part 1 MACT application to ask the State for an applicability determination. If the section 112(j) deadline arrives before you can determine your applicability, you should submit a Part 1 application. In most cases, even if the section 112(d) emission standard statutory deadline is missed by 18 months, there will be published proposed standards that you can refer to that will assist you in determining whether your source is subject to the provisions of section 112(j).

If you are subject to the provisions of section 112(j), you must apply for a title V permit or permit revision. The content of the required applications, details of the application approval process, timing of submittals, reviews, and permit issuance are specified in §§ 63.52 and 63.53 of 40 CFR part 63. The application process is a two-part process. Part 1 of the permit application requests very basic information about the affected source; the substantive information required by the permitting authority to make its MACT determination is tied to submittal of the Part 2 permit application. The Part 1 permit application must be submitted to the permitting authority by the section 112(j) deadline if it can reasonably be determined the source is in the source category or subcategory, or within 30 days after being notified in writing by the permitting authority that one or more sources at the major source belong in a subject category or subcategory.

The application content for a MACT determination is contained in 40 CFR

63.53. Information available as of the date on which the first Part 2 MACT application is filed for a source in the relevant source category or subcategory in the State or jurisdiction will be considered by the permitting authority in making its case-by-case MACT determination. The definition of "available information" in 40 CFR 63.51 specifies the type of information and sources of information available to the affected source owner or operator for use in completing the application.

Your Part 1 application for a MACT determination must contain the following information:

- The name and address (physical location) of your source.
- A brief description of the major source and an identification of the relevant source category.
- An identification of the types of emission points belonging to the relevant source category.
- An identification of any affected sources for which a section 112(g) MACT determination has been made.

As mentioned previously, if you are unsure whether you are subject to section 112(j), you should submit a Part 1 MACT application to ask the State for an applicability determination. If you have not submitted a Part 1 MACT application and the permitting authority notifies you that you are subject to section 112(j), you must submit an application for a title V permit or for a revision to an existing title V permit or pending title V permit within 30 days of being notified.

Your Part 2 Application for a MACT determination must contain the following information:

- For new affected sources, the anticipated date of startup of operation.
- The HAP emitted by each affected source in the relevant source category and an estimated total uncontrolled and controlled emission rate for HAP from the affected source.
- Any existing Federal, State, or local limitations or requirements applicable to the affected source.
- For each affected emission point or group of affected emission points, an identification of control technology in place.
- Information relevant to establishing the MACT floor, and, at the option of the owner or operator, a recommended MACT floor.
- Any other information reasonably needed by the permitting authority including, at the discretion of the permitting authority, information required pursuant to subpart A of 40 CFR part 63.

Your Part 2 MACT application may also, but is not required to, include the following:

- Recommended emission limitations for the affected source and support information consistent with 40 CFR 63.52(f). You may recommend a specific design, equipment, work practice, or operational standard, or combination thereof, as an emission limitation.
- A description of the control technologies that you would apply to meet the emission limitation including technical information on the design, operation, size, estimated control efficiency and any other information deemed appropriate by the permitting authority, and identification of the affected sources to which the control technologies shall be applied.
- Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

You are required to submit your Part 2 MACT application within 24 months after submittal of your Part 1 MACT application.

B. If I Am the Permitting Authority for a Source Subject to Section 112(j), What Must I Do?

As the permitting authority for a source subject to section 112(j), you may, but are not required to, notify an owner or operator of a source of their applicability when you have available information that allows you to identify subject sources. In such cases, you should submit the notification prior to the source's Part 1 MACT application deadline. Sources that can reasonably determine they are subject must submit a Part 1 application, regardless of any notification (or lack thereof). You may notify a source that has not submitted a Part 1 application to do so, but your discretion to do this does not relieve the source of its obligation to submit an application in the absence of such a notification. You also have the responsibility of notifying owners or operators of sources that erroneously submit a Part 1 MACT application (i.e., the source is not subject to section 112(j)) that they are not subject to section 112(j), as well as notifying owners or operators of sources of their applicability when requested by an owner or operator of a source with their Part 1 MACT application.

Once you have received a Part 2 MACT application from a source, you must notify the owner or operator of the source in writing whether the application is complete or incomplete within 60 days. If you do not notify the owner or operator in writing within 60 days after the submittal, it will be assumed that the application is complete.

Potential sources that would be affected by section 112(j) would be those categories or subcategories of major sources listed for regulation under section 112(c) of the CAA for which the statutory deadline for a section 112(d) emission standard is missed by 18 months. You should start the affected source identification by first identifying those source categories and subcategories for which a section 112(d) emission standard has been missed. Using available information from the EPA obtained in the rule development process for subject sources, and other available information (e.g., EPA databases, State inventories, available literature), you should be able to identify sources subject to section 112(j) within your jurisdiction.

If you are the permitting authority for a source subject to section 112(j), you must determine case-by-case MACT for the source. You should use all available information, as described in 40 CFR 63.51. The most prominent and useful piece of information will be the proposed MACT rule and its supporting documentation. You can also supplement that information with whatever other information is available, including information submitted by the source itself.

Permitting authorities must determine a MACT emission limitation equivalent to the limitation that would apply had the MACT standard been promulgated on time. You may conduct an independent analysis to determine MACT using available information to identify the 12 percent of the best performing sources (if there are 30 or more sources) or the best performing 5 (if less than 30 sources). Alternately, you may simply look to the proposed MACT standard and use the information and analysis already prepared by EPA. Regardless of the approach adopted to issue or revise the source's title V permit under section 112(j), you must determine MACT as an equivalent emission limitation on a case-by-case basis for each category of sources. Guidance to assist you in your case-by-case MACT determination is presented in "Guidelines for MACT Determinations under Section 112(j) Requirements," (EPA 453/R–02–001).

For sources in existence and subject to section 112(j) at the deadline, sources that become subject to section 112(j) after the section 112(j) deadline, and sources that make a change subject to section 112(j) after a permit is issued, you are required to issue a section 112(j) permit or a revised section 112(j) permit

with case-by-case MACT within 18 months after receiving a complete Part 2 application.

C. What Happens When a Rule Comes Out After the Hammer Date for a Given Source Category?

If the EPA promulgates emission standards under section 112(d) for a source category before the date a permit application is approved by the permitting authority, the title V permit must contain the promulgated standards rather than the section 112(j) case-by-case MACT level of control. If, however, the EPA promulgates emission standards under section 112(d) for a source after the date a permit application is approved by the permitting authority, the permitting authority must incorporate the requirements of the promulgated standards in the title V permit upon its next renewal. In such cases, the permitting authority must establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standards within a reasonable time, not to exceed 8 years after the standards are promulgated. The permitting authority is not required to revise the emission limit in the permit to reflect the promulgated standards if it determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standards. If the requirements you established in a case-by-case determination under section 112(j) are more stringent than the standards promulgated under section 112(d), you may elect to revise the permit to incorporate the less stringent requirements but you are not required to do so.

V. What Are the Environmental, Energy, Cost, and Economic Impacts of This Rule?

The General Provisions do not apply until specific relevant standards are promulgated. At that time, the impacts of the individual NESHAP will be analyzed, including the impacts of the General Provisions requirements.

The section 112(j) rule provides general guidance and procedures concerning the implementation of an underlying statutory requirement. We estimate that approximately 84,000 affected sources may have to prepare and submit a Part 1 permit application. The total estimated cost of this 1-time event is about $9,000,000. We currently anticipate no other impacts since we plan to promulgate all the 10-year MACT standards before the need to submit a Part 2 permit application.

VI. What Are the Administrative Requirements for This Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to 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 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

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must approve any reporting and recordkeeping requirements that qualify as an information collection request (ICR) under the PRA.

Approval of an ICR is not required for the General Provisions because, for sources affected by CAA section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by part 63 will be estimated when standards applicable to such category are promulgated.

However, approval of an ICR is required for the section 112(j) rule. The information collection requirements in today's amendments to the final section 112(j) rule have been submitted to OMB for approval under the provisions of the PRA. The EPA has prepared an ICR document (ICR No. 1648.04), and you may obtain a copy from Sandy Farmer by mail at Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The collection of information required by today's amendments to the final section 112(j) rule have an estimated nationwide recordkeeping and reporting burden of 172,480 hours ($8,984,976). This burden is a short 1-time permit application.

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 (1) review instructions; (2) 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; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) 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. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (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."

Executive Order 13132 identifies 2 types of rules with Federalism implications—rules that impose substantial compliance costs, unless

they are expressly required by statute or there are federal funds available to cover the costs, and rules that preempt State or local law. The EPA has interpreted that rules containing "substantial compliance costs" are those that contain a "significant federal intergovernmental mandate" under Section 202 of the Unfunded Mandates Reform Act (UMRA)—i.e., it is likely to result in the expenditure by State, local, and Tribal governments in the aggregate of $100 million or more in any one year. In addition, EPA will conclude a rule also has Federalism implications if the impacts of the rule on small governments is likely to equal or exceed 1% of their revenues.

Because these final amendments do not exceed either threshold for substantial costs described above or preempt State or local law, they 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. Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State and local governments, EPA specifically solicited comment on the rule amendments from State and local officials.

D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, or 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. There are currently no tribal governments that have approved title V permit programs to which sources would submit permit applications on May 15, 2002. Accordingly, Executive Order 13175 does not apply to this action.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to 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 objective 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 these final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. These amendments will clarify existing requirements and reduce regulatory burden. The EPA has determined that this action is not a "significant" regulatory action within the meaning of Executive Order 12866, and it does not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's final rule amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final amendments. The EPA has also determined that these amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule amendments on small entities, small entities are defined as: (1) A small business whose parent company has fewer than 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; 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 final amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory flexibility analysis is not necessary for the General Provisions amendments because it is unknown at this time which requirements from the General Provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the General Provisions will be assessed when specific emission standards affecting those sources are developed. "Small entities" will be defined in the context of the applicability of those standards.

Similarly, no analysis has been prepared for the amendments to the section 112(j) rule. The rule provides general guidance and procedures concerning the implementation of an underlying statutory requirement, but it does not by itself impose any regulatory requirements other than a permit application to the permitting authority or prescribe the specific content of any case-by-case determination which might be made under section 112(j). Although the final amendments will not have a significant economic impact on a substantial number of small entities,

EPA nonetheless has tried to reduce the impact of the rule amendments on small entities. We have extended the time between application deadlines for the Part 1 and Part 2 submittals so that all 10-year MACT standards would be promulgated before any Part 2 applications are due. We have also minimized the required information in the Part 1 permit application. Although we expect some small businesses to be affected by the section 112(j) permit application requirement, we cannot determine how many. In any event, the impact would be insignificant. Furthermore, the net effect of these rule amendments to the existing rule will be to reduce potential regulatory burdens.

G. National Technology Transfer and Advancement Act of 1995

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 the 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 amendments to the General Provisions do not include any technical standards; they consist primarily of revisions to the generally applicable procedural and administrative requirements that the General Provisions overlay on NESHAP. The final amendments to the section 112(j) rule, which establishes requirements and procedures for owners or operators of major sources of HAP and permitting authorities to follow if the EPA misses the deadline for promulgation of section 112(d) standards, clarify and amend current procedural and administrative provisions to establish equivalent emissions limitations by permit. Therefore, section 112(j) is also not a vehicle for the application of voluntary consensus standards.

H. 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 reasonable 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 amendments to the General Provisions are not subject to Executive Order 13045 because the provisions provide general technology performance and compliance guidelines for section 112(d) standards, which are not based on health or safety risks. Likewise, the final amendments to the section 112(j) rule are not subject to Executive Order 13045 because they establish the process for developing case-by-case MACT, and thus are based on technology performance and not on safety or health risks.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, 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. Therefore, we will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These final amendments are not a "major rule" as defined by 5 U.S.C. 804(2), and therefore will be effective April 5, 2002.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

The final 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 it is not a significant regulatory action under Executive Order 12866.

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: March 5, 2002.

Christine Todd Whitman,

Administrator.

For the reasons cited 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 A—[Amended]

2. Section 63.1 is amended by:

a. Revising paragraphs (a)(3) and (4);

b. Removing and reserving paragraphs (a)(7) and (a)(8);

c. Removing paragraphs (a)(13) and (14);

d. Removing and reserving paragraph (b)(2);

e. Revising paragraph (b)(3);

f. Revising paragraphs (c)(1), (c)(2) introductory text and (c)(2)(iii);

g. Removing and reserving paragraph (c)(4); and

h. Revising paragraph (e).

The revisions read as follows:

§ 63.1 Applicability.

(a) * * *

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (section 111, part C or D or any other authority of this Act), or a standard issued under State authority. The Administrator may specify in a specific standard under this part that facilities subject to other provisions under the Act need only comply with the provisions of that standard.

(4)(i) Each relevant standard in this part 63 must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.

(ii) If a relevant part 63 standard incorporates the requirements of 40 CFR part 60, part 61 or other part 63 standards, the relevant part 63 standard

must identify explicitly the applicability of each corresponding part 60, part 61, or other part 63 subpart A (General) provision.

(iii) The General Provisions in this subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

* * * * *

(7) [Reserved]

(8) [Reserved]

* * * * *

(b) * * *

(2) [Reserved]

(3) An owner or operator of a stationary source who is in the relevant source category and who determines that the source is not subject to a relevant standard or other requirement established under this part must keep a record as specified in § 63.10(b)(3).

(c) * * *

(1) If a relevant standard has been established under this part, the owner or operator of an affected source must comply with the provisions of that standard and of this subpart as provided in paragraph (a)(4) of this section.

(2) Except as provided in § 63.10(b)(3), if a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from a permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources pursuant to section 112(c)(3) of the Act will specify whether—

* * * * *

(iii) If a standard fails to specify what the permitting requirements will be for area sources affected by such a standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without any deferral.

* * * * *

(4) [Reserved]

* * * * *

(e) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to a source subject to an emission limitation by permit established under section 112(j) of the Act, and the requirements under the section 112(j) emission limitation are substantially as effective as the promulgated emission standard, the owner or operator may request the permitting authority to revise the source's title V permit to reflect that the emission limitation in the permit satisfies the requirements of the promulgated emission standard. The process by which the permitting authority determines whether the section 112(j) emission limitation is substantially as effective as the promulgated emission standard must include, consistent with part 70 or 71 of this chapter, the opportunity for full public, EPA, and affected State review (including the opportunity for EPA's objection) prior to the permit revision being finalized. A negative determination by the permitting authority constitutes final action for purposes of review and appeal under the applicable title V operating permit program.

3. Section 63.2 is amended by:

a. Revising the definition of *Affected source*;

b. Revising the definition of *Commenced*;

c. Revising the definition of *Construction*;

d. Revising paragraph (2) in the definition of *Effective date*;

e. Revising the definition of *Equivalent emission limitation*;

f. Revising paragraph (6) in the definition of *Federally enforceable*;

g. Revising the first sentence in the definition of *Malfunction*;

h. Revising the definition of *New source*;

i. Revising the introductory text in the definition of *Reconstruction*;

j. Amending the definition of *Relevant standard* by revising the first sentence of paragraph (4); running the undesignated paragraph at the end of paragraph (4) into pargraph (4), and revising the last sentence of newly designated text in paragraph (4);

k. Revising the definition of *Shutdown*;

l. Revising the definition of *Startup;*

m. By adding in alphabetical order definitions for *Monitoring, New affected source,* and *Working day*; and

n. By removing definitions for *Compliance plan, Lesser quantity,* and *Part 70 permit.*

The revisions and additions read as follows:

§ 63.2 Definitions.

* * * * *

Affected source, for the purposes of this part, means 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 for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. Each relevant standard will define the "affected source," as defined in this paragraph unless a different definition is warranted based on a published justification as to why this definition would result in significant administrative, practical, or implementation problems and why the different definition would resolve those problems. The term "affected source," as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Affected source may be defined differently for part 63 than affected facility and stationary source in parts 60 and 61, respectively. This definition of "affected source," and the procedures for adopting an alternative definition of "affected source," shall apply to each section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.

* * * * *

Commenced means, with respect to construction or reconstruction of an affected source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

* * * * *

Construction means the on-site fabrication, erection, or installation of an affected source. Construction does not include the removal of all equipment comprising an affected source from an existing location and reinstallation of such equipment at a new location. The owner or operator of an existing affected source that is relocated may elect not to reinstall minor ancillary equipment including, but not limited to, piping, ductwork, and valves. However, removal and reinstallation of an affected source will be construed as reconstruction if it satisfies the criteria for reconstruction as defined in this section. The costs of replacing minor ancillary equipment must be considered in determining whether the existing affected source is reconstructed.

* * * * *

Effective date means: * * *

(2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part.

* * * * *

Equivalent emission limitation means any maximum achievable control technology emission limitation or requirements which are applicable to a

major source of hazardous air pollutants and are adopted by the Administrator (or a State with an approved permit program) on a case-by-case basis, pursuant to section 112(g) or (j) of the Act.

* * * * *

Federally enforceable * * *

(6) Limitations and conditions that are part of an operating permit where the permit and the permitting program pursuant to which it was issued meet all of the following criteria:

(i) The operating permit program has been submitted to and approved by EPA into a State implementation plan (SIP) under section 110 of the CAA;

(ii) The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(iii) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable";

(iv) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(v) The permit in question was issued only after adequate and timely notice and opportunity for comment for EPA and the public.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner.* * *

Monitoring means the collection and use of measurement data or other information to control the operation of a process or pollution control device or to verify a work practice standard relative to assuring compliance with applicable requirements. Monitoring is composed of four elements:

(1) Indicator(s) of performance—the parameter or parameters you measure or observe for demonstrating proper operation of the pollution control measures or compliance with the applicable emissions limitation or standard. Indicators of performance may include direct or predicted emissions measurements (including opacity), operational parametric values that correspond to process or control device (and capture system) efficiencies or emissions rates, and recorded findings of inspection of work practice activities, materials tracking, or design characteristics. Indicators may be expressed as a single maximum or minimum value, a function of process variables (for example, within a range of pressure drops), a particular operational or work practice status (for example, a damper position, completion of a waste recovery task, materials tracking), or an interdependency between two or among more than two variables.

(2) Measurement techniques—the means by which you gather and record information of or about the indicators of performance. The components of the measurement technique include the detector type, location and installation specifications, inspection procedures, and quality assurance and quality control measures. Examples of measurement techniques include continuous emission monitoring systems, continuous opacity monitoring systems, continuous parametric monitoring systems, and manual inspections that include making records of process conditions or work practices.

(3) Monitoring frequency—the number of times you obtain and record monitoring data over a specified time interval. Examples of monitoring frequencies include at least four points equally spaced for each hour for continuous emissions or parametric monitoring systems, at least every 10 seconds for continuous opacity monitoring systems, and at least once per operating day (or week, month, etc.) for work practice or design inspections.

(4) Averaging time—the period over which you average and use data to verify proper operation of the pollution control approach or compliance with the emissions limitation or standard. Examples of averaging time include a 3-hour average in units of the emissions limitation, a 30-day rolling average emissions value, a daily average of a control device operational parametric range, and an instantaneous alarm.

New affected source means 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 that is subject to a section 112(d) or other relevant standard for new sources. This definition of "new affected source," and the criteria to be utilized in implementing it, shall apply to each section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002. Each relevant standard will define the term "new affected source," which will be the same as the "affected source" unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part establishing an emission standard applicable to such source.

* * * * *

Reconstruction, unless otherwise defined in a relevant standard, means the replacement of components of an affected or a previously nonaffected source to such an extent that:

* * * * *

Relevant standard means: * * *

(4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the collection of equipment, activities, or both regulated by such standard or limitation. * * * Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part, as provided by § 63.1(a)(4), and all applicable appendices of this part or of other parts of this chapter that are referenced in that standard.

* * * * *

Shutdown means the cessation of operation of an affected source or portion of an affected source for any purpose.

* * * * *

Startup means the setting in operation of an affected source or portion of an affected source for any purpose.

* * * * *

Working day means any day on which Federal Government offices (or State government offices for a State that has obtained delegation under section

112(l)) are open for normal business. Saturdays, Sundays, and official Federal (or where delegated, State) holidays are not working days.

4. Section 63.3 is amended by adding the abbreviation for standard cubic meter per minute in paragraph (b).

The revisions read as follows:

§ 63.3 Units and abbreviations.

* * * * *

(b) * * *

scmm = cubic meter at standard conditions per minute

* * * * *

5. Section 63.4 is amended by:

a. Revising paragraph (a)(1);

b. Removing and reserving paragraphs (a)(3) through (a)(5);

c. Removing paragraph (b)(3); and

d. Revising paragraph (c).

The revisions read as follows:

§ 63.4 Prohibited activities and circumvention.

(a) * * * (1) No owner or operator subject to the provisions of this part must operate any affected source in violation of the requirements of this part. Affected sources subject to and in compliance with either an extension of compliance or an exemption from compliance are not in violation of the requirements of this part. An extension of compliance can be granted by the Administrator under this part; by a State with an approved permit program; or by the President under section 112(i)(4) of the Act.

* * * * *

(3)–(5) [Reserved]

* * * * *

(c) *Fragmentation.* Fragmentation after November 15, 1990 which divides ownership of an operation, within the same facility among various owners where there is no real change in control, will not affect applicability. The owner and operator must not use fragmentation or phasing of reconstruction activities (i.e., intentionally dividing reconstruction into multiple parts for purposes of avoiding new source requirements) to avoid becoming subject to new source requirements.

6. Section 63.5 is amended by:

a. Revising the section heading;

b. Revising paragraphs (a)(1) and (2);

c. Revising paragraphs (b)(1), (b)(3) and (4);

d. Removing and reserving paragraph (b)(5);

e. Revising paragraph (b)(6);

f. Revising paragraphs (d)(1)(i), (d)(1)(ii)(B), and (d)(1)(ii)(E);

g. Removing and reserving paragraph (d)(1)(ii)(G);

h. Revising paragraph (d)(2);

i. Revising paragraph (d)(3)(vi); and

j. Revising paragraphs (f)(1) and (f)(2).

The revisions read as follows:

§ 63.5 Preconstruction review and notification requirements.

(a) * * *

(1) This section implements the preconstruction review requirements of section 112(i)(1). After the effective date of a relevant standard, promulgated pursuant to section 112(d), (f), or (h) of the Act, under this part, the preconstruction review requirements in this section apply to the owner or operator of new affected sources and reconstructed affected sources that are major-emitting as specified in this section. New and reconstructed affected sources that commence construction or reconstruction before the effective date of a relevant standard are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(2) This section includes notification requirements for new affected sources and reconstructed affected sources that are not major-emitting affected sources and that are or become subject to a relevant promulgated emission standard after the effective date of a relevant standard promulgated under this part.

(b) *Requirements for existing, newly constructed, and reconstructed affected sources.* (1) A new affected source for which construction commences after proposal of a relevant standard is subject to relevant standards for new affected sources, including compliance dates. An affected source for which reconstruction commences after proposal of a relevant standard is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

* * * * *

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, no person may, without obtaining written approval in advance from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section, do any of the following:

(i) Construct a new affected source that is major-emitting and subject to such standard;

(ii) Reconstruct an affected source that is major-emitting and subject to such standard; or

(iii) Reconstruct a major source such that the source becomes an affected source that is major-emitting and subject to the standard.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, an owner or operator who constructs a new affected source that is not major-emitting or reconstructs an affected source that is not major-emitting that is subject to such standard, or reconstructs a source such that the source becomes an affected source subject to the standard, must notify the Administrator of the intended construction or reconstruction. The notification must be submitted in accordance with the procedures in § 63.9(b).

(5) [Reserved]

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard must be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source.

* * * * *

(d) * * *

(1) * * *

(i) An owner or operator who is subject to the requirements of paragraph (b)(3) of this section must submit to the Administrator an application for approval of the construction or reconstruction. The application must be submitted as soon as practicable before actual construction or reconstruction begins. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.9(b)(5). The owner or operator may submit the application for approval well in advance of the date actual construction or reconstruction begins in order to ensure a timely review by the Administrator and that the planned date to begin will not be delayed.

(ii) * * *

(B) A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2 or in the relevant standard;

* * * * *

(E) The expected date of the beginning of actual construction or reconstruction;

* * * * *

(G) [Reserved]

* * * * *

(2) *Application for approval of construction.* Each application for approval of construction must include, in addition to the information required

in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each type of emission point for each type of hazardous air pollutant that is emitted (or could reasonably be anticipated to be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions must include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions must include an estimated control efficiency (percent) for that method. Such technical information must include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(3) * * *

(vi) If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in paragraphs (d)(3)(iii) through (d)(3)(v) of this section.

* * * * *

(f) * * *

(1) Preconstruction review procedures that a State utilizes for other purposes may also be utilized for purposes of this section if the procedures are substantially equivalent to those specified in this section. The Administrator will approve an application for construction or reconstruction specified in paragraphs (b)(3) and (d) of this section if the owner or operator of a new affected source or reconstructed affected source, who is subject to such requirement meets the following conditions:

(i) The owner or operator of the new affected source or reconstructed affected source has undergone a preconstruction review and approval process in the State in which the source is (or would be) located and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant promulgated emission standard, if the source is properly built and operated.

(ii) Provide a statement from the State or other evidence (such as State regulations) that it considered the factors specified in paragraph (e)(1) of this section.

(2) The owner or operator must submit to the Administrator the request for approval of construction or reconstruction under this paragraph (f)(2) no later than the application deadline specified in paragraph (d)(1) of this section (see also § 63.9(b)(2)). The owner or operator must include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in paragraph (e) of this section. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction under this paragraph (f)(2).

7. Section 63.6 is amended by:

a. Revising paragraph (a)(1) introductory text;

b. Revising paragraphs (b)(1), (b)(2), (b)(3)(i), (b)(4), (b)(5), and (b)(7);

c. Revising paragraphs (c)(2) and (c)(5);

d. Revising paragraphs (e)(1)(i) and (ii);

e. Removing and reserving paragraph (e)(2);

f. Revising paragraphs (e)(3)(i) introductory text, (e)(3)(i)(A), (e)(3)(ii), the first three sentences of (e)(3)(iii) and (e)(3)(v), revising paragraphs (e)(3)(iv), (e)(3)(vii)(B), (e)(3)(vii)(C), adding paragraph (e)(3)(vii)(D), revising paragraph (e)(3)(viii) and adding paragraph (e)(3)(ix);

g. Revising paragraphs (f)(1), (f)(2)(iii)(D), and (f)(3);

h. Revising paragraph (h)(1);

i. Revising paragraph (h)(2)(iii)(C);

j. Revising paragraph (i)(4)(i)(B);

k. Revising the last sentence of paragraph (i)(4)(ii);

l. Revising paragraphs (i)(6)(i)(B)(*1*) and (*2*) and removing and reserving paragraphs (i)(6)(i)(C) & (D);

m. Revising paragraph (i)(12)(i);

n. Revising paragraph (i)(14); and

o. Adding paragraph (i)(4)(i)(C).

The revisions and additions read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

(a) * * *

(1) The requirements in this section apply to the owner or operator of affected sources for which any relevant standard has been established pursuant to section 112 of the Act and the applicability of such requirements is set out in accordance with § 63.1(a)(4) unless—

* * * * *

(b) *Compliance dates for new and reconstructed affected sources.* (1) Except as specified in paragraphs (b)(3) and (4) of this section, the owner or operator of a new or reconstructed affected source for which construction or reconstruction commences after proposal of a relevant standard that has an initial startup before the effective date of a relevant standard established under this part pursuant to section 112(d), (f), or (h) of the Act must comply with such standard not later than the standard's effective date.

(2) Except as specified in paragraphs (b)(3) and (4) of this section, the owner or operator of a new or reconstructed affected source that has an initial startup after the effective date of a relevant standard established under this part pursuant to section 112(d), (f), or (h) of the Act must comply with such standard upon startup of the source.

(3) * * *

(i) The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; for purposes of this paragraph, a finding that controls or compliance methods are "more stringent" must include control technologies or performance criteria and compliance or compliance assurance methods that are different but are substantially equivalent to those required by the promulgated rule, as determined by the Administrator (or his or her authorized representative); and

* * * * *

(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall not be required to comply with the section 112(f) emission standard until the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator must comply with the standard as provided in paragraphs (b)(1) and (2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or (4) of this section must notify the Administrator in accordance with § 63.9(d).

* * * * *

(7) When an area source becomes a major source by the addition of equipment or operations that meet the definition of new affected source in the relevant standard, the portion of the

existing facility that is a new affected source must comply with all requirements of that standard applicable to new sources. The source owner or operator must comply with the relevant standard upon startup.

(c) * * *

(2) If an existing source is subject to a standard established under this part pursuant to section 112(f) of the Act, the owner or operator must comply with the standard by the date 90 days after the standard's effective date, or by the date specified in an extension granted to the source by the Administrator under paragraph (i)(4)(ii) of this section, whichever is later.

* * * * *

(5) Except as provided in paragraph (b)(7) of this section, the owner or operator of an area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source shall be subject to relevant standards for existing sources. Such sources must comply by the date specified in the standards for existing area sources that become major sources. If no such compliance date is specified in the standards, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in the relevant standard for existing sources in existence at the time the standard becomes effective.

* * * * *

(e) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards, i.e., meet the emission standard or comply with the startup, shutdown, and malfunction plan. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

(ii) Malfunctions must be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section. To the extent that an unexpected event arises during a startup, shutdown, or malfunction, an owner or operator must comply by minimizing emissions during such a startup, shutdown, and malfunction event consistent with safety and good air pollution control practices.

* * * * *

(2) [Reserved]

(3) * * *

(i) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction; a program of corrective action for malfunctioning process; and air pollution control and monitoring equipment used to comply with the relevant standard. This plan must be developed by the owner or operator by the source's compliance date for that relevant standard. The purpose of the startup, shutdown, and malfunction plan is to—

(A) Ensure that, at all times, the owner or operator operate and maintain affected sources, including associated air pollution control and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards;

* * * * *

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source must operate and maintain such source (including associated air pollution control and monitoring equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator must keep records for that event which demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator must keep records of these events as specified in § 63.10(b), including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control and monitoring equipment. * * *

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, and the source exceeds the relevant emission standard, then the owner or operator must record the actions taken for that event and must report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator).

(v) The owner or operator must maintain at the affected source a current startup, shutdown, and malfunction plan and must make the plan available upon request for inspection and copying by the Administrator. In addition, if the startup, shutdown, and malfunction plan is subsequently revised as provided in paragraph (e)(3)(viii) of this section, the owner or operator must maintain at the affected source each previous (i.e., superseded) version of the startup, shutdown, and malfunction plan, and must make each such previous version available for inspection and copying by the Administrator for a period of 5 years after revision of the plan. If at any time after adoption of a startup, shutdown, and malfunction plan the affected source ceases operation or is otherwise no longer subject to the provisions of this part, the owner or operator must retain a copy of the most recent plan for 5 years from the date the source ceases operation or is no longer subject to this part and must make the plan available upon request for inspection and copying by the Administrator. * * *

* * * * *

(vii) * * *

(B) Fails to provide for the operation of the source (including associated air pollution control and monitoring equipment) during a startup, shutdown, or malfunction event in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards;

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control and monitoring equipment as quickly as practicable; or

(D) Includes an event that does not meet the definition of startup,

shutdown, or malfunction listed in § 63.2.

(viii) The owner or operator may periodically revise the startup, shutdown, and malfunction plan for the affected source as necessary to satisfy the requirements of this part or to reflect changes in equipment or procedures at the affected source. Unless the permitting authority provides otherwise, the owner or operator may make such revisions to the startup, shutdown, and malfunction plan without prior approval by the Administrator or the permitting authority. However, each such revision to a startup, shutdown, and malfunction plan must be reported in the semiannual report required by § 63.10(d)(5). If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator must revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control and monitoring equipment. In the event that the owner or operator makes any revision to the startup, shutdown, and malfunction plan which alters the scope of the activities at the source which are deemed to be a startup, shutdown, malfunction, or otherwise modifies the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part, the revised plan shall not take effect until after the owner or operator has provided a written notice describing the revision to the permitting authority.

(ix) The title V permit for an affected source must require that the owner or operator adopt a startup, shutdown, and malfunction plan which conforms to the provisions of this part, and that the owner or operator operate and maintain the source in accordance with the procedures specified in the current startup, shutdown, and malfunction plan. However, any revisions made to the startup, shutdown, and malfunction plan in accordance with the procedures established by this part shall not be deemed to constitute permit revisions under part 70 or part 71 of this chapter. Moreover, none of the procedures specified by the startup, shutdown, and malfunction plan for an affected source shall be deemed to fall within the permit shield provision in section 504(f) of the Act.

(f) * * *

(1) *Applicability.* The non-opacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart. If a startup, shutdown, or malfunction of one portion of an affected source does not affect the ability of particular emission points within other portions of the affected source to comply with the non-opacity emission standards set forth in this part, then that emission point must still be required to comply with the non-opacity emission standards and other applicable requirements.

(2) * * *

(iii) * * *

(D) The performance test was appropriately quality-assured, as specified in § 63.7(c).

* * * * *

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a non-opacity emission standard, as specified in paragraphs (f)(1) and (2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable), and information available to the Administrator pursuant to paragraph (e)(1)(i) of this section.

* * * * *

(h) * * *

(1) *Applicability.* The opacity and visible emission standards set forth in this part must apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart. If a startup, shutdown, or malfunction of one portion of an affected source does not affect the ability of particular emission points within other portions of the affected source to comply with the opacity and visible emission standards set forth in this part, then that emission point shall still be required to comply with the opacity and visible emission standards and other applicable requirements.

(2) * * *

(iii) * * *

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e); and

* * * * *

(i) * * *

(4)(i) * * *

(B) Any request under this paragraph for an extension of compliance with a relevant standard must be submitted in writing to the appropriate authority no later than 120 days prior to the affected source's compliance date (as specified in paragraphs (b) and (c) of this section), except as provided for in paragraph (i)(4)(i)(C) of this section. Nonfrivolous requests submitted under this paragraph will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the date of denial. Emission standards established under this part may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards.

(C) An owner or operator may submit a compliance extension request after the date specified in paragraph (i)(4)(i)(B) of this section provided the need for the compliance extension arose after that date, and before the otherwise applicable compliance date and the need arose due to circumstances beyond reasonable control of the owner or operator. This request must include, in addition to the information required in paragraph (i)(6)(i) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problems. Nonfrivolous requests submitted under this paragraph will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the original compliance date.

(ii) * * * Any request for an extension of compliance with a relevant standard under this paragraph must be submitted in writing to the Administrator not later than 90 calendar days after the effective date of the relevant standard.

* * * * *

(6)(i) * * *

(B) * * *

(*1*) The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated; and

(*2*) The date by which final compliance is to be achieved.

(C) [Reserved]

(D) [Reserved]

* * * * *

(12)(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days

after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(i) or (i)(5) of this section. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete.

* * * * *

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraph (i)(10)(iii) or (iv) of this section is not met. Upon a determination to terminate, the Administrator will notify, in writing, the owner or operator of the Administrator's determination to terminate, together with:

(i) Notice of the reason for termination; and

(ii) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the determination to terminate, additional information or arguments to the Administrator before further action on the termination.

(iii) A final determination to terminate an extension of compliance will be in writing and will set forth the specific grounds on which the termination is based. The final determination will be made within 30 calendar days after presentation of additional information or arguments, or within 30 calendar days after the final date specified for the presentation if no presentation is made.

* * * * *

8. Section 63.7 is amended by:

a. Revising paragraphs (a)(1) and (a)(2) introductory text;

b. Removing and reserving paragraphs (a)(2)(i) through (viii);

c. Revising paragraph (b)(1);

d. Revising the first sentence of paragraph (b)(2);

e. Revising paragraphs (c)(3)(ii)(A) through (B);

f. Revising paragraph (c)(4)(i);

g. Revising paragraphs (e)(2)(i) through (iii);

h. Revising paragraph (f)(1);

i. Revising paragraphs (f)(2)(i) through (ii); and

j. Revising paragraph (f)(3).

The revisions read as follows:

§ 63.7 Performance testing requirements.

(a) * * *

(1) The applicability of this section is set out in § 63.1(a)(4).

(2) If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.

(i)—(viii) [Reserved]

* * * * *

(b) * * *

(1) The owner or operator of an affected source must notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is initially scheduled to begin to allow the Administrator, upon request, to review an approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test.

(2) In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section due to unforeseeable circumstances beyond his or her control, the owner or operator must notify the Administrator as soon as practicable and without delay prior to the scheduled performance test date and specify the date when the performance test is rescheduled. * * *

(c) * * *

(3) * * *

(ii) * * *

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard or with only minor changes to those tests methods (see paragraph (e)(2)(i) of this section), the owner or operator must conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator is authorized to conduct the performance test using an alternative test method after the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or after the alternative method is approved (see paragraph (f) of this section). However, the owner or operator is authorized to conduct the performance test using an alternative method in the absence of notification of approval 45 days after submission of the site-specific test plan or request to use an alternative method. The owner or operator is authorized to conduct the performance test within 60 calendar days after he/she is authorized to demonstrate compliance using an alternative test method. Notwithstanding the requirements in the preceding three sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

* * * * *

(4)(i) *Performance test method audit program.* The owner or operator must analyze performance audit (PA) samples during each performance test. The owner or operator must request performance audit materials 30 days prior to the test date. Audit materials including cylinder audit gases may be obtained by contacting the appropriate EPA Regional Office or the responsible enforcement authority.

* * * * *

(e) * * *

(2) * * *

(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology (see definition in § 63.90(a)). Such changes may be approved in conjunction with approval of the site-specific test plan (see paragraph (c) of this section); or

(ii) Approves the use of an intermediate or major change or alternative to a test method (see definitions in § 63.90(a)), the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) Approves shorter sampling times or smaller sample volumes when necessitated by process variables or other factors; or

* * * * *

(f) * * *

(1) *General.* Until authorized to use an intermediate or major change or alternative to a test method, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) * * *

(i) Notifies the Administrator of his or her intention to use an alternative test method at least 60 days before the performance test is scheduled to begin;

(ii) Uses Method 301 in appendix A of this part to validate the alternative test method. This may include the use

of specific procedures of Method 301 if use of such procedures are sufficient to validate the alternative test method; and

* * * * *

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate and issue an approval or disapproval of the alternative test method. If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator is authorized to conduct the performance test using an alternative test method after the Administrator approves the use of the alternative method. However, the owner or operator is authorized to conduct the performance test using an alternative method in the absence of notification of approval/disapproval 45 days after submission of the request to use an alternative method and the request satisfies the requirements in paragraph (f)(2) of this section. The owner or operator is authorized to conduct the performance test within 60 calendar days after he/she is authorized to demonstrate compliance using an alternative test method. Notwithstanding the requirements in the preceding three sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

* * * * *

9. Section 63.8 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraphs (b)(1)(i) and (ii);

c. Revising paragraphs (b)(2)(i) and (ii);

d. Revising paragraphs (c)(1)(i) through (iii);

e. Revising paragraph (c)(2);

f. Revising paragraph (c)(6);

g. Revising paragraph (f)(1);

h. Revising paragraphs (f)(4)(i) through (ii);

i. Adding paragraph (f)(4)(iv);

j. Revising the heading of paragraph (f)(5) and revising paragraph (f)(5)(i) introductory text;

k. Revising paragraph (g)(1); and

l. Revising paragraph (g)(5).

The revisions and additions read as follows:

§ 63.8 Monitoring requirements.

(a) * * *

(1) The applicability of this section is set out in § 63.1(a)(4).

* * * * *

(b) * * *

(1) * * *

(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures (see § 63.90(a) for definition); or

(ii) Approves the use of an intermediate or major change or alternative to any monitoring requirements or procedures (see § 63.90(a) for definition).

* * * * *

(2)(i) When the emissions from two or more affected sources are combined before being released to the atmosphere, the owner or operator may install an applicable CMS for each emission stream or for the combined emissions streams, provided the monitoring is sufficient to demonstrate compliance with the relevant standard.

(ii) If the relevant standard is a mass emission standard and the emissions from one affected source are released to the atmosphere through more than one point, the owner or operator must install an applicable CMS at each emission point unless the installation of fewer systems is—

* * * * *

(c) * * *

(1)(i) The owner or operator of an affected source must maintain and operate each CMS as specified in § 63.6(e)(1).

(ii) The owner or operator must keep the necessary parts for routine repairs of the affected CMS equipment readily available.

(iii) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).

(2)(i) All CMS must be installed such that representative measures of emissions or process parameters from the affected source are obtained. In addition, CEMS must be located according to procedures contained in the applicable performance specification(s).

(ii) Unless the individual subpart states otherwise, the owner or operator must ensure the read out (that portion of the CMS that provides a visual display or record), or other indication of operation, from any CMS required for compliance with the emission standard is readily accessible on site for operational control or inspection by the operator of the equipment.

* * * * *

(6) The owner or operator of a CMS that is not a CPMS, which is installed in accordance with the provisions of this part and the applicable CMS performance specification(s), must check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (ii) of this section. The zero (low-level) and high-level calibration drifts must be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specification(s) specified in the relevant standard. The system shall allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases must be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces must be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity. The CPMS must be calibrated prior to use for the purposes of complying with this section. The CPMS must be checked daily for indication that the system is responding. If the CPMS system includes an internal system check, results must be recorded and checked daily for proper operation.

* * * * *

(f) * * *

(1) *General.* Until permission to use an alternative monitoring procedure (minor, intermediate, or major changes; see definition in § 63.90(a)) has been granted by the Administrator under this paragraph (f)(1), the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

* * * * *

(4)(i) *Request to use alternative monitoring procedure.* An owner or operator who wishes to use an alternative monitoring procedure must submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section. The application may be submitted at any time provided that the monitoring procedure is not the performance test method used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring procedure will serve as the performance test method that is to be used to demonstrate compliance with a relevant standard, the application must be submitted at least 60 days before the performance evaluation is scheduled to begin and

must meet the requirements for an alternative test method under § 63.7(f).

(ii) The application must contain a description of the proposed alternative monitoring system which addresses the four elements contained in the definition of monitoring in § 63.2 and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application must include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

* * * * *

(iv) Application for minor changes to monitoring procedures, as specified in paragraph (b)(1) of this section, may be made in the site-specific performance evaluation plan.

(5) *Approval of request to use alternative monitoring procedure.*

(i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. If a request for a minor change is made in conjunction with site-specific performance evaluation plan, then approval of the plan will constitute approval of the minor change. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

* * * * *

(g) *Reduction of monitoring data.*

(1) The owner or operator of each CMS must reduce the monitoring data as specified in paragraphs (g)(1) through (5) of this section.

* * * * *

(5) Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments must not be included in any data average computed under this part. For the owner or operator complying with the requirements of § 63.10(b)(2)(vii)(A) or (B), data averages must include any data recorded during periods of monitor breakdown or malfunction.

10. Section 63.9 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (b)(2)(iv);

c. Removing and reserving paragraph (b)(3);

d. Revising the introductory text of paragraph (b)(4);

e. Revising paragraph (b)(4)(i);

f. Removing and reserving paragraphs (b)(4)(ii) through (iii).

g. Revising paragraph (b)(5);

h. Revising paragraph (h)(2)(i)(E); and

i. Revising the first sentence of paragraph (h)(2)(ii);

The revisions and additions read as follows:

§ 63.9 Notification requirements.

(a) * * *

(1) The applicability of this section is set out in § 63.1(a)(4).

* * * * *

(b) * * *

(2) * * *

(iv) A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and

* * * * *

(3) [Reserved]

(4) The owner or operator of a new or reconstructed major affected source for which an application for approval of construction or reconstruction is required under § 63.5(d) must provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major-emitting affected source, reconstruct a major-emitting affected source, or reconstruct a major source such that the source becomes a major-emitting affected source with the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i); and

(ii) [Reserved]

(iii) [Reserved]

* * * * *

(5) The owner or operator of a new or reconstructed affected source for which an application for approval of construction or reconstruction is not required under § 63.5(d) must provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new affected source, reconstruct an affected source, or reconstruct a source such that the source becomes an affected source, and

(ii) A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

(iii) Unless the owner or operator has requested and received prior permission from the Administrator to submit less than the information in § 63.5(d), the notification must include the information required on the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i).

* * * * *

(h) * * *

(2)(i) * * *

(E) If the relevant standard applies to both major and area sources, an analysis demonstrating whether the affected source is a major source (using the emissions data generated for this notification);

* * * * *

(ii) The notification must be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity (or activities that have the same compliance date) specified in the relevant standard (unless a different reporting period is specified in the standard, in which case the letter must be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). * * *

* * * * *

11. Section 63.10 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraphs (b)(2)(ii) through (b)(2)(v);

c. Revising paragraph (b)(3); and

d. Revising the second sentence of paragraph (d)(5)(i).

The revisions read as follows:

§ 63.10 Recordkeeping and reporting requirements.

(a) * * *

(1) The applicability of this section is set out in § 63.1(a)(4).

* * * * *

(b) * * *

(2) * * *

(ii) The occurrence and duration of each malfunction of the required air pollution control and monitoring equipment;

(iii) All required maintenance performed on the air pollution control and monitoring equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3));

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.6(h)(9)	Adjusted Opacity Standard	Yes.	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes	Not applicable to an affected source with Tier II compliance date. May be applicable to an affected source exempt from Tier II rule.
§ 63.6(i)(15)	[Reserved]	Not applicable.	
§ 63.6(i)(16)		Yes.	

[FR Doc. 02–7222 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–P

startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

* * * * *

(3) *Recordkeeping requirement for applicability determinations.* If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants regulated by any standard established pursuant to section 112(d) or (f), and that stationary source is in the source category regulated by the relevant standard, but that source is not subject to the relevant standard (or other requirement established under this part) because of limitations on the source's potential to emit or an exclusion, the owner or operator must keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination must be signed by the person making the determination and include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis must be performed in accordance with requirements established in relevant subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any. The requirements to determine applicability of a standard under § 63.1(b)(3) and to record the results of that determination under paragraph (b)(3) of this section shall not by themselves create an obligation for the owner or operator to obtain a title V permit.

* * * * *

(d) * * *

(5)(i) * * * Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they must include the number, duration, and a brief description of each startup, shutdown, or malfunction. * * *

* * * * *

12. Section 63.11 is amended by revising paragraph (a) to read as follows:

§ 63.11 Control device requirements.

(a) *Applicability.* The applicability of this section is set out in § 63.1(a)(4).

* * * * *

Subpart B—[Amended]

13. Section 63.50 is amended by:

1. Revising paragraph (a);
2. Revising paragraph (b); and
3. Removing and reserving paragraph (c) as follows:

§ 63.50 Applicability.

(a) *General applicability.* (1) The requirements of this section through § 63.56 implement section 112(j) of the Clean Air Act (as amended in 1990). The requirements of this section through § 63.56 apply in each State beginning on the effective date of an approved title V permit program in such State. The requirements of this section through § 63.56 do not apply to research or laboratory activities as defined in § 63.51.

(2) The requirements of this section through § 63.56 apply to:

(i) The owner or operator of affected sources within a source category or subcategory under this part that are located at a major source that is subject to an approved title V permit program and for which the Administrator has failed to promulgate emission standards by the section 112(j) deadlines. If title V applicability has been deferred for a source category, then section 112(j) is not applicable for sources in that category within that State, local or tribal jurisdiction until those sources become subject to title V permitting requirements; and

(ii) Permitting authorities with an approved title V permit program.

(b) Relationship to State and local requirements. Nothing in §§ 63.50 through 63.56 shall prevent a State or local regulatory agency from imposing more stringent requirements, as a matter of State or local law, than those contained in §§ 63.50 through 63.56.

(c) [Reserved]

14. Section 63.51 is amended by:

a. Revising the introductory text of this section;

b. Adding in alphabetical order the definition of *affected source;*

c. In the definition of *Available information by* revising the introductory text and paragraphs (2) through (5);

d. Removing the definition of *emission point;*

e. Removing the definition of *emission unit;*

f. Revising the definition of *enhanced review;*

g. Revising the definition of *equivalent emission limitation;*

h. Removing the definition of *existing major source;*

i. Revising paragraphs (1)(i) and (ii) of the definition of *maximum achievable control technology (MACT) floor;*

j. Adding in alphabetical order the definition of *new affected source;*

k. Removing the definition of *new emission unit;*

l. Removing the definition of *new major source;*

m. Adding in alphabetical order the definition of *research or laboratory activities.*

n. Revising the definition of *section 112(j) deadline;*

o. Revising the definition of *similar source;* and

p. Removing the definition of *United States;*

The revisions and additions read as follows:

§ 63.51 Definitions.

Terms used in §§ 63.50 through 63.56 that are not defined in this section have the meaning given to them in the Act, or in subpart A of this part.

Affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is in a section 112(c) source category or subcategory for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline, and that is addressed by an applicable MACT emission limitation established pursuant to this subpart.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options under this subpart, any information that is available as of the date on which the first Part 2 MACT application is filed for a source in the relevant source category or subcategory in the State or jurisdiction; and, pursuant to the requirements of this subpart, is additional relevant information that can be expeditiously provided by the Administrator, is submitted by the applicant or others prior to or during the public comment

period on the section 112(j) equivalent emission limitation for that source, or information contained in the information sources in paragraphs (1) through (5) of this definition.

(1) * * *

(2) Relevant background information documents for a draft or proposed regulation.

(3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination.

(4) Relevant data and information available from the Clean Air Technology Center developed pursuant to section 112(l)(3) of the Act.

(5) Relevant data and information contained in the Aerometric Information Retrieval System (AIRS).

* * * * *

Enhanced review means a review process containing all administrative steps needed to ensure that the terms and conditions resulting from the review process can be incorporated using title V permitting procedures.

Equivalent emission limitation means an emission limitation, established under section 112(j) of the Act, which is equivalent to the MACT standard that EPA would have promulgated under section 112(d) or (h) of the Act.

* * * * *

Maximum achievable control technology (MACT) floor means:

(1) * * *

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or

(ii) The average emission limitation achieved by the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for categories or subcategories with fewer than 30 sources;

* * * * *

New affected source means the collection of equipment, activities, or both, that if constructed after the issuance of a section 112(j) permit for the source pursuant to § 63.52, is subject to the applicable MACT emission limitation for new sources. Each permit must define the term "new affected source," which will be the same as the "affected source" unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (*e.g.*, product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.

* * * * *

Research or laboratory activities means activities whose primary purpose is to conduct research and development into new processes and products where such activities are operated under the close supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner; and where the source is not in a source category, specifically addressing research or laboratory activities, that is listed pursuant to section 112(c)(7) of the Act.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part, except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the section 112(j) deadline is December 15, 1999.

Similar source means that equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration of emissions, is substantially equivalent to the new affected source and employs control technology for control of emissions of hazardous air pollutants that is practical for use on the new affected source.

* * * * *

15. Section 63.52 is revised to read as follows:

§ 63.52 Approval process for new and existing affected sources.

(a) *Sources subject to section 112(j) as of the section 112(j) deadline.* The requirements of paragraphs (a)(1) and (2) of this section apply to major sources that include, as of the section 112(j) deadline, one or more sources in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part on or before an applicable section 112(j) deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued to the source pursuant to the requirements of the subpart, must apply to such sources.

(1) The owner or operator must submit an application for a title V permit or for a revision to an existing title V permit or a pending title V permit meeting the requirements of § 63.53(a) by the section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the major source belong in the category or subcategory subject to section 112(j).

(2) If an application was not submitted under paragraph (a)(1) of this section and if notified by the permitting authority, the owner or operator must submit an application for a title V permit or for a revision to an existing title V permit or a pending title V permit meeting the requirements of § 63.53(a) within 30 days after being notified in writing by the permitting authority that one or more sources at the major source belong to such category or subcategory. Permitting authorities are not required to make such notification.

(3) The requirements in paragraphs (a)(3)(i) through (ii) of this section apply when the owner or operator has obtained a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g) or has submitted a title V permit application for a revision that incorporates a case-by-case MACT determination under section 112(g), but has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j).

(i) When the owner or operator has a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), the owner or operator must submit an application meeting the requirements of § 63.53(a) for a title V

permit revision within 30 days of the section 112(j) deadline or within 30 days of being notified in writing by the permitting authority that one or more sources at the major source belong in such category or subcategory. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(ii) When the owner or operator has submitted a title V permit application that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), but has not received the permit incorporating the section 112(g) requirements, the owner or operator must continue to pursue a title V permit that addresses the emission limitation requirements of section 112(g). Within 30 days of issuance of that title V permit, the owner or operator must submit an application meeting the requirements of § 63.53(a) for a change to the existing title V permit. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(b) *Sources that become subject to section 112(j) after the section 112(j) deadline and that do not have a title V permit addressing section 112(j) requirements.* The requirements of paragraphs (b)(1) through (4) of this section apply to sources that do not meet the criteria in paragraph (a) of this section on the section 112(j) deadline and are, therefore, not subject to section 112(j) on that date, but where events occur subsequent to the section 112(j) deadline that would bring the source under the requirements of this subpart, and the source does not have a title V permit that addresses the requirements of section 112(j).

(1) When one or more sources in a category or subcategory subject to the requirements of this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke section 112(g) requirements, the owner or operator must submit an application meeting the requirements of § 63.53(a) within 30 days of startup of the source. This application shall be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(2) The requirements in this paragraph apply when one or more sources in a category or subcategory subject to this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does require emission limitations to be established and permitted under section 112(g), and the owner or operator has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j). In this case, the owner or operator must apply for and obtain a title V permit that addresses the emission limitation requirements of section 112(g). Within 30 days of issuance of that title V permit, the owner or operator must submit an application meeting the requirements of § 63.53(a) for a revision to the existing title V permit. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation), increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this subpart, must submit an application meeting the requirements of § 63.53(a) for a title V permit or for an application for a title V permit revision within 30 days after the date that such source becomes a major source. This application must be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, must apply to such sources.

(4) On or after April 5, 2002, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the Act that results in an area source becoming a major source that is subject to this subpart, then the owner or operator of such a major source must submit an application meeting the requirements of § 63.53(a) for a title V permit or for a change to an

existing title V permit or pending title V permit on or before the date 6 months after the date that such source becomes a major source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(c) *Sources that have a title V permit addressing section 112(j) requirements.* The requirements of paragraphs (c)(1) and (2) of this section apply to major sources that include one or more sources in a category or subcategory for which the Administrator fails to promulgate an emission standard under this part on or before an applicable section 112(j) deadline, and the owner or operator has a permit meeting the section 112(j) requirements, and where changes occur at the major source to equipment, activities, or both, subsequent to the section 112(j) deadline.

(1) If the title V permit already provides the appropriate requirements that address the events that occur under paragraph (c) of this section subsequent to the section 112(j) deadline, then the source must comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the section 112(j) requirements are thus satisfied.

(2) If the title V permit does not contain the appropriate requirements that address the events that occur under paragraph (c) of this section subsequent to the section 112(j) deadline, then the owner or operator must submit an application for a revision to the existing title V permit that meets the requirements of § 63.53(a). The application must be submitted within 30 days of beginning construction and must be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(d) *Requests for applicability determination or notice of MACT approval.*

(1) An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part may, on or before an applicable section 112(j) deadline, request an applicability determination from the permitting authority by submitting an application meeting the requirements of § 63.53(a) by the applicable deadlines specified in paragraphs (a), (b), or (c) of this section.

(2) In addition to meeting the requirements of paragraphs (a), (b), and (c) of this section, the owner or operator of a new affected source may submit an application for a Notice of MACT Approval before construction, pursuant to § 63.54.

(e) *Permit application review.*

(1) Within 24 months after an owner or operator submits a Part 1 MACT application meeting the requirements of § 63.53(a), the owner or operator must submit a Part 2 MACT application meeting the requirements of § 63.53(b). Part 2 MACT applications must be reviewed by the permitting authority according to procedures established in § 63.55. The resulting MACT determination must be incorporated into the source's title V permit according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the affected source is located.

(2) Notwithstanding paragraph (e)(1) of this section, the owner or operator may request either an applicability determination or an equivalency determination by the permitting authority as provided in paragraphs (e)(2)(i) and (ii) of this section.

(i) As specified in paragraph (d)(1) of this section, an owner or operator may request, through submittal of an application pursuant to § 63.53(a), a determination by the permitting authority of whether one or more sources at a major source belong in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part. If the applicability determination is positive, the owner or operator must comply with the applicable provisions of this subpart. The owner or operator must submit a Part 2 MACT application within 24 months after being notified of the positive applicability determination. If the applicability determination is negative, then no further action by the owner or operator is necessary.

(ii) As specified in paragraphs (a) and (b) of this section, an owner or operator may request, through submittal of an application meeting the requirements of § 63.53(a), a determination by the permitting authority of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under section 112(g) that apply to one or more sources at a major source in a relevant category or subcategory are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. The process for determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j) must include the opportunity for full public, EPA, and affected State review prior to a final determination. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit, any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the owner or operator must comply with the applicable provisions of this subpart. The owner or operator must submit a Part 2 MACT application within 24 months of being notified of such a negative determination. A negative determination under this section constitutes final action for purposes of judicial review under 40 CFR 70.4(b)(3)(x) and corresponding State title V program provisions.

(3) Within 60 days of submittal of the Part 2 MACT application, the permitting authority must notify the owner or operator in writing whether the application is complete or incomplete. The Part 2 MACT application shall be deemed complete on the date it was submitted unless the permitting authority notifies the owner or operator in writing within 60 days of the submittal that the Part 2 MACT application is incomplete. A Part 2 MACT application is complete if it is sufficient to begin processing the application for a title V permit addressing section 112(j) requirements. In the event that the permitting

authority disapproves a permit application or determines that the application is incomplete, the owner or operator must revise and resubmit the application to meet the objections of the permitting authority. The permitting authority must specify a reasonable period in which the owner or operator is required to remedy the deficiencies in the disapproved or incomplete application. This period may not exceed 6 months from the date the owner or operator is first notified that the application has been disapproved or is incomplete.

(4) Following submittal of a Part 1 or Part 2 MACT application, the permitting authority may request additional information from the owner or operator. The owner or operator must respond to such requests in a timely manner.

(5) If the owner or operator has submitted a timely and complete application as required by this section, any failure to have a title V permit addressing section 112(j) requirements shall not be a violation of section 112(j), unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application. Once a complete application is submitted, the owner or operator shall not be in violation of the requirement to have a title V permit addressing section 112(j) requirements.

(f) *Permit content.* The title V permit must contain an equivalent emission limitation (or limitations) for the relevant category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in subpart D of this part are met, the title V permit may contain an alternative emission limitation. For the purposes of the preceding sentence, early reductions made pursuant to section 112(i)(5)(A) of the Act must be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(1) The title V permit must contain an emission standard or emission limitation that is equivalent to existing source MACT and an emission standard or emission limitation that is equivalent to new source MACT for control of emissions of hazardous air pollutants. The MACT emission standards or limitations must be determined by the permitting authority and must be based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained, and operated properly. The permit must also specify the affected source and the new affected source. If construction of a new affected source or reconstruction of an affected source commences after a title V permit meeting the requirements of section 112(j) has been issued for the source, the new source MACT compliance dates must apply.

(2) The title V permit must specify any notification, operation and maintenance, performance testing, monitoring, and reporting and recordkeeping requirements. In developing the title V permit, the permitting authority must consider and specify the appropriate provisions of subpart A of this part. The title V permit must also include the information in paragraphs (f)(2)(i) through (iii) of this section.

(i) In addition to the MACT emission limitation required by paragraph (f)(1) of this section, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation.

(ii) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with requirements established pursuant to title V and paragraph (h) of this section.

(iii) Compliance dates by which the owner or operator must be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit.

(A) The owner or operator of an affected source subject to the requirements of this subpart must comply with the emission limitation(s) by the date established in the source's title V permit. In no case shall such compliance date be later than 3 years after the issuance of the permit for that source, except where the permitting authority issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B) of the Act, or unless otherwise specified in section 112(i), or in subpart D of this part.

(B) The owner or operator of a new affected source, as defined in the title V permit meeting the requirements of section 112(j), that is subject to the requirements of this subpart must comply with a new source MACT level of control immediately upon startup of the new affected source.

(g) *Permit issuance dates.* The permitting authority must issue a title V permit meeting section 112(j) requirements within 18 months after submittal of the complete Part 2 MACT application.

(h) *Enhanced monitoring.* In accordance with section 114(a)(3) of the Act, monitoring shall be capable of demonstrating continuous compliance for each compliance period during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for directly enforcing all applicable requirements established under this subpart, including emission limitations.

(i) *MACT emission limitations.*

(1) The owner or operator of affected sources subject to paragraphs (a), (b), and (c) of this section must comply with all requirements of this subpart that are applicable to affected sources, including the compliance date for affected sources established in paragraph (f)(2)(iii)(A) of this section.

(2) The owner or operator of new affected sources subject to paragraph (c)(1) of this section must comply with all requirements of this subpart that are applicable to new affected sources, including the compliance date for new affected sources established in paragraph (f)(2)(iii)(B) of this section.

16. Section 63.53 is revised to read as follows:

§ 63.53 Application content for case-by-case MACT determinations.

(a) *Part 1 MACT application.* The Part 1 application for a MACT determination must contain the information in paragraphs (a)(1) through (4) of this section.

(1) The name and address (physical location) of the major source.

(2) A brief description of the major source and an identification of the relevant source category.

(3) An identification of the types of emission points belonging to the relevant source category.

(4) An identification of any affected sources for which a section 112(g) MACT determination has been made.

(b) *Part 2 MACT application.*

(1) The Part 2 application for a MACT determination must contain the information in paragraphs (b)(1)(i) through (vi) of this section.

(i) For a new affected source, the anticipated date of startup of operation.

(ii) The hazardous air pollutants emitted by each affected source in the relevant source category and an estimated total uncontrolled and controlled emission rate for hazardous air pollutants from the affected source.

(iii) Any existing Federal, State, or local limitations or requirements applicable to the affected source.

(iv) For each affected emission point or group of affected emission points, an identification of control technology in place.

(v) Information relevant to establishing the MACT floor, and, at the option of the owner or operator, a recommended MACT floor.

(vi) Any other information reasonably needed by the permitting authority including, at the discretion of the permitting authority, information required pursuant to subpart A of this part.

(2) The Part 2 application for a MACT determination may, but is not required to, contain the following information:

(i) Recommended emission limitations for the affected source and support information consistent with § 63.52(f). The owner or operator may recommend a specific design, equipment, work practice, or operational standard, or combination thereof, as an emission limitation.

(ii) A description of the control technologies that would be applied to meet the emission limitation including technical information on the design, operation, size, estimated control efficiency and any other information deemed appropriate by the permitting authority, and identification of the affected sources to which the control technologies must be applied.

(iii) Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

17. Section 63.54 is amended by:

a. Revising the section heading and adding introductory text;

b. Revising paragraph (a)(1) through (2);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(6);

e. Revising paragraph (c)(3);

f. Revising paragraph (d);

g. Removing paragraph (e);

h. Removing paragraph (f);

i. Redesignating paragraph (g) as (e) and revising newly designated paragraph (e); and

j. Redesignating paragraph (h) as (f).

The revisions and addition read as follows:

§ 63.54 Preconstruction review procedures for new affected sources.

The requirements of this section apply to an owner or operator who constructs a new affected source subject to § 63.52(c)(1). The purpose of this section is to describe alternative review processes that the permitting authority may use to make a MACT determination for the new affected source.

(a) *Review process for new affected sources.* (1) If the permitting authority requires an owner or operator to obtain or revise a title V permit before construction of the new affected source, or when the owner or operator chooses to obtain or revise a title V permit before construction, the owner or operator must follow the procedures established under the applicable title V permit program before construction of the new affected source.

(2) If an owner or operator is not required to obtain or revise a title V permit before construction of the new affected source (and has not elected to do so), but the new affected source is covered by any preconstruction or preoperation review requirements established pursuant to section 112(g) of the Act, then the owner or operator must comply with those requirements in order to ensure that the requirements of section 112(j) and (g) are satisfied. If the new affected source is not covered by section 112(g), the permitting authority, in its discretion, may issue a Notice of MACT Approval, or the equivalent, in accordance with the procedures set forth in paragraphs (b) through (f) of this section, or an equivalent permit review process, before construction or operation of the new affected source.

* * * * *

(b) *Optional administrative procedures for preconstruction or preoperation review for new affected sources.* The permitting authority may provide for an enhanced review of section 112(j) MACT determinations for review procedures and compliance requirements equivalent to those set forth in paragraphs (b) through (f) of this section.

* * * * *

(6) Approval of an applicant's proposed control technology must be set forth in a Notice of MACT Approval (or the equivalent) as described in § 63.52(f).

(c) *Opportunity for public comment on notice of MACT approval.* * * *

* * * * *

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in § 63.52(f). The form and content of the notice must be substantially equivalent to that found in § 70.7 of this chapter.

* * * * *

(d) *Review by the EPA and affected States.* The permitting authority must send copies of the preliminary notice (in time for comment) and final notice required by paragraph (c) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in affected States. The permitting authority must provide EPA with a review period for the final notice of at least 45 days and shall not issue a final Notice of MACT Approval until EPA objections are satisfied.

(e) *Compliance with MACT determinations.* An owner or operator of a major source that is subject to a MACT determination must comply with notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements established under § 63.52(h), under title V, and at the discretion of the permitting authority, under subpart A of this part. The permitting authority must provide the EPA with the opportunity to review compliance requirements for consistency with requirements established pursuant to title V during the review period under paragraph (d) of this section.

* * * * *

18. Section 63.55 is revised to read as follows:

§ 63.55 Maximum achievable control technology (MACT) determinations for affected sources subject to case-by-case determination of equivalent emission limitations.

(a) *Requirements for permitting authorities.* The permitting authority must determine whether the § 63.53(a) Part 1 and § 63.53(b) Part 2 MACT application is complete or an application for a Notice of MACT Approval is approvable. In either case, when the application is complete or approvable, the permitting authority must establish hazardous air pollutant emissions limitations equivalent to the limitations that would apply if an emission standard had been issued in a timely manner under section 112(d) or (h) of the Act. The permitting authority must establish these emissions limitations consistent with the following requirements and principles:

(1) Emission limitations must be established for the equipment and activities within the affected sources within a source category or subcategory for which the section 112(j) deadline has passed.

(2) Each emission limitation for an existing affected source must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by affected sources in the category or subcategory for which the section 112(j) deadline has passed. This limitation must not be less stringent than the MACT floor

which must be established by the permitting authority according to the requirements of section 112(d)(3)(A) and (B) and must be based upon available information.

(3) Each emission limitation for a new affected source must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable. This limitation must not be less stringent than the emission limitation achieved in practice by the best controlled similar source which must be established by the permitting authority according to the requirements of section 112(d)(3). This limitation must be based upon available information.

(4) The permitting authority must select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that hazardous air pollutants cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(5) Nothing in this subpart shall prevent a State or local permitting authority from establishing an emission limitation more stringent than required by Federal regulations.

(b) *Reporting to EPA.* The owner or operator must submit additional copies of its Part 1 and Part 2 MACT application for a title V permit, permit revision, or Notice of MACT Approval, whichever is applicable, to the EPA at the same time the material is submitted to the permitting authority.

19. Section 63.56 is revised to read as follows:

§ 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.

(a) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected sources within a major source before the date a permit application under this paragraph (a) is approved, the title V permit must contain the promulgated standard rather than the emission limitation determined under § 63.52, and the owner or operator must comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates a relevant emission standard under section 112(d) or (h) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority must incorporate requirements of that standard in the title V permit upon its next renewal. The permitting authority must establish a compliance date in the revised permit that assures that the owner or operator must comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation established by the permit, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, the requirements of paragraphs (c)(1) and (2) of this section shall apply.

(1) If the Administrator promulgates an emission standard under section 112(d) or (h) that is applicable to an affected source after the date a permit application under this paragraph is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the permitting authority determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standard pursuant to § 63.1(e).

(2) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected source after the date a permit application is approved under § 63.52 or § 63.54, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior MACT determination, the permitting authority is not required to incorporate any less stringent emission limitation of the promulgated standard in the title V permit and may in its discretion consider any more stringent provisions of the MACT determination to be applicable legal requirements when issuing or revising such a title V permit.

[FR Doc. 02–5861 Filed 3–29–02; 8:45 am]
BILLING CODE 6560–50–P

rule based on this comment, although we will consider issuing additional rules in the future consistent with this comment.

Section 20.1106 is located in subpart L of part 20 of title 38, Code of Federal Regulations. Part 20 of title 38 contains the Rules of Practice of the Board of Veterans' Appeals. Subpart L of part 20 contains the Board's rules concerning the finality of decisions of the Board and VA regional offices. Section 20.1106 provides that, with certain exceptions, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime. This rule has been stated in the Board's rules of practice since 1980. In 1992, we amended the rule to clarify that it did not apply to claims under 38 U.S.C. 1318. This final rule will further amend § 20.1106 to clarify that the rule does not apply to claims under 38 U.S.C. 1311

Part 3 of title 38, Code of Federal Regulations, contains substantive and procedural rules governing adjudication of claims for disability compensation, pension, DIC and other benefits. Part 3 includes 38 CFR 3.22, which states VA's interpretation of 38 U.S.C. 1318, and 38 CFR 3.5(e), which essentially reiterates the statutory provisions of 38 U.S.C. 1311(a)(2) without elaboration. However, part 3 does not include a rule stating the principle in § 20.1106 that, except in cases under 38 U.S.C. 1311 and 1318 and certain other statutes, issues in DIC claims generally will be decided without regard to any prior disposition of such issues during the veteran's lifetime.

The commenter states that the principle stated in § 1106 would apply to all VA decisions on DIC claims, whether such decisions are made by the Board or by a VA regional office. Accordingly, the commenter asserts that those principles should be stated in part 3.

VA agrees that the principle stated in § 20.1106 applies to DIC claims before either a VA regional office or the Board. The principles stated in § 20.1106 reflect VA's interpretation of the statutory provisions applicable to DIC claims before both VA regional offices and the Board. VA has consistently applied that interpretation to DIC claims decided at both regional-office and Board levels, and will continue to do so. However, we will make no change to the proposed rule based on this comment.

In the *NOVA* case, the Federal Circuit concluded that there was an apparent conflict between 38 CFR 3.22 and 38 CFR 20.1106. The court directed VA to conduct expedited rule making to revise either of those regulations or to explain the basis for the apparent inconsistency. The court further directed VA to stay all proceedings involving claims under 38 U.S.C. 1318 pending the completion of such rule making. As stated in our December 2001 NPRM, VA concluded that it was necessary to revise § 20.1106 to remove the apparent inconsistency cited by the court.

In view of the time limit imposed by the court for completing rule making and the fact that DIC claims have been stayed until this rule making is completed, we limited our proposed rule to addressing the apparent inconsistency identified by the Federal Circuit and did not propose additional changes to part 3, such as those recommended by the commenter. We believe it is appropriate to retain the Board's longstanding rule of practice in subpart L of part 20 of title 38, Code of Federal Regulations, because that rule pertains to subject matter addressed by that subpart.

Nevertheless, we understand the commenter's concern that it would be logical to include a provision similar to § 20.1106 in part 3 of title 38 of the CFR, to make clear that the same principles apply to claims before VA regional offices. We will make no change to part 3 in this final rule, because any such change would be beyond the scope of the proposed rule. However, we will consider whether to issue additional rules in the future consistent with this comment.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, inasmuch as this final rule applies to individual claimants for veterans' benefits and does not affect such entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: March 29, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. Section 20.1106 is revised to read as follows:

§ 20.1106 Rule 1106. Claim for death benefits by survivor-prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1311(a)(2), 1318, and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 7104(b))

[FR Doc. 02–8201 Filed 4–4–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7155–9]

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for solvent extraction for vegetable oil production plants which were promulgated on April 12, 2001 under authority of section 112 of the Clean Air Act (CAA). The amendments will clarify the startup, shutdown, and malfunction requirements for owners or operators subject to the Vegetable Oil NESHAP. The amendments will also clarify the applicability of the NESHAP General Provisions.

DATES: This direct final action rule will be effective on June 4, 2002 without further notice, unless significant adverse comments are received by May 6, 2002.

If significant adverse comments are received we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–59, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, submit comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–59, Room M–1500, U.S. EPA, 401 M Street, SW., Washington DC 20460. We request that a separate copy of each public comment also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Minerals and Inorganic Chemicals Group (C504–05), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5262, electronic mail (e-mail): *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. We are publishing this direct final rule without proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. 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.

Docket

The docket is an organized and complete file of the administrative record compiled developing this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to help you to readily identify and locate documents so that you can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A)) of the CAA.) You may obtain the regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. We may charge a reasonable fee for copying docket materials. You may also obtain docket indexes by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at *http://www.epa.gov/airprogm/oar/docket/faxlist.html.*

Worldwide Web

In addition to being available in the docket, an electronic copy of this direct final rule will also be available through the Worldwide Web (WWW). Following signature, a copy of the direct final rule will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN 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.

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	NAICS	Examples of regulated entities
Industry	311223	Cottonseed oil mills.
	311222	Soybean oil mills.
	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	311119	Prepared feeds and feed ingredients for animals and fowls, excluding dogs and cats.
	311211	Flour and other grain mill product mills.
	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 § 63.2832 of the rule. If you have any questions regarding the applicability of these amendments to a particular entity, consult the appropriate EPA Regional Office representative.

Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available after the effective date by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit no later than June 4, 2002. 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 this direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

I. Why Are We Publishing These Amendments as a Direct Final Rule?

On May 26, 2000, we proposed National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (65 FR 34252). The proposed rule included requirements for limiting emissions during vegetable oil production, including requirements during startup, shutdown, and malfunction (SSM) of vegetable oil production processes. As with all NESHAP, the regulatory development process included an examination of which specific provisions in the General Provisions at 40 CFR part 63, subpart A, should be applicable to sources subject to subpart GGGG. Based on a review of the General Provisions promulgated on March 16, 1994 (59 FR 12408), we determined that 40 CFR 63.6(e), which contains various procedures related to operation and maintenance and SSM, would apply to sources subject to subpart GGGG.

Based on public comments, we made one major change to the proposed regulation, which was to allow the use of an accounting month rather than a calendar month to determine solvent losses and quantities of oilseed processed by an affected source. There were no substantive public comments on the proposed SSM provisions and they were not changed in the final rule. On April 12, 2001, we promulgated National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (66 FR 19006).

On March 23, 2001 (66 FR 16318), we proposed amendments to the General Provisions to part 63. The proposed amendments included several changes to the SSM requirements. Among others, these changes included proposed 40 CFR 63.6(e)(3)(iii) requiring records related to malfunctions; proposed 40 CFR 63.6(e)(3)(iv) which requires reporting of actions inconsistent with the startup, shutdown, and malfunction plan (SSMP); and proposed 40 CFR 63.6(e)(3)(viii) which requires reporting modifications to the SSM plan in the semiannual report. In addition, the proposed changes to the General Provisions SSMP clarify that the title V permit must require that an SSMP be prepared and followed but the SSMP is not itself part of the title V permit.

In the preamble to the proposed General Provisions amendments, we specifically requested comment on "any conflicts * * * that result solely from applying these proposed amendments to the General Provisions to promulgated part 63 subparts." One commenter identified such a conflict between SSM provisions of the Vegetable Oil Production NESHAP and those provisions in the General Provisions. Specifically, the commenter noted that proposed 40 CFR 63.6(e)(3)(iii), which requires records related to malfunctions under 40 CFR 63.10(b), should not apply to subpart GGGG, as subpart GGGG states that 40 CFR 63.10(b)(2)(ii) through (iii) relating to malfunction records do not apply. Also, proposed 40 CFR 63.6(e)(3)(iv), which requires reporting of actions inconsistent with the SSMP if the emissions exceed the relevant standard, does not comport with subpart GGGG. The Vegetable Oil Production NESHAP require reporting of such actions regardless of whether the standard was exceeded. The commenter also specifically noted that proposed 40 CFR 63.6(e)(3)(viii), the requirement to report modifications to the SSM plan in the semiannual report, should not apply to sources subject to subpart GGGG, as subpart GGGG does not require a semiannual report.

We agree with the commenter that these proposed provisions conflict with those in the promulgated Vegetable Oil Production NESHAP. As we proposed to codify in 40 CFR 63.1(a)(4)(i), each relevant part 63 standard should identify explicitly whether each provision in subpart A is or is not included in each standard. This regulatory language is based on our conviction that each NESHAP must determine which of the General Provisions do or do not make sense for a particular source category. It was not our intent to alter the SSMP requirements of the Vegetable Oil Production NESHAP.

We have discussed the implications of the General Provisions amendments with the commenter and as a result are editing subpart GGGG to correct the inconsistencies. These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil Production NESHAP affected sources.

II. What Are the Amendments to the Final Rule?

With this direct final action, we are amending several provisions related to SSM requirements. Specifically, we are amending the explanation column of Table 1 of 40 CFR 63.2870 as it applies to 40 CFR 63.6(e) to state, "implement your plan as specified in § 63.2852." Table 1 also now indicates that 40 CFR 63.6(e)(3)(iii), (iv) and (viii) do not apply to Vegetable Oil Production NESHAP affected sources.

We are also amending the first sentence of 40 CFR 63.2861(d) to clarify that owner/operators must submit an immediate SSM report if an SSM is handled differently from the procedures in the SSM plan and the emission standards are exceeded.

We are also amending the third sentence of 40 CFR 63.2852 to clarify that the SSMP does not have to be incorporated into the title V permit.

These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil Production NESHAP affected sources.

Please note that these changes are contained within the Vegetable Oil Production NESHAP and that they are being made for consistency with the General Provisions amendments, where appropriate. The Vegetable Oil Production NESHAP, however, also contains specifically tailored SSMP provisions for this industry and one should look expressly to that rule for the applicable SSMP provisions.

III. What Are the Administrative Requirements?

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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that these 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. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (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."

This 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. Thus, the requirements of section 6 of Executive Order 13132 do not apply to this direct final rule.

C. 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."

These rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments are known to own or operate solvent extraction for vegetable oil production facilities. Thus, Executive Order 13175 does not apply to these rule amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the 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 Order has the potential to influence the regulation. This direct final rule is not subject to the Executive Order because it is based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

The direct final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because they are not significant regulatory actions under Executive Order 12866.

F. 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, 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 these 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 in the private sector in any 1 year. Thus, the amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these 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 on them. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act, As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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 this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that has less than 750 employees and is unaffiliated with a larger domestic entity; (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 impacts of today's final 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. 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 better clarify and make the startup, shutdown, and malfunction plan consistent with the amended part 63 subpart A; the effect is to clarify that sources do not have to modify their title V permit each time the SSMP is changed. We have therefore concluded that today's direct final rule will relieve regulatory burden for all small entities.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. The OMB has previously approved the information collection requirements for the subject facilities under the Paperwork Reduction Act (OMB Control No. 2060–0471). The amendments contained in this direct final rule will have no net impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (March 7, 1996) (15 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 would be otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable voluntary consensus standards.

This action does not involve the use of any new technical standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to this direct final rule.

J. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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: March 5, 2002.

Christine Todd Whitman,

Administrator.

For the reasons cited 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 GGGG—[AMENDED]

2. Section 63.2852 is amended by revising the first three sentences to read as follows:

§ 63.2852 What is a startup, shutdown, and malfunction plan?

You must develop a written SSM plan in accordance with § 63.6(e)(3) and implement the plan, when applicable. You must complete the SSM plan before the compliance date for your source. You must also keep the SSM plan on-site and readily available as long as the source is operational.* * *

3. Section 63.2861 is amended by revising the first sentence of paragraph (d) introductory text to read as follows:

§ 63.2861 What reports must I submit and when?

* * * * *

(d) *Immediate SSM reports.* If you handle a SSM during an initial startup period subject to § 63.2850(c)(2) or (d)(2) or a malfunction period subject to § 63.2850(e)(2) differently from procedures in the SSM plan and the relevant emission requirements in § 63.2840 are exceeded, then you must submit an immediate SSM report. * * *

* * * * *

4. Table 1 of § 63.2870 is amended by revising the entry to § 63.6(e) to read as follows:

§ 63.2870 What parts of the General Provisions apply to me?

* * * * *

TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
*	*	*	*	* * *
§ 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii).	Operation and maintanance requirements.	.....	Yes	Implement your SSM plan, as specified in § 63.2852.
§ 63.6(e)(3)(v)(iii)	Operation and maintenance requirements.	.....	No	Implement your plan, as specified in § 63.2852.
§ 63.6(e)(3)(iv)	Operation and maintenance requirements.	.....	No	Report SSM and in accordance with § 63.2861(c) and (d).

TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.6(e)(3)(viii)	Operation and maintenance requirements.		Yes	Except, report each revision to your SSM plan in accordance with § 63.2861(c) rather than § 63.10(d)(5) as required under § 63.6(e)(3)(viii).
*	*	*	*	* * *

[FR Doc. 02–5862 Filed 4–4–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; CC Docket No. 96–98; CC Docket No 96–116; FCC 02–73]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission), on its own motion, reconsiders its findings in the *Numbering Resource Optimization Third Report and Order,* regarding the local number portability (LNP) and thousands-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs). Specifically, the Commission reverses its clarification that the requirements extend to all carriers within the largest 100 MSAs, regardless of whether they have received a specific request from another carrier to provide LNP.

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff, (202) 418–7705 or e-mail at *pslipako@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration in CC Docket No. 99–200 (Third Order on Reconsideration*), FCC 02–73, adopted on March 13, 2002 and released on March 14, 2002. The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street, SW, Washington, DC 20554. The complete text may also be obtained through the world wide web at *http://www.fcc.gov/Bureaus/CommonCarrier/Orders,* or may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Synopsis of the Third Order on Reconsideration in CC Docket No. 99–200

1. On its own motion, the Commission reconsiders its findings in the *Numbering Resource Optimization Third Report and Order,* 67 FR 6431 (Feb. 12, 2002), regarding the local number portability (LNP) and thousands-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs). Specifically, the Commission reverses its clarification that these requirements extend to all carriers within the largest 100 MSAs, regardless of whether they have received a specific request from another carrier to provide LNP.

2. In the *Numbering Resource Optimization Third Report and Order,* the Commission extended LNP and thousands-block number pooling requirements to all carriers in the largest 100 MSAs, and gave non-compliant carriers six months from the effective date of the order to deploy LNP. This decision was driven by questions raised when certain state commissions began implementing thousands-block number pooling trials and discovered that some LECs had not deployed LNP in some of the largest 100 MSAs. Apparently, some carriers and state commissions differed on the current status of the LNP requirements. Specifically, they were not sure whether LNP is required for all carriers within the 100 largest MSAs, or only for those carriers that receive a request from a competing carrier. Thus, the Commission sought to clarify the issue.

3. In attempting to clarify the issue, however, the Commission reversed the decision on LNP deployment reached by the Commission in the *Number Portability First Order on Reconsideration,* 62 FR 18280 (April 15, 1997), without providing an adequate opportunity for comment on this specific issue. The Commission now reverses this clarification and provides interested parties an opportunity to comment on whether carriers should be required to deploy LNP and participate in thousands-block number pooling in the 100 largest MSAs, regardless of whether they have received a specific request to provide LNP from another carrier.

4. Pursuant to sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this *Third Order on Reconsideration* in CC Docket 99–200 is hereby *adopted.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–8249 Filed 4–4–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000831250–0250–01; 032602D]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reopening of Directed Fishery for Pacific Mackerel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reopening of the directed fishery for Pacific mackerel.

SUMMARY: NMFS announces the reopening of the directed fishery for Pacific mackerel in the U.S. exclusive economic zone off the Pacific coast at 12 midnight local time (l.t.) on March 31, 2002. A significant portion of the Pacific mackerel harvest guideline remains unharvested; therefore, the incidental catch allowance that has been in effect



Federal Register

Friday,
April 5, 2002

Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7168–1]

RIN 2060–AE78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on targeted amendments to the national emission standards for the portland cement manufacturing industry promulgated on June 14, 1999 under the authority of section 112 of the Clean Air Act (CAA). The amendments make improvements to the implementation of the emission standards, primarily in the areas of applicability, testing, and monitoring to resolve issues and questions raised since promulgation of the rule.

DATES: This direct final rule is effective on July 5, 2002 without further notice, unless significant adverse comments are received by May 6, 2002.

If significant material adverse comments are received by May 6, 2002, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposed rule published elsewhere in this issue. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on July 5, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–53, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–53, Room M–1500, U.S. EPA, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, 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:

Comments. We are publishing this direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. We anticipate no adverse comment because EPA received no adverse comment when we published a document in the **Federal Register** on the settlement agreement relating to these amendments (66 FR 50643, October 4, 2001). 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 emissions standards for the portland cement manufacturing industry promulgated on June 14, 1999, if adverse comments are filed.

If we receive any relevant 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. 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 this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–92–53.

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.

Regulated Entities. Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Industry	32731	3241	Owners or operators of portland cement manufacturing plants.
State	32731	3241	Owners or operators of portland cement manufacturing plants.
Tribal associations	32731	3241	Owners or operators of portland cement manufacturing plants.
Federal agencies	None	None	None.

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 the EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this 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 June 4, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this 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 this 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
A. Applicability and Designation of Affected Sources
B. Operating Limits for Kilns and In-line Kiln/Raw Mills
C. Performance Testing Requirements
D. Monitoring Requirements
E. PM and Opacity Compliance Waiver During PM CEM Testing
F. Compliance Dates
III. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background

On June 14, 1999, we published in the **Federal Register** the final rule entitled, "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry" (40 CFR part 63, subpart LLL). The American Portland Cement Alliance (APCA) petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the final rule under section 307(b)(1) of the CAA. (*See* 42 U.S.C. 7607(b)(1).) The APCA and the EPA negotiated and have agreed to the terms of a Settlement Agreement and its implementation.

The action taken today is consistent with the terms of the Settlement Agreement and reflects EPA's judgment that these amendments improve the rule's implementation. Today's action makes specific changes to the NESHAP for the portland cement manufacturing industry, generally relating to applicability, performance testing, and monitoring.

The portland cement NESHAP contains emission limitations for hazardous air pollutants (HAP) emitted by portland cement manufacturing sources. In a separate action, some of those emission limitations were remanded to EPA by the court in *National Lime Association* v. *EPA*, 233 F. 3d 625 (D.C. Cir. 2000). Today's direct final rule does not deal with any of the issues which were remanded to EPA, rather, the direct final rule amends certain provisions of the final rule dealing largely with issues of implementation.

II. Amendments to the NESHAP

A. Applicability and Designation of Affected Sources

A "bin" is one of the affected sources listed in § 63.1340 of the final rule, *i.e.*, a source of emissions that is subject to emissions standards in the rule. The term is not defined in the rule, which leads to potential confusion. We are, therefore, adding a definition of "bin" to clarify the applicability of the rule. We define "bin" as a manmade enclosure for storage of raw materials, clinker, or finished product prior to the further processing of these materials at a portland cement plant.

Today's action revises § 63.1340(c) of the final rule to clarify that primary and secondary crushers are not subject to the final rule regardless of their location in the production line relative to raw material storage. This was the intent of the final rule. (See 63 FR 14194, March 24, 1998 and 64 FR 31900, June 14, 1999.) However, portland cement manufacturers pointed out that the provision, as it appears in the final rule, could be interpreted to apply to crushers if they follow raw material storage:

> * * * The primary and secondary crushers and any other equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage are not subject to this subpart.* * *

Portland cement manufacturers pointed out that crushers may follow the raw material storage in the production line. We did not intend that the final rule apply to crushers because we wanted to maintain consistency with 40 CFR part 60, subpart F, the new source performance standards (NSPS) for the portland cement industry. We are, therefore, amending the final rule to clarify that primary and secondary crushers are not covered by the final rule regardless of their location relative to raw material storage.

Section 63.1356 of the final rule is being revised to clarify that the systems used to convey and transfer coal from the coal mill to the kiln at portland cement plants that are major sources of HAP are not subject to the NSPS for coal preparation plants (40 CFR part 60, subpart Y). The final portland cement NESHAP already cover conveying system transfer points associated with coal preparation plants at portland cement plants that are major sources. There is no need for these sources to be subject to duplicative requirements, *i.e.*, to also be covered by the NSPS for coal preparation plants. Further, these emission sources will be subject to more stringent opacity requirements (10 percent) under the NESHAP than under the NSPS for coal preparation plants (40 CFR part 60, subpart Y). Other coal conveying transfer points will continue to be subject to the NSPS for coal preparation plants.

The list of affected sources in § 63.1340(b)(7) of the final rule is being amended to clarify that coal conveying system transfer points associated with conveying of coal from the mill to the kiln are included as affected sources.

Section 63.1356(a) of the final rule is being revised to clarify that in exempting affected sources subject to the portland cement NESHAP from duplicative requirements under 40 CFR part 60, subpart F, it was not our intention that these sources would then become affected sources under the requirements of 40 CFR part 60, subpart OOO (NSPS for Nonmetallic Mineral Processing Plants). The requirements of 40 CFR part 60, subpart OOO may apply to certain sources at a portland cement plant depending on whether or not 40 CFR part 60, subpart F, applies to that source. In particular, 40 CFR 60.670(b) states that if an emission source is subject to 40 CFR part 60, subpart F, or follows in the plant process a source that is subject to subpart F, then 40 CFR part 60, subpart OOO does not apply to that source. The purpose of § 63.1356(a) of the final rule is to avoid having a source that is subject to certain requirements under this subpart also be subject to the same requirements under 40 CFR part 60, subparts F or OOO.

The list of affected sources in the portland cement NESHAP is being amended by combining into one paragraph the affected sources, "bagging system" and "bulk loading or unloading system," making the rule language consistent with the NSPS for portland cement plants (40 CFR part 60, subpart F).

B. Operating Limits for Kilns and In-line Kiln/Raw Mills

Section 63.1344(a)(3) of the final rule is being revised to indicate that the operating limit for gas stream temperature pertaining to the inlet to the alkali bypass particulate matter (PM) control device may be established during a performance test either with or without the raw mill being in operation.

This revision provides additional flexibility in that the test for dioxin/furan (D/F) emissions from the alkali bypass may be conducted whether the raw mill is operating or not since D/F emissions in the alkali bypass are not affected by the operation of the raw mill. Alkali bypass emissions are not affected by the operation of the raw mill since the alkali bypass gas stream does not pass through the raw mill.

C. Performance Testing Requirements

Today's direct final rule revises the performance testing requirements in 40 CFR 63.1349(e) to clarify conditions under which changes in operation will require repeat performance testing. This revision provides a more understandable description of the criteria for determining when the performance tests need to be repeated. In the current final rule, a new performance test is required if there is a "significant change in feed or fuel from that used in the previous performance test." Under today's amendments, a new test is required if a change in operations may adversely affect compliance. This allows sources the flexibility to make changes in their kiln's operation without having to retest (and establish new temperature operating limits for D/F) if the change will not adversely affect compliance. Further, if the operational change will only adversely affect compliance with one of the pollutant emission limits (for example, PM, but not D/F), then the source will only be required to retest for that one pollutant. This amendment may be less costly to industry (e.g., test only if compliance may be adversely affected versus test after any significant change in feed or fuels, which is largely pointless if compliance is not adversely affected), while being at least equally protective. This amendment is also consistent with and reaffirms § 63.7(e) of the General Provisions in 40 CFR part 63, subpart A, which states that performance tests must be conducted under representative conditions.

Section 63.1349(e) of the final rule is further amended by adding paragraphs (e)(3)(i) through (iv). This amendment will allow a source that is required to conduct a new performance test under paragraph (e)(1) of this section to operate under the planned operational change conditions for a period not to exceed 360 hours, provided that certain conditions are met. This amendment allows the source sufficient time to (1) equilibrate the operation of the kiln after the change has occurred (which could take days), (2) conduct any emissions checks (pretests) prior to the actual performance test, and (3) conduct the actual performance test. The time required to conduct a performance test could exceed 1 week, especially if both PM and D/F tests are to be conducted, and if both the main and alkali bypass stacks need to be tested. However, the 360-hour waiver is allowed only if certain requirements are met. If the source is conducting a D/F test to reestablish a new temperature operating limit, the source must submit temperature monitoring data for the entire pretest period and document the results of the performance test. Prior notice must be given to the Administrator of the planned change and once the planned operational period begins, the source must conduct and complete the performance test within 360 hours. The requirement that the source must actually conduct the performance test prevents a source from falsely claiming an operational change is needed in order to obtain the 360-hour waiver.

Today's direct final rule amends § 63.1349(b) of the final rule to require performance testing under "representative" conditions rather than under "the highest load or capacity reasonably expected to occur." This amendment makes the NESHAP consistent with the General Provisions' requirements (cited above) that performance tests be conducted under representative conditions. The implication of this amendment is that the performance test should be conducted at the highest production rate at which the kiln normally would operate. If the kiln is operated under a condition not representative of the condition during the performance test, *e.g.*, the kiln is operated at a production rate higher than the production rate at which it was tested, the performance test will need to be re-conducted and temperature limit(s) reestablished. This is in accordance with today's amendments to 40 CFR 63.1349(e) which state that a new performance test is required if a change in operations may adversely affect compliance.

Today's action amends § 63.1349(b)(3) of the final rule to allow the D/F performance test of an alkali bypass associated with an in-line kiln/raw mill to be conducted either with the raw mill operating or with the raw mill not operating. This amendment is consistent with the amendment to § 63.1344(a)(3) (discussed earlier) allowing the operating limit affecting the temperature at the inlet to the alkali bypass PM control device to be established either with the raw mill operating or with the raw mill not operating. This will provide greater flexibility since D/F emissions in the alkali bypass are not affected by the operation of the raw mill.

D. Monitoring Requirements

Corresponding to the amendments requiring that performance tests be conducted under representative performance conditions, paragraphs (c)(2)(i), (d)(2)(i), and (e) of 40 CFR 63.1350 are being amended to require that the daily manual observations of opacity or visible emissions (VE) be conducted under representative performance conditions as well.

Section 63.1350(k) of the final rule requires affected sources to install PM continuous emission monitors (CEM). However, as noted in the Settlement Agreement, we agreed to state in this preamble that § 63.1350(k) of the final rule currently requires sources to install PM CEM, but does not specify a deadline by which sources would be required to comply with this requirement.

We are amending the requirements of § 63.1350(e)(2) of the final rule to conduct follow-up VE tests when VE were observed previously. This amendment allows the source to have 2 consecutive calendar days of visible emissions prior to having to conduct a follow-up test by Method 9 (40 CFR part 60, appendix A). The final rule as promulgated requires a Method 9 test be conducted within 24 hours for a particular raw or finish mill if VE are observed during the daily test by Method 22 (40 CFR part 60, appendix A). We agree with industry that this may be overly burdensome since the presence of VE does not necessarily indicate whether a source is in violation of the 10 percent opacity limit. Further, if VE are observed, corrective action may be taken by the source to eliminate the emissions prior to the subsequent Method 22 test and, thereby, eliminate the emissions and avoid having to do a more costly Method 9 test.

Section 63.1350 of the final rule is being amended to give sources the option of installing continuous monitoring systems on raw mills and finish mills in place of daily Method 22 testing, which is required in the final rule. This amendment allows a source the option to use continuous monitoring equipment (e.g., continuous opacity monitors or bag leak detectors) in lieu of the manual measurement (Method 22) of VE and opacity. We believe that these continuous monitoring options are just as effective in demonstrating compliance as the currently required manual methods. Some sources may prefer to use these instruments in lieu of daily visual monitoring.

We are revising the requirements of § 63.1350(a)(4) of the final rule so that Method 22 VE monitoring is not required for conveying system transfer points if they are totally enclosed. This amendment eliminates the need for VE monitoring at totally enclosed transfer points, since we expect minimal VE from such transfer points. As indicated in the Settlement Agreement with the APCA, "the enclosures for these transfer points shall be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan." The other amendments to § 63.1350(a)(4) provide procedures for monitoring of VE for transfer points inside buildings.

We are also revising Table 1 to subpart LLL to clarify that § 63.6(h)(7) of the NESHAP General Provisions applies to the final rule. The EPA inadvertently omitted this table entry from the final rule.

E. PM and Opacity Compliance Waiver During PM CEM Testing

Section 63.1357 of the final rule specifies the conditions under which an owner or operator is exempt from compliance with PM and opacity standards for the purpose of conducting tests to correlate PM CEM with manual method results. The final rule provides a 96-hour waiver from compliance. For sources that do choose to use a PM CEM, we are clarifying that they may petition us for additional time for the waiver from the PM and opacity limits during the correlation testing if additional time is needed to finish the PM CEM correlation testing.

F. Compliance Dates

Section 63.1351 of the final rule is being revised to correct erroneous compliance deadlines specified in the final rule. This amendment adds a few more days to the compliance date to give an existing source a full 3 years to comply with the standards. We are also changing the compliance date for new sources to coincide with the publication date of the final rule in the **Federal Register**.

III. Administrative Requirements

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 these 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. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The 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 amendments. Thus, Executive Order 13132 does not apply to this direct final rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, 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 direct final rule is not subject to Executive Order 13045, because it is not an economically significant regulatory action as defined by Executive Order 12866, and because it is based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

This direct final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. 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, 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 this 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 aggregate, or the private sector in any 1 year, nor does the direct final 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 this direct final rule.

G. Regulatory Flexibility Act, As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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 effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of applicability, testing, and monitoring. We have therefore concluded that today's final rule will have no adverse impacts on any small entities and may relieve burden in some cases.

Although the direct final rule will not have a significant economic impact on a substantial number of small entities, we worked with portland cement industry, including small entities, throughout the rulemaking process. Meetings were held on a regular basis with industry representatives in connection with the settlement agreement, to discuss the development of the direct final rule, exchange information, and solicit comments on final rule requirements.

H. Paperwork Reduction Act

The information collection requirements in the final rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control No. 2060–0416. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1801.02) and a copy may be obtained from Sandy Farmer by mail at Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at *farmer.sandy@epamail.epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded from the internet at *http://www.epa.gov/icr.*

Today's action makes clarifying changes to the promulgated rule and imposes no new information collection requirements on industry. Because only clarifying changes are being made, there is no additional burden on industry as a result of this direct final rule and the ICR has not been revised.

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, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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.** This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule will be effective on July 5, 2002, unless significant adverse comments are received by May 6, 2002.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 28, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart LLL—[Amended]

2. Section 63.1340 is amended by revising paragraphs (b)(7) and (8), deleting paragraph (b)(9), and revising paragraph (c) to read as follows:

§ 63.1340 Applicability and designation of affected sources.

* * * * *

(b) * * *

(7) Each conveying system transfer point including those associated with coal preparation used to convey coal from the mill to the kiln at any portland cement plant which is a major source; and

(8) Each bagging and bulk loading and unloading system at any portland cement plant which is a major source.

(c) For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. Any equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage is not subject to this subpart. In addition, the primary and secondary crushers of the on-site nonmetallic mineral processing plant, regardless of whether they precede the raw material storage, are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

* * * * *

3. Section 63.1341 is amended by adding in alphabetical order the definition for the term *Bin* to read as follows:

§ 63.1341 Definitions.

* * * * *

Bin means a manmade enclosure for storage of raw materials, clinker, or finished product prior to further processing at a portland cement plant.

* * * * *

4. Section 63.1344 is amended by revising paragraph (a)(3) to read as follows:

§ 63.1344 Operating limits for kilns and in-line kiln/raw mills.

(a) * * *

(3) If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass specified in paragraph (b) of this section and established during the performance test, with or without the raw mill operating, is not exceeded.

* * * * *

5. Section 63.1349 is amended by revising paragraphs (b)(1)(i), (b)(2), (b)(3), (b)(3)(i), (e), and Table 1 to § 63.1349 to read as follows:

§ 63.1349 Performance testing requirements.

* * * * *

(b) * * *

(1) * * *

(i) Method 5 of appendix A to part 60 of this chapter shall be used to determine PM emissions. Each performance test shall consist of three separate runs under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with § 63.7(e). Each run shall be conducted for at least 1 hour, and the minimum sample volume shall be 0.85 dscm (30 dscf). The average of the three runs shall be used to determine compliance. A determination of the PM collected in the impingers ("back half") of the Method 5 particulate sampling train is not required to demonstrate initial compliance with the PM standards of this subpart. However, this shall not preclude the permitting authority from requiring a determination of the "back half" for other purposes.

* * * * *

(2) The owner or operator of any affected source subject to limitations on opacity under this subpart that is not subject to paragraph (b)(1) of this section shall demonstrate initial compliance with the affected source opacity limit by conducting a test in accordance with Method 9 of appendix A to part 60 of this chapter. The performance test shall be conducted under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The maximum 6-minute average opacity exhibited during the test period shall be used to determine whether the affected source is in initial compliance with the standard. The duration of the Method 9 performance test shall be 3 hours (30 6-minute averages), except that the duration of the Method 9 performance test may be reduced to 1 hour if the conditions of paragraphs (b)(2)(i) through (ii) of this section apply:

* * * * *

(3) The owner or operator of an affected source subject to limitations on D/F emissions under this subpart shall demonstrate initial compliance with the D/F emission limit by conducting a performance test using Method 23 of appendix A to part 60 of this chapter. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a kiln or in-line kiln/raw mill equipped with an alkali bypass shall conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass. However, the owner or operator of an in-line kiln/raw mill may conduct a performance test of the alkali bypass exhaust when the raw mill of the in-line kiln/raw mill is operating or not operating.

(i) Each performance test shall consist of three separate runs; each run shall be conducted under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The duration of each run shall be at least 3 hours, and the sample volume for each run shall be at least 2.5 dscm (90 dscf). The concentration shall be determined for each run, and the arithmetic average of the concentrations measured for the three runs shall be calculated and used to determine compliance.

* * * * *

(e)(1) If a source plans to undertake a change in operations that may adversely affect compliance with an applicable D/F standard under this subpart, the source must conduct a performance test and establish new temperature limit(s) as specified in paragraph (b)(3) of this section.

(2) If a source plans to undertake a change in operations that may adversely affect compliance with an applicable PM standard under § 63.1343, the source must conduct a performance test as specified in paragraph (b)(1) of this section.

(3) In preparation for and while conducting a performance test required in paragraph (e)(1) of this section, a source may operate under the planned operational change conditions for a period not to exceed 360 hours, provided that the conditions in paragraphs (e)(3)(i) through (iv) of this section are met. The source shall submit temperature and other monitoring data that are recorded during the pretest operations.

(i) The source must provide the Administrator written notice at least 60 days prior to undertaking an operational change that may adversely affect compliance with an applicable standard

under this subpart, or as soon as practicable where 60 days advance notice is not feasible. Notice provided under this paragraph shall include a description of the planned change, the emissions standards that may be affected by the change, and a schedule for completion of the performance test required under paragraph (e)(1) of this section, including when the planned operational change period would begin.

(ii) The performance test results must be documented in a test report according to paragraph (a) of this section.

(iii) A test plan must be made available to the Administrator prior to testing, if requested.

(iv) The performance test must be conducted, and it must be completed within 360 hours after the planned operational change period begins.

* * * * *

TABLE 1 TO § 63.1349.—SUMMARY OF PERFORMANCE TEST REQUIREMENTS

Affected source and pollutant	Performance test
New and existing kiln and in-line kiln/raw mil[b c] PM	EPA Method 5[a].
New and existing kiln and in-line kiln/raw mill[b c] Opacity	COM if feasible[d e] or EPA Method 9 visual opacity readings.
New and existing kiln and in-line kiln/raw mill[b c f g] D/F	EPA Method 23[h].
New greenfield kiln and in-line kiln/raw mill[c] THC	THC CEM (EPA PS–8A)[i].
New and existing clinker cooler PM	EPA Method 5[a].
New and existing clinker cooler opacity	COM[d j] or EPA Method 9 visual opacity readings.
New and existing raw and finish mill opacity	EPA Method 9[a j].
New and existing raw material dryer and materials handling processes (raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) opacity.	EPA Method 9[a j].
New greenfield raw material dryer THC	THC CEM (EPA PS–8A)[i].

[a] Required initially and every 5 years thereafter.
[b] Includes main exhaust and alkali bypass.
[c] In-line kiln/raw mill to be tested with and without raw mill in operation.
[d] Must meet COM performance specification criteria. If the fabric filter or electrostatic precipitator has multiple stacks, daily EPA Method 9 visual opacity readings may be taken instead of using a COM.
[e] Opacity limit is 20 percent.
[f] Alkali bypass is tested with the raw mill operating or not operating.
[g] Temperature and (if applicable) activated carbon injection parameters determined separately with and without the raw mill operating.
[h] Required initially and every 30 months thereafter.
[i] EPA Performance Specification (PS)–8A of appendix B to part 60 of this chapter.
[j] Opacity limit is 10 percent.

6. Section 63.1350 is amended by:

a. Adding paragraphs (a)(4)(v) through (a)(4)(vii);

b. Revising paragraph (c)(2)(i);

c. Revising paragraph (d)(2)(i);

d. Revising paragraphs (e) and (e)(2);

e. Redesignating paragraph (m) as paragraph (n) and adding a new paragraph (m); and

f. Revising Table 1 to § 63.1350.

The revisions and additions read as follows:

§ 63.1350 Monitoring requirements.

(a) * * *

(4) * * *

(v) The requirement to conduct Method 22 visible emissions monitoring under this paragraph shall not apply to any totally enclosed conveying system transfer point, regardless of the location of the transfer point. "Totally enclosed conveying system transfer point" shall mean a conveying system transfer point that is enclosed on all sides, top, and bottom.

(vi) If any partially enclosed or unenclosed conveying system transfer point is located in a building, the owner or operator of the portland cement plant shall have the option to conduct a Method 22 visible emissions monitoring test according to the requirements of paragraphs (a)(4)(i) through (iv) of this section for each such conveying system transfer point located within the building, or for the building itself (according to paragraph (a)(4)(vii) of this section).

(vii) If visible emissions from a building are monitored, the requirements of paragraphs (a)(4)(i) through (iv) of this section apply to the monitoring of the building, and you must also do the following: Test visible emissions from each side, roof and vent of the building for at least 1 minute. The test must be conducted under normal operating conditions.

* * * * *

(c) * * *

(2) * * *

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A to part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The duration of the Method 9 test shall be at least 30 minutes each day.

* * * * *

(d) * * *

(2) * * *

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A to part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The duration of the Method 9 test shall be at least 30 minutes each day.

* * * * *

(e) The owner or operator of a raw mill or finish mill shall monitor opacity by conducting daily visual emissions observations of the mill sweep and air separator PMCD of these affected sources in accordance with the procedures of Method 22 of appendix A to part 60 of this chapter. The Method 22 test shall be conducted while the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The duration of the Method 22 test shall be 6 minutes. If visible emissions are observed during any Method 22 visible emissions test, the owner or operator must:

* * * * *

(2) Within 24 hours of the end of the Method 22 test in which visible emissions were observed, conduct a followup Method 22 test of each stack from which visible emissions were observed during the previous Method 22

test. If visible emissions are observed during the followup Method 22 test from any stack from which visible emissions were observed during the previous Method 22 test, conduct a visual opacity test of each stack from which emissions were observed during the follow up Method 22 test in accordance with Method 9 of appendix A to part 60 of this chapter. The duration of the Method 9 test shall be 30 minutes.

* * * * *

(m) The requirements under paragraph (e) of this section to conduct daily Method 22 testing shall not apply to any specific raw mill or finish mill equipped with a continuous opacity monitor COM or bag leak detection system (BLDS). If the owner or operator chooses to install a COM in lieu of conducting the daily visual emissions testing required under paragraph (e) of this section, then the COM must be installed at the outlet of the PM control device of the raw mill or finish mill, and the COM must be installed, maintained, calibrated, and operated as required by the general provisions in subpart A of this part and according to PS–1 of appendix B to part 60 of this chapter. To remain in compliance, the opacity must be maintained such that the 6-minute average opacity for any 6-minute block period does not exceed 10 percent. If the average opacity for any 6-minute block period exceeds 10 percent, this shall constitute a violation of the standard. If the owner or operator chooses to install a BLDS in lieu of conducting the daily visual emissions testing required under paragraph (e) of this section, the requirements in paragraphs (m)(1) through (9) of this section apply to each BLDS:

(1) The BLDS must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less. "Certify" shall mean that the instrument manufacturer has tested the instrument on gas streams having a range of particle size distributions and confirmed by means of valid filterable PM tests that the minimum detectable concentration limit is at or below 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The sensor on the BLDS must provide output of relative PM emissions.

(3) The BLDS must have an alarm that will activate automatically when it detects a significant increase in relative PM emissions greater than a preset level.

(4) The presence of an alarm condition should be clearly apparent to facility operating personnel.

(5) For a positive-pressure fabric filter, each compartment or cell must have a bag leak detector. For a negative-pressure or induced-air fabric filter, the bag leak detector must be installed downstream of the fabric filter. If multiple bag leak detectors are required (for either type of fabric filter), detectors may share the system instrumentation and alarm.

(6) All BLDS must be installed, operated, adjusted, and maintained so that they are based on the manufacturer's written specifications and recommendations. The EPA recommends that where appropriate, the standard operating procedures manual for each bag leak detection system include concepts from EPA's "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997).

(7) The baseline output of the system must be established as follows:

(i) Adjust the range and the averaging period of the device; and

(ii) Establish the alarm set points and the alarm delay time.

(8) After initial adjustment, the range, averaging period, alarm set points, or alarm delay time may not be adjusted except as specified in the operations and maintenance plan required by paragraph (a) of this section. In no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a 1 calendar year period unless a responsible official as defined in § 63.2 certifies in writing to the Administrator that the fabric filter has been inspected and found to be in good operating condition.

(9) The owner or operator must maintain and operate the fabric filter such that the bag leak detector alarm is not activated and alarm condition does not exist for more than 5 percent of the total operating time in a 6-month block period. Each time the alarm activates, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter demonstrates that no corrective actions are necessary, no alarm time will be counted. The owner or operator must continuously record the output from the BLDS during periods of normal operation. Normal operation does not include periods when the BLDS is being maintained or during startup, shutdown or malfunction.

* * * * *

TABLE 1 TO § 63.1350.—MONITORING REQUIREMENTS

Affected source/pollutant or opacity	Monitor type/operation/process	Monitoring requirements
All affected sources	Operations and maintenance plan .	Prepare written plan for all affected sources and control devices.
All kilns and in-line kiln raw mills at major sources (including alkali bypass)/opacity .	Continuous opacity monitor, if applicable .	Install, calibrate, maintain and operate in accordance with general provisions and with PS–1.
	Method 9 opacity test, if applicable .	Daily test of at least 30-minutes, while kiln is at representative performance conditions.
Kilns and in-line raw mills at major sources (including alkali bypass)/particulate matter .	Particulate matter continuous monitoring systems .	Deferred
Kilns and in-line kiln raw mills at major and area sources (including alkali bypass)/D/F .	Combustion system inspection .	Conduct annual inspection of components of combustion system.
	Continuous temperature monitoring at PMCD inlet .	Install, operate, calibrate and maintain continuous temperature monitoring and recording system; calculate three-hour rolling averages; verify temperature sensor calibration at least quarterly.

TABLE 1 TO § 63.1350.—MONITORING REQUIREMENTS—Continued

Affected source/pollutant or opacity	Monitor type/operation/process	Monitoring requirements
	Activated carbon injection rate monitor, if applicable .	Install, operate, calibrate and maintain continuous activated carbon injection rate monitor; calculate three-hour rolling averages; verify calibration at least quarterly; install, operate, calibrate and maintain carrier gas flow rate monitor or carrier gas pressure drop monitor; calculate three-hour rolling averages; document carbon specifications.
New greenfield kilns and inline kiln raw mills at major and area sources/THC .	Total hydrocarbon continuous emission monitor .	Install, operate, and maintain THC CEM in accordance with PS–8A; calculate 30-day block average THC concentration.
Clinker coolers at major sources/opacity	Continuous opacity monitor, if applicable .	Install, calibrate, maintain and operate in accordance with general provisions and with PS–1.
	Method 9 opacity test, if applicable .	Daily test of at least applicable 30-minutes, while kiln is at representative performance conditions.
Raw mills and finish mills at major sources/opacity	Method 22 visible emissions test .	Conduct daily 6-minute Method 22 visible emissions test while mill is operating at representative performance conditions; if visible emissions are observed, initiate corrective action within one hour and conduct follow up Method 22 test. If visible emissions are observed, conduct 30-minute Method 9 test.
New greenfield raw material dryers at major and area sources/THC .	Total hydrocarbon continuous emission monitor .	Install, operate, and maintain THC CEM in accordance with PS–8A; calculate 30-day block average THC concentration.
Raw material dryers; raw material, clinker, finished product storage bins; conveying system transfer points, excluding totally enclosed conveying system transfer points; bagging systems; and bulk loading and unloading systems at major sources/opacity .	Method 22 visible emissions test .	As specified in operation and maintenance plan.

7. Section 63.1351 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.1351 Compliance dates.

(a) The compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is June 14, 2002.

(b) The compliance date for an owner or operator of an affected source subject to the provisions of this subpart that commences new construction or reconstruction after March 24, 1998 is June 14, 1999 or upon startup of operations, whichever is later.

* * * * *

8. Section 63.1356 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 63.1356 Exemption from new source performance standards.

(a) Except as provided in paragraphs (a)(1) and (2) of this section, any affected source subject to the provisions of this subpart is exempt from any otherwise applicable new source performance standard contained in subpart F or subpart OOO of part 60 of this chapter.

* * * * *

(b) The requirements of subpart Y of part 60 of this chapter, "Standards of Performance for Coal Preparation Plants," do not apply to conveying system transfer points used to convey coal from the mill to the kiln that are associated with coal preparation at a portland cement plant that is a major source under this subpart.

9. Section 63.1357 is amended by revising paragraph (e) to read as follows:

§ 63.1357 Temporary, conditioned exemption from particulate matter and opacity standards.

* * * * *

(e) The PM and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for the purposes of conducting tests to correlate PM CEMS with manual method test results, including all runs and conditions, except as described in this paragraph. Where additional time is required to correlate a PM CEMS device, a source may petition the Administrator for an extension of the 96-hour aggregate waiver of compliance with the PM and opacity standards. An extension of the 96-hour aggregate waiver is renewable at the discretion of the Administrator.

* * * * *

10. Table 1 to subpart LLL of part 63 is revised to read as follows:

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS

Citation	Requirement	Applies to Subpart LLL	Explanation
63.1(a)(1)–(4)	Applicability	Yes .	
63.1(a)(5)		No	[Reserved]
63.1(a)(6)–(8)	Applicability	Yes .	
63.1(a)(9)		No	[Reserved]
63.1(a)(10)–(14)	Applicability	Yes .	
63.1(b)(1)	Initial Applicability Determination	No	§ 63.1340 specifies applicability.
63.1(b)(2)–(3)	Initial Applicability Determination	Yes .	

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Requirement	Applies to Subpart LLL	Explaination
63.1(c)(1)	Applicability After Standard Established .	Yes .	
63.1(c)(2)	Permit Requirements	Yes	Area sources must obtain Title V permits.
63.1(c)(3)		No	[Reserved]
63.1(c)(4)–(5)	Extensions, Notifications	Yes .	
63.1(d)		No	[Reserved]
63.1(e)	Applicability of Permit Program	Yes .	
63.2	Definitions	Yes	Additional definitions in § 63.1341.
63.3(a)–(c)	Units and Abbreviations	Yes .	
63.4(a)(1)–(3)	Prohibited Activities	Yes .	
63.4(a)(4)		No	[Reserved]
63.4(a)(5)	Compliance date	Yes .	
63.4(b)–(c)	Circumvention, Severability	Yes .	
63.5(a)(1)–(2)	Construction/Reconstruction	Yes .	
63.5(b)(1)	Compliance Dates	Yes .	
63.5(b)(2)		No	[Reserved]
63.5(b)(3)–(6)	Construction Approval, Applicability	Yes .	
63.5(c)		No	[Reserved]
63.5(d)(1)–(4)	Approval of Construction/Reconstruction .	Yes .	
63.5(e)	Approval of Construction/Reconstruction .	Yes .	
63.5(f)(1)–(2)	Approval of Construction/Reconstruction .	Yes .	
63.6(a)	Compliance for Standards and Maintenance .	Yes .	
63.6(b)(1)–(5)	Compliance Dates	Yes .	
63.6(b)(6)		No	[Reserved]
63.6(b)(7)	Compliance Dates	Yes .	
63.6(c)(1)–(2)	Compliance Dates	Yes .	
63.6(c)(3)–(4)		No	[Reserved]
63.6(c)(5)	Compliance Dates	Yes .	
63.6(d)		No	[Reserved]
63.6(e)(1)–(2)	Operation & Maintenance	Yes .	
63.6(e)(3)	Startup, Shutdown Malfunction Plan	Yes .	
63.6(f)(1)–(3)	Compliance with Emission Standards	Yes .	
63.6(g)(1)–(3)	Alternative Standard	Yes .	
63.6(h)(1)–(2)	Opacity/VE Standards	Yes .	
63.6(h)(3)		No	[Reserved]
63.6(h)(4)–(h)(5)(i)	Opacity/VE Standards	Yes .	
63.6(h)(5)(ii)–(iv)	Opacity/VE Standards	No	Test duration specified in subpart LLL.
63.6(h)(6)	Opacity/VE Standards	Yes .	
63.6(h)(7)	Opacity/VE Standards	Yes .	
63.6(i)(1)–(14)	Extension of Compliance	Yes .	
63.6(i)(15)		No	[Reserved]
63.6(i)(16)	Extension of Compliance	Yes .	
63.6(j)	Exemption from Compliance	Yes .	
63.7(a)(1)–(3)	Performance Testing Requirements	Yes	§ 63.1349 has specific requirements.
63.7(b)	Notification	Yes .	
63.7(c)	Quality Assurance/Test Plan	Yes .	
63.7(d)	Testing Facilities	Yes .	
63.7(e)(1)–(4)	Conduct of Tests	Yes .	
63.7(f)	Alternative Test Method	Yes .	
63.7(g)	Data Analysis	Yes .	
63.7(h)	Waiver of Tests	Yes .	
63.8(a)(1)	Monitoring Requirements	Yes .	
63.8(a)(2)	Monitoring	No	§ 63.1350 includes CEMS requirements.
63.8(a)(3)		No	[Reserved]
63.8(a)(4)	Monitoring	No	Flares not applicable.
63.8(b)(1)–(3)	Conduct of Monitoring	Yes .	
63.8(c)(1)–(8)	CMS Operation/Maintenance	Yes	Performance specification supersedes requirements for THC CEMS Temperature and activated carbon injection monitoring data reduction requirements given in subpart LLL.
63.8(d)	Quality Control	Yes .	
63.8(e)	Performance Evaluation for CMS	Yes	Performance specification supersedes requirements for THC CEMS.
63.8(f)(1)–(5)	Alternative Monitoring Method	Yes	Additional requirements in § 63.1350(l).

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Requirement	Applies to Subpart LLL	Explanation
63.8(f)(6)	Alternative to RATA Test	Yes .	
63.8(g)	Data Reduction	Yes .	
63.9(a)	Notification Requirements	Yes .	
63.9(b)(1)–(5)	Initial Notifications	Yes .	
63.9(c)	Request for Compliance Extension	Yes .	
63.9(d)	New Source Notification for Special Compliance Requirements .	Yes .	
63.9(e)	Notification of Performance Test	Yes .	
63.9(f)	Notification of VE/Opacity Test	Yes	Notification not required for VE/opacity test under § 63.1350(e) and (j).
63.9(g)	Additional CMS Notifications	Yes .	
63.9(h)(1)–(3)	Notification of Compliance Status	Yes .	
63.9(h)(4)		No	[Reserved]
63.9(h)(5)–(6)	Notification of Compliance Status	Yes .	
63.9(i)	Adjustment of Deadlines	Yes .	
63.9(j)	Change in Previous Information	Yes .	
63.10(a)	Recordkeeping/Reporting	Yes .	
63.10(b)	General Requirements	Yes .	
63.10(c)(1)	Additional CMS Recordkeeping	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(c)(2)–(4)		No	[Reserved]
63.10(c)(5)–(8)	Additional CMS Recordkeeping	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(c)(9)		No	[Reserved]
63.10(c)(10)–(15)	Additional CMS Recordkeeping	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(d)(1)	General Reporting Requirements	Yes .	
63.10(d)(2)	Performance Test Results	Yes .	
63.10(d)(3)	Opacity or VE Observations	Yes .	
63.10(d)(4)	Progress Reports	Yes .	
63.10(d)(5)	Startup, Shutdown, Malfunction Reports .	Yes .	
63.10(e)(1)–(2)	Additional CMS Reports	Yes .	
63.10(e)(3)	Excess Emissions and CMS Performance Reports .	Yes	Exceedances are defined in subpart LLL.
63.10(f)	Waiver for Recordkeeping/Reporting	Yes .	
63.11(a)–(b)	Control Device Requirements	No	Flares not applicable.
63.12(a)–(c)	State Authority and Delegations	Yes .	
63.13(a)–(c)	State/Regional Addresses	Yes .	
63.14(a)–(b)	Incorporation by Reference	Yes .	
63.15(a)–(b)	Availability of Information	Yes .	

[FR Doc. 02–8161 Filed 4–4–02; 8:45 am]
BILLING CODE 6560–50–P



Federal Register

Thursday,
April 11, 2002

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7163–3]

RIN 2060–AH89

National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and notice of revisions to list of categories of major and area sources and to the promulgation schedule for standards.

SUMMARY: This action adds wet-formed fiberglass mat production to the list of categories of major sources of hazardous air pollutants (HAP) published under section 112(c) of the Clean Air Act (CAA) and to the source category schedule for national emission standards for hazardous air pollutants (NESHAP).

This action promulgates the NESHAP for new and existing sources at wet-formed fiberglass mat production facilities. The primary organic HAP emitted by these facilities are formaldehyde, methanol, and vinyl acetate. Exposure to these HAP can cause reversible or irreversible adverse health effects including carcinogenic, respiratory, nervous system, developmental, reproductive, and/or dermal health effects. These NESHAP will reduce nationwide emissions of HAP from the drying and curing ovens at these facilities by 199 megagrams per year (Mg/yr) (219 tons per year or tons/yr), an approximate 74 percent reduction from the current level of emissions.

These NESHAP are based on the Administrator's determination that wet-formed fiberglass mat production facilities emit several of the 188 HAP listed in the CAA from the various process operations found within the industry, and that these facilities can be major sources of HAP. These NESHAP will protect the public by requiring all wet-formed fiberglass mat production facilities that are major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT).

EFFECTIVE DATE: April 11, 2002. The incorporation by reference of certain publications listed in the subpart is approved by the Director of the Federal Register as of April 11, 2002.

ADDRESSES: *Docket.* Docket No. A–97–54 contains the information considered by EPA in developing this rule. This docket is located at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Room M–1500, Waterside Mall, Washington, DC 20460 and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning the final rule, contact Mr. Juan Santiago, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1084, e-mail address: *santiago.juan@epa.gov.* For information regarding Method 316 or Method 318, contact Ms. Rima N. Howell; Emissions, Monitoring, and Analysis Division (MD–19); U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443, e-mail address: *howell.rima@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. 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 this notice will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page 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.

Regulated Entities. Entities potentially regulated by this action are those industrial facilities that manufacture wet-formed fiberglass mat. Wet-formed fiberglass mat production is classified under Standard Industrial Classification (SIC) code 3229325; the NAICS code is 327212, Non-woven Fabric Mills. Regulated categories and entities are shown in table 1. This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by the final rule. This table lists the types of entities that EPA is now aware could potentially be regulated by the final rule. To determine whether your facility would be regulated by the final rule, carefully examine the applicability criteria in § 63.2981 of the final rule. If there are any questions regarding the applicability of this action to a particular entity, consult Mr. Juan Santiago (See **FOR FURTHER INFORMATION CONTACT**).

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	SIC/NAICS	Description
Industrial	3229325/327212	Wet-formed fiberglass mat production facilities.

Judicial Review. These NESHAP for wet-formed fiberglass mat production facilities were proposed on May 26, 2000 (65 FR 34278). This action announces EPA's final decisions on the rule. Under section 307(b)(1) of the CAA, judicial review of the NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of April 11, 2002. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Organization of this Document. The information in this preamble is organized as follows:

I. Background

A. Regulatory Background and Addition to Source Category List
B. What is the source of authority for development of NESHAP?
C. What are the health effects of pollutants emitted from this source category?
D. Stakeholder and Public Participation
II. What are the requirements of these NESHAP?
A. Do these NESHAP apply to me?
B. What emission limits must I meet?
C. What operating limits must I meet?
D. What are the performance test and initial compliance provisions of these NESHAP?
E. What monitoring requirements must I meet?
F. What are the notification, recordkeeping, and reporting requirements of these NESHAP?
III. What are the impacts of these NESHAP?
A. What are the air emission impacts?
B. What are the water and solid waste impacts?
C. Are there any additional environmental and health impacts?
D. What are the energy impacts?
E. What are the cost impacts?
F. What are the economic impacts?
IV. Summary of Changes Since Proposal
A. Operating Limits
B. Performance Test and Initial Compliance Provisions
C. Monitoring Requirements
D. Definitions
V. Summary of Responses to Major Comments
VI. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13132—Federalism
C. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act
J. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Background

A. Regulatory Background and Addition to Source Category List

Section 112(c) of the CAA directs us to list each category of major and area sources, as appropriate, that emits one or more of the 188 HAP listed in section 112(b) of the CAA. The term "major source" is defined in section 112(a)(1) to mean:

* * * any stationary source or group of stationary sources located within a contiguous area under common control that emits or has the potential to emit, considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants * * *.

We published an initial list of source categories on July 16, 1992 (57 FR 31576). Included on the initial source category list were major sources of HAP emissions from the asphalt roofing and processing industry.

As stated in the preamble to the proposed rule (65 FR 34279; May 26, 2000), during development of the asphalt roofing and processing NESHAP, industry representatives informed us of the existence of the wet-formed fiberglass mat production industry and its relationship to the asphalt roofing production industry. We proposed separate NESHAP for wet-formed fiberglass mat production because the production processes and pollutant emissions differ from those in the asphalt roofing industry. In addition, wet-formed fiberglass mat is produced at both stand-alone facilities and those collocated with asphalt roofing and processing facilities. The CAA provides that we may amend the source category list anytime. Consequently, we proposed adding wet-formed fiberglass mat production to the source category list under section 112(c) of the CAA.

Wet-formed fiberglass mat is the substrate for several asphalt roofing products. In wet-formed fiberglass mat production, glass fibers are bonded with an organic resin. The mat is formed as the resin is dried and cured in heated ovens. The majority of HAP emissions associated with wet-formed fiberglass mat production are emitted from the drying and curing oven exhaust. Based on HAP emission data obtained during the development of the rule, we have determined that all wet-formed fiberglass mat production facilities are major sources of HAP. Nine of the 14 facilities (10 of the 15 production lines) control the drying and curing oven exhaust emissions. Several of the five remaining facilities that do not control the drying and curing oven exhaust are also major sources of HAP.

We received no public comments that were opposed to adding wet-formed fiberglass mat facilities to the source category list. Therefore, today's action adds wet-formed fiberglass mat production to the list of source categories under section 112(c) of the CAA for which MACT standards are to be developed. Section 112(c)(5) requires that final standards for this source category be promulgated no later than May 26, 2002 (2 years after adding the source category to the list). Today's action satisfies that requirement.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to promulgate standards for the control of HAP emissions from each source category listed under section 112(c). The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT. The MACT standards can be based on the emission reductions achievable through application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section 112(h) of the CAA; or (5) a combination of the above (see section 112(d)(2) of the CAA).

For new sources, MACT standards cannot be less stringent than the emission control achieved in practice by the best-controlled similar source (see section 112(d)(3) of the CAA). The MACT standards for existing sources can be less stringent than standards for new sources. However, they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best-performing five sources for categories or subcategories with fewer than 30 sources.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, MACT standards are designed to ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better-controlled and lower-emitting sources in each category or subcategory. This approach provides assurance to the public that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this

approach provides a level economic playing field, ensuring that facilities that employ cleaner processes and good emission controls are not disadvantaged relative to competitors with poorer controls.

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects of Pollutants Emitted From This Source Category?

The CAA was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (see section 101(b) of the CAA). These NESHAP will protect public health by reducing emissions of HAP from wet-formed fiberglass mat production facilities.

Emission data collected during development of the NESHAP show that formaldehyde, vinyl acetate, and methanol are emitted from wet-formed fiberglass mat production facilities. The emission limits in these NESHAP will reduce emissions of these pollutants emitted from drying and curing ovens. As a result of controlling these HAP, the final NESHAP will also reduce emissions of volatile organic compounds (VOC). A summary of the potential health effects caused by exposure to these pollutants is presented in the preamble to the proposed rule (65 FR 34280; May 26, 2000).

D. Stakeholder and Public Participation

Various stakeholders were involved in the development of these standards. Individual wet-formed fiberglass mat production facilities and the Technical Association of the Pulp and Paper Industry (TAPPI) were consulted throughout the development of these standards. Representatives from State and Regional enforcement agencies, as well as representatives from other offices within EPA, participated in the regulatory development process by reviewing and commenting on the standards during development.

The NESHAP for wet-formed fiberglass mat production (40 CFR part 63, subpart HHHH) was proposed in the **Federal Register** on May 26, 2000 (65 FR 34278). The public comment period ended on July 25, 2000. Industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed NESHAP and to provide additional information during the public comment period. Although the Agency offered the opportunity at proposal for oral presentation of data, views, or arguments concerning the proposed rule, no one requested a hearing and, therefore, a hearing was not held. The EPA received five letters containing comments on the proposed NESHAP from various groups including a State university and two trade associations representing industry. These final NESHAP reflect EPA's full consideration of the comments. The major public comments, along with EPA's responses to these comments on the proposed rule, are summarized in this preamble. A discussion of all public comments and EPA's responses is contained in the docket.

II. What Are the Requirements of These NESHAP?

A. Do These NESHAP Apply to Me?

These NESHAP apply to you if you own or operate an existing or newly constructed or reconstructed drying and curing oven located at a wet-formed fiberglass mat production facility that is a major source of HAP or that is collocated with a major source of HAP emissions. A major source means any source that has the potential to emit 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP.

You would not be subject to the NESHAP if your facility is determined to be an area source. An area source of HAP is any facility that is not a major source as defined in 40 CFR part 63, subpart A.

B. What Emission Limits Must I Meet?

These NESHAP regulate emissions of formaldehyde as a surrogate for total HAP emissions. Control of formaldehyde by thermal oxidation will also result in control of vinyl acetate and methanol. You must meet either a mass HAP emission limit or percentage reduction requirement for each drying and curing oven. The HAP emission limits are the same for new and existing drying and curing ovens. The HAP emission limits for the exhaust from new and existing drying and curing ovens are a maximum formaldehyde emission rate of 0.03 kilograms per megagram (kg/Mg) of wet-formed fiberglass mat produced (0.05 pounds per ton (lb/ton) of wet-formed fiberglass mat produced) or a minimum of 96 percent destruction efficiency of formaldehyde (as shown in Table 2). You can choose to comply with either the emission rate limit or the percent reduction requirement. If you use a thermal oxidizer or other control device to achieve the mass emission limit or percentage reduction requirement, you must collect and convey the emissions from each drying and curing oven to the control device according to the procedures specified in chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice." Section 63.3003 of the rule explains how to obtain a copy of this reference.

TABLE 2.—SUMMARY OF EMISSION LIMITS FOR NEW AND EXISTING DRYING AND CURING OVENS AT WET-FORMED FIBERGLASS MAT MANUFACTURING PLANTS

Process	Emission limit
Each existing and new drying and curing oven.	0.03 kg of formaldehyde per Mg of fiberglass mat (0.05 lb of formaldehyde per ton of fiberglass mat) or 96 percent reduction of formaldehyde.

C. What Operating Limits Must I Meet?

In addition to the emission limits, the final NESHAP contain specific operating limits, summarized in Table 3. The operating limits require you to maintain certain process or control device parameters within the levels established during the initial performance test. All operating limits must reflect operation of the process and control device during a performance test that demonstrates achievement of the emission limit during operating conditions that would achieve the highest potential emission rate.

TABLE 3.—SUMMARY OF OPERATING LIMITS FOR NEW AND EXISTING AFFECTED SOURCES

Affected source	Parameter, operation, or process to monitor	Operating limits
Each affected drying and curing oven (regardless of control technology).	Resin free-formaldehyde content, and	Use a resin with a free-formaldehyde content no greater than that of the resin used during the performance test, as determined by the resin purchase specification or test method.
	Application rate of urea-formaldehyde resin solids, and	Do not exceed the urea-formaldehyde resin solids application rate achieved during the performance test.
	Corrective action	Initiate corrective action within 1 hour of an established operating parameter deviation and complete and document action per operation, maintenance and monitoring plan.
Each affected drying and curing oven controlled by a thermal oxidizer.	Thermal oxidizer operating temperature, and	Maintain the average temperature for each 3-hour period at or above the average operating temperature achieved during the performance test.
	Thermal oxidizer operation	Operate the thermal oxidizer in accordance with the operation, maintenance, and monitoring plan; annually inspect the thermal oxidizer for structural and design integrity.
Each affected drying and curing oven controlled by process modifications or a control device other than a thermal oxidizer.	Process or control device parameters.	Maintain the process or control device parameter within the ranges established during the performance test.

You must also prepare an operation, maintenance, and monitoring (OMM) plan. The OMM plan must specify the parameters that must be monitored, how they will be monitored, the operating limits, and the corrective actions that must be followed whenever a monitored parameter deviates from the operating limits. The OMM plan shall be incorporated by reference into your title V permit.

Following the performance test, whenever you detect that a monitored parameter deviates from the established operating limits, you must initiate the corrective actions specified in the OMM plan within 1 hour. You must complete the corrective actions in an expeditious manner and implement them as specified in your OMM plan.

If you use a thermal oxidizer to achieve compliance with the emission limits, you must operate the thermal oxidizer so that the average operating temperature in any 3-hour block period does not fall below the average temperature established during the performance test. Additionally, an annual inspection of the thermal oxidizer is required to ensure that the structural and design integrity of the combustion chamber is maintained in the same condition as during the performance test. If you use process modifications or an add-on control device other than a thermal oxidizer to achieve compliance with the emission standards, you must maintain the process or control device parameter(s) within the operating limits that you established during the performance test. In addition, you must receive EPA Administrator approval for the alternative monitoring. You must also include the alternative monitoring and alternative operating limits in your OMM plan, which is incorporated by reference into your title V permit.

The operating limits also require you to maintain the free-formaldehyde content of the resin and the urea-formaldehyde resin solids application rate within the levels you established during a compliance test and as specified in your OMM plan. These operating limits apply regardless of which type of control you use to comply with the HAP emission limits.

D. What Are the Performance Test and Initial Compliance Provisions of These NESHAP?

You must conduct a performance test to demonstrate initial compliance with the emission limits. The performance test must be performed initially and every 5 years following the initial performance test. A performance test is also required to change the value or range of an operating limit. Under the final NESHAP, you must conduct the performance test while operating at the maximum urea-formaldehyde resin solids application rate and using the resin with the highest free-formaldehyde content. You must measure formaldehyde emissions as the average of three test runs using EPA Method 316 in appendix A of 40 CFR part 63, "Sampling and Analysis for Formaldehyde from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries" or EPA Method 318 in appendix A of 40 CFR part 63, "Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries." You must demonstrate compliance with either the mass emission limit or the percentage reduction requirement using the instructions and equations contained in the performance test requirements section of these final NESHAP.

If you use a thermal oxidizer to comply with these NESHAP, you must conduct a performance evaluation for the thermal oxidizer temperature monitoring device prior to the initial performance test to determine compliance. The evaluation must be conducted according to the procedures in 40 CFR 63.8(e) of the NESHAP general provisions. The temperature monitoring device must meet the following performance and equipment specifications: (1) The temperature monitoring device must be installed either at the exit of the combustion zone of each thermal oxidizer or at the location specified by the manufacturer, and the device must be installed in a location before any heat recovery or heat exchange equipment; (2) the recorder response range must include zero and 1.5 times the average temperature; and (3) the reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference, subject to the approval of the Administrator.

During the performance tests, you must continuously monitor the thermal oxidizer operating temperature and record the average temperature in 15-minute blocks during each 1-hour test run. After completion of the three required test runs, you must determine the 3-hour average operating temperature of the thermal oxidizer. If you use process modifications or an add-on control device other than a thermal oxidizer to comply with the emission limits, you must determine the

appropriate control device or process parameters to monitor to indicate whether compliance is being achieved. You must include the process or control device parameters, monitoring frequency, and the averaging periods in your site-specific test plan required by the 40 CFR part 63 general provisions prior to conducting your initial performance test. You may perform multiple tests to establish the least restrictive value or operating range for the selected parameters that still demonstrate compliance.

During the performance tests, you must also determine and record the average hourly urea-formaldehyde resin solids application rate during each of the three test runs and the free-formaldehyde content of the resin used to produce the mat.

The final NESHAP allow facilities subject to the NESHAP to conduct short-term experimental production runs, where the resin free-formaldehyde content or urea-formaldehyde resin solids application rate deviate from the levels established during previous performance tests, without conducting additional performance tests. You must apply for approval from the Administrator or delegated State agency to conduct such experimental production runs. The application must be made at least 30 days prior to conducting the run. The application would include information on the nature and duration of the test runs including plans to perform emissions testing. If you conduct such experimental production runs without first receiving approval from the Administrator or delegated State agency, then you must conduct a performance test under those same experimental run conditions to show that you were in compliance with the formaldehyde emission limit or percent reduction.

E. What Monitoring Requirements Must I Meet?

Continuous compliance is demonstrated after the initial performance test and between subsequent performance tests by monitoring operating parameters of emission control devices and processes. The allowable monitoring parameter values or ranges are determined during your initial performance test and must be included in your OMM plan.

If you use a thermal oxidizer to achieve compliance with the emission limits, you must: (1) Install, operate, calibrate, and maintain a device that continuously measures the operating temperature of each thermal oxidizer; and (2) determine and record the temperature in 15-minute and 3-hour block averages. This is typically done using a thermocouple (a standard feature on most thermal oxidizers) and a data logger.

If process modifications or a control device other than a thermal oxidizer is used to achieve compliance with the emission limits, you must monitor the parameters that were established during the performance test and included in your OMM plan.

You are also required to record the urea-formaldehyde-to-latex ratio in the binder, measure the loss-on-ignition value using the method in Appendix B to 40 CFR part 63, subpart HHHH, measure the weight per square of the wet-formed fiberglass mat produced and the hourly mat production rate, and calculate the urea-formaldehyde resin solids content of the product manufactured. The values of these parameters are determined in order to calculate the hourly average urea-formaldehyde resin solids application rate. You must also determine the free-formaldehyde content of the urea-formaldehyde resins using either the method in Appendix A to 40 CFR part 63, subpart HHHH, or the material supplier's documentation. Because these process parameters affect the amount of HAP emitted from the drying and curing oven, you must monitor them to ensure that operation of the production process is consistent with the conditions of the performance test, and that the production process does not vary in such a way as to increase HAP emissions from the drying and curing oven exhaust.

The final NESHAP contain provisions that allow you to change the thermal oxidizer operating temperature, operating parameters for add-on control devices other than thermal oxidizers, and process operating parameter values from those established using the initial and 5-year performance tests. These provisions allow you to make process changes or to demonstrate that different monitoring parameter values would more appropriately demonstrate compliance with the final emission limits. You may revise the monitoring or process parameter values by conducting additional performance tests to verify compliance at the revised operating levels. For example, if you intend to use a urea-formaldehyde resin with a higher free-formaldehyde content or operate at a higher urea-formaldehyde resin solids application rate, you must perform additional performance tests to verify compliance under conditions of the increased operating or process parameters. You must notify the Administrator in writing of your intention to conduct these additional performance tests and follow the procedures in 40 CFR 63.7.

F. What Are the Notification, Recordkeeping, and Reporting Requirements of These NESHAP?

All notification, recordkeeping, and reporting requirements in the 40 CFR part 63 general provisions, as well as additional requirements, apply to wet-formed fiberglass mat manufacturing facilities. The notification and reporting requirements include, but are not limited to: (1) Initial notification of applicability of the rule, notification of the dates for conducting the performance test, and notification of compliance status including the measured range of each monitored parameter and the operating limits established during the performance test; (2) a report of performance test results; (3) periodic reports of any startup, shutdown, and malfunction events that occur; and (4) semiannual reports of deviations and continuous monitoring system performance. A deviation is any instance when any requirement or obligation established by the rule including, but not limited to, the emission limits and operating limits, is not met. If no deviations occur during a semiannual reporting period, you must submit a semiannual report stating that the affected source has been in continuous compliance during that period. If deviations from established monitoring parameters occur, the frequency of submitting the semiannual reports becomes quarterly until a request to return to semiannual reporting is approved by the Administrator. You cannot submit the request to reduce the frequency of the reporting period until the affected source's reports of deviations and continuous monitoring system performance remain continually within the established parameter ranges for 1 full year.

When using a thermal oxidizer or other control device to reduce HAP emissions, you will have to make your startup, shutdown, and malfunction plan available for inspection if the Administrator requests to see it, but you do not have to submit it to the Administrator for approval. You must keep the plan for the life of the affected source or until the source is no longer subject to the rule. If you revise the plan, you must keep the previous superseded versions on record for 5 years following the revision.

You must maintain records of the following, as applicable: (1) All results of performance tests; (2) thermal oxidizer operating temperature; (3) process parameters for drying and

curing ovens that comply with the emission limits using process modifications or an add-on control device other than a thermal oxidizer; (4) free-formaldehyde content of the resin; (5) urea-formaldehyde-to-latex ratio; (6) loss-on-ignition value of the wet-formed fiberglass mat produced; (7) urea-formaldehyde resin solids content per ton of the wet-formed fiberglass mat produced; (8) weight of the mat per roofing square; (9) average hourly wet-formed fiberglass mat production rate; (10) for operating parameter deviations, the date, time, and duration of each deviation, the date and time corrective actions were initiated and completed, a brief description of the cause of the deviation, and a description of the corrective actions taken to return the parameter to the limit or within the range established in the OMM plan and during the most recent performance test; (11) the OMM plan; (12) the occurrence and duration of each startup, shutdown, or malfunction of the control device; (13) actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan; (14) maintenance and inspections performed on control devices; and (15) any other information required to be recorded by the general provisions.

The NESHAP general provisions require that records be maintained for at least 5 years from the date of each record. You must retain the records onsite for at least 2 years but you may retain the records offsite for the remaining 3 years. The records must be readily available and in a form suitable for efficient inspection and review. The files may be retained on paper, microfilm, microfiche, a computer, computer disks, or magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

III. What Are the Impacts of These NESHAP?

A. What Are the Air Emission Impacts?

At the current level of control, nationwide emissions of HAP from the 14 facilities in the industry are estimated to be approximately 268 Mg/yr (295 tons/yr). Under the final NESHAP, it is expected that thermal oxidizers will be added to the five uncontrolled drying and curing ovens, and that existing thermal oxidizers will be replaced with new units for three out of the ten controlled drying and curing ovens. This would result in an estimated reduction in nationwide HAP emissions of 199 Mg/yr (219 tons/yr).

Formaldehyde emissions from wet-formed fiberglass mat manufacturing lines account for about 65 percent of the baseline HAP emissions. Methanol emissions account for approximately 30 percent, with vinyl acetate comprising the remaining 5 percent of the baseline HAP emissions. (These percentages are national averages. The actual emission profiles from individual lines will vary with the type of resin and binder used.) Estimated nationwide emissions of formaldehyde from existing wet-formed fiberglass mat production lines are 174 Mg/yr (192 tons/yr) at the current level of control. Implementing the NESHAP will reduce nationwide formaldehyde emissions from existing sources by about 130 Mg/yr (143 tons/yr), and combined emissions of vinyl acetate and methanol will be reduced by 70 Mg/yr (77 tons/yr).

Secondary emissions of nitrogen oxides (NO_X) from thermal oxidizer controls are formed as a result of natural gas combustion. Total emissions of NO_X from all affected sources are estimated to increase by about 15 Mg/yr (16 tons/yr).

B. What Are the Water and Solid Waste Impacts?

Because compliance with the NESHAP is based on the use of thermal oxidizers, no water pollution or solid waste impacts would result from the NESHAP.

C. Are There Any Additional Environmental and Health Impacts?

Reducing HAP emissions will lower occupational HAP and VOC exposure levels. The operation of thermal oxidizers may increase occupational noise levels in the five facilities that currently do not control HAP emissions.

D. What Are the Energy Impacts?

Thermal oxidizers require electrical energy to operate fans. Additional electrical energy requirements are estimated to be 4,260 megawatt hours per year (MW-hr/yr). An additional 275,000 million British thermal units per year (Btu/yr) of natural gas are estimated to be required for eight additional thermal oxidizers that would be added to existing sources. The total additional energy (electricity and natural gas) required as a result of the NESHAP is 290 billion Btu/yr in the fifth year following promulgation of the NESHAP.

We do not have sufficient information to predict the number of new glass mat production lines that will be built and come on line in the 5 years after promulgation or to predict the energy needs for control devices on those new lines. However, the average energy need for the control device on a new line would be about the same as the average energy need for a control device on an existing line, or about 530 MW-hr/yr of electricity and 34,400 million Btu of natural gas.

E. What Are the Cost Impacts?

Cost impacts of the final NESHAP for drying and curing ovens were analyzed using site-specific information included in the TAPPI survey responses coupled with procedures from the "OAQPS Cost Manual." For some facilities where site-specific data necessary for estimating costs (e.g., a vent flow rate) were not available, average factors developed from industry survey data were used to estimate the missing data.

The total capital costs to achieve the final NESHAP are estimated to be $5,272,000. These capital cost impacts arise from the purchase and installation of eight thermal oxidizers—five thermal oxidizers for the five facilities without existing controls and three thermal oxidizers for three facilities that must replace existing thermal oxidizers that cannot meet the final NESHAP. The average capital cost of installing a new thermal oxidizer is estimated at $716,000 per oxidizer. The capital cost estimate to install a new thermal oxidizer to achieve compliance includes the cost of auxiliary burners, combustion chambers, primary heat exchangers, weather-tight housing and insulation, a fan, flow and temperature controls, a stack, and structural supports.

The monitoring requirements for the thermal oxidizer operating temperature are not current industry practice and are expected to impose additional costs on facilities with existing thermal oxidizers. To estimate the impact of the additional monitoring equipment (i.e., a data logging system), a cost of $7,000 ($1,000 for each of the seven facilities with an existing thermal oxidizer that is achieving the NESHAP) was included in the capital cost estimate. No additional capital costs were estimated for monitoring equipment for the new thermal oxidizers since temperature monitors and recording devices are standard equipment and are included in the cost estimates for new thermal oxidizers.

The total annualized cost of the final NESHAP for eight new thermal oxidizers is about $2,414,000. The average annual cost for a typical facility that installs a new thermal oxidizer is $302,000. The annualized cost estimate includes the cost of operation,

maintenance, supervisory labor, maintenance materials, utilities, administrative charges, taxes, insurance, and capital recovery.

F. What Are the Economic Impacts?

Fourteen facilities owned by nine different companies produce wet-formed fiberglass mat domestically. All of these facilities may potentially be affected by the NESHAP because they are major sources or are collocated with other sources (e.g., asphalt roofing plants) that together may be major sources.

The estimated nationwide annualized cost of the NESHAP is $1.595 million. This cost estimate represents approximately 0.069 percent of the 1995 sales revenues for domestically produced wet-formed fiberglass mat. Based upon this estimate, it is reasonable to assume that market price increases and production decreases resulting from the final NESHAP are likely to be very small. Thus, we conclude that the final NESHAP are not likely to have a significant economic impact on the wet-formed fiberglass mat industry as a whole or on secondary markets such as the labor market and foreign trade.

We performed a streamlined economic analysis to determine facility-specific impacts. The facility-specific impacts are examined by calculating the ratio of the estimated annualized costs of emission controls for each facility to the estimated revenues per facility (i.e., a cost-to-sales ratio) to assess the likelihood of facility closures and employment impacts. Cost-to-sales ratios refer to the change in the cost of emission controls divided by the sales revenue of wet-formed fiberglass mat, the goods produced in the process for which additional pollution control is required. This ratio can be estimated for either individual firms or as an average for some set of firms such as affected small business firms. While it has different significance for different market situations, it is a good rough gauge of potential impact. If costs for the individual (or group of) firms are completely passed onto the purchasers of the good(s) being produced, the ratio is an estimate of the price change (in percentage form after multiplying the ratio by 100). If costs are completely absorbed by the producer, this ratio is an estimate of changes in pretax profits (in percentage form after multiplying the ratio by 100). The distribution of cost-to-sales ratios across the whole market, the competitiveness of the market, and profit-to-sales ratios are among the obvious factors that may influence the significance of any particular cost-to-sales ratio for an individual facility.

For these NESHAP, a cost-to-sales ratio exceeding 1 percent was determined to be an initial indicator of the potential for a significant facility impact. Each of the 14 facilities affected by the final NESHAP has cost-to-sales ratios of less than 1 percent of sales. Therefore, the facility-specific impacts are not considered to be significant for any facility affected by the NESHAP. No facility is likely to close as a result of the final NESHAP. Facilities in the wet-formed fiberglass mat production industry are likely to increase the price charged for the product in response to market price changes, to absorb the costs with no price increase, or to respond with a combination of these alternatives. The economic impacts to consumers and producers of wet-formed fiberglass mat are anticipated to be minimal. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using wet-formed fiberglass mat. For more information, consult the economic impact report entitled "Economic Impact Analysis for the Proposed National Emission Standard for Hazardous Air Pollutants from the Production of Wet-Formed Fiberglass Mat," January 1999 (Docket A–97–54).

IV. Summary of Changes Since Proposal

We have made changes in the final NESHAP for wet-formed fiberglass mat production facilities in response to comments on the proposed rule. The principal changes made since proposal are summarized below. Additional discussion of changes and the rationale for these changes is presented in section V of this preamble.

A. Operating Limits

In § 63.2984, we have removed the operating limits for binder urea-formaldehyde (UF) content, UF resin solids content, UF resin solids per ton of product, product loss-on-ignition, and production rate. They have been replaced with an operating limit for maximum hourly urea-formaldehyde resin solids application rate, measured as the urea-formaldehyde resin solids left in the product after curing.

B. Performance Test and Initial Compliance Provisions

We revised § 63.2993 of the final rule to allow the use of either EPA Method 318, "Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries" for measuring formaldehyde concentrations, or EPA Method 316,"Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries."

C. Monitoring Requirements

In § 63.2984(a), we revised the rule to clarify that a deviation of a process or control device parameter from a level established during a performance test is a deviation from an operating limit and is separately enforceable from the emission limit in § 63.2983. We also added a definition of *Deviation* in § 63.3004 of the final rule.

In response to comments, we revised § 63.2984(d) of the final rule to delete the requirement to reference the operating limits in the 40 CFR part 70 operating permit application. Instead, you will include the operating limits in the OMM plan and reference the OMM plan in the 40 CFR part 70 operating permit application. You must also include the operating limits or ranges in the notification of compliance status and the performance test report required under § 63.3000(b) and (d), respectively.

In the final rule, we have deleted § 63.2988 and the requirement that you have your OMM plan approved by the Administrator. You must include in your 40 CFR part 70 operating permit a requirement that you develop an OMM plan and operate according to it at all times. To revise the operating limits specified in your OMM plan, you must conduct a new performance test and include the revised operating limits in the notification of compliance status and performance test results submitted to the Administrator after the test. You must also include the revised operating limits in the revised OMM plan. You may begin operating according to the revised operating limits as soon as you have completed the performance test demonstrating compliance.

We revised § 63.2994(b)(1) of the final rule to allow the gas temperature monitoring device to be installed either at the exit of the combustion zone or at the location specified by the manufacturer. However, the temperature monitoring device must be installed in a location before any heat recovery or heat exchange equipment, and it must remain in the same location for both the performance test and the continuous monitoring of the temperature.

In response to comments, we have revised the monitoring requirements in § 63.2996 so that you must monitor and record the data needed to calculate the hourly urea-formaldehyde resin solids application rate.

D. Definitions

In response to comments, we replaced the definition of *Binder formulation urea formaldehyde content* with a definition of *Urea formaldehyde content in binder formulation* for clarification purposes.

V. Summary of Responses to Major Comments

We received five comment letters on the proposed NESHAP for wet-formed fiberglass mat production. A copy of each comment letter is available for public inspection in the docket for the rulemaking.

We reviewed and carefully considered all of the comments received and made changes to the rule where appropriate. A summary of responses to major comments received on the proposed rule is presented below. Additional discussion of our responses to public comments is presented in the document "National Emission Standards for Wet-Formed Fiberglass Mat Production—Background for Promulgated Standards, Comment and Response Document" which is in the docket.

Comment: One commenter stated that basing the operating limits and monitoring requirements on resin free-formaldehyde content, binder UF content, resin UF solids content, resin UF solids content per ton of product, and product loss-on-ignition (LOI) is not practical because most manufacturers do not have a single product that has the maximum value for all these parameters. Therefore, the facility operators would need to perform several performance tests using different products with the maximum for each of these variables.

The commenter recommended that EPA specify an operating standard and monitoring requirement only for urea-formaldehyde (dry) weight per roofing square (100 square feet) of product. According to the commenter, formaldehyde is emitted as the UF binder cures and bonds the glass fibers together into a mat. The greater the amount of UF binder solids per square of mat, the greater the formaldehyde emissions per square of mat, according to the commenter.

The commenter suggested using the following equation for calculating the pounds of UF solids per square of mat:

$$\frac{\text{UF Solids}}{\text{Square of Mat}} = \text{LOI} \times \text{UFL} \times \text{MWs}$$

Where:

LOI = loss on ignition (percent);

UFL = UF-to-latex ratio in the binder (percent of UF solids in total combined solids for UF and latex);

MW = weight of the mat per square (pounds per roofing square).

Response: We agree with the commenter that the suggested monitoring parameters better predict potential emissions than those in the proposed standards and offer greater operating flexibility. We have revised the testing, monitoring, and operating limit requirements in the final rule to reflect the approach recommended by the commenter.

The final rule establishes an operating limit for UF solids hourly application rate. This operating limit is based on the equation suggested by the commenter, with the addition of a term for the glass mat production rate (squares per hour) so the hourly UF solids application rate is calculated.

You must conduct the performance test while producing a product with the greatest hourly UF solids application rate. The hourly UF solids application rate is the product of UF solids per square of mat times the hourly production rate in squares. The hourly UF solids application rate achieved during the initial performance test will become an operating limit that you cannot exceed after the test. After the compliance test, you must monitor the parameters used to calculate the hourly UF solids application rate and use Equation 3 of § 63.2995 of the final rule to ensure compliance with the operating limit for hourly UF solids application rate.

We continue to believe that the resin free-formaldehyde content is an important variable affecting emissions. Therefore, the final rule still requires an operating limit for the resin free-formaldehyde content. The operating limit established for the resin free-formaldehyde content during the initial performance test must not be exceeded after the initial performance test. Continuous compliance with the operating limit will be determined through resin purchase specifications and records. These records are the minimum data requirements necessary to verify continuous compliance with the operating limit.

Comment: One commenter asked EPA to revise the provisions of § 63.2989(a)(4) and (b) for changing an approved OMM plan. As currently written, a facility that has proposed changes to its approved plan must continue to operate according to the approved plan pending the Administrator's approval of the proposed changes. The commenter advocates that a facility be allowed to operate according to the proposed changes, pending the Administrator's approval of the revised plan, after they have demonstrated compliance with the formaldehyde emission limits. The commenter stated that the suggested change is consistent with the title V permit application shield.

Response: The EPA believes the commenter is incorrect that there is a corresponding provision for permit revisions in title V of the CAA or the permit regulations in 40 CFR part 70. The permit application shield applies only to the original permit application and renewals. The shield protects the facility from enforcement actions for operating without a permit in cases where the facility submits an application on time, but there are delays in issuing the permit. However, the permit application shield does not apply to permit revisions. A facility owner or operator submitting an application to revise their operating permit must operate under the approved permit until the revised permit is approved.

However, we have revised the provisions of § 63.2988 to delete the provisions requiring the Administrator's approval of a facility's OMM plan. We have also modified the provisions of § 63.2989(a)(1) through (4) to allow a facility to make changes to the OMM plan without the requirement for obtaining the Administrator's approval. Changes in operating limits still require another performance test to verify compliance. In addition, we have revised § 63.2984(d) of the final rule to delete the requirement to reference the operating standards and their allowable ranges or limits in the 40 CFR part 70 permit. Instead, your OMM plan must be incorporated by reference in your title V permit. These changes allow you to revise the allowable ranges or limits of the operating standards without reopening your permit or going through an approval process. We have also added paragraph (c) to § 63.2989 which provides that if you can anticipate potential changes to operating conditions or multiple operating conditions while demonstrating compliance during an initial or most recent performance test, then those anticipated operating conditions could be accounted for in the OMM plan, and the plan would not need to be revised later. The purpose of the OMM plan is to ensure compliance while at the same time allowing the owner or operator of the affected source flexibility to operate under representative conditions for the affected source.

Comment: One commenter asked EPA to revise § 63.2993 to allow the use of EPA Method 318, "Extractive Fourier Transfer Infrared Spectrometry (FTIR)

for Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries," for measuring formaldehyde concentrations.

Response: We agree with the commenter that facilities should be able to use FTIR, as specified in EPA Method 318, to measure formaldehyde concentrations. Therefore, § 63.2993 of the final rule has been revised to allow the use of either EPA Method 316, "Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries," or EPA Method 318 (FTIR) to measure formaldehyde concentrations.

Comment: The proposal preamble stated that EPA estimates that only one of the two small business companies in the glass mat industry will have to install an add-on control device at its plant (65 FR 34289). As stated in the preamble, EPA estimates that the annual control cost for this one small business would not exceed 1 percent of total sales of the company. A representative of the facility in question disagreed with EPA's estimate and stated that if this facility is required to install a thermal oxidizer, the cost-to-sales ratio would be greater than 1 percent of sales. The comment letter and included test report for this glass mat facility indicated that total HAP emissions from the wet-formed fiberglass mat production line at the plant are less than 10 tons per year.

Response: We estimated the annualized cost of a thermal oxidizer for the facility in question based on the volumetric flow rate from the drying and curing oven submitted by the facility in response to the EPA survey. We had no other site-specific information that would have resulted in a more accurate cost estimate. The survey response from the facility reported a volumetric flow rate from the glass mat line stack of 747 standard cubic feet per minute (scfm). Based on this flow rate, we estimated that the total annual cost would be 0.344 percent of annual sales for the company. However, the flow rate reported in the test report submitted with the comment letter was 2,520 scfm. We revised the estimated annual add-on control costs using this higher flow rate, but the revised annual cost is still less than the threshold (1.0 percent of sales) used as an indicator in considering whether the rule has a significant economic impact on small businesses.

Since the estimated cost as a percentage of sales is relatively minimal, it is anticipated that the final rule will not have a significant impact on this company's profitability. Nonetheless, EPA has tried to reduce the impact of this rule on small entities by providing flexibility by offering a choice of compliance and monitoring options. Compliance options include mass emission limits or percent reduction standards. Compliance with the standards can be achieved through the use of a thermal oxidizer, other control devices, or process modifications that meet the standards. Finally, if the facility in question, after considering all operations present at the source, is not a major source of HAP emissions, it would not be subject to the NESHAP and would have no compliance costs as a result of the standards.

VI. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the rule. 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 rule.

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 the 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 final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from its federalism official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because today's rule applies to affected sources in the wet-formed fiberglass mat industry, not to State or local governments. Nor will State law be preempted, or any mandates be imposed on State or local government. Thus, the requirements of section 6 of the Executive Order do not apply to today's final rule. The EPA notes, however, that although not required to do so by this Executive Order (or otherwise), EPA did consult with State and local officials during development of today's final rule.

C. 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. No known wet-formed fiberglass mat production facility is located within the jurisdiction of any tribal government. Thus, Executive Order 13175 does not apply to this rule.

D. 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 the environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

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. This rule is not subject to Executive Order 13045 because it establishes an environmental standard based on available technology rather than reduction of health risk. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, today's final rule has been determined not to be a economically significant regulatory action as defined by Executive Order 12866.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on 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, 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 the 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 this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments since it contains no requirements that apply to such governments or that impose obligations upon them. The total nationwide capital cost for the standard is estimated at $5.3 million; the annualized nationwide cost is estimated at $2.4 million. Thus, today's final rule is not subject to the requirements of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has less 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 the final rule on small entities, we have determined that only two of the nine companies producing wet-formed fiberglass mat are small businesses. One of these small businesses is not anticipated to incur emission control costs because it already has controls in place which should achieve the MACT emission levels. Therefore, only one small firm in the wet-formed fiberglass mat production industry is likely to incur emission control costs as a result of the rule. After the proposed rule was published, the company submitted information indicating that HAP emissions from the facility's glass mat line are less than 10 tons per year and, thus, it is not a major source. However, this particular glass mat line is collocated with an asphalt roofing manufacturing facility and emissions from all collocated sources, in aggregate, must be considered in determining whether a source is a major source. The company also stated in their letter that if this facility is required to install a thermal oxidizer as a result of the rule, their cost-to-sales ratio would be greater than 1 percent. As a result, EPA revised the estimated annual add-on control costs for this facility using the higher flow rate of 2,520 scfm as reported in the comment from this facility. However, the revised annual cost-to-

sales ratio is still less than the threshold (1.0 percent of sales) used as an indicator in considering whether the rule has a significant economic impact on small businesses. As a result of the increased costs of emission controls, this small entity in the affected industry will likely either increase the price of its product in response to a market change in price, will absorb the cost increase with no price increase, or will respond with a combination of these responses. Since the estimated costs as a percentage of sales are relatively minimal, it is anticipated that the rule will not have a significant impact on this company's profitability if, indeed, it is a major source and subject to the NESHAP.

Although this 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 by providing flexibility by offering a choice of compliance and monitoring options. Compliance options include mass emission limits or percent reduction standards. Compliance with the final standards can be achieved through the use of a thermal oxidizer or other control device. Pollution prevention practices, such as process modifications, are also included in the rule.

G. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1964.01), and a copy may be obtained from Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements contained in the NESHAP are necessary to determine initial and continuous compliance with the emission standards. The information requirements include the notification, recordkeeping, and reporting requirements of the NESHAP general provisions, authorized under section 114 of the CAA (42 U.S.C. 7414), which are mandatory for all owners or operators subject to national emission standards. All information submitted to EPA for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. The rule does not require any notifications or reports beyond the minimum required by the general provisions. Subpart HHHH requires additional records of information specific to the wet-formed fiberglass mat production industry which are needed to determine compliance with the rule.

The annual public reporting and recordkeeping burden for this collection is estimated at 2,983 labor hours per year at an annual cost of $98,183. This estimate includes an initial performance test and report (with repeat tests where needed); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event in which the procedures in the plan were not followed; semiannual deviation reports; notifications; the OMM plan; and recordkeeping. The annualized capital cost associated with monitoring requirements is estimated at $2,300.

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, verifying, processing, maintaining, 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 existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113, directs all Federal Agencies to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard 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.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for the EPA's emissions sampling and analysis reference methods and industry recommended materials analysis procedures cited in this rule. Candidate voluntary consensus standards for materials analysis were identified for product loss-on-ignition and free-formaldehyde content. Consensus comments provided by industry experts were that the candidate standards did not meet industry materials analysis requirements. Therefore, EPA has determined that these VCS were impractical for the wet-formed fiberglass mat production NESHAP. The EPA, in consultation with TAPPI, has formulated industry-specific materials analysis consensus standards which were proposed along with the proposed rule and are published with the final rule as appendix A and appendix B.

The EPA search to identify VCS for the EPA's emissions sampling and analysis reference methods cited in this rule identified six candidate standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that four of the candidate consensus standards identified for measuring emissions of the HAP or surrogates subject to emission limits in the rule would not be practical due to lack of equivalency, documentation, and validation data. Two of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

Section 63.2993 of subpart HHHH lists the EPA testing methods. These testing methods have been used by States and industry for more than 10 years.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, 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. Therefore, we will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2), and therefore will be effective April 11, 2002.

J. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The EPA has determined that this rule will not affect in a material way productivity, competition, or prices in the energy sector. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy. In addition, it will not raise novel legal or policy issues related to energy arising out of legal mandates, the President's priorities, or the principles set forth in Executive Orders 12866 and 13211.

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: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart HHHH to read as follows:

Subpart HHHH—National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

Sec.

What This Subpart Covers

63.2980 What is the purpose of this subpart?
63.2981 Does this subpart apply to me?
63.2982 What parts of my plant does this subpart cover?

Emission Limitations

63.2983 What emission limits must I meet?
63.2984 What operating limits must I meet?
63.2985 When do I have to comply with these standards?
63.2986 How do I comply with the standards?

Operation, Maintenance, and Monitoring Plan

63.2987 What must my operation, maintenance, and monitoring (OMM) plan include?
63.2988 [Reserved]
63.2989 How do I change my (OMM) plan?
63.2990 Can I conduct short-term experimental production runs that cause parameters to deviate from operating limits?

Testing and Initial Compliance Requirements

63.2991 When must I conduct performance tests?
63.2992 How do I conduct a performance test?
63.2993 What test methods must I use in conducting performance tests?
63.2994 How do I verify the performance of monitoring equipment?
63.2995 What equations must I use to determine compliance?

Monitoring Requirements

63.2996 What must I monitor?
63.2997 What are the requirements for monitoring devices?

Notifications, Reports, and Records

63.2998 What records must I maintain?
63.2999 In what form and for how long must I maintain records?
63.3000 What notifications and reports must I submit?

Other Requirements and Information

63.3001 What sections of the general provisions apply to me?
63.3002 Who implements and enforces this subpart?
63.3003 Incorporation by reference.
63.3004 What definitions apply to this subpart?
63.3005—63.3079 [Reserved].

Tables to Subpart HHHH of Part 63

Table 1 to Subpart HHHH—Minimum Requirements for Monitoring and Recordkeeping
Table 2 to Subpart HHHH—Applicability of General Provisions (40 CFR part 63, subpart A) to Subpart HHHH

Appendices to Subpart HHHH of Part 63

Appendix A to Subpart HHHH—Method for Determining Free-Formaldehyde in Urea-Formaldehyde Resins by Sodium Sulfite (Iced & Cooled)
Appendix B to Subpart HHHH—Method for the Determination of Loss-on-Ignition

Subpart HHHH—National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

What This Subpart Covers

§ 63.2980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for emissions from facilities that produce wet-formed fiberglass mat. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.2981 Does this subpart apply to me?

You must comply with this subpart if you meet the criteria in paragraphs (a) and (b) of this section:

(a) You own or operate a drying and curing oven at a wet-formed fiberglass mat production facility.

(b) Your drying and curing oven or the facility at which your drying and curing oven is located is a major source of hazardous air pollutants (HAP). A major source is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or can potentially emit, considering controls, in the aggregate, 9.07 megagrams (10 tons) or more per year of a single HAP or 22.68 megagrams (25 tons) or more per year of any combination of HAP.

§ 63.2982 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source. The affected source (the portion of your plant covered by this subpart) is each wet-formed fiberglass mat drying and curing oven.

(b) An affected source is a new affected source if you commenced construction of the affected source after May 26, 2000, and you meet the applicability criteria in § 63.2981 at start-up.

(c) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(d) An affected source is existing if it is not new or reconstructed.

Emission Limitations

§ 63.2983 What emission limits must I meet?

(a) You must limit the formaldehyde emissions from each drying and curing oven by either:

(1) Limiting emissions of formaldehyde to 0.03 kilograms or less per megagram (0.05 pounds per ton) of fiberglass mat produced; or

(2) Reducing uncontrolled formaldehyde emissions by 96 percent or more.

(b) [Reserved]

§ 63.2984 What operating limits must I meet?

(a) You must maintain operating parameters within established limits or ranges specified in your operation, maintenance, and monitoring (OMM) plan described in § 63.2987. If there is a deviation of any of the specified parameters from the limit or range specified in the OMM plan, you must address the deviation according to paragraph (b) of this section. You must comply with the operating limits specified in paragraphs (a)(1) through (4) of this section:

(1) You must operate the thermal oxidizer so that the average operating temperature in any 3-hour block period does not fall below the temperature established during your performance test and specified in your OMM plan.

(2) You must not use a resin with a free-formaldehyde content greater than that of the resin used during your performance test and specified in your OMM plan.

(3) You must operate the wet-formed fiberglass mat production process so that the average urea formaldehyde resin solids application rate in any 3-hour block period does not exceed the average application rate achieved during your performance test and specified in your OMM plan.

(4) If you use an add-on control device other than a thermal oxidizer or wish to monitor an alternative parameter and comply with a different operating limit, you must obtain approval for the alternative monitoring under § 63.8(f). You must include the approved alternative monitoring and operating limits in the OMM plan specified in § 63.2987.

(b) When during a period of normal operations you detect that an operating parameter deviates from the limit or range established in paragraph (a) of this section, you must initiate corrective actions within 1 hour according to the provisions of your OMM plan. During periods of start up, shut down, or malfunction you must follow your start up, shut down and malfunction plan (SSMP). The corrective action actions must be completed in an expeditious manner as specified in the OMM plan or SSMP.

(c) You must maintain and inspect control devices according to the procedures specified in the OMM plan.

(d) You must include the operating limits specified in paragraphs (a)(1) through (4) of this section and their allowable ranges or levels in your OMM plan. Your 40 CFR part 70 operating permit for the drying and curing oven must contain a requirement that you develop and operate according to an OMM plan at all times.

(e) If you use a thermal oxidizer or other control device to achieve the emission limits in § 63.2983, you must capture and convey the formaldehyde emissions from each drying and curing oven according to the procedures in chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice" (23rd Edition). This publication is incorporated by reference in § 63.3003.

§ 63.2985 When do I have to comply with these standards?

(a) Existing drying and curing ovens must be in compliance with this subpart no later than April 11, 2005.

(b) New or reconstructed drying and curing ovens must be in compliance with this subpart at startup or by April 11, 2002, whichever is later.

(c) If your facility is an area source that increases its emissions or its potential to emit such that it becomes a major source of hazardous air pollutants, the following apply:

(1) Any portion of the existing facility that is a new affected source or a new reconstructed affected source must be in compliance upon startup.

(2) All other parts of the source must be in compliance with this subpart 1 year after becoming a major source or by April 11, 2005, whichever is later.

§ 63.2986 How do I comply with the standards?

(a) You must install, maintain, and operate a thermal oxidizer or other control device or implement a process modification that reduces formaldehyde emissions from each drying and curing oven to the emission limits specified in § 63.2983.

(b) You must comply with the operating limits specified in § 63.2984. The operating limits prescribe the requirements for demonstrating continuous compliance based on the OMM plan. You must begin complying with the operating limits on the date by which you must complete the initial performance test.

(c) You must conduct a performance test according to §§ 63.2991, 63.2992, and 63.2993 to demonstrate compliance for each drying and curing oven subject to the emission limits in § 63.2983, and to establish or modify the operating limits or ranges for process or control device parameters that will be monitored to demonstrate continuous compliance.

(d) You must install, calibrate, maintain, and operate devices that monitor the parameters specified in your OMM plan at the frequency specified in the plan. All continuous parameter monitoring systems must be installed and operating no later than the applicable compliance date specified in § 63.2985.

(e) You must prepare and follow a written OMM plan as specified in § 63.2987.

(f) You must comply with the monitoring, recordkeeping, notification, and reporting requirements of this subpart as required by §§ 63.2996 through 63.3000.

(g) You must comply with the requirements in paragraphs (g)(1) through (3) of this section.

(1) You must be in compliance with the emission limits in § 63.2983 and the operating limits in § 63.2984 at all times, except during periods of startup, shutdown, or malfunction.

(2) 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).

(3) You must develop and implement a written SSMP according to the provisions in § 63.6(e)(3). The SSMP must address the startup, shutdown, and corrective actions taken for malfunctioning process and air pollution control equipment.

Operation, Maintenance, and Monitoring Plan

§ 63.2987 What must my operation, maintenance, and monitoring (OMM) plan include?

(a) You must prescribe the monitoring that will be performed to ensure compliance with these emission limitations. Minimum monitoring requirements are listed in table 1 of this subpart. Your plan must specify the items listed in paragraphs (a)(1) through (3) of this section:

(1) Each process and control device to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The operating limits or ranges for each parameter that represent continuous compliance with the emission limits in § 63.2983. Operating limits and ranges must be based on values of the monitored parameters recorded during performance tests.

(b) You must establish routine and long-term maintenance and inspection

schedules for each control device. You must incorporate in the schedules the control device manufacturer's recommendations for maintenance and inspections or equivalent procedures. If you use a thermal oxidizer, the maintenance schedule must include procedures for annual or more frequent inspection of the thermal oxidizer to ensure that the structural and design integrity of the combustion chamber is maintained. At a minimum, you must meet the requirements of paragraphs (b)(1) through (10) of this section:

(1) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation. Clean pilot sensor if necessary.

(2) Ensure proper adjustment of combustion air and adjust if necessary.

(3) Inspect, when possible, all internal structures (such as baffles) to ensure structural integrity per the design specifications.

(4) Inspect dampers, fans, and blowers for proper operation.

(5) Inspect motors for proper operation.

(6) Inspect, when possible, combustion chamber refractory lining. Clean and repair or replace lining if necessary.

(7) Inspect the thermal oxidizer shell for proper sealing, corrosion, and hot spots.

(8) For the burn cycle that follows the inspection, document that the thermal oxidizer is operating properly and make any necessary adjustments.

(9) Generally observe whether the equipment is maintained in good operating condition.

(10) Complete all necessary repairs as soon as practicable.

(c) You must establish procedures for responding to operating parameter deviations. At a minimum, the procedures must include the information in paragraphs (c)(1) through (3) of this section.

(1) Procedures for determining the cause of the operating parameter deviation.

(2) Actions for correcting the deviation and returning the operating parameters to the allowable ranges or limits.

(3) Procedures for recording the date and time that the deviation began and ended, and the times corrective actions were initiated and completed.

(d) Your plan must specify the recordkeeping procedures to document compliance with the emissions and operating limits. Table 1 of this subpart establishes the minimum recordkeeping requirements.

§ 63.2988 [Reserved]

§ 63.2989 How do I change my OMM plan?

Changes to the operating limits or ranges in your OMM plan require a new performance test.

(a) In order to revise the ranges or levels established for your operating limits in § 63.2984, you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b) to revise your operating ranges or limits.

(2) After completing the performance test to demonstrate that compliance with the emissions limits can be achieved at the revised levels of the operating limits, you must submit the performance test results and the revised operating limits as part of the notification of compliance status required under § 63.9(h).

(b) If you are revising the inspection and maintenance procedures in your plan that are specified in § 63.2987(b), you do not need to conduct a new performance test.

(c) If you plan to operate your process or control device under alternative operating conditions and do not wish to revise your OMM plan when you change operating conditions, you can perform a separate compliance test to establish operating limits for each condition. You can then include the operating limits for each condition in your OMM plan. After completing the performance tests, you must record the date and time when you change operations from one condition to another, the condition under which you are operating, and the operating limits that apply under that condition. If you can perform a single performance test that establishes the most stringent operating limits that cover all alternative operating conditions, then you do not need to comply with the provisions of this paragraph.

§ 63.2990 Can I conduct short-term experimental production runs that cause parameters to deviate from operating limits?

With the approval of the Administrator, you may conduct short-term experimental production runs during which your operating parameters deviate from the operating limits. Experimental runs may include, but are not limited to, runs using resin with a higher free-formaldehyde content than specified in the OMM plan, or using experimental pollution prevention techniques. To conduct a short-term experimental production run, you must complete the requirements in paragraphs (a) and (b) of this section.

(a) Prepare an application to the Administrator for approval to conduct the experimental production runs. Your application must include the items listed in paragraphs (a)(1) through (6) of this section.

(1) The purpose of the experimental production run.

(2) Identification of the affected line.

(3) An explanation of how the operating parameters will deviate from the previously approved ranges and limits.

(4) The duration of the experimental production run.

(5) The date and time of the experimental production run.

(6) A description of any emission testing to be performed during the experimental production run.

(b) Submit the application to the Administrator for approval at least 30 days before you conduct the experimental production run.

(c) If you conduct such experimental production runs without first receiving approval from the Administrator, then you must conduct a performance test under those same experimental production run conditions to show that you were in compliance with the formaldehyde emission limits in § 63.2983.

Testing and Initial Compliance Requirements

§ 63.2991 When must I conduct performance tests?

You must conduct a performance test for each drying and curing oven subject to this subpart according to the provisions in paragraphs (a) through (c) of this section:

(a) *Initially.* You must conduct an initial performance test no later than 180 days after the applicable compliance date specified in § 63.2985. The initial performance test is used to demonstrate initial compliance and establish operating parameter limits and ranges to be used to demonstrate continuous compliance with the emission standards.

(b) *Every 5 years.* You must conduct a performance test every 5 years as part of renewing your 40 CFR part 70 operating permit.

(c) *To change your OMM plan.* You must conduct a performance test according to the requirements specified in § 63.2992 to change the limit or range for any operating limit specified in your OMM plan established during a previous compliance test.

§ 63.2992 How do I conduct a performance test?

(a) You must verify the performance of monitoring equipment as specified in § 63.2994 before performing the test.

(b) You must conduct the performance test according to the procedures in § 63.7.

(c) You must conduct the performance test under the conditions specified in paragraphs (c)(1) and (2) of this section.

(1) The resin must have the highest specified free-formaldehyde content that will be used.

(2) You must operate at the maximum feasible urea-formaldehyde resin solids application rate (pounds urea-formaldehyde resin solids applied per hour) that will be used.

(d) During the performance test, you must monitor and record the operating parameters that you will use to demonstrate continuous compliance after the test. These parameters are listed in table 1 of this subpart.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction as specified in § 63.7(e)(1).

(f) You must conduct three separate test runs for each performance test as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

§ 63.2993 What test methods must I use in conducting performance tests?

(a) Use EPA Method 1 (40 CFR part 60, appendix A) for selecting the sampling port location and the number of sampling ports.

(b) Use EPA Method 2 (40 CFR part 60, appendix A) for measuring the volumetric flow rate.

(c) Use EPA Method 316 or 318 (40 CFR part 63, appendix A) for measuring the concentration of formaldehyde.

(d) Use the method contained in appendix A of this subpart or the resin purchase specification and the vendor specification sheet for each resin lot for determining the free-formaldehyde content in the urea-formaldehyde resin.

(e) Use the method in appendix B of this subpart for determining product loss-on-ignition.

§ 63.2994 How do I verify the performance of monitoring equipment?

(a) Before conducting the performance test, you must take the steps listed in paragraphs (a)(1) and (2) of this section:

(1) Install and calibrate all process equipment, control devices, and monitoring equipment.

(2) Conduct a performance evaluation of the continuous monitoring system (CMS) according to § 63.8(e) which specifies the general requirements and requirements for notifications, the site-specific performance evaluation plan, conduct of the performance evaluation, and reporting of performance evaluation results.

(b) If you use a thermal oxidizer, the temperature monitoring device must meet the performance and equipment specifications listed in paragraphs (b)(1) through (3) of this section:

(1) The temperature monitoring device must be installed either at the exit of the combustion zone of each thermal oxidizer, or at the location specified by the manufacturer. The temperature monitoring device must also be installed in a location before any heat recovery or heat exchange equipment, and it must remain in the same location for both the performance test and the continuous monitoring of temperature.

(2) The recorder response range must include zero and 1.5 times the average temperature required in § 63.2984(a)(1).

(3) The measurement method or reference method for calibration must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference subject to the approval of the Administrator.

§ 63.2995 What equations must I use to determine compliance?

(a) *Percent reduction for formaldehyde.* To determine compliance with the percent reduction formaldehyde emission standard, use equation 1 of this section as follows:

$$E_f = \frac{M_i - M_o}{M_i} \times 100 \qquad \text{(Eq. 1)}$$

Where:

E_f = Formaldehyde control efficiency, percent.

M_i = Mass flow rate of formaldehyde entering the control device, kilograms (pounds) per hour.

M_o = Mass flow rate of formaldehyde exiting the control device, kilograms (pounds) per hour.

(b) *Formaldehyde mass emissions rate.* To determine compliance with the kilogram per megagram (pound per ton) formaldehyde emission standard, use equation 2 of this section as follows:

$$E = \frac{M}{P} \qquad \text{(Eq. 2)}$$

Where:

E = Formaldehyde mass emissions rate, kilograms (pounds) of formaldehyde per megagram (ton) of fiberglass mat produced.

M = Formaldehyde mass emissions rate, kilograms (pounds) per hour.

P = The wet-formed fiberglass mat production rate during the emissions sampling period, including any material trimmed from the final product, megagrams (tons) per hour.

(c) *Urea-formaldehyde (UF) resin solids application rate.* To determine the UF resin solids application rate, use equation 3 of this section as follows:

$$\frac{\text{UF Solids}}{\text{Hour}} = \text{LOI} \times \text{UFL} \times \text{MW} \times \text{SQ} \qquad \text{(Eq. 3)}$$

Where:

UF solids/hour = UF resin solids application rate (pounds per hour).

LOI = loss on ignition (weight faction), or pound of organic binder per pound of mat.

UFL = UF-to-latex ratio in the binder (mass fraction of UF resin solids in total combined resin solids for UF and latex), or pound of UF solids per pound of total resin solids (UF and latex).

MW = weight of the final mat per square (pounds per roofing square).

SQ = roofing squares produced per hour.

Monitoring Requirements

§ 63.2996 What must I monitor?

You must monitor the parameters listed in table 1 of this subpart and any other parameters specified in your OMM plan. The parameters must be monitored, at a minimum, at the corresponding frequencies listed in table 1 of this subpart.

§ 63.2997 What are the requirements for monitoring devices?

(a) If formaldehyde emissions are controlled using a thermal oxidizer, you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install, calibrate, maintain, and operate a device to monitor and record continuously the thermal oxidizer temperature at the exit of the combustion zone before any substantial

heat exchange occurs or at the location consistent with the manufacturer's recommendations.

(2) Continuously monitor the thermal oxidizer temperature and determine and record the average temperature in 15-minute and 3-hour block averages. You may determine the average temperature more frequently than every 15 minutes and every 3 hours, but not less frequently.

(b) If formaldehyde emissions are controlled by process modifications or a control device other than a thermal oxidizer, you must install, calibrate, maintain, and operate devices to monitor the parameters established in your OMM plan at the frequency established in the plan.

Notifications, Reports, and Records

§ 63.2998 What records must I maintain?

You must maintain records according to the procedures of § 63.10. You must maintain the records listed in paragraphs (a) through (g) of this section.

(a) All records required by § 63.10. Table 2 of this subpart presents the applicable requirements of the general provisions.

(b) The OMM plan.

(c) Records of values of monitored parameters listed in table 1 of this subpart to show continuous compliance with each operating limit specified in table 1 of this subpart.

(d) Records of maintenance and inspections performed on the control devices.

(e) If an operating parameter deviation occurs, you must record:

(1) The date, time, and duration of the operating parameter deviation;

(2) A brief description of the cause of the operating parameter deviation;

(3) The dates and times at which corrective actions were initiated and completed;

(4) A brief description of the corrective actions taken to return the parameter to the limit or to within the range specified in the OMM plan; and

(5) A record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(f) Keep all records specified in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(g) If you operate your process or control device under alternative operating condition and have established operating limits for each condition as specified in § 63.2989(c), then you must keep records of the date and time you changed operations from one condition to another, the condition under which you are operating, and the applicable operating limits for that condition.

§ 63.2999 In what form and for how long must I maintain records?

(a) You must maintain each record required by this subpart for 5 years. You must maintain the most recent 2 years of records at the facility. The remaining 3 years of records may be retained offsite.

(b) Your records must be readily available and in a form so they can be easily inspected and reviewed. You can keep the records on paper or an alternative media, such as microfilm, computer, computer disks, magnetic tape, or on microfiche.

§ 63.3000 What notifications and reports must I submit?

(a) You must submit all notifications and reports required by the applicable general provisions and this section. Table 2 of this subpart presents the applicable requirements of the general provisions.

(b) *Notification of compliance status.* You must submit the notification of compliance status, including the performance test results, the operating limits or ranges as determined during the performance test, and other information specified in § 63.9(h), before the close of business on the 60th calendar day after you complete the performance test according to § 63.10(d)(2).

(c) *Semiannual compliance reports.* You must submit semiannual compliance reports according to the requirements of paragraphs (c)(1) through (5) of this section.

(1) *Dates for submitting reports.* Unless the Administrator has agreed to a different schedule for submitting reports under § 63.10(a), you must deliver or postmark each semiannual compliance report no later than 30 days following the end of each semiannual reporting period. The first semiannual reporting period begins on the compliance date for your affected source and ends on June 30 or December 31, whichever date immediately follows your compliance date. Each subsequent semiannual reporting period for which you must submit a semiannual compliance report begins on July 1 or January 1 and ends 6 calendar months later. As required by § 63.10(e)(3), you must begin submitting quarterly compliance reports if you deviate from the emission limits in § 63.2983 or the operating limits in § 63.2984.

(2) *Inclusion with title V report.* For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and for which the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 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 paragraph (c)(1) of this section.

(3) *Contents of reports.* The semiannual compliance report must contain the information in paragraphs (c)(3)(i) through (vi) of this section:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) A summary of the total duration of continuous parameter monitoring system downtime during the semiannual reporting period and the total duration of continuous parameter monitoring system downtime as a percent of the total source operating time during that semiannual reporting period.

(v) The date of the latest continuous parameter monitoring system certification or audit.

(vi) A description of any changes in the wet-formed fiberglass mat manufacturing process, continuous parameter monitoring system, or add-on control device since the last semiannual reporting period.

(4) *No deviations.* If there were no deviations from the emission limit in § 63.2983 or the operating limits in § 63.2984, the semiannual compliance report must include a statement to that effect. If there were no periods during which the continuous parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement to that effect.

(5) *Deviations.* If there was a deviation from the emission limit in § 63.2983 or an operating limit in § 63.2984, the semiannual compliance report must contain the information in paragraphs (c)(5)(i) through (ix) of this section:

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous parameter monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous parameter monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) 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.

(v) The date and time that corrective actions were taken, a description of the cause of the deviation, and a description of the corrective actions taken.

(vi) A summary of the total duration of each deviation during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(vii) A breakdown of the total duration of the deviations during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(viii) A brief description of the process units.

(ix) A brief description of the continuous parameter monitoring system.

(d) *Performance test reports.* You must submit reports of performance test results for add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2). You must include in the performance test reports the values measured during the performance test for the parameters listed in table 1 of this subpart and the operating limits or ranges to be included in your OMM plan. For the thermal oxidizer temperature, you must include 15-minute averages and the average for the three 1-hour test runs.

(e) *Startup, shutdown, malfunction reports.* If you have a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified § 63.10(d)(5).

Other Requirements and Information

§ 63.3001 What sections of the general provisions apply to me?

You must comply with the requirements of the general provisions of 40 CFR part 63, subpart A, as specified in table 2 of this subpart.

§ 63.3002 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 Administrator has delegated authority to your State, local, or tribal agency, then that agency is the primary enforcement authority. If the Administrator has not delegated authority to your State, only EPA enforces this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of 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 section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) The authority under § 63.6(g) to approve alternatives to the emission limits in § 63.2983 and operating limits in § 63.2984 is not delegated.

(2) The authority under § 63.7(e)(2)(ii) and (f) to approve of major alternatives (as defined in § 63.90) to the test methods in § 63.2993 is not delegated.

(3) The authority under § 63.8(f) to approve major alternatives (as defined in § 63.90) to the monitoring requirements in §§ 63.2996 and 63.2997 is not delegated.

(4) The authority under § 63.10(f) to approve major alternatives (as defined in § 63.90) to recordkeeping, notification, and reporting requirements in §§ 63.2998 through 63.3000 is not delegated.

§ 63.3003 Incorporation by reference.

(a) The following material is incorporated by reference and referred to at § 63.2984: chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists, (23rd edition, 1998). The incorporation by reference of this material is approved by the Director of the Office of the Federal Register as of the date of publication of the final rule according to 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and notice of any change in the material will be published in the **Federal Register**.

(b) The materials referenced in this section are incorporated by reference and are available for inspection at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, 7th Floor, Washington, DC; and at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street SW, Washington, DC. The material is also available for purchase from the following address: Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240, telephone number (513) 742–2020.

§ 63.3004 What definitions apply to this subpart?

Terms used in this subpart are defined the Clean Air Act, in § 63.2, and in this section as follows:

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Binder application vacuum exhaust means the exhaust from the vacuum system used to remove excess resin solution from the wet-formed fiberglass mat before it enters the drying and curing oven.

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 emission limit, or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Drying and curing oven means the process section that evaporates excess moisture from a fiberglass mat and cures the resin that binds the fibers.

Emission limitation means an emission limit, operating limit, or work practice standard.

Fiberglass mat production rate means the weight of finished fiberglass mat produced per hour of production including any trim removed after the binder is applied and before final packaging.

Loss-on-ignition means the percentage decrease in weight of fiberglass mat measured before and after it has been ignited to burn off the applied binder. The loss-on-ignition is used to monitor the weight percent of binder in fiberglass mat.

Nonwoven wet-formed fiberglass mat manufacturing means the production of a fiberglass mat by bonding glass fibers to each other using a resin solution. Nonwoven wet-formed fiberglass mat manufacturing is also referred to as wet-formed fiberglass mat manufacturing.

Roofing square means the amount of finished product needed to cover an area 10 feet by 10 feet (100 square feet) of finished roof.

Thermal oxidizer means an air pollution control device that uses controlled flame combustion inside a combustion chamber to convert

combustible materials to noncombustible gases.

Urea-formaldehyde content in binder formulation means the mass-based percent of urea-formaldehyde resin in the total binder mix as it is applied to the glass fibers to form the mat.

§§ 63.3005–63.3079 [Reserved].

Tables to Subpart HHHH of Part 63

TABLE 1 TO SUBPART HHHH.—MINIMUM REQUIREMENTS FOR MONITORING AND RECORDKEEPING

[As stated in § 63.2998(c), you must comply with the minimum requirements for monitoring and recordkeeping in the following table]

You must monitor these parameters:	At this frequency:	And record for the monitored perameter:
1. Thermal oxidizer temperature [a]	Continuously	15-minute and 3-hour block averages.
2. Other process or control device parameters specified in your OMM [b] plan.	As specified in your OMM plan	As specified in your OMM plan.
3. Urea-formaldehyde resin solids application rate.	On each operating day, calculate the average lb/hr application rate for each product manufactured during that day.	The average lb/hr value for each product manufactured during the day.
4. Resin free-formaldehyde content	For each lot of resin purchased	The value for each lot used during the operating day.
5. Loss-on-ignition [c]	Measured at least once per day, for each product manufactured during that day.	The value for each product manufactured during the operating day.
6. UF-to-latex ratio in the binder [c]	For each batch of binder prepared the operating day.	The value for each batch of binder prepared during the operating day.
7. Weight of the final mat product per square (lb/roofing square) [c].	Each product manufactured during the operating day.	The value for each product manufactured during the operating day.
8. Average nonwoven wet-formed fiberglass mat production rate (roofing squares per the hour) [c].	For each product manufactured during the operating day.	The average value for each product manufactured during operating day.

[a] Required if a thermal oxidizer is used to control formaldehyde emissions.
[b] Required if process modifications or a control device other than a thermal oxidizer is used to control emissions.
[c] These parameters must be monitored and values recorded, but no operating limits apply.

TABLE 2 TO SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

[As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes	
§ 63.1(a)(5)		No	[Reserved].
§ 63.1(a)(6)–(8)		Yes	
§ 63.1(a)(9)		No	[Reserved].
§ 63.1(a)(10)–(14)		Yes	
§ 63.1(b)	Initial Applicability Determination	Yes	
§ 63.1(c)(1)	Applicability After Standard Established	Yes	
§ 63.1(c)(2)		Yes	Some plants may be area sources.
§ 63.1(c)(3)		No	[Reserved].
§ 63.1(c)(4)–(5)		Yes	
§ 63.1(d)		No	[Reserved].
§ 63.1(e)	Applicability of Permit Program	Yes	
§ 63.2	Definitions	Yes	Additional definitions in § 63.3004.
§ 63.3	Units and Abbreviations	Yes	
§ 63.4(a)(1)–(3)	Prohibited Activities	Yes	
§ 63.4(a)(4)		No	[Reserved].
§ 63.4(a)(5)		Yes	
§ 63.4(b)–(c)	Circumvention/Severability	Yes	
§ 63.5(a)	Construction/Reconstruction	Yes	
§ 63.5(b)(1)	Existing/Constructed/Reconstruction	Yes	
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3)–(6)		Yes	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes	
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes	
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes	
§ 63.6(b)(1)–(5)	New and Reconstructed Sources-Dates	Yes	
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)		Yes	
§ 63.6(c)(1)–(2)	Existing Sources Dates	Yes	§ 63.2985 specifies dates.
§ 63.6(c)(3)–(4)		No	[Reserved].
§ 63.6(c)(5)		Yes	

TABLE 2 TO SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

[As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.6(d)	.....	No	[Reserved].
§ 63.6(e)	Operation and Maintenance Requirements.	Yes	§§ 63.2984 and 63.2987 specify additional requirements.
§ 63.6(f)	Compliance with Emission Standards ...	Yes	
§ 63.6(g)	Alternative Standard	Yes	EPA retains approval authority.
§ 63.6(h)	Compliance with Opacity/Visible Emissions Standards.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes	
§ 63.6(i)(15)	.....	No	[Reserved].
§ 63.6(i)(16)	.....	Yes	
§ 63.6(j)	Exemption from Compliance	Yes	
§ 63.7(a)	Performance Test Requirements—Applicability and Dates.	Yes	
§ 63.7(b)	Notification of Performance Test	Yes	
§ 63.7(c)	Quality Assurance Program/Test Plan ..	Yes	
§ 63.7(d)	Testing Facilities	Yes	
§ 63.7(e)	Conduct of Tests	Yes	§ 63.2991–63.2994 specify additional requirements.
§ 63.7(f)	Alternative Test Method	Yes	EPA retains approval authority
§ 63.7(g)	Data Analysis	Yes	
§ 63.7(h)	Waiver of Tests	Yes	
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability	Yes	
§ 63.8(a)(3)	.....	No	[Reserved].
§ 63.8(a)(4)	.....	Yes	
§ 63.8(b)	Conduct of Monitoring	Yes	
§ 63.8(c)(1)–(3)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes	
§ 63.8(c)(4)	.....	Yes	
§ 63.8(c)(5)	.....	No	Subpart HHHH does not specify opacity or visible emission standards
§ 63.8(c)(6)–(8)	.....	Yes	
§ 63.8(d)	Quality Control	Yes	
§ 63.8(e)	CMS Performance Evaluation	Yes	
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Yes	EPA retains approval authority
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart HHHH does not require the use of continuous emissions monitoring systems (CEMS)
§ 63.8(g)(1)	Data Reduction	Yes	
§ 63.8(g)(2)	Data Reduction	No	Subpart HHHH does not require the use of CEMS or continuous opacity monitoring systems (COMS).
§ 63.8(g)(3)–(5)	Data Reduction	Yes	
§ 63.9(a)	Notification Requirements—Applicability	Yes	
§ 63.9(b)	Initial Notifications	Yes	
§ 63.9(c)	Request for Compliance Extension	Yes	
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes	
§ 63.9(e)	Notification of Performance Test.	Yes	
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS Notifications	Yes	
§ 63.9(g)(2)–(3)	.....	No	Subpart HHHH does not require the use of COMS or CEMS.
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	§ 63.3000(b) specifies additional requirements.
§ 63.9(h)(4)	.....	No	[Reserved].
§ 63.9(h)(5)–(6)	.....	Yes	
§ 63.9(i)	Adjustment of Deadlines	Yes	
§ 63.9(j)	Change in Previous Information	Yes	
§ 63.10(a)	Recordkeeping/Reporting—Applicability	Yes	
§ 63.10(b)	General Recordkeeping Requirements	Yes	§ 63.2998 includes additional requirements.
§ 63.10(c)(1)	Additional CMS Recordkeeping	Yes	
§ 63.10(c)(2)–(4)	.....	No	[Reserved].
§ 63.10(c)(5)–(8)	.....	Yes	
§ 63.10(c)(9)	.....	No	[Reserved].
§ 63.10(c)(10)–(15)	.....	Yes	
§ 63.10(d)(1)	General Reporting Requirements	Yes	§ 63.3000 includes additional requirements.

TABLE 2 TO SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

[As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.10(d)(2)	Performance Test Results	Yes	§ 63.3000 includes additional requirements
§ 63.10(d)(3)	Opacity or Visible Emissions Observations.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.10(d)(4)–(5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes	
§ 63.10(e)(1)	Additional CMS Reports—General	No	Subpart HHHH does not require CEMS.
§ 63.10(e)(2)	Reporting results of CMS performance evaluations.	Yes	
§ 63.10(e)(3)	Excess Emission/CMS Performance Reports.	Yes	
§ 63.10(e)(4)	COMS Data Reports	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes	EPA retains approval authority
§ 63.11	Control Device Requirments—Applicability.	No	Facilities subject to subpart HHHH do not use flares as control devices.
§ 63.12	State Authority and Delegations	Yes	
§ 63.13	Addresses	Yes	
§ 63.14	Incorporation by Reference	No	
§ 63.15	Availability of Information/Confidentiality	Yes	

Appendices to Subpart HHHH of Part 63

Appendix A to Subpart HHHH—Method for Determining Free-Formaldehyde in Urea-Formaldehyde Resins by Sodium Sulfite (Iced & Cooled)

1.0 Scope

This procedure corresponds to the Housing and Urban Development method of determining free-formaldehyde in urea-formaldehyde resins. This method applies to samples that decompose to yield formaldehyde under the conditions of other free-formaldehyde methods. The primary use is for urea-formaldehyde resins.

2.0 Part A—Testing Resins

Formaldehyde will react with sodium sulfite to form the sulfite addition products and liberate sodium hydroxide (NaOH); however, at room temperature, the methanol groups present will also react to liberate NaOH. Titrate at 0 degrees Celsius (°C) to minimize the reaction of the methanol groups.

2.1 Apparatus Required.

2.1.1 Ice crusher.

2.1.2 One 100-milliliter (mL) graduated cylinder.

2.1.3 Three 400-mL beakers.

2.1.4 One 50-mL burette.

2.1.5 Analytical balance accurate to 0.1 milligrams (mg).

2.1.6 Magnetic stirrer.

2.1.7 Magnetic stirring bars.

2.1.8 Disposable pipettes.

2.1.9 Several 5-ounce (oz.) plastic cups.

2.1.10 Ice cube trays (small cubes).

2.2 Materials Required.

2.2.1 Ice cubes (made with distilled water).

2.2.2 A solution of 1 molar (M) sodium sulfite (Na_2SO_3) (63 grams (g) Na_2SO_3/500 mL water (H_2O) neutralized to thymolphthalein endpoint).

2.2.3 Standardized 0.1 normal (N) hydrochloric acid (HCl).

2.2.4 Thymolphthalein indicator (1.0 g thymolphthalein/199 g methanol).

2.2.5 Sodium chloride (NaCl) (reagent grade).

2.2.6 Sodium hydroxide (NaOH).

2.3 Procedure.

2.3.1 Prepare sufficient quantity of crushed ice for three determinations (two trays of cubes).

2.3.2 Put 70 cubic centimeters (cc) of 1 M Na_2SO_3 solution into a 400-mL beaker. Begin stirring and add approximately 100 g of crushed ice and 2 g of NaCl. Maintain 0 °C during test, adding ice as necessary.

2.3.3 Add 10–15 drops of thymolphthalein indicator to the chilled solution. If the solution remains clear, add 0.1 N NaOH until the solution turns blue; then add 0.1 N HCl back to the colorless endpoint. If the solution turns blue upon adding the indicator, add 0.1 N HCl to the colorless endpoint.

2.3.4 On the analytical balance, accurately weigh the amount of resin indicated under the "*Resin Sample Size*" chart (see below) as follows.

RESIN SAMPLE SIZE

Approximate free HCHO (percent)	Sample weight (gram(s))
<0.5	10
0.5–1.0	5
1.0–3.0	2
3.0	1

2.3.4.1 Pour about 1 inch of resin into a 5 oz. plastic cup.

2.3.4.2 Determine the gross weight of the cup, resin, and disposable pipette (with the narrow tip broken off) fitted with a small rubber bulb.

2.3.4.3 Pipette out the desired amount of resin into the stirring, chilled solution (approximately 1.5 to 2 g per pipette-full).

2.3.4.4 Quickly reweigh the cup, resin, and pipette with the bulb.

2.3.4.5 The resultant weight loss equals the grams of resin being tested.

2.3.5 Rapidly titrate the solution with 0.1 N HCl to the colorless endpoint described in Step 3 (2.3.3).

2.3.6 Repeat the test in triplicate.

2.4 Calculation.

2.4.1 The percent free-formaldehyde (%HCHO) is calculated as follows:

$$\%HCHO = \frac{(\text{mL } 0.1 \text{ N HCl})\ (\text{N of Acid})\ (3.003)}{\text{Weight of Sample}}$$

2.4.2 Compute the average percent free-formaldehyde of the three tests.

(**Note:** If the results of the three tests are not within a range of ±0.5 percent or if the average of the three tests does not meet expected limits, carry out Part B and then repeat Part A.)

3.0 Part B—Standard Check

Part B ensures that test reagents used in determining percent free-formaldehyde in urea-formaldehyde resins are of proper concentration and that operator technique is correct. Should any doubts arise in either of these areas, the formaldehyde standard solution test should be carried out.

3.1 Preparation and Standardization of a 1 Percent Formalin Solution.

Prepare a solution containing approximately 1 percent formaldehyde from a stock 37 percent formalin solution. Standardize the prepared solution by titrating the hydroxyl ions resulting from the formation of the formaldehyde bisulfite complex.

3.2 Apparatus Required.

Note: All reagents must be American Chemical Society analytical reagent grade or better.

3.2.1 One 1-liter (L) volumetric flask (class A).
3.2.2 One 250-mL volumetric flask (class A).
3.2.3 One 250-mL beaker.
3.2.4 One 100-mL pipette (class A).
3.2.5 One 10-mL pipette (class A).
3.2.6 One 50-mL graduated cylinder (class A).
3.2.7 A pH meter, standardized using pH 7 and pH 10 buffers.
3.2.8 Magnetic stirrer.
3.2.9 Magnetic stirring bars.
3.2.10 Several 5-oz. plastic cups.
3.2.11 Disposal pipettes.
3.2.12 Ice cube trays (small cubes).

3.3 Materials Required.

3.3.1 A solution of 37 percent formalin.
3.3.2 Anhydrous Na_2SO_3.
3.3.3 Distilled water.
3.3.4 Standardized 0.100 N HCl.
3.3.5 Thymolphthalein indicator (1.0 g thymolphthalein/199 g methanol).

3.4 Preparation of Solutions and Reagents.

3.4.1 Formaldehyde Standard Solution (approximately 1 percent). Measure, using a graduated cylinder, 27.0 mL of analytical reagent 37 percent formalin solution into a 1-L volumetric flask. Fill the flask to volume with distilled water.

(**Note:** You must standardize this solution as described in section 3.5. This solution is stable for 3 months.)

3.4.2 Sodium Sulfite Solution 1.0 M (used for standardization of Formaldehyde Standard Solution). Quantitatively transfer, using distilled water as the transfer solvent, 31.50 g of anhydrous Na_2SO_3 into a 250-mL volumetric flask. Dissolve in approximately 100 mL of distilled water and fill to volume.

(**Note:** You must prepare this solution daily, but the calibration of the Formaldehyde Standard Solution needs to be done only once.)

3.4.3 Hydrochloric Acid Standard Solution 0.100 M. This reagent should be readily available as a primary standard that only needs to be diluted.

3.5 Standardization.

3.5.1 Standardization of Formaldehyde Standard Solution.

3.5.1.1 Pipette 100.0 mL of 1 M sodium sulfite into a stirred 250-mL beaker.

3.5.1.2 Using a standardized pH meter, measure and record the pH. The pH should be around 10. It is not essential the pH be 10; however, it is essential that the value be accurately recorded.

3.5.1.3 To the stirring Na_2SO_3 solution, pipette in 10.0 mL of Formaldehyde Standard Solution. The pH should rise sharply to about 12.

3.5.1.4 Using the pH meter as a continuous monitor, titrate the solution back to the original exact pH using 0.100 N HCl. Record the milliliters of HCl used as titrant. (**Note:** Approximately 30 to 35 mL of HCl will be required.)

3.5.1.5 Calculate the concentration of the Formaldehyde Standard Solution using the equation as follows:

$$\%HCHO = \frac{(mL\ HCl)\ (N\ HCl)\ (3.003)}{mL\ sample}$$

3.6 Procedure.

3.6.1 Prepare a sufficient quantity of crushed ice for three determinations (two trays of cubes).

3.6.2 Put 70 cc of 1 M Na_2SO_3 solution into a 400-mL beaker. Begin stirring and add approximately 100 g of crushed ice and 2 g NaCl. Maintain 0 °C during the test, adding ice as necessary.

3.6.3 Add 10–15 drops of thymolphthalein indicator to the chilled solution. If the solution remains clear, add 0.1 N NaOH until the solution turns blue; then add 0.1 N HCl back to the colorless endpoint. If the solution turns blue upon adding the indicator, add 0.1 N HCl to the colorless endpoint.

3.6.4 On the analytical balance, accurately weigh a sample of Formaldehyde Standard Solution as follows.

3.6.4.1 Pour about 0.5 inches of Formaldehyde Standard Solution into a 5-oz. plastic cup.

3.6.4.2 Determine the gross weight of the cup, Formaldehyde Standard Solution, and a disposable pipette fitted with a small rubber bulb.

3.6.4.3 Pipette approximately 5 g of the Formaldehyde Standard Solution into the stirring, chilled Na_2SO_3 solution.

3.6.4.4 Quickly reweigh the cup, Formaldehyde Standard Solution, and pipette with the bulb.

3.6.4.5 The resultant weight loss equals the grams of Formaldehyde Standard Solution being tested.

3.6.5 Rapidly titrate the solution with 0.1 N HCl to the colorless endpoint in Step 3 (3.6.3).

3.6.6 Repeat the test in triplicate.

3.7 Calculation for Formaldehyde Standard Solution.

3.7.1 The percent free-formaldehyde (% HCHO) is calculated as follows:

$$\%HCHO = \frac{(mL\ 0.1\ N\ HCl)(N\ Acid)(3.003)}{Weight\ of\ Formaldehyde\ Standard\ Solution}$$

3.7.2 The range of the results of three tests should be no more than ±5 percent of the actual Formaldehyde Standard Solution concentration. Report results to two decimal places.

3.8 Reference.

West Coast Adhesive Manufacturers Trade Association Test 10.1.

Appendix B to Subpart HHHH—Method for the Determination of Loss-on-Ignition

1.0 Purpose

The purpose of this test is to determine the loss-on-ignition (LOI) of wet-formed fiberglass mat.

2.0 Equipment

2.1 Scale sensitive to 0.001 gram (g).

2.2 Drying oven equipped with a means of constant temperature regulation and mechanical air convection.

2.3 Furnace designed to heat to at least 625 °C (1,157 °F) and controllable to ±25 °C (±45 °F).

2.4 Crucible, high form, 250 milliliter (mL).

2.5 Desiccator.

2.6 Pan balance (see Note 2 in 4.9)

3.0 Sample Collection Procedure

3.1 Obtain a sample of mat in accordance with Technical Association of the Pulp and Paper Industry (TAPPI) method 1007 "Sample Location."

3.2 Use a 5- to 10-g sample cut into pieces small enough to fit into the crucible.

3.3 Place the sample in the crucible. (**Note 1:** To test without the use of a crucible, see Note 2 after Section 4.8.)

3.4 Condition the sample in the furnace set at 105 ± 3 °C (221 ± 9 °F) for 5 minutes ± 30 seconds.

4.0 Procedure

4.1 Condition each sample by drying for 5 minutes ± 30 seconds at 105 ± 3 °C (22 ± 5 °F).

4.2 Remove the test sample from the furnace and cool in the desiccator for 30 minutes in the standard atmosphere for testing glass textiles.

4.3 Place the empty crucible in the furnace at 625 ± 25 °C (1,157 ± 45 °F). After 30 minutes, remove and cool the crucible in the standard atmosphere (TAPPI method 1008) for 30 minutes.

4.4 Identify each crucible with respect to each test sample of mat.

4.5 Weigh the empty crucible to the nearest 0.001 g. Record this weight as the tare mass, T.

4.6 Place the test sample in the crucible and weigh to the nearest 0.001 g. Record this weight as the initial mass, A.

4.7 Place the test sample and crucible in the furnace and ignite at 625 ± 25 °C (1,157 ± 45 °F).

4.8 After ignition for at least 30 minutes, remove the test sample and crucible from the furnace and cool in the desiccator for 30 minutes in the standard atmosphere (TAPPI method 1008).

4.9 Remove each crucible, and test each sample separately from the desiccator, and immediately weigh each sample to the nearest 0.001 g. Record this weight as the ignited mass, B. **(Note 2:** When it is known that no ash residue separates from the test sample during the weighing and igniting processes, you may weigh the sample separately without the crucible. When this occurs, the tare mass (T) equals zero. With appropriate care, you can dry and weigh a single piece of mat and place with tongs into the ignition oven on appropriate refractory supports. When the ignition time is over, remove the sample as an intact fragile web and weigh it directly on a pan balance.)

5.0 Calculation

5.1 Calculate the LOI for each sample as follows:

$$\% \text{ LOI} = 100 \times (A - B)/(A - T)$$

Where:

A = initial mass of crucible and sample before ignition (g);

B = mass of crucible and glass residue after ignition (g); and

T = tare mass of crucible, (g) (see Note 2).

5.2 Report the percent LOI of the glass mat to the nearest 0.1 percent.

6.0 Precision

The repeatability of this test method for measurements on adjacent specimens from the same sample of mat is better than 1 percent.

[FR Doc. 02–7096 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–P



Federal Register

Thursday,
April 11, 2002

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7163–7]

RIN 2060–AF28

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: Final rule.

SUMMARY: This action establishes final national emission standards for hazardous air pollutants (NESHAP) for certain types of affected sources at petroleum refineries. The affected sources include catalytic cracking units (CCU), catalytic reforming units, and sulfur recovery units, as well as associated by-pass lines. The EPA has identified petroleum refineries as major sources of hazardous air pollutants (HAP). Hazardous air pollutants that would be reduced by this final rule include organics (acetaldehyde, benzene, formaldehyde, hexane, phenol, toluene, and xylene); reduced sulfur compounds (carbonyl sulfide, carbon disulfide); inorganics (hydrogen chloride, chlorine); and particulate metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, and nickel). The health effects of exposure to these HAP can include cancer, respiratory irritation, and damage to the nervous system. These final standards implement section 112(d) of the Clean Air Act (CAA) by requiring all petroleum refineries that are major sources to meet standards reflecting the application of the maximum achievable control technology (MACT). When fully implemented, this rule will reduce HAP emissions from the affected sources by nearly 11,000 tons per year tpy—an 87 percent reduction from current levels. Emissions of other pollutants such as volatile organic compounds (VOC), particulate matter (PM), carbon monoxide (CO), and hydrogen sulfide will be reduced by about 60,000 tpy.

EFFECTIVE DATE: April 11, 2002.

ADDRESSES: Docket No. A–97–36 contains supporting information used in developing this rule. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on the basis for the rule, contact Mr. Robert B. Lucas, Waste and Chemical Process Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0884, electronic mail address, "*lucas.bob@epa.gov;*" for information concerning legal matters, contact Mr. Richard Vetter, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2127, electronic mail address, "*vetter.rick@epa.gov*" for questions concerning compliance determinations, contact Mr. Thomas Ripp, Office of Enforcement and Compliance Assurance (2223A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (202) 564–7003, electronic mail address, "*ripp.tom@epa.gov*" or for information on the test methods, contact Ms. Rima Howell, Emissions Monitoring and Analysis Division (D205–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443, electronic mail address, "*howell.rima@epa.gov*". For applicability determination questions, refer to the table in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) Other material related to this rulemaking is available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the 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.

Judicial Review. Today's action constitutes final administrative action on the proposed NESHAP for CCU, catalytic reforming units, and sulfur recovery units (63 FR 48890, September 11, 1998). 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 June 10, 2002. 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.

Regional Contacts for Applicability Determination

Region I, Director, Air Compliance Programs, EPA New England, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023, Phone contact: (617) 918–1656 FAX: (617) 918–1112.

Region II, U.S. EPA, 290 Broadway, New York, NY 10007–1866, Phone (212) 637–3000, FAX (212) 637–3526.

Region III, Dianne Walker (3AP11) U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone: (215) 814–3297, FAX: (215) 814–5103.

Region IV, Leonardo Ceron, U.S. EPA, 61 Forsyth Street, SW., Atlanta, GA 30303–3104, Phone: (404) 562–9900, FAX: (404–562–8174.

Region V, Kathy Keith U.S. EPA, 77 West Jackson Boulevard, Chicago, IL 60604–3507, Phone: (312) 353–6956, FAX: (312) 353–4135.

Region VI, U.S. EPA, Martin E. Brittain (214) 665–7206, Jonathan York (214) 665–7289, Barry Feldman (214) 665–7439, Fountain Place, 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75292–2733, FAX: (214) 665–2146.

Region VII, Bill Peterson, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, Phone: (913) 551–7881, FAX: (913) 551–7467.	Region VIII, Art Palomares (303–312–6332), e-mail: *Palomares.Art@epa.gov,* Tami Thomas-Burton (303–312–6581). e-mail: Thomas-burton.tami@epa.gov, U.S. EPA, MACT Enforcement, 999 18th Street, Suite 500, ENF–T, Denver, Colorado 80202, FAX: 303–312–6409.
Region IX, John Kim, U.S. EPA, 75 Hawthorne Street (AIR–5), San Francisco, CA 94105, Phone: (415) 744–1263, FAX: (415) 744–2499.	Region X, Kai–Hon Shum, U.S. EPA, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, Phone: (206) 553–2117, FAX: 206–553–0149.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC code	NAIC	Examples of regulated entities
Industry	2911	32411	Petroleum refineries that operate CCU, catalytic reforming units, or sulfur recovery units.
Federal Government			Not affected.
State/local/tribal			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 § 63.1561 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information in this preamble is organized as follows:

I. Background
II. Summary of Final Rule and Changes Since Proposal
A. Who must comply with this rule?
B. What equipment is covered?
C. When must I comply?
D. What are the emission limitations and other standards?
E. How do I demonstrate initial compliance?
F. How do I demonstrate continuous compliance?
G. What are the notification, recordkeeping, and reporting requirements?
III. Summary of Environmental, Energy, and Economic Impacts
A. What are the air quality impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health and environmental impacts?
E. What are the energy impacts?
IV. Summary of Major Comments and Responses
A. Why did we extend the compliance date?
B. What is the new alternative nickel emission limitation?
C. Why did we not change the proposed nickel emission limitation?
D. How did we change the proposed monitoring requirements?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background

The CAA was created in part to protect and enhance the quality of the Nation's air resources to promote public health and welfare and the productive capability of its population. Section 112(d) of the CAA requires us (the EPA) to establish standards for all categories and subcategories of major sources of HAP and for area sources listed for regulation under section 112(c). Major sources are those that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAP. Area sources are stationary sources of HAP that are not major sources.

We received 40 public comments on the proposed NESHAP. Commenters included industry representatives and trade associations, State and local agencies, environmental groups, vendors, and technical experts. To provide interested individuals the opportunity for oral presentations of data, views, or arguments concerning the proposed rule, we held a public hearing on October 14, 1998, and extended the end of the public comment period from November 10, 1998, to December 1, 1998 (Docket A–97–36). Today's final rule reflects our full consideration of all the comments we received. Major public comments on the proposed rule along with our responses to these comments are summarized in this document. See the Response to Comment Document (Docket A–97–36) for detailed responses to all the comments.

II. Summary of Final Rule and Changes Since Proposal

We revised the overall format of the rule to make it easier to understand, implement, and enforce. Separate sections of this "plain language" final rule cover the requirements for each type of HAP (i.e., metal HAP, organic HAP, inorganic HAP, or overall HAP) from an affected source. Each section of the rule refers you (the refinery owner or operator) to tables at the end of the rule that list the specific rule requirements and give step-by-step instructions on how to demonstrate initial and continuous compliance.

For purposes of the final rule, the title has been changed to "National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units" to better describe the affected population. The source category list will be amended to reflect this name change in a separate action.

In the past year, six petroleum refining companies have signed voluntary settlements with EPA which will add controls for CCU and SRU that will comply with this final rule. We have not revised the impact estimates to reflect the controls resulting from these settlements.

A. Who Must Comply With This Rule?

The final rule (subpart UUU) applies to you if your petroleum refinery is a major source of HAP emissions and includes an affected source covered by the rule. Based on our data, we believe all 164 existing petroleum refineries in the U.S. and its territories are major

sources; 132 of these facilities have one or more of the affected sources subject to the rule requirements.

B. What Equipment Is Covered?

Section 63.1562 of the final rule identifies each type of affected source as well as equipment or processes not covered by the rule. As proposed, three types of existing, new, or reconstructed units are subject to the rule. These are:

- Each CCU that regenerates catalyst;
- Each catalytic reforming unit that regenerates catalyst; and
- Each sulfur recovery unit and the tail gas treatment unit serving it.

The rule also applies to each by-pass line serving a new, existing, or reconstructed affected source. We have clarified the applicability of the rule to emphasize that the unit is the affected source while the emission limits and standards apply to the specified type of vent associated with the unit.

The final rule applies only to the predominant type of CCU—those using a fluidized bed (i.e., fluid CCU). We also revised the applicability of the rule to exclude redundant sulfur recovery units not located at a petroleum refinery and used by the refinery only for emergency or maintenance backup. Consistent with the proposed rule, the final rule doesn't apply to a sulfur recovery unit that doesn't recover elemental sulfur, certain equipment associated with by-pass lines (i.e., low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, or pressure relief valves needed for safety reasons), or gaseous streams routed to a fuel gas system.

C. When Must I Comply?

Section 63.1563 of the final rule gives the compliance dates. As discussed further in section IV.A of this document, we have included provisions allowing an extended compliance date for existing fluid CCU located at a petroleum refinery that commits to hydrotreating the CCU feed to comply with the gasoline sulfur control requirements in the Tier 2 Motor Vehicle Emission Standards (40 CFR part 80) and the applicable emission limitations in subpart UUU. The compliance date for these existing affected sources will depend on when the refinery must meet the 30 parts per million (ppm) limit for gasoline sulfur content, but can't be any later than December 31, 2009. Otherwise, affected sources must comply within 3 years from today's date.

We also clarified the compliance dates for new or reconstructed affected sources. If you started your new or reconstructed affected source before today's date, you must comply with the applicable rule requirements by today. If you start your new or reconstructed affected source after today's date, you must comply with the rule requirements upon startup.

D. What Are the Emission Limitations and Other Standards?

The final rule includes emission limitations for HAP emissions of particulate metals and organic compounds from CCU, organic and inorganic compounds from catalytic reforming units, and reduced sulfur compounds from sulfur recovery units. An emission limitation means any emission limit, operating limit, opacity limit, or visible emissions limit. Surrogates are used in this rule to represent the HAP emissions. They allow easier, less expensive measurement and monitoring requirements. For CCU, PM and nickel (Ni) are used as surrogates for metal HAP. Carbon monoxide is used as a surrogate for organic HAP emissions. Total organic carbon (TOC) is a surrogate for organic HAP emissions from catalytic reforming units while hydrogen chloride (HCl) represents inorganic HAP emissions. Sulfur dioxide (SO_2) or total reduced sulfur (TRS) represent the reduced sulfur HAP emissions from sulfur recovery units.

We made no changes in the MACT floor determinations of control technologies serving as the basis of the proposed rule. The emission control technologies and limits are discussed in the preamble to the proposed NESHAP (63 FR 48890). However, we did revise in other respects the emission limitations and standards that reflect the performance of the MACT floor technologies.

In response to public comments, we clarified the requirements for affected sources also subject to the new source performance standard (NSPS) for petroleum refineries (40 CFR part 60, subpart J) and added new compliance options. If your affected source is also subject to the NSPS, complying with the NSPS emission limitations also allows you to comply with this rule. If your affected source isn't subject to the NSPS, you can elect to comply with the NSPS emission limitations in order to be in compliance with this rule.

As further discussed in section IV.B of this document, we also added a second Ni limit as another metal HAP compliance option for CCU. This alternative provides an emission limit formatted to account for the variable characteristics of these units. We added it to the rule both to credit and encourage hydrotreating of the CCU feed as a means of reducing metal HAP emissions to the atmosphere.

We also made a change to the TOC emission limit for catalytic reforming units in § 63.1562(b)(1)(iii) of the proposed rule. This provision exempted emissions during depressuring and purging operations if the reactor vent pressure or differential pressure between the reactor vent and the gas transfer system to the control device were under 1 pound per square inch gauge (psig). Since 5 psig is the limit in States with facilities representing the MACT floor, we revised this provision to state that the emission limitations do not apply to depressuring and purging when the reactor vent pressure is 5 psig or less.

The final rule also includes specific operating limits for monitored process or control device operating parameters. Operating limits also may apply if you choose to comply with certain options, such as the alternative Ni emission limitations for CCU.

Tables 1, 2, 8, and 9 to the final rule (subpart UUU) show the final emission limitations for CCU. Tables 15, 16, 22, and 23 to subpart UUU give the emission limitations for catalytic reforming units. The final emission limitations for sulfur recovery units are in Tables 29 and 30 to subpart UUU.

The final rule also includes work practice standards for HAP emissions from by-pass lines. A work practice standard may include a design, equipment, work practice, or operational requirement. Table 36 to subpart UUU lists the four options provided under the final rule. The final rule also includes work practice standards for all affected sources. These standards require you to prepare an operation, maintenance, and monitoring plan according to the rule requirements and comply with the procedures in the plan. This plan must be consistent with good air pollution control practices for minimizing emissions.

E. How Do I Demonstrate Initial Compliance?

You must install and operate the required continuous monitoring systems and show that you meet each emission limitation or work practice standard that applies to you. The requirements for demonstrating initial compliance differ by unit type and according to whether or not your affected source is also subject to the NSPS requirements.

If your CCU or sulfur recovery unit is also subject to the NSPS, you must meet the applicable emission limitations and monitoring requirements in this rule. These requirements in this case are the same as the NSPS. If you have already

done a performance test to demonstrate initial compliance with the NSPS, you aren't required to do another test to demonstrate initial compliance with the limits in this rule. If you have already done a performance test, you aren't required to do another one to show that your continuous opacity and emission monitoring systems meet the applicable performance specifications. You can demonstrate initial compliance for these affected sources by submitting a written statement in your Notification of Compliance Status certifying that you comply with the applicable NSPS requirements.

We have revised the requirements for affected sources not subject to the NSPS to account for the new compliance options, as well as revisions to monitoring requirements. Your requirements for demonstrating initial compliance will vary according to the compliance option you elect and the type of continuous monitoring system you must use.

1. HAP Metal Emissions From CCU

If you elect to comply with the NSPS, you must install and operate a continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent. The final rule also requires a continuous opacity monitoring system if your CCU has a fresh feed capacity of 20,000 barrels per day (or more) and uses an add-on control device other than a wet scrubber (e.g., an electrostatic precipitator) to control the catalyst regenerator vent emissions. You also must install and operate a continuous opacity monitoring system if your CCU isn't equipped with an add-on control device. If you use a continuous opacity monitoring system and elect to comply with either of the Ni limits, you also must install and operate a continuous parameter monitoring system to measure and record the gas flow rate. Or, you can use the approved alternative procedure in the final rule to determine the gas flow rate.

For a smaller CCU (fresh feed capacity 20,000 barrels per day or less) that uses an electrostatic precipitator to control emissions from the catalyst regenerator vent, you can use a continuous opacity monitoring system (with a continuous monitoring parameter system for gas flow rate if you elect either of the Ni options) or continuous parameter monitoring systems. The continuous parameter monitoring systems must measure and record the gas flow rate as well as the voltage and secondary current (or total power input).

If you use a wet scrubber to control emissions from your catalyst regenerator vent, you must use continuous parameter monitoring systems to measure and record the pressure drop across the scrubber, the gas flow rate, and the total liquid (or scrubbing liquor) flow rate, regardless of unit capacity. In response to comments, we exempted non-Venturi wet scrubbers of the jet-ejector design from monitoring requirements and operating limits for pressure drop.

Section 63.1573 of the final rule provides approved alternative monitoring procedures. If applicable, you can use these alternative procedures to determine the gas flow rate rather than a continuous parameter monitoring system.

You must prepare a site-specific test plan and do a performance test to demonstrate initial compliance with the applicable emission limitation(s). If you use a continuous opacity monitoring system and elect to meet the NSPS, you also must do a site-specific performance evaluation test plan and performance evaluation to show that your monitoring system meets the applicable performance specification.

If you use a continuous opacity monitoring system and elect the PM limit, you must use the performance test results to establish a site-specific opacity operating limit. If you elect either Ni limit, you must use the performance test results to establish a site-specific Ni operating limit based on opacity, gas flow rate, equilibrium catalyst Ni concentration, and coke burn-rate (depending on the format of the option you elect). You can use EPA Method 6010b, 6020, 7520, or 7521 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 to analyze the equilibrium catalyst Ni concentration. The final rule includes procedures for establishing each type of operating limit.

If you use continuous parameter monitoring systems for an electrostatic precipitator and elect the PM emission limitation, you must use the performance test results to establish operating limits for gas flow rate and voltage and secondary current (or total power input). If you elect either of the Ni limits, you must establish operating limits for the equilibrium catalyst Ni concentration. If you use a wet scrubber, you must use the performance test results to establish operating limits for pressure drop and liquid-to-gas ratio (if you elect the PM limit) as well as equilibrium catalyst Ni concentration (if you elect either of the Ni limits).

Table 3 to subpart UUU shows the requirements for continuous monitoring systems for HAP metal emissions from CCU. Table 4 to subpart UUU shows the performance test requirements under each of the four compliance options. You have demonstrated initial compliance with the metal HAP emission limitations if you meet the conditions in Table 5 to subpart UUU.

2. Organic HAP Emissions From CCU

Table 10 to subpart UUU shows the requirements for continuous monitoring systems for organic HAP emissions from CCU. If you elect to comply with the NSPS requirements, you must install and operate a continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent.

If you don't elect to comply with the NSPS requirements, you must use continuous parameter monitoring systems. In response to comments, we have revised the proposed requirements for thermal incinerators to include a continuous parameter monitoring system to measure and record the oxygen content (percent dry basis) in the incinerator vent stream as well as the combustion zone temperature. If your unit is not equipped with a combustion control device, the final rule requires that you use a continuous emission monitoring system. Like the NSPS, if you can demonstrate that emissions from your vent average 50 ppm or less, the final rule does not require a continuous emission monitoring system or a continuous parameter monitoring system.

To demonstrate initial compliance, you must prepare a site-specific test plan and do a performance test to show that your vent meets the emission limit. If you use a continuous emission monitoring system and elect to comply with the NSPS, you also must prepare a site-specific performance evaluation test plan and do a performance evaluation to show that your system meets the applicable performance specification.

If you use continuous parameter monitoring systems, you must use the test results to establish operating limits for combustion zone temperature and oxygen concentration in the vent stream. We also clarified the performance test provisions for flares, which require a visible emissions test by Method 22 with a 2-hour observation period.

Table 11 to subpart UUU shows the performance test requirements for organic HAP emissions. You have demonstrated initial compliance with

the organic HAP emission limits if you meet the conditions in Table 12 to subpart UUU.

3. Organic HAP Emissions From Catalytic Reforming Units

Table 17 to subpart UUU shows the continuous monitoring system requirements for organic HAP emissions from catalytic reforming units. We didn't revise the proposed requirements for continuous monitoring systems for these units.

To demonstrate initial compliance, you must prepare a site-specific test plan and do a performance test to show that your vent meets the applicable emission limitation. We revised the proposed performance test procedures to remove Method 18 (40 CFR part 60, appendix A) for measurement of TOC concentration. You can use Method 25 or 25A for TOC concentration. We also clarified the requirements for flares (see section II.E of this document). Using the performance test results, you must establish operating limits for the combustion zone temperature of your combustion control device. Table 18 to subpart UUU shows the performance test requirements. You have demonstrated initial compliance with the emission limitations if you meet the conditions in Table 19 to subpart UUU.

4. Inorganic HAP Emissions From Catalytic Reforming Units

Table 24 to subpart UUU shows the continuous monitoring system requirements for inorganic HAP emissions from catalytic reforming units. We revised the proposed requirements for wet scrubbers to include a continuous parameter monitoring system to measure and record the pH of the water (or scrubbing liquid) exiting the scrubber instead of a continuous parameter monitoring system for pressure drop. You can also use the approved monitoring alternative for pH strips in lieu of a continuous parameter monitoring system. We also revised the proposed rule to include requirements for units with an internal scrubbing system (i.e., no add-on control device) based on use of colormetric tube sampling systems.

Table 25 to subpart UUU shows the performance test requirements for inorganic HAP emissions from catalytic reforming units. You must prepare a site-specific test plan and do a performance test to show that you meet the applicable emission limitation. We revised the proposed performance test requirements to specify that you can't make any test runs during the first hour or the last 6 hours of the cycle for a semi-regenerative or cyclic regeneration unit. Using the results of the performance test, you must establish operating limits for the liquid-to-gas ratio and pH of the scrubber water (or scrubbing liquid). If you don't use a control device, you must establish an operating limit for the HCl concentration using colormetric tubes. You can use Method 26 in 40 CFR part 60, appendix B, to measure emissions from these units. You have achieved initial compliance with the inorganic HAP emission standards if you meet the conditions in Table 26 to subpart UUU.

5. Organic HAP Emissions From Sulfur Recovery Units

Table 31 to subpart UUU shows the continuous monitoring system requirements for organic HAP emissions from sulfur recovery units. If you elect to comply with the NSPS requirements, you must install and operate a continuous emission monitoring system to measure and record the concentration (dry basis, zero percent excess air) of SO2 emissions exiting each exhaust stack for the unit if you use an oxidation or reduction control system followed by incineration. If you use a reduction control system without incineration, you must use continuous emission monitoring systems to measure and record the concentration of reduced sulfur and oxygen emissions. If you elect to comply with the TRS limit and use an incinerator to control emissions from your vent, you must install and operate a continuous emission monitoring system or a continuous parameter monitoring system to measure and record the combustion zone temperature and the oxygen content (percent, dry basis) in the vent stream of the incinerator. If you do not use an add-on control device to control emissions from your vent, you must install and operate a continuous emission monitoring system to measure and record the concentration of TRS.

You must prepare a site-specific test plan and do a performance test to show that emissions from your vent meet the applicable standard. If you use a continuous emission monitoring system and elect to meet the NSPS, you also must do a site-specific performance evaluation test plan and a performance evaluation to show that your system meets the applicable performance specification. If you use continuous parameter monitoring systems, you must establish operating limits for oxygen concentration as well as for combustion zone temperature. Table 32 to subpart UUU shows the performance test requirements for each option. You have demonstrated initial compliance if you meet the conditions specified in Table 33 to subpart UUU.

6. HAP Emissions From Bypass Lines

We revised the proposed standards for by-pass lines to include two new equipment options suggested by commenters. Table 37 to subpart UUU shows the performance test requirement applicable to a flow indicator, level recorder, or electronic valve position monitor. You have achieved initial compliance if you meet the applicable conditions for the work practice option you select shown in Table 38 to subpart UUU.

7. Continuous Monitoring System Requirements

We added new sections (§§ 63.1572 and 63.1573) to the final rule to clearly identify the requirements for monitor installation and operation and monitoring alternatives. Table 40 to subpart UUU shows the requirements for continuous opacity monitoring systems and continuous emission monitoring systems, which are the same as the NSPS. Table 41 to subpart UUU shows the requirements for installation and operation of continuous parameter monitoring systems. We have revised these requirements to include more detailed requirements for inspections and calibration checks as well as performance specifications for some types of systems. We also revised the rule to clarify that each continuous parameter monitoring system must measure and record on an hourly or hourly average basis and determine and record the daily average value.

The final rule also specifies that you operate your monitors (or collect data at all required intervals) at all times the affected source is operating. This does not apply to monitoring malfunctions, associated repairs, required quality assurance or control activities, and preapproved planned maintenance activities. You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations or to meet a minimum data availability requirement.

8. Performance Tests, Performance Evaluations, and Engineering Assessments

Section 63.1571 of the final rule contains general information and criteria you must meet for these activities. We have clarified the rule to specify that you can do your performance test at any time from today's date to your compliance date. In response to comments, we revised

§ 63.1564(e) of the proposed rule to require that the tests be done under normal operating conditions rather than at "maximum representative operating capacity for the process." You must base your process or control device operating limits on the performance test measurements. However, unless you elect one of the two Ni options for metal HAP emissions from CCU, you can adjust the measured values, if necessary, using control device design specifications, manufacturer recommendations, or other applicable data. You must document any adjustment to the satisfaction of your permitting authority. We added special provisions to the rule for adjusting the Ni-related values.

This section of the rule also covers how to change your operating limit. While you can change your site-specific opacity operating limit or Ni operating limit only by doing a new performance test, you can change other operating limits for continuous parameter monitoring systems by doing another performance test, a performance test in conjunction with an engineering assessment, or by an engineering assessment. You must establish a revised limit if you make any change in the process or operating conditions that could affect control system performance or if you change the designated conditions after the last performance or compliance tests were done.

F. How Do I Demonstrate Continuous Compliance?

A new section, § 63.1570, of the final rule states your general requirements for complying with this rule. You must be in compliance with all of the non-opacity emission limits during the times specified in § 63.6(g)(1). You must be in compliance with the opacity emission limits during the times specified in § 63.6(h)(1). You must always operate and maintain your affected source, including air pollution and control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

Subpart UUU requires that you develop and implement a startup, shutdown, and malfunction plan according to the requirements in § 63.6(e)(3). During periods of startup, shutdown, or malfunction, you must operate your affected source and control equipment according to your plan.

You must report each instance in which you did not meet each emission limitation or work practice standard that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations and work practice standards that must be reported according the requirements in § 63.1575 of the final rule.

Consistent with §§ 63.6(e) and 63.7(e)(1), a deviation that occurs during a period of startup, shutdown, or malfunction is not a violation if you demonstrate to the Administrator's satisfaction that you were operating in accordance with your startup, shutdown, and malfunction plan. The Administrator will determine whether a deviation that occurs during a period of startup, shutdown, or malfunction is a violation according to the provisions in § 63.6(e). As proposed, multiple deviations from the same control device at the same time when you monitor process or control device operating parameters are a single deviation. You still must report each deviation.

You must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you. To demonstrate continuous compliance with the emission limitations for CCU, you must meet each of the conditions specified in Tables 6 and 7 to subpart UUU (for metal HAP emissions) and Tables 13 and 14 to subpart UUU (for organic HAP emissions). For catalytic reforming units, you must meet each of the conditions in Tables 20 and 21 to subpart UUU (for organic HAP emissions) and Tables 27 and 28 to subpart UUU (for inorganic HAP emissions). For HAP emissions from sulfur recovery units, you must meet each of the conditions in Tables 34 and 35 to subpart UUU. Continuous compliance requirements for by-pass lines are in Table 39 to subpart UUU. We have revised the continuous compliance requirements to reflect the inclusion of new compliance options and monitoring requirements.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

Sections 63.1574 through 63.1576 of the final rule describe the requirements for notices, reports, and records. As proposed, you may be required to provide up to seven types of one-time notifications of applicability, intention to construct or reconstruct (including construction and startup dates), performance test dates, and compliance status.

We added a one-time notice for owner and operators to obtain an extension of compliance on the emission limitations for an existing CCU. To obtain the extension, the owner or operator must commit to adding hydrotreatment of the CCU feedstock to meet the final Tier 2 gasoline sulfur control standards (40 CFR part 80, subpart J).

We have streamlined the data requirements for the Notification of Compliance Status by removing certain information on operation, maintenance, and monitoring of affected sources and control systems. This information is to be included in a separate operation, maintenance, and monitoring plan submitted to your permitting authority for review and approval. The plan must cover each affected source, monitoring system or procedure, and control device or method. This plan also contains information such as the procedures you will use to monitor certain process or control device operating parameters, your quality assurance/quality control plan for continuous monitoring systems, and monitoring and maintenance schedules.

You must submit a semiannual compliance report containing the information specified in the rule. We revised the rule to require that you submit the report whether or not a deviation occurred during the reporting period. However, only summary information is required if no deviation occurred. As proposed, the rule does not require that you make emergency reports if actions taken are consistent with your startup, shutdown, and malfunction plan. If actions taken are not consistent with your plan, you must report the events and the response in your semiannual compliance report.

We also revised the proposed rule in response to comments to include provisions allowing the permitting authority to approve a period of planned routine maintenance for a refinery with multiple CCU served by a single wet scrubber emission control device. During this pre-approved time period, the refinery may take the control device and/or one of the process units out of service for maintenance while the remaining process unit(s) continues to operate. To obtain approval, you must submit a written request at least 6 months before the planned maintenance is scheduled to begin that contains the specified information and data. This includes:

- A description of the planned routine maintenance and why it is necessary;
- The date the maintenance will begin and end;
- A quantified estimate of the emissions (including HAP and criteria pollutants) that would be released with an analysis of the environmental benefits (i.e., emission reduction) that would result as opposed to delaying the maintenance until the next unit turnaround; and
- Actions to be taken to minimize emissions during the period.

You must include a copy of the request in the compliance report due for the period before the planned maintenance is scheduled to begin. In the compliance report due after the routine planned maintenance is complete, you must provide followup information on the maintenance including the number of hours the control device did not operate.

As proposed, you must keep records of the information and data required by § 63.10. This includes information and data you must record to show continuous compliance with the emission limitations and work practice standards. You also must keep records of any changes that affect the performance of your emission control system.

III. Summary of Environmental, Energy, and Economic Impacts

In response to comments, we revised the environmental impacts analysis in two major respects. First, we incorporated the most current (1998) facility-specific data available. We removed thermal (non-fluid) CCU from the analysis because these units are not subject to the final rule. Finally, we changed the HAP metal emission estimate methodology to allow more site-specific and unit-specific estimates based on equilibrium catalyst Ni concentrations. The revised environmental impacts analysis is available in the docket (Docket A–97–37).

A. What Are the Air Quality Impacts?

We estimate nationwide HAP emissions from process vents on CCU, catalytic reforming units, and sulfur recovery units at 12,700 tpy at the current level of control. Most of the 162 existing refineries will meet the requirements of the rule within 3 years for all affected sources. A small number of fluid CCU may be granted an extension of compliance to install hydrotreating unit(s). When this rule is fully implemented for all affected sources, nationwide HAP emissions will be reduced by about 11,000 tpy, an 87 percent reduction. Emissions of non-HAP such as VOC, CO, PM, and hydrogen sulfide will be reduced by about 55 percent from the current level of about 109,000 tpy. Little or no adverse secondary air impacts, water, or solid waste impacts are anticipated from the implementation of these standards.

B. What Are the Cost Impacts?

For most facilities, the costs of the rule will be incurred over the next 3 years. For a few facilities, the costs for fluid CCU will be incurred over the next 8 years as hydrotreatment units are installed to meet the requirements of Tier 2 and this rule. The nationwide capital and annualized costs of control equipment (1998 dollars) are estimated at $163 million and $37.2 million/yr, respectively. When fully implemented, this rule is expected to result in an overall annual national cost of $47.3 million. This includes a cost of $37.2 million for operation and maintenance of control devices and a monitoring, recordkeeping, and reporting cost of $10.1 million ($9.2 million for operation and maintenance of monitoring systems and $0.9 million for recordkeeping and reporting).

About 75 percent of the facilities are currently meeting at least one of the emission limits required under the final rule. The costs for this rule are for the small fraction of refineries not already meeting the standard. Based on our cost analysis, only 29 of the 124 CCU (23 percent) and 53 of the 185 sulfur recovery units (29 percent) will require new or upgraded controls. We estimate that 102 of the 177 catalytic reforming units will require new or upgraded control systems for HCl.

C. What Are the Economic Impacts?

The economic analysis for the proposed rule showed that the estimated price increase of refined petroleum products is 0.24 percent for refineries expected to incur compliance costs as a result of the rule. The estimated decrease in output is 0.17 percent of domestic refinery products. The decline in domestic production is due to higher imports and reduced quantity demanded due to higher prices. However, the value of domestic shipments is expected to increase by 0.07 percent because the estimated price increase more than offsets the lower production volume. Annual net exports (exports minus imports) are predicted to decrease by 0.76 percent. Employment in the industry is likely to decrease by 0.19 percent (136 jobs). No plant closures or significant regional impacts are expected. The impacts for the final rule are expected to be similar to those predicted for the proposed rule since the overall costs and number of affected facilities changed only slightly; both overall capital and annual costs and number of affected sources are estimated to be lower for the final rule. Therefore, a new economic analysis was not considered necessary and was not conducted for the final rule. For more information on the economic impact analysis methodology and results, consult the "Economic Impact Analysis for the Petroleum Refinery NESHAP" (Docket A–97–37).

D. What Are the Non-Air Health and Environmental Impacts?

The control requirements in this rule are based on air pollution control systems currently in widespread use throughout the petroleum refining industry. The reduction in emissions of HAP and criteria pollutants will result in reduced deposition to waterbodies. The reduction in VOC will reduce ozone formation resulting in less damage to agricultural crops and forests. A small increase in annual water usage, about 6.2 million gallons nationwide, will result from the increased use of wet scrubbers.

E. What Are the Energy Impacts?

The energy impacts also are about the same as the proposed rule. Once fully implemented, annual electric usage is expected to increase by about 67,000 megawatt-hours (MW-hrs), primarily for CCU and sulfur recovery unit control systems. National natural gas usage, primarily for sulfur recovery unit control systems, is expected to increase by about 1.5 billion cubic feet per year.

IV. Summary of Major Comments and Responses

A. Why Did We Extend the Compliance Date?

Comment: Several industry commenters urge us to defer or delay promulgation of the rule to allow time to coordinate with the Tier 2 gasoline sulfur control requirements and other rules such as the reformulated gasoline (RFG) Phase II standard and the revised national ambient air quality standard for PM. Their major concern is that plants will be required to install expensive controls that may be extraneous as soon as they are installed depending on the outcome of the Tier 2 and other rules.

Response: To comply with the Tier 2 gasoline sulfur control requirements, individual refineries ultimately will need to produce gasoline with an average sulfur content of 30 ppm. The majority of refineries will need to undertake major construction projects to meet this limit. Since these projects could require modification of CCU and other affected sources, we revised the schedule to delay promulgation of this rule until completion of the Tier 2, which was promulgated on February 10, 2000 (65 FR 6698).

For some refineries, the Tier 2 rule significantly impacts its CCU. These refineries will have construction projects adding hydrotreating of the feed to the CCU. For these refineries, we also extended the compliance date to allow more time for construction projects. We believe that this will encourage refinery

owners and operators to employ hydrotreating of the feedstock to comply with the Tier 2 rule. As discussed in more detail below, we believe that hydrotreating the feedstock has increased environmental benefits relative to other methods of reducing gasoline sulfur.

The extended compliance date for existing CCU is based on when and how a refinery produces low sulfur gasoline to meet the Tier 2 limit. Hydrotreating the feed to the CCU is one of the means of producing low sulfur gasoline. As discussed further below, hydrotreating the feedstock provides environmental benefits not realized with other methods of producing low sulfur gasoline. It is also, unfortunately, significantly more expensive than other methods of reducing the sulfur content of gasoline.

A refinery owner or operator must determine which technology to use in reducing gasoline sulfur to meet the fuel standards. A number of alternatives are available. Refineries may elect to hydrotreat after the CCU, to hydrotreat the CCU feedstock or to implement some other form of desulfurization technology. Hydrotreating the feedstock removes metals as well as sulfur. While hydrotreating the feedstock to the unit would allow greater flexibility within the overall refinery operations and would better position the refinery for any additional sulfur fuel standards that might be promulgated in the future, such as standards to reduce sulfur in diesel fuel (64 FR 26142, May 13, 1999), the cost of hydrotreating the CCU feed is considerably more than post-unit hydrotreating for desulfurization. Thus, despite the greater flexibility realized through hydrotreating the feedstock, there is an economic bias against its use to reduce gasoline sulfur to meet the fuel standards. We believe that this bias could increase substantially if we do not coordinate the compliance dates for these NESHAP and the Tier 2 rule. A substantial increase in the economic bias against hydrotreating the feedstock would likely result in less refineries implementing this method of reducing gasoline sulfur, thereby foregoing a potentially significant environmental benefit.

Some facilities will take longer than 3 years to comply with the Tier 2 standards. Should these facilities elect to install hydrotreatment units for the feed to the CCU, these new units will not be operating at the compliance date for the MACT standard, 3 years promulgation. To avoid non-compliance, an owner or operator would be required to install expensive PM controls to comply with the MACT standard. These new controls might then become redundant with the later startup of the hydrotreatment unit for the feed to the CCU. Therefore, if the owner or operator elects to install a hydrotreatment unit for the feed to the CCU, the MACT compliance date for the CCU becomes the same as the Tier 2 compliance date.

Linking the compliance dates for the two rules, in this particular instance for those refineries that elect to hydrotreat the CCU feedstock, will allow the refinery to coordinate both decision making and the actual construction projects and, thus, minimize disruption to the refinery operations. We believe that not linking the compliance dates for the two rules could result in an environmental benefit being foregone and that linking them will result in a net environmental benefit because the number of process unit shutdowns and startups would be minimized. Shutdowns and startups can result in considerably more emissions to the atmosphere than operations under normal conditions. An estimate of the emissions reductions that would result from linking the compliance dates for the CCU MACT standards and Tier 2 fuel standards is not possible at this time. This is because we lack information regarding how the refineries will choose to comply with the fuel standards and the uncertainties associated with startup and shutdown of these refinery operations.

Linking the MACT standards' compliance date to the Tier 2 fuel standards' compliance date (i.e., the date the refinery produces low sulfur gasoline at 30 ppm) will not result in an overall or complete delay of the MACT standards for all CCU. While we believe that linking the compliance dates will serve as an incentive to hydrotreat the CCU feedstock, we nevertheless expect that the majority of facilities will comply with the fuel standards without implementing CCU feedstock hydrotreating. In some cases, even those that elect to hydrotreat the feedstock will comply in 3 years or less to take advantage of the various pooling, averaging, banking, and trading options provided in the final Tier 2 standards. The remainder of refineries will begin production of low sulfur gasoline over the next 8-year period, although most are expected to be in full compliance (i.e., producing gasoline at the 30 ppm annual average) by the year 2006. In no case will refineries be allowed any later than December 31, 2009, to comply with the MACT standard for CCU, which corresponds to the final Tier 2 compliance date.

B. What Is the New Alternative Nickel Emission Limitation?

Comment: Several industry commenters urge us to include a rate-based Ni alternative of 0.007 lb Ni/1,000 lbs of coke burn-off in the final rule. According to the commenters, this approach avoids penalizing large units with low HAP emissions and equates to the NSPS for PM by using the highest or worst case Ni equilibrium concentration to convert PM to Ni. Most of the units that can comply with the PM limit cannot comply with the mass-based Ni limit due to their greater size. The commenters argue that larger units should not be subject to a more restrictive Ni limit than smaller units due to their greater processing capacity.

Environmental groups and one independent technical expert strongly disagree that we should provide the second Ni alternative at the level suggested by industry (i.e., 0.007 lb/1,000 lbs of coke burn-off). Commenters claim that this alternative is not technically equivalent to the MACT floor, is not protective of the environment as it is set at a level that allows all refiners to process heavy feeds with no control device, will actually increase emissions, and poses difficulties in ensuring continuous compliance.

Response: After careful review of all the information and data collected following proposal and received as part of the public comments, we decided to include an additional metal HAP alternative for CCU formatted in terms of Ni emissions per 1,000 lbs of coke burn-off. We concluded that this particular format (i.e., lb Ni/1,000 lbs of coke burn-off) does account for the wide variation of processing capacity within the industry and, with the new provisions added to the final rule, there are adequate means of ensuring continuous compliance.

We also concluded that the technical approach recommended by the industry commenters (using equilibrium catalyst Ni concentration to make a direct conversion of the PM emission standard to a Ni limit) is not appropriate. As discussed further in the Response to Comment Document, we must reject any method to derive a Ni emission limit in terms of lb Ni/1,000 lb coke burn-off based on the PM emission limit and some arbitrarily selected equilibrium catalyst concentration, whether it is a median, average or highest measured value. The emission limits calculated using these approaches do not correlate with actual emissions (in lb Ni/1,000 lbs coke burn-off) of any CCU, and the resulting Ni emission limits are not

"equivalent" to the technology-based standard used as a basis of the PM emission limit that characterizes performance of the MACT floor technologies. This is because the equilibrium catalyst Ni concentration in no way reflects the performance of the MACT floor technology, as PM emissions. The equilibrium catalyst Ni concentration of a CCU is dependent on a complex mixture of operating and economic considerations; it is not totally dictated by the variability of Ni in the crude oil or the unit feed. In addition, we have no data or information to relate the equilibrium catalyst metals concentration to the best performing facilities (i.e., the equilibrium catalyst metal concentration does not reflect or relate to control device performance).

Although we do not accept the recommended approach in determining the emission limit based on an equilibrium catalyst conversion factor, we feel that the alternative format in terms of lb Ni/1,000 lb of coke burn-off has considerable merit. This particular format allows for flexible compliance on the part of the plant owner/operator. An emission limit expressed in this format can be met by using front-end hydrotreating, in-process operational changes, or end of pipe add-on controls alone or in combination.

In addition, to comply with the Tier 2 fuel standards, an owner or operator must choose one of a number of available methods of reducing sulfur in gasoline. One of those methods is to hydrotreat CCU feedstocks. This method of compliance has environmental benefits not realized with other methods. This is because feedstock hydrotreating has the potential to reduce Ni emissions from CCU, depending on what operating changes are made in the catalyst regeneration processes in conjunction with the feedstock hydrotreating. We believe that a Ni emission limit, in terms of lb Ni/1,000 lbs coke burn-off, has a potential to encourage feedstock hydrotreating as a means to comply with this limit and the Tier 2 fuel standards.

To determine an appropriate emission limit, we examined the available emissions data for the top performing CCU in terms of lb Ni emissions/1,000 lb coke burn-off rate. Although the currently available source test data are somewhat limited and are generally assumed to be representative of the lowest Ni emitters across the industry, they do allow an analysis following the basic criteria established for a MACT floor determination.

Through review of the emission data, we found that the average emission rates, as well as each individual test run result for the top-ranked CCU, are all below 0.001 lb Ni/1,000 lbs coke burn-off. Based on our data analysis, we determined that the emission limit of 0.001 lb Ni/1,000 lbs coke burn-off adequately characterizes performance of the MACT floor technology while taking into account process and measurement variability. This analysis provides an emission limit in the alternative format (Ni emissions per unit coke burn) that is reflective of the MACT floor technology. This emission limit is included in the final rule as an alternative format to the PM or Ni lb/hr limits that were also selected to characterize the performance of the MACT floor technologies. The determination of the emission limit formatted in terms of coke burn-off that is used to characterize the MACT floor technology is discussed in more detail in the Response to Comments Document (Docket A–97–36).

C. Why Did We Not Change the Proposed Nickel Emission Limitation?

Comment: Three commenters believe we should relax the proposed Ni emission limitation (lbs/hr) for metal HAP emissions from CCU. They question the method we used to determine the numerical emission limit that characterizes the MACT floor technology in this particular format. According to the commenters, our variability analysis is flawed for several reasons.

- We used the z-statistic rather than the student's t-statistic, which is appropriate for small samples from populations.
- We used the average relative standard deviation instead of the more representative maximum relative standard deviation.
- The analysis includes data known to be false or problematic.
- We used the 95 percent confidence level rather than the 98 percent interval, which the commenter claims is an EPA precedent.

The commenters also believe the level of emissions that would be excluded by the higher limit is trivial and of little environmental significance. Raising the limit would allow some refineries to avoid installing controls that are not cost effective and provide real *de minimus* relief. The commenters support a standard of 760 lbs/yr based on their approach.

Response: We acknowledge the quality assurance concerns regarding the results of certain Ni emission measurements and the use of larger confidence intervals about the average emission value in setting an emission limit that reflects use of the MACT floor technology. However, we also believe that the analysis must use the average of the top 12 percent or the 6th percentile facility, rather than the emissions of the 12th percentile facility. There are 124 fluid CCU in the U.S. and its territories; the 6th percentile of the industry would be represented by the emissions reductions achieved by the 7th and 8th ranked units. Reanalysis of the data, considering the reviewer's comments on the statistical approach while using the 6th percentile unit, yields an emission limit nearly identical to the proposed limit.

In response to this comment, we examined the emission rates of the top performing unit for which we have documented source test results. We found that the average emission rates, as well as each individual test run result for the top eight ranked units, are all below 200 lbs/yr. The 9th and 10th ranked units have similar average emission rates, but a wider fluctuation in the individual test run results. From the test data available, we determined that the proposed emission limit of 250 lbs/yr adequately characterizes the performance of the MACT floor technologies while taking into account process variability. For these reasons, we made no change in the proposed Ni lb/hr emission limit.

D. How Did We Change the Proposed Monitoring Requirements?

Comment: Environmental groups urge us to require continuous emission monitoring systems for HCl, TRS, and either CO, TOC, or total hydrocarbons (THC) for existing and new affected sources. They say these systems are commercially available, feasible (as stated in the background information document), ensure standards are met at all times, and provide better HAP monitoring. They say the cost of these systems is decreasing, and they may no longer be too costly. Also, the continuous monitoring of a process allows the operator greater flexibility in operation which could result in increased output, improved efficiency, and overall cost savings. Two commenters specifically request continuous emission monitoring systems for TRS limits. Due to the TRS emissions from refineries and numerous exceedances, more accurate information than operating parameter values is needed to assess compliance.

Response: We agree with the commenters' recommendations that the NSPS experience with continuous emission monitoring systems demonstrates their technical and economic feasibility for this industry,

provides better data, and needs to be encouraged.

In determining monitoring requirements, we looked at the various options. One of the options examined was requiring continuous emission or opacity monitors for all affected sources under this rule. We did not select this option because of the high capital and operating costs.

However, in response to these comments, we reexamined these options to look for ways to encourage their use or require their use if needed. As a result, we included options in the rule allowing plants to choose to comply with the NSPS monitoring requirements.

We also included requirements in the rule for continuous opacity monitoring systems for catalyst regenerator vents on any CCU with a fresh feed capacity greater than 20,000 barrels per day (and not using wet scrubbers). We also added continuous opacity monitors as a monitoring option for smaller units. Continuous opacity monitoring systems are already required for the larger units under Federal/State implementation plan requirements in 40 CFR part 51, appendix P; therefore, these costs are not attributable to the standard. We did not require a continuous opacity monitoring system for a unit with a wet scrubber because of interference from water vapor in wet scrubber exhaust gases. For these units, parameter monitoring is still the only monitoring method.

A continuous emission monitoring system for TRS or reduced sulfur emissions is also required in the final rule for any sulfur recovery unit with no add-on control device. The cost of continuous emission monitoring systems for these units is reasonable and does not pose any economic hardship for plants that do not use a control device. For units with add-on control devices, we are confident that the process or control device parameter monitoring allowed in place of continuous emission or opacity monitoring systems provides adequate assurance of continuous compliance.

V. Administrative Requirements

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 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, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under 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.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. 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. Thus, Executive Order 13175 does not apply to this rule.

D. 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 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.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. The EPA interprets Executive Order 13045 as applying only to

regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final NESHAP are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

F. 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, 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 this rule does 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. The rule does not 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 this rule.

G. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The 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 rule on small entities, small entities are defined as: (1) A firm having no more than 1,500 employees and no more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks; [1] according to Small Business Administration (SBA) size standards established under the North American Industry Classification System (NAICS); (2) a small government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small entities in NAICS 32411 only will be affected.

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. We have determined that nine of the 23 small refiners own one or more of the affected sources. None of the 9 small refiners will need additional air pollution control equipment for CCU or sulfur recovery units. Only those costs for monitoring, reporting, and recordkeeping would be incurred by these firms. Six small refiners will need to add control equipment for catalytic reforming units. Annual total compliance costs for the nine affected small refiners would be less than 0.01 percent of estimated revenues. For more information, please consult the public docket for this final rule.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. As discussed in the preamble to the proposed rule, EPA met with representatives of five small refineries and listened to their concerns. In response, we exercised the maximum degree of flexibility in minimizing impacts on small business through the alternative Nickel standard and subcategorization for catalytic reforming units. The rule reflects the minimum level of control allowed under the CAA. Since proposal, we have further reduced the economic impact on all refineries, including small businesses, by subcategorizing CCU and, in appropriate circumstances, extending the compliance date to coincide with the Tier 2 gasoline sulfur control rule.

H. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1844.01), and a copy may be obtained from Sandy Farmer, Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 260–2740.

The information collection requirements in the final rule include mandatory notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, subpart A). These information requirements are needed to confirm the compliance status of major sources, to identify any non-major sources not subject to the standard and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which facilities, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA for which a claim of

[1] Capacity includes owned or leased facilities as well as facilities under a processing agreement or an agreement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of this rule) is estimated to total 19,428 labor hours per year at a total annual cost of $1.3 million. This estimate includes initial notifications, a performance test, one-time preparation of a startup, shutdown, and malfunction plan and operation, maintenance, and monitoring plan, semiannual deviation summary reports, and recordkeeping for 132 plants expected to be subject to the rule during this ICR clearance period. Total capital costs associated with the monitoring equipment over the 3-year period of the ICR is estimated at $15.8 million; the annualized cost of capital is estimated at $1.1 million. This estimate includes the capital and startup costs associated with installation of monitoring equipment.

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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus 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 NTTTA 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.

Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards for use in emissions testing. The search for emissions testing procedures identified 34 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. After reviewing the available standards, we determined that 26 of the candidate consensus standards identified for measuring emissions of the HAP or surrogates subject to the emission limitations in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations. Eight of the remaining candidate consensus are under development or currently under EPA review. We plan to follow, review, and consider adopting these standards after their development and we complete further review.

One consensus standard, ASTM D6216–98, is practical for EPA use in Performance Specification 1 (PS–1) in 40 CFR part 60, appendix B, "Specifications and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources." This ASTM method can best be used in place of the design specification verification procedures currently in sections 5 and 6 of PS–1. We proposed ASTM D6216–98 for incorporation by reference in another rulemaking (63 FR 50824, September 23, 1998). Comments from the proposal have been addressed and we expect to complete this action in the near future. For these reasons, we do not propose to adopt ASTM D6216–98 in lieu of PS–1 requirements as it would be impractical to us to act independently from the other rulemaking already undergoing promulgation, and because ASTM D6216 does not address all the requirements specified in PS–1.

Tables 4 and 40 in subpart UUU list the EPA test methods and performance specifications included in this rule. Most of these methods and performance specifications have been used by States and industry for more than 10 years. Nevertheless, as provided by § 63.7(f) of the NESHAP General Provisions (40 CFR part 63, subpart A), any State or facility may apply to EPA for permission to use an alternative method in place of any of the EPA test methods or performance specifications listed in the rule.

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 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, Petroleum refineries.

Dated: March 19, 2002.

Christine Todd Whitman,

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.*

2. Part 63 is amended by adding subpart UUU to read as follows:

Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

Sec.

What This Subpart Covers

63.1560 What is the purpose of this subpart?
63.1561 Am I subject to this subpart?
63.1562 What parts of my plant are covered by this subpart?
63.1563 When do I have to comply with this subpart?

Catalytic Cracking Units, Catalytic Reforming Units, Sulfur Recovery Units, and Bypass Lines

63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?
63.1565 What are my requirements for organic HAP emissions from catalytic cracking units?
63.1566 What are my requirements for organic HAP emissions from catalytic reforming units?
63.1567 What are my requirements for inorganic HAP emissions from catalytic reforming units?

63.1568 What are my requirements for HAP emissions from sulfur recovery units?
63.1569 What are my requirements for HAP emissions from bypass lines?

General Compliance Requirements

63.1570 What are my general requirements for complying with this subpart?
63.1571 How and when must I conduct a performance test or other initial compliance demonstration?
63.1572 What are my monitoring installation, operation, and maintenance requirements?
63.1573 What are my monitoring alternatives?

Notifications, Reports, and Records

63.1574 What notifications must I submit and when?
63.1575 What reports must I submit and when?
63.1576 What records must I keep, in what form, and for how long?

Other Requirements and Information

63.1577 What parts of the General Provisions apply to me?
63.1578 Who implements and enforces this subpart?
63.1579 What definitions apply to this subpart?

Tables

Table 1 to Subpart UUU of Part 63—Metal HAP Emission Limits for Catalytic Cracking Units
Table 2 to Subpart UUU of Part 63—Operating Limits for Metal HAP Emissions from Catalytic Cracking Units
Table 3 to Subpart UUU of Part 63—Continuous Monitoring Systems for Metal HAP Emissions from Catalytic Cracking Units
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 Standard (NSPS) for Particulate Matter (PM)
Table 5 to Subpart UUU of Part 63—Initial Compliance with Metal HAP Emission Limits for Catalytic Cracking Units
Table 6 to Subpart UUU of Part 63—Continuous Compliance with Metal HAP Emission Limits for Catalytic Cracking Units
Table 7 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for Metal HAP Emissions from Catalytic Cracking Units
Table 8 to Subpart UUU of Part 63—Organic HAP Emission Limits for Catalytic Cracking Units
Table 9 to Subpart UUU of Part 63—Operating Limits for Organic HAP Emissions from Catalytic Cracking Units
Table 10 to Subpart UUU of Part 63—Continuous Monitoring Systems for Organic HAP Emissions from Catalytic Cracking Units
Table 11 to Subpart UUU of Part 63—Requirements for Performance Tests for Organic HAP Emissions from Catalytic Cracking Units Not Subject to the New Source Performance Standard (NSPS) for Carbon Monoxide (CO)
Table 12 to Subpart UUU of Part 63—Initial Compliance with Organic HAP Emission Limits for Catalytic Cracking Units
Table 13 to Subpart UUU of Part 63—Continuous Compliance with Organic HAP Emission Limits for Catalytic Cracking Units
Table 14 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for Organic HAP Emissions from Catalytic Cracking Units
Table 15 to Subpart UUU of Part 63—Organic HAP Emission Limits for Catalytic Reforming Units
Table 16 to Subpart UUU of Part 63—Operating Limits for Organic HAP Emissions from Catalytic Reforming Units
Table 17 to Subpart UUU of Part 63—Continuous Monitoring Systems for Organic HAP Emissions from Catalytic Reforming Units
Table 18 to Subpart UUU of Part 63—Requirements for Performance Tests for Organic HAP Emissions from Catalytic Reforming Units
Table 19 to Subpart UUU of Part 63—Initial Compliance with Organic HAP Emission Limits for Catalytic Reforming Units
Table 20 to Subpart UUU of Part 63—Continuous Compliance with Organic HAP Emission Limits for Catalytic Reforming Units
Table 21 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for Organic HAP Emissions from Catalytic Reforming Units
Table 22 to Subpart UUU of Part 63—Inorganic HAP Emission Limits for Catalytic Reforming Units
Table 23 to Subpart UUU of Part 63—Operating Limits for Inorganic HAP Emission Limitations for Catalytic Reforming Units
Table 24 to Subpart UUU of Part 63—Continuous Monitoring Systems for Inorganic HAP Emissions from Catalytic Reforming Units
Table 25 to Subpart UUU of Part 63—Requirements for Performance Tests for Inorganic HAP Emissions from Catalytic Reforming Units
Table 26 to Subpart UUU of Part 63—Initial Compliance with Inorganic HAP Emission Limits for Catalytic Reforming Units
Table 27 to Subpart UUU of Part 63—Continuous Compliance with Inorganic HAP Emission Limits for Catalytic Reforming Units
Table 28 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for Inorganic HAP Emissions from Catalytic Reforming Units
Table 29 to Subpart UUU of Part 63—HAP Emission Limits for Sulfur Recovery Units
Table 30 to Subpart UUU of Part 63—Operating Limits for HAP Emissions from Sulfur Recovery Units
Table 31 to Subpart UUU of Part 63—Continuous Monitoring Systems for HAP Emissions from Sulfur Recovery Units
Table 32 to Subpart UUU of Part 63—Requirements for Performance Tests for HAP Emissions from Sulfur Recovery Units Not Subject to the New Source Performance Standards (NSPS) for Sulfur Oxides
Table 33 to Subpart UUU of Part 63—Initial Compliance with HAP Emission Limits for Sulfur Recovery Units
Table 34 to Subpart UUU of Part 63—Continuous Compliance with HAP Emission Limits for Sulfur Recovery Units
Table 35 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for HAP Emissions from Sulfur Recovery Units
Table 36 to Subpart UUU of Part 63—Work Practice Standards for HAP Emissions from Bypass Lines
Table 37 to Subpart UUU of Part 63—Requirements for Performance Tests for Bypass Lines
Table 38 to Subpart UUU of Part 63—Initial Compliance with Work Practice Standards for HAP Emissions from Bypass Lines
Table 39 to Subpart UUU of Part 63—Continuous Compliance with Work Practice Standards for HAP Emissions from Bypass Lines
Table 40 to Subpart UUU of Part 63—Requirements for Installation, Operation, and Maintenance of Continuous Opacity Monitoring Systems and Continuous Emission Monitoring Systems
Table 41 to Subpart UUU of Part 63—Requirements for Installation, Operation, and Maintenance of Continuous Parameter Monitoring Systems
Table 42 to Subpart UUU of Part 63—Additional Information for Initial Notification of Compliance Status
Table 43 to Subpart UUU of Part 63—Requirements for Reports
Table 44 to Subpart UUU of Part 63—Applicability of NESHAP General Provisions to Subpart UUU

What This Subpart Covers

§ 63.1560 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (HAP) emitted from petroleum refineries. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.1561 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a petroleum refinery that is located at a major source of HAP emissions.

(1) A petroleum refinery is an establishment engaged primarily in petroleum refining as defined in the Standard Industrial Classification (SIC) code 2911 and the North American Industry Classification (NAIC) code 32411, and used mainly for:

(i) Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants;

(ii) Separating petroleum; or

(iii) Separating, cracking, reacting, or reforming an intermediate petroleum

stream, or recovering a by-product(s) from the intermediate petroleum stream (e.g., sulfur recovery).

(2) A major source of HAP is a plant site 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.

(b) [Reserved]

§ 63.1562 What parts of my plant are covered by this subpart?

(a) This subpart applies to each new, reconstructed, or existing affected source at a petroleum refinery.

(b) The affected sources are:

(1) Each catalytic cracking unit that regenerates catalyst.

(2) Each catalytic reforming unit that regenerates catalyst.

(3) Each sulfur recovery unit and the tail gas treatment unit serving it.

(4) Each bypass line serving a new, existing, or reconstructed catalytic cracking unit, catalytic reforming unit, or sulfur recovery unit. This means each vent system that contains a bypass line (e.g., ductwork) that could divert an affected vent stream away from a control device used to comply with the requirements of this subpart.

(c) An affected source is a new affected source if you commence construction of the affected source after September 11, 1998, and you meet the applicability criteria in § 63.1561 at the time you commenced construction.

(d) Any affected source is reconstructed if you meet the criteria in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

(f) This subpart does not apply to:

(1) A thermal catalytic cracking unit.

(2) A sulfur recovery unit that does not recover elemental sulfur or where the modified reaction is carried out in a water solution which contains a metal ion capable of oxidizing the sulfide ion to sulfur (e.g., the LO–CAT II process).

(3) A redundant sulfur recovery unit not located at a petroleum refinery and used by the refinery only for emergency or maintenance backup.

(4) Equipment associated with bypass lines such as low leg drains, high point bleed, analyzer vents, open-ended valves or lines, or pressure relief valves needed for safety reasons.

(5) Gaseous streams routed to a fuel gas system.

§ 63.1563 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you startup your affected source before April 11, 2002, then you must comply with the emission limitations and work practice standards for new and reconstructed sources in this subpart no later than April 11, 2002.

(2) If you startup your affected source after April 11, 2002, you must comply with the emission limitations and work practice standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations and work practice standards for existing affected sources in this subpart by no later than April 11, 2005 except as specified in paragraph (c) of this section.

(c) We will grant an extension of compliance for an existing catalytic cracking unit allowing additional time to meet the emission limitations and work practice standards for catalytic cracking units in §§ 63.1564 and 63.1565 if you commit to hydrotreating the catalytic cracking unit feedstock and to meeting the emission limitations of this subpart on the same date that your facility meets the final Tier 2 gasoline sulfur control standard (40 CFR part 80, subpart J). To obtain an extension, you must submit a written notification to your permitting authority according to the requirements in § 63.1574(e). Your notification must include the information in paragraphs (c)(1) and (2) of this section.

(1) Identification of the affected source with a brief description of the controls to be installed (if needed) to comply with the emission limitations for catalytic cracking units in this subpart.

(2) A compliance schedule, including the information in paragraphs (c)(2)(i) through (iv) of this section.

(i) The date by which onsite construction or the process change is to be initiated.

(ii) The date by which onsite construction or the process change is to be completed.

(iii) The date by which your facility will achieve final compliance with both the final Tier 2 gasoline sulfur control standard as specified in § 80.195, and the emission limitations and work practice standards for catalytic cracking units in this subpart. In no case will your permitting authority grant an extension beyond the date you are required to meet the Tier 2 gasoline sulfur control standard or December 31, 2009, whichever comes first. If you don't comply with the emission limitations and work practice standards for existing catalytic cracking units by the specified date, you will be out-of-compliance with the requirements for catalytic cracking units beginning April 11, 2005.

(iv) A brief description of interim emission control measures that will be taken to ensure proper operation and maintenance of the process equipment during the period of the compliance extension.

(d) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the requirements in paragraphs (d)(1) and (2) of this section apply.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with the requirements of this subpart upon startup.

(2) All other parts of the source must be in compliance with the requirements of this subpart by no later than 3 years after it becomes a major source or, if applicable, the extended compliance date granted according to the requirements in paragraph (c) of this section.

(e) You must meet the notification requirements in § 63.1574 according to the schedule in § 63.1574 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before the date you are required to comply with the emission limitations and work practice standards in this subpart.

Catalytic Cracking Units, Catalytic Reforming Units, Sulfur Recovery Units, and Bypass Lines

§ 63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?

(a) *What emission limitations and work practice standards must I meet?* You must:

(1) Meet each emission limitation in Table 1 of this subpart that applies to you. If your catalytic cracking unit is subject to the NSPS for PM in § 60.102 of this chapter, you must meet the emission limitations for NSPS units. If your catalytic cracking unit isn't subject to the NSPS for PM, you can choose from the four options in paragraphs (a)(1)(i) through (iv) of this section:

(i) You can elect to comply with the NSPS requirements (Option 1);

(ii) You can elect to comply with the PM emission limit (Option 2);

(iii) You can elect to comply with the Nickel (Ni) lb/hr emission limit (Option 3); or

(iv) You can elect to comply with the Ni lb/1,000 lbs of coke burn-off emission limit (Option 4).

(2) Comply with each operating limit in Table 2 of this subpart that applies to you.

(3) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(4) The emission limitations and operating limits for metal HAP emissions from catalytic cracking units required in paragraphs (a)(1) and (2) of this section do not apply during periods of planned maintenance preapproved by the applicable permitting authority according to the requirements in § 63.1575(j).

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standard?* You must:

(1) Install, operate, and maintain a continuous monitoring system(s) according to the requirements in § 63.1572 and Table 3 of this subpart.

(2) Conduct a performance test for each catalytic cracking unit not subject to the NSPS for PM according to the requirements in § 63.1571 and under the conditions specified in Table 4 of this subpart.

(3) Establish each site-specific operating limit in Table 2 of this subpart that applies to you according to the procedures in Table 4 of this subpart.

(4) Use the procedures in paragraphs (b)(4)(i) through (iv) of this section to determine initial compliance with the emission limitations.

(i) If you elect Option 1 in paragraph (a)(1)(i) of ths section, the NSPS requirements, compute the PM emission rate (lb/1,000 lbs of coke burn-off) for each run using Equations 1, 2, and 3 (if applicable) of this section as follows:

$$R_c = K_1 Q_r \left(\%CO_2 + \%CO\right) + K_2 Q_a - K_3 Q_r \left[\left(\%CO/2\right) + \%CO_2 + \%O_2\right] + K_3 Q_{oxy}\left(\%O_{xy}\right) \qquad \text{(Eq. 1)}$$

Where:

R_c = Coke burn-off rate, kg/hr (lb/hr);

Q_r = Volumetric flow rate of exhaust gas from catalyst regenerator before adding air or gas streams. Example: You may measure after an electrostatic precipitator, but you must measure before a carbon monoxide boiler, dscm/min (dscf/min);

Q_a = Volumetric flow rate of air to catalytic cracking unit catalyst regenerator, as determined from instruments in the catalytic cracking unit control room, 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);

$\%O_2$ = Oxygen concentration in regenerator exhaust, percent by volume (dry basis);

K_1 = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) (0.0186 (lb-min)/(hr-dscf-%));

K_2 = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm) (0.1303 (lb-min)/(hr-dscf));

K_3 = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) (0.0062 (lb-min)/(hr-dscf-%));

Q_{oxy} = Volumetric flow rate of oxygen-enriched air stream to regenerator, as determined from instruments in the catalytic cracking unit control room, dscm/min (dscf/min); and

$\%O_{xy}$ = Oxygen concentration in oxygen-enriched air stream, percent by volume (dry basis).

$$E = \frac{K \times C_s \times Q_{sd}}{R_c} \qquad \text{(Eq. 2)}$$

Where:

E = Emission rate of PM, kg/1,000 kg (lb/1,000 lb) of coke burn-off;

C_s = Concentration of PM, g/dscm (lb/dscf);

Q_{sd} = Volumetric flow rate of the catalytic cracking unit catalyst regenerator flue gas as measured by Method 2 in appendix A to part 60 of this chapter, dscm/hr (dscf/hr);

R_c = Coke burn-off rate, kg coke/hr (1,000 lb coke/hr); and

K = Conversion factor, 1.0 (kg^2/g)/(1,000 kg) (1,000 lb/(1,000 lb)).

$$E_s = 1.0 + A\left(H/R_c\right)K' \qquad \text{(Eq. 3)}$$

Where:

E_s = Emission rate of PM allowed, kg/1,000 kg (1b/1,000 lb) of coke burn-off in catalyst regenerator;

1.0 = Emission limitation, kg coke/1,000 kg (lb coke/1,000 lb);

A = Allowable incremental rate of PM emissions, 0.18 g/million cal (0.10 lb/million Btu); and

H = Heat input rate from solid or liquid fossil fuel, million cal/hr (million Btu/hr). Make sure your permitting authority approves procedures for determining the heat input rate.

R_c = Coke burn-off rate, kg coke/hr (1,000 lb coke/hr) determined using Equation 1 of this section; and

K′ = Conversion factor to units to standard, 1.0 (kg^2/g)/(1,000 kg) (10^3 lb/(1,000 lb)).

(ii) If you elect Option 2 in paragraph (a)(1)(ii) of this section, the PM emission limit, compute your PM emission rate (lb/1,000 lbs of coke burn-off) using Equations 1 and 2 of this section and your site-specific opacity operating limit (if you use a continuous opacity monitoring system) using Equation 4 of this section as follows:

$$\text{Opacity Limit} = \text{Opacity}_{st} \times \left(\frac{1 \text{ lb/klb coke burn}}{\text{PMEmR}_{st}}\right) \qquad \text{(Eq. 4)}$$

Where:

Opacity limit = Maximum permissible hourly average opacity, percent, or 10 percent, whichever is greater;

Opacity_{st} = Hourly average opacity measured during the source test runs, percent; and

PMEmR_{st} = PM emission rate measured during the source test, lb/1,000 lbs coke burn.

$$E_{Ni_1} = C_{Ni} \times Q_{sd} \qquad \text{(Eq. 5)}$$

(iii) If you elect Option 3 in paragraph (a)(1)(iii) of this section, the Ni lb/hr emission limit, compute your Ni emission rate using Equation 5 of this section and your site-specific Ni operating limit (if you use a continuous opacity monitoring system) using Equations 6 and 7 of this section as follows:

Where:

E_{Ni1} = Mass emission rate of Ni, mg/hr (lb/hr); and

C_{Ni} = Ni concentration in the catalytic cracking unit catalyst regenerator flue gas as measured by Method 29 in appendix A to part 60 of this chapter, mg/dscm (lbs/dscf).

$$\text{Opacity}_1 = \frac{13\ \text{g Ni/hr}}{\text{NiEmR1}_{st}} \times \text{Opacity}_{st} \qquad \text{(Eq. 6)}$$

Where:

Opacity_1 = Opacity value for use in Equation 7 of this section, percent, or 10 percent, whichever is greater; and

NiEmR1_{st} = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 5 of this section for each of the performance test runs, g Ni/hr.

$$\text{Ni Operating Limit}_1 = \text{Opacity}_1 \times Q_{mon,st} \times \text{E-Cat}_{st} \qquad \text{(Eq. 7)}$$

Where:

Ni operating limit_1 = Maximum permissible hourly average Ni operating limit, percent-acfm-ppmw, i.e., your site-specific Ni operating limit;

$Q_{mon,st}$ = Hourly average actual gas flow rate as measured by the continuous parameter monitoring system during the performance test or using the alternative procedure in § 63.1573, acfm; and

E–Cat_{st} = Ni concentration on equilibrium catalyst measured during source test, ppmw.

(iv) If you elect Option 4 in paragraph (a)(1)(iv) of this section, the Ni lbs/1,000 lbs of coke burn-off emission limit, compute your Ni emission rate using Equations 1 and 8 of this section and your site-specific Ni operating limit (if you use a continuous opacity monitoring system) using Equations 9 and 10 of this section as follows:

$$E_{Ni_2} = \frac{C_{Ni} \times Q_{sd}}{R_c} \qquad \text{(Eq. 8)}$$

Where:

E_{Ni2} = Normalized mass emission rate of Ni, mg/kg coke (lb/1,000 lbs coke).

$$\text{Opacity}_2 = \frac{1.0\ \text{mg/kg coke}}{\text{NiEmR2}_{st}} \times \text{Opacity}_{st} \qquad \text{(Eq. 9)}$$

Where:

Opacity_2 = Opacity value for use in Equation 10 of this section, percent, or 10 percent, whichever is greater; and

NiEmR2_{st} = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 8 of this section for each of the performance test runs, mg/kg coke.

$$\text{Ni Operating Limit}_2 = \text{Opacity}_2 \times \text{E-Cat}_{st} \times \frac{Q_{mon,st}}{R_{c,st}} \qquad \text{(Eq. 10)}$$

Where:

Ni operating limit_2 = Maximum permissible hourly average Ni operating limit, percent-ppmw-acfm-hr/kg coke, i.e., your site-specific Ni operating limit; and

$R_{c,st}$ = Coke burn rate from Equation 1 of this section, as measured during the initial performance test, kg coke/hr.

(5) Demonstrate initial compliance with each emission limitation that applies to you according to Table 5 of this subpart.

(6) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting your operation, maintenance, and monitoring plan to your permitting authority as part of your Notification of Compliance Status.

(7) Submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standards?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 1 and 2 of this subpart that applies to you according to the methods specified in Tables 6 and 7 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by maintaining records to document conformance with the procedures in your operation, maintenance, and monitoring plan.

(3) If you use a continuous opacity monitoring system and elect to comply with Option 3 in paragraph (a)(1)(iii) of this section, determine continuous compliance with your site-specific Ni operating limit by using Equation 11 of this section as follows:

$$\text{Ni Operating Value}_1 = \text{Opacity} \times Q_{mon} \times \text{E-Cat} \qquad \text{(Eq. 11)}$$

Where:

Ni operating value$_1$ = Maximum permissible hourly average Ni standard operating value, %-acfm-ppmw;

Opacity = Hourly average opacity, percent;

Q_{mon} = Hourly average actual gas flow rate as measured by continuous parameter monitoring system or calculated by alternative procedure in § 63.1573, acfm; and

E-Cat = Ni concentration on equilibrium catalyst from weekly or more recent measurement, ppmw.

(4) If you use a continuous opacity monitoring system and elect to comply with Option 4 in paragraph (a)(1)(iv) of this section, determine continuous compliance with your site-specific Ni operating limit by using Equation 12 of this section as follows:

$$\text{Ni Operating Value}_2 = \frac{\text{Opacity} \times \text{E-Cat} \times Q_{mon}}{R_c} \quad \text{(Eq. 12)}$$

Where:

Ni operating value$_2$ = Maximum permissible hourly average Ni standard operating value, percent-acfm-ppmw-hr/kg coke.

§ 63.1565 What are my requirements for organic HAP emissions from catalytic cracking units?

(a) *What emission limitations and work practice standards must I meet?* You must:

(1) Meet each emission limitation in Table 8 of this subpart that applies to you. If your catalytic cracking unit is subject to the NSPS for carbon monoxide (CO) in § 60.103 of this chapter, you must meet the emission limitations for NSPS units. If your catalytic cracking unit isn't subject to the NSPS for CO, you can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to comply with the NSPS requirements (Option 1); or

(ii) You can elect to comply with the CO emission limit (Option 2).

(2) Comply with each site-specific operating limit in Table 9 of this subpart that applies to you.

(3) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(4) The emission limitations and operating limits for organic HAP emissions from catalytic cracking units required in paragraphs (a)(1) and (2) of this section do not apply during periods of planned maintenance preapproved by the applicable permitting authority according to the requirements in § 63.1575(j).

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standards?* You must:

(1) Install, operate, and maintain a continuous monitoring system according to the requirements in § 63.1572 and Table 10 of this subpart. Except:

(i) Whether or not your catalytic cracking unit is subject to the NSPS for CO in § 60.103 of this chapter, you don't have to install and operate a continuous emission monitoring system if you show that CO emissions from your vent average less than 50 parts per million (ppm), dry basis. You must get an exemption from your permitting authority, based on your written request. To show that the emissions average is less than 50 ppm (dry basis), you must continuously monitor CO emissions for 30 days using a CO continuous emission monitoring system that meets the requirements in § 63.1572.

(ii) If your catalytic cracking unit isn't subject to the NSPS for CO, you don't have to install and operate a continuous emission monitoring system or a continuous parameter monitoring system if you vent emissions to a boiler (including a "CO boiler") or process heater that has a design heat input capacity of at least 44 megawatts (MW).

(iii) If your catalytic cracking unit isn't subject to the NSPS for CO, you don't have to install and operate a continuous emission monitoring system or a continuous parameter monitoring system if you vent emissions to a boiler or process heater in which all vent streams are introduced into the flame zone.

(2) Conduct each performance test for a catalytic cracking unit not subject to the NSPS for CO according to the requirements in § 63.1571 and under the conditions specified in Table 11 of this subpart.

(3) Establish each site-specific operating limit in Table 9 of this subpart that applies to you according to the procedures in Table 11 of this subpart.

(4) Demonstrate initial compliance with each emission limitation that applies to you according to Table 12 of this subpart.

(5) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your Notification of Compliance Status according to § 63.1574.

(6) Submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standards?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 8 and 9 of this subpart that applies to you according to the methods specified in Tables 13 and 14 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

§ 63.1566 What are my requirements for organic HAP emissions from catalytic reforming units?

(a) *What emission limitations and work practice standards must I meet?* You must:

(1) Meet each emission limitation in Table 15 of this subpart that applies to you. You can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to vent emissions of total organic compounds (TOC) to a flare that meets the control device requirements in § 63.11(b) (Option 1); or

(ii) You can elect to use a control device to meet a TOC percent reduction standard or concentration limit, whichever is less stringent (Option 2).

(2) Comply with each site-specific operating limit in Table 16 of this subpart that applies to you.

(3) The emission limitations in Tables 15 and 16 of this subpart apply to emissions from catalytic reforming unit process vents that occur during depressuring and purging operations. These process vents include those used during unit depressurization, purging, coke burn, catalyst rejuvenation, and reduction or activation purge.

(4) The emission limitations in Tables 15 and 16 of this subpart do not apply to emissions from process vents during depressuring and purging operations when the reactor vent pressure is 5 pounds per square inch gauge (psig) or less.

(5) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standard?* You must:

(1) Install, operate, and maintain a continuous monitoring system(s) according to the requirements in § 63.1572 and Table 17 of this subpart.

(2) Conduct each performance test for a catalytic reforming unit according to the requirements in § 63.1571 and under the conditions specified in Table 18 of this subpart.

(3) Establish each site-specific operating limit in Table 16 of this subpart that applies to you according to the procedures in Table 18 of this subpart.

(4) Use the procedures in paragraph (b)(4)(i) or (ii) of this section to determine initial compliance with the emission limitations.

(i) If you elect the percent reduction standard under Option 2, calculate the emission rate of TOC using Equation 1 of this section (if you use Method 25) or Equation 2 of this section (if you use Method 25A); then calculate the mass emission reduction using Equation 3 of this section as follows:

$$E = K_4 M_c Q_s \qquad \text{(Eq. 1)}$$

Where:

E = Emission rate of TOC in the vent stream, kilograms-C per hour;

K_4 = Constant, 6.0×10^{-5} (kilograms per milligram)(minutes per hour);

M_c = Mass concentration of total gaseous nonmethane organic as measured and calculated using Method 25 in appendix A to part 60 of this chapter, mg/dscm; and

Q_s = Vent stream flow rate, dscm/min, at a temperature of 20 degrees Celsius (C).

$$E = K_5 C_{TOC} Q_S \qquad \text{(Eq. 2)}$$

Where:

E = Emission rate of TOC in the vent stream, kilograms-C per hour;

K_5 = Constant, 9.0×10^{-5} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (gram-C per gram-mole-propane) (kilogram per gram) (minutes per hour), where the standard temperature (standard cubic meter) is at 20 degrees C (uses 36g–C/g.mole propane);

C_{TOC} = Concentration of TOC on a dry basis in ppmv as propane as measured by Method 25A in appendix A to part 60 of this chapter; and

Q_s = Vent stream flow rate, dry standard cubic meters per minute, at a temperature of 20 degrees C.

$$\%\ \text{reduction} = \frac{E_i - E_o}{E_i} \times 100\% \qquad \text{(Eq. 3)}$$

Where:

E_i = Mass emission rate of TOC at control device inlet, kg/hr; and

E_o = Mass emission rate of TOC at control device outlet, kg/hr.

(5) If you elect the 20 parts per million by volume (ppmv) concentration limit, correct the measured TOC concentration for oxygen (O_2) content in the gas stream using Equation 4 of this section as follows:

$$C_{TOC,3\%O_2} = C_{TOC}\left(\frac{17.9\%}{20.9\% - \%O_2}\right) \qquad \text{(Eq. 4)}$$

(6) You are not required to do a TOC performance test if:

(i) You elect to vent emissions to a flare as provided in paragraph (a)(1)(i) of this section (Option 1); or

(ii) You elect the TOC percent reduction or concentration limit in paragraph (a)(1)(ii) of this section (Option 2), and you use a boiler or process heater with a design heat input capacity of 44 MW or greater or a boiler or process heater in which all vent streams are introduced into the flame zone.

(7) Demonstrate initial compliance with each emission limitation that applies to you according to Table 19 of this subpart.

(8) Demonstrate initial compliance with the work practice standard in paragraph (a)(5) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your Notification of Compliance Status.

(9) Submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standards?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 15 and 16 of this subpart that applies to you according to the methods specified in Tables 20 and 21 of this subpart.

(2) Demonstrate continuous compliance with the work practice standards in paragraph (a)(3) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

§ 63.1567 What are my requirements for inorganic HAP emissions from catalytic reforming units?

(a) *What emission limitations and work practice standards must I meet?* You must:

(1) Meet each emission limitation in Table 22 of this subpart that applies to you. These emission limitations apply during coke burn-off and catalyst rejuvenation. You can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to use a control device to meet either a percent reduction standard for hydrogen chloride (HCl) emissions (Option 1); or

(ii) You can elect to meet an HCl concentration limit (Option 2).

(2) Meet each site-specific operating limit in Table 23 of this subpart that applies to you. These operating limits apply during coke burn-off and catalyst rejuvenation.

(3) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standard?* You must:

(1) Install, operate, and maintain a continuous monitoring system(s) according to the requirements in § 63.1572 and Table 24 of this subpart.

(2) Conduct each performance test for a catalytic reforming unit according to the requirements in § 63.1571 and the conditions specified in Table 25 of this subpart.

(3) Establish each site-specific operating limit in Table 23 of this subpart that applies to you according to the procedures in Table 25 of this subpart.

(4) Demonstrate initial compliance with each emission limitation that applies to you according to Table 26 of this subpart.

(5) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your Notification of Compliance Status.

(6) Submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standard?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 22 and 23 of this subpart that applies to you according to the methods specified in Tables 27 and 28 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by maintaining records to document conformance with the procedures in your operation, maintenance and monitoring plan.

§ 63.1568 What are my requirements for HAP emissions from sulfur recovery units?

(a) *What emission limitations and work practice standard must I meet?* You must:

(1) Meet each emission limitation in Table 29 of this subpart that applies to you. If your sulfur recovery unit is subject to the NSPS for sulfur oxides in § 60.104 of this chapter, you must meet the emission limitations for NSPS units. If your sulfur recovery unit isn't subject to the NSPS for sulfur oxides, you can choose from the options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to meet the NSPS requirements (Option 1); or

(ii) You can elect to meet the total reduced sulfur (TRS) emission limitation (Option 2).

(2) Meet each operating limit in Table 30 of this subpart that applies to you.

(3) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standards?* You must:

(1) Install, operate, and maintain a continuous monitoring system according to the requirements in § 63.1572 and Table 31 of this subpart.

(2) Conduct each performance test for a sulfur recovery unit not subject to the NSPS for sulfur oxides according to the requirements in § 63.1571 and under the conditions specified in Table 32 of this subpart.

(3) Establish each site-specific operating limit in Table 30 of this subpart that applies to you according to the procedures in Table 32 of this subpart.

(4) Correct the reduced sulfur samples to zero percent excess air using Equation 1 of this section as follows:

$$C_{adj} = C_{meas}\left[20.9_c/(20.9 - \%O_2)\right] \qquad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to zero percent oxygen, ppm or g/dscm;

C_{meas} = pollutant concentration measured on a dry basis, ppm or g/dscm;

20.9_c = 20.9 percent oxygen—0.0 percent oxygen (defined oxygen correction basis), percent;

20.9 = oxygen concentration in air, percent;

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(5) Demonstrate initial compliance with each emission limitation that applies to you according to Table 33 of this subpart.

(6) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your notification of compliance status.

(7) Submit the notification of compliance status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standards?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 29 and 30 of this subpart that applies to you according to the methods specified in Tables 34 and 35 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

§ 63.1569 What are my requirements for HAP emissions from bypass lines?

(a) *What work practice standards must I meet?* (1) You must meet each work practice standard in Table 36 of this subpart that applies to you. You can choose from the four options in paragraphs (a)(1)(i) through (iv) of this section:

(i) You can elect to install an automated system (Option 1);

(ii) You can elect to use a manual lock system (Option 2);

(iii) You can elect to seal the line (Option 3); or

(iv) You can elect to vent to a control device (Option 4).

(2) As provided in § 63.6(g), we, the EPA, may choose to grant you permission to use an alternative to the work practice standard in paragraph (a)(1) of this section.

(3) You must prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(b) *How do I demonstrate initial compliance with the work practice standards?* You must:

(1) If you elect the option in paragraph (a)(1)(i) of this section, conduct each performance test for a bypass line according to the requirements in § 63.1571 and under the conditions specified in Table 37 of this subpart.

(2) Demonstrate initial compliance with each work practice standard in Table 36 of this subpart that applies to you according to Table 38 of this subpart.

(3) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your notification of compliance status.

(4) Submit the notification of compliance status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the work practice standards?* You must:

(1) Demonstrate continuous compliance with each work practice standard in Table 36 of this subpart that applies to you according to the requirements in Table 39 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(2) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

General Compliance Requirements

§ 63.1570 What are my general requirements for complying with this subpart?

(a) You must be in compliance with all of the non-opacity standards in this subpart during the times specified in § 63.6(f)(1).

(b) You must be in compliance with the opacity and visible emission limits in this subpart during the times specified in § 63.6(h)(1).

(c) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(d) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(e) During periods of startup, shutdown, and malfunction, you must operate in accordance with your SSMP.

(f) You must report each instance in which you did not meet each emission limitation and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet the work practice standards in this subpart that apply to you. These instances are deviations from the emission limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.1575.

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The SSMP must require that good air pollution control practices are used during those periods. The plan must also include elements designed to minimize the frequency of such periods (i.e., root cause analysis). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e) and the contents of the SSMP.

§ 63.1571 How and when do I conduct a performance test or other initial compliance demonstration?

(a) *When must I conduct a performance test?* You must conduct performance tests and report the results by no later than 150 days after the compliance date specified for your source in § 63.1563 and according to the provisions in § 63.7(a)(2). If you are required to do a performance evaluation or test for a semi-regenerative catalytic reforming unit catalyst regenerator vent, you may do them at the first regeneration cycle after your compliance date and report the results in a followup Notification of Compliance Status report due no later than 150 days after the test.

(1) For each emission limitation or work practice standard where initial compliance is not demonstrated using a performance test, opacity observation, or visible emission observation, you must conduct the initial compliance demonstration within 30 calendar days after the compliance date that is specified for your source in § 63.1563.

(2) For each emission limitation where the averaging period is 30 days, the 30-day period for demonstrating initial compliance begins at 12:00 a.m. on the compliance date that is specified for your source in § 63.1563 and ends at 11:59 p.m., 30 calendar days after the compliance date that is specified for your source in § 63.1563.

(3) If you commenced construction or reconstruction between September 11, 1998 and April 11, 2002, you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than October 8, 2002 or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(4) If you commenced construction or reconstruction between September 11, 1998 and April 11, 2002, and you chose to comply with the proposed emission limitation when demonstrating initial compliance, you must conduct a second compliance demonstration for the promulgated emission limitation by October 10, 2005, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(b) *What are the general requirements for performance test and performance evaluations?* You must:

(1) Conduct each performance test according to the requirements in § 63.7(e)(1).

(2) Except for opacity and visible emission observations, conduct three separate test runs for each performance test as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(3) Conduct each performance evaluation according to the requirements in § 63.8(e).

(4) Not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(5) Calculate the average emission rate for the performance test by calculating the emission rate for each individual test run in the units of the applicable emission limitation using Equation 2, 5, or 8 of § 63.1564, and determining the arithmetic average of the calculated emission rates.

(c) *What procedures must I use for an engineering assessment?* You may choose to use an engineering assessment to calculate the process vent flow rate, net heating value, TOC emission rate, and total organic HAP emission rate expected to yield the highest daily emission rate when determining the emission reduction or outlet concentration for the organic HAP standard for catalytic reforming units. If you use an engineering assessment, you must document all data, assumptions, and procedures to the satisfaction of the applicable permitting authority. An engineering assessment may include the approaches listed in paragraphs (c)(1) through (c)(4) of this section. Other engineering assessments may be used but are subject to review and approval by the applicable permitting authority.

(1) You may use previous test results provided the tests are representative of current operating practices at the process unit, and provided EPA

methods or approved alternatives were used;

(2) You may use bench-scale or pilot-scale test data representative of the process under representative operating conditions;

(3) You may use maximum flow rate, TOC emission rate, organic HAP emission rate, or organic HAP or TOC concentration specified or implied within a permit limit applicable to the process vent; or

(4) You may use design analysis based on engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(i) Use of material balances based on process stoichiometry to estimate maximum TOC concentrations;

(ii) Calculation of hourly average maximum flow rate based on physical equipment design such as pump or blower capacities; and

(iii) Calculation of TOC concentrations based on saturation conditions.

(d) *Can I adjust the process or control device measured values when establishing an operating limit?* If you do a performance test to demonstrate compliance, you must base the process or control device operating limits for continuous parameter monitoring systems on the results measured during the performance test. You may adjust the values measured during the performance test according to the criteria in paragraphs (d)(1) through (3) of this section.

(1) If you must meet the HAP metal emission limitations in § 63.1564, you elect the option in paragraph (a)(1)(iii) in § 63.1564 (Ni lb/hr), and you use continuous parameter monitoring systems, you must establish an operating limit for the equilibrium catalyst Ni concentration based on the laboratory analysis of the equilibrium catalyst Ni concentration from the initial performance test. Section 63.1564(b)(2) allows you to adjust the laboratory measurements of the equilibrium catalyst Ni concentration to the maximum level. You must make this adjustment using Equation 1 of this section as follows:

$$\text{Ecat-Limit} = \frac{13 \text{ g Ni/hr}}{\text{NiEmR1}_{st}} \times \text{Ecat}_{st} \qquad \text{(Eq. 1)}$$

Where:

Ecat-Limit = Operating limit for equilibrium catalyst Ni concentration, mg/kg;

$NiEmR1_{st}$ = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 5 of this section for each performance test run, g Ni/hr; and

$Ecat_{st}$ = Average equilibrium Ni concentration from laboratory test results, mg/kg.

(2) If you must meet the HAP metal emission limitations in § 63.1564, you elect the option in paragraph (a)(1)(iv) in § 63.1564 (Ni lb/1,000 lb of coke burn-off), and you use continuous parameter monitoring systems, you must establish an operating limit for the equilibrium catalyst Ni concentration based on the laboratory analysis of the equilibrium catalyst Ni concentration from the initial performance test. Section 63.1564(b)(2) allows you to adjust the laboratory measurements of the equilibrium catalyst Ni concentration to the maximum level. You must make this adjustment using Equation 2 of this section as follows:

$$\text{Ecat-Limit} = \frac{1.0 \text{ mg/kg coke burn-off}}{\text{NiEmR2}_{st}} \times \text{Ecat}_{st} \qquad \text{(Eq. 2)}$$

Where:

$NiEmR2_{st}$ = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 8 of § 63.1564 for each performance test run, mg/kg coke burn-off.

(3) If you choose to adjust the equilibrium catalyst Ni concentration to the maximum level, you can't adjust any other monitored operating parameter (i.e., gas flow rate, voltage, pressure drop, liquid-to-gas ratio).

(4) Except as specified in paragraph (d)(3) of this section, if you use continuous parameter monitoring systems, you may adjust one of your monitored operating parameters (flow rate, voltage and secondary current, pressure drop, liquid-to-gas ratio) from the average of measured values during the performance test to the maximum value (or minimum value, if applicable) representative of worst-case operating conditions, if necessary. This adjustment of measured values may be done using control device design specifications, manufacturer recommendations, or other applicable information. You must provide supporting documentation and rationale in your Notification of Compliance Status, demonstrating to the satisfaction of your permitting authority, that your affected source complies with the applicable emission limit at the operating limit based on adjusted values.

(e) *Can I change my operating limit?* You may change the established operating limit by meeting the requirements in paragraphs (e)(1) through (3) of this section.

(1) You may change your established operating limit for a continuous parameter monitoring system by doing an additional performance test, a performance test in conjunction with an engineering assessment, or an engineering assessment to verify that, at the new operating limit, you are in compliance with the applicable emission limitation.

(2) You must establish a revised operating limit for your continuous parameter monitoring system if you make any change in process or operating conditions that could affect control system performance or you change designated conditions after the last performance or compliance tests were done. You can establish the revised operating limit as described in paragraph (e)(1) of this section.

(3) You may change your site-specific opacity operating limit or Ni operating limit only by doing a new performance test.

§ 63.1572 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each continuous emission monitoring system according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) You must install, operate, and maintain each continuous emission monitoring system according to the requirements in Table 40 of this subpart.

(2) If you use a continuous emission monitoring system to meet the NSPS CO or SO_2 limit, you must conduct a performance evaluation of each continuous emission monitoring system according to the requirements in § 63.8 and Table 40 of this subpart. This requirement does not apply to an affected source subject to the NSPS that has already demonstrated initial compliance with the applicable performance specification.

(3) As specified in § 63.8(c)(4)(ii), each continuous emission monitoring system must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) Data must be reduced as specified in § 63.8(g)(2).

(b) You must install, operate, and maintain each continuous opacity monitoring system according to the requirements in paragraphs (b)(1) through (3) of this section.

(1) Each continuous opacity monitoring system must be installed, operated, and maintained according to the requirements in Table 40 of this subpart.

(2) If you use a continuous opacity monitoring system to meet the NSPS opacity limit, you must conduct a performance evaluation of each continuous opacity monitoring system according to the requirements in § 63.8 and Table 40 of this subpart. This requirement does not apply to an affected source subject to the NSPS that has already demonstrated initial compliance with the applicable performance specification.

(3) As specified in § 63.8(c)(4)(i), each continuous opacity monitoring system 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.

(c) You must install, operate, and maintain each continuous parameter monitoring system according to the requirements in paragraphs (c)(1) through (7) of this section.

(1) Each continuous parameter monitoring system must be installed, operated, and maintained according to the requirements in Table 41 of this subpart and in a manner consistent with the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately.

(2) The continuous parameter monitoring system 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 (or at least two if a calibration check is performed during that hour or if the continuous parameter monitoring system is out-of-control).

(3) Each continuous parameter monitoring system must have valid hourly average data from at least 75 percent of the hours during which the process operated.

(4) Each continuous parameter monitoring system must determine and record the hourly average of all recorded readings and if applicable, the daily average of all recorded readings for each operating day. The daily average must cover a 24-hour period if operation is continuous or the number of hours of operation per day if operation is not continuous.

(5) Each continuous parameter monitoring system must record the results of each inspection, calibration, and validation check.

(d) You must monitor and collect data according to the requirements in paragraphs (d)(1) and (2) of this section.

(1) 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 (or collect data at all required intervals) at all times the affected source is operating.

(2) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities for purposes of this regulation, including data averages and calculations, for 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 device and associated control system.

§ 63.1573 What are my monitoring alternatives?

(a) *What is the approved alternative for monitoring gas flow rate?* You can elect to 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). If you select this alternative, you must use the same procedure for the performance test and for monitoring after the performance test.

(1) 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.

(2) 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).

(3) Calculate and record the hourly average actual exhaust gas flow rate using Equation 1 of this section as follows:

$$Q_{gas} = (1.12\ \text{scfm/dscfm}) \times (Q_{air} + Q_{oxy}) \times \left(\frac{Temp_{gas}}{273°K}\right) \times \left(\frac{P_{vent}}{1\ \text{atm.}}\right) \qquad \text{(Eq. 1)}$$

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 catalytic cracking unit control room instrumentations, dscfm;

Q_{oxy} = Volumetric flow rate of oxygen-enriched air stream to regenerator, as determined from the catalytic cracking unit control room instrumentations, dscfm;

$Temp_{gas}$ = 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, atm. When used in conjunction with opacity in the final vent stack, you can assume P_{vent} = 1 atm.

(b) *What is the approved alternative for monitoring pH levels?* If you use a wet scrubber to control inorganic HAP emissions from your vent on a catalytic reforming unit, you can measure and record the pH of the water (or scrubbing liquid) exiting the scrubber 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.

(c) *Can I use another type of monitoring system?* You may request approval from your permitting authority to use an automated data compression system. An automated data compression system does not record monitored operating parameter values at a set frequency (e.g., once every hour) but records all values that meet set criteria for variation from previously recorded values. Your request must contain a description of the monitoring system and data recording system, including the criteria used to determine which monitored values are recorded and retained, the method for calculating daily averages, and a demonstration that the system meets all of the criteria in paragraphs (c)(1) through (5) of this section:

(1) The system measures the operating parameter value at least once every hour;

(2) The system records at least 24 values each day during periods of operation;

(3) The system records the date and time when monitors are turned off or on;

(4) The system recognizes unchanging data that may indicate the monitor is not functioning properly, alerts the operator, and records the incident; and

(5) The system computes daily average values of the monitored operating parameter based on recorded data.

(d) *Can I monitor other process or control device operating parameters?* You may request approval to monitor parameters other than those required in this subpart. You must request approval if:

(1) You use a control device other than a thermal incinerator, boiler, process heater, flare, electrostatic precipitator, or wet scrubber;

(2) You use a combustion control device (e.g., incinerator, flare, boiler or process heater with a design heat capacity of at least 44 MW, boiler or process heater where the vent stream is introduced into the flame zone), electrostatic precipitator, or scrubber but want to monitor a parameter other than those specified; or

(3) You wish to use another type of continuous emission monitoring system that provides direct measurement of a pollutant (i.e., a PM or multi-metals HAP continuous emission monitoring system, a carbonyl sulfide/carbon disulfide continuous emission monitoring system, a TOC continuous emission monitoring system, or HCl continuous emission monitoring system).

(e) *How do I request to monitor alternative parameters?* You must submit a request for review and approval or disapproval to the Administrator. The request must include the information in paragraphs (e)(1) through (5) of this section.

(1) A description of each affected source and the parameter(s) to be monitored to determine whether the affected source will continuously comply with the emission limitations and an explanation of the criteria used to select the parameter(s).

(2) A description of the methods and procedures that will be used to demonstrate that the parameter can be used to determine whether the affected source will continuously comply with the emission limitations and the schedule for this demonstration. You must certify that you will establish an operating limit for the monitored parameter(s) that represents the conditions in existence when the control device is being properly operated and maintained to meet the emission limitation.

(3) The frequency and content of monitoring, recording, and reporting, if monitoring and recording are not continuous. You also must include the rationale for the proposed monitoring, recording, and reporting requirements.

(4) Supporting calculations.

(5) Averaging time for the alternative operating parameter.

Notifications, Reports, and Records

§ 63.1574 What notifications must I submit and when?

(a) Except as allowed in paragraphs (a)(1) through (3) of this section, you must submit all of the notifications in §§ 63.6(h), 63.7(b) and (c), 63.8(e), 63.8(f)(4), 63.8(f)(6), and 63.9(b) through (h) that apply to you by the dates specified.

(1) You must submit the notification of your intention to construct or reconstruct according to § 63.9(b)(5) unless construction or reconstruction had commenced and initial startup had not occurred before April 11, 2002. In this case, you must submit the notification as soon as practicable before startup but no later than July 10, 2002. This deadline also applies to the application for approval of construction or reconstruction and approval of construction or reconstruction based on State preconstruction review required in §§ 63.5(d)(1)(i) and 63.5(f)(2).

(2) You must submit the notification of intent to conduct a performance test required in § 63.7(b) at least 30 calendar days before the performance test is scheduled to begin (instead of 60 days).

(3) If you are required to conduct a performance test, performance evaluation, design evaluation, opacity observation, visible emission observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii). You can submit this information in an operating permit application, in an amendment to an operating permit application, in a separate submission, or in any combination. In a State with an approved operating permit program where delegation of authority under section 112(l) of the CAA has not been requested or approved, you must provide a duplicate notification to the applicable Regional Administrator. If the required information has been submitted previously, you do not have to provide a separate notification of compliance status. Just refer to the earlier submissions instead of duplicating and resubmitting the previously submitted information.

(i) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status no later than 30 calendar days following completion of the initial compliance demonstration.

(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 § 63.1573.

(b) As specified in § 63.9(b)(2), if you startup your new affected source before April 11, 2002, you must submit the initial notification no later than August 9, 2002.

(c) As specified in § 63.9(b)(3), if you start 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.

(d) You also must include the information in Table 42 of this subpart in your notification of compliance status.

(e) If you request an extension of compliance for an existing catalytic cracking unit as allowed in § 63.1563(c), you must submit a notification to your permitting authority containing the required information by October 13, 2003.

(f) As required by this subpart, you must prepare and implement an operation, maintenance, and monitoring plan for each affected source, control system, and continuous monitoring system. The purpose of this plan is to detail the operation, maintenance, and monitoring procedures you will follow.

(1) You must submit the plan to your permitting authority for review and approval along with your notification of compliance status. While you do not have to include the entire plan in your part 70 or 71 permit, you must include the duty to prepare and implement the plan as an applicable requirement in your part 70 or 71 operating permit. You must submit any changes to your permitting authority for review and approval and comply with the plan until the change is approved.

(2) Each plan must include, at a minimum, the information specified in paragraphs (f)(2)(i) through (x) of this section.

(i) Process and control device parameters to be monitored for each affected source, along with established operating limits.

(ii) Procedures for monitoring emissions and process and control device operating parameters for each affected source.

(iii) Procedures that you will use to determine the coke burn-rate, the volumetric flow rate (if you use process data rather than direct measurement), and the rate of combustion of liquid or solid fossil fuels if you use an incinerator-waste heat boiler to burn the exhaust gases from a catalyst regenerator.

(iv) Procedures and analytical methods you will use to determine the equilibrium catalyst Ni concentration, the equilibrium catalyst Ni concentration monthly rolling average, and the hourly or hourly average Ni operating value.

(v) Procedures you will use to determine the pH of the water (or scrubbing liquid) exiting a wet scrubber if you use pH strips.

(vi) Procedures you will use to determine the HCl concentration of gases from a semi-regenerative catalytic reforming unit with an internal scrubbing system (i.e., no add-on control device) when you use a colormetric tube sampling system, including procedures for correcting for pressure (if applicable to the sampling equipment).

(vii) Procedures you will use to determine the gas flow rate for a catalytic cracking unit if you use the alternative procedure based on air flow rate and temperature.

(viii) Monitoring schedule, including when you will monitor and when you will not monitor an affected source (e.g., during the coke burn-off, regeneration process).

(ix) Quality control plan for each continuous opacity monitoring system and continuous emission monitoring system you use to meet an emission limit in this subpart. This plan must include procedures you will use for calibrations, accuracy audits, and adjustments to the system needed to meet applicable requirements for the system.

(x) Maintenance schedule for each affected source, monitoring system, and control device that is generally consistent with the manufacturer's instructions for routine and long-term maintenance.

§ 63.1575 What reports must I submit and when?

(a) You must submit each report in Table 43 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule, you must submit each report by the date in Table 43 of 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 § 63.1563 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your affected source in § 63.1563.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.1563.

(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 part 70 or 71 of this chapter, 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) of this chapter, 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 (4) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitation that applies to you and there are no deviations from the requirements for work practice standards, a statement that there were no deviations from the emission limitations or work practice standards during the reporting period and that no continuous emission monitoring system or continuous opacity monitoring system was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(d) For each deviation from an emission limitation and for each deviation from the requirements for work practice standards that occurs at an affected source where you are not using a continuous opacity monitoring system or a continuous emission monitoring system to comply with the emission limitation or work practice standard in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (3) of this section and the information in paragraphs (d)(1) through (3) of this section.

(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.

(3) Information on the number, duration, and cause for monitor downtime incidents (including

unknown cause, if applicable, other than downtime associated with zero and span and other daily calibration checks).

(e) For each deviation from an emission limitation occurring at an affected source where you are using a continuous opacity monitoring system or a continuous emission monitoring system to comply with the emission limitation, you must include the information in paragraphs (d)(1) through (3) of this section and the information in paragraphs (e)(1) through (13) of this section.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each continuous opacity monitoring system or continuous emission monitoring system was inoperative, except for zero (low-level) and high-level checks.

(3) The date and time that each continuous opacity monitoring system or continuous emission monitoring system 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 (recorded in minutes for opacity and hours for gases and in the averaging period specified in the regulation for other types of emission limitations), 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 and 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 downtime for the continuous opacity monitoring system or continuous emission monitoring system during the reporting period (recorded in minutes for opacity and hours for gases and in the averaging time specified in the regulation for other types of standards), and the total duration of downtime for the continuous opacity monitoring system or continuous emission monitoring system as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of downtime for the continuous opacity monitoring system or continuous emission monitoring system during the reporting period into periods that are due to monitoring equipment malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.

(9) An identification of each HAP that was monitored at the affected source.

(10) A brief description of the process units.

(11) The monitoring equipment manufacturer(s) and model number(s).

(12) The date of the latest certification or audit for the continuous opacity monitoring system or continuous emission monitoring system.

(13) A description of any change in the continuous emission monitoring system or continuous opacity monitoring system, processes, or controls since the last reporting period.

(f) You also must include the information required in paragraphs (f)(1) through (2) of this section in each compliance report, if applicable.

(1) A copy of any performance test done during the reporting period on any affected unit. The report may be included in the next semiannual report. The copy must include a complete report for each test method used for a particular kind of emission point tested. For additional tests performed for a similar emission point using the same method, you must submit the results and any other information required, but a complete test report is not required. A complete test report contains a brief process description; a simplified flow diagram showing affected processes, control equipment, and sampling point locations; sampling site data; description of sampling and analysis procedures and any modifications to standard procedures; quality assurance procedures; record of operating conditions during the test; record of preparation of standards; record of calibrations; raw data sheets for field sampling; raw data sheets for field and laboratory analyses; documentation of calculations; and any other information required by the test method.

(2) Any requested change in the applicability of an emission standard (e.g., you want to change from the PM standard to the Ni standard for catalytic cracking units or from the HCl concentration standard to percent reduction for catalytic reforming units) in your periodic report. You must include all information and data necessary to demonstrate compliance with the new emission standard selected and any other associated requirements.

(g) You may submit reports required by other regulations in place of or as part of the compliance report if they contain the required information.

(h) The reporting requirements in paragraphs (h)(1) and (2) of this section apply to startups, shutdowns, and malfunctions:

(1) When actions taken to respond are consistent with the plan, you are not required to report these events in the semiannual compliance report and the reporting requirements in §§ 63.6(e)(3)(iii) and 63.10(d)(5) do not apply.

(2) When actions taken to respond are not consistent with the plan, you must report these events and the response taken in the semiannual compliance report. In this case, the reporting requirements in §§ 63.6(e)(3)(iv) and 63.10(d)(5) do not apply.

(i) If the applicable permitting authority has approved a period of planned maintenance for your catalytic cracking unit according to the requirements in paragraph (j) of this section, you must include the following information in your compliance report.

(1) In the compliance report due for the 6-month period before the routine planned maintenance is to begin, you must include a full copy of your written request to the applicable permitting authority and written approval received from the applicable permitting authority.

(2) In the compliance report due after the routine planned maintenance is complete, you must include a description of the planned routine maintenance that was performed for the control device during the previous 6-month period, and the total number of hours during those 6 months that the control device did not meet the emission limitations and monitoring requirements as a result of the approved routine planned maintenance.

(j) If you own or operate multiple catalytic cracking units that are served by a single wet scrubber emission control device (e.g., a Venturi scrubber), you may request the applicable permitting authority to approve a period of planned routine maintenance for the control device needed to meet requirements in your operation, maintenance, and monitoring plan. You must present data to the applicable permitting authority demonstrating that the period of planned maintenance results in overall emissions reductions. During this pre-approved time period, the emission control device may be taken out of service while maintenance is performed on the control device and/or one of the process units while the remaining process unit(s) continue to operate. During the period the emission control device is unable to operate, the emission limits, operating limits, and monitoring requirements applicable to the unit that is operating and the wet scrubber emission control device do not

apply. The applicable permitting authority may require that you take specified actions to minimize emissions during the period of planned maintenance.

(1) You must submit a written request to the applicable permitting authority at least 6 months before the planned maintenance is scheduled to begin with a copy to the EPA Regional Administrator.

(2) Your written request must contain the information in paragraphs (j)(2)(i) through (v) of this section.

(i) A description of the planned routine maintenance to be performed during the next 6 months and why it is necessary.

(ii) The date the planned maintenance will begin and end.

(iii) A quantified estimate of the HAP and criteria pollutant emissions that will be emitted during the period of planned maintenance.

(iv) An analysis showing the emissions reductions resulting from the planned maintenance as opposed to delaying the maintenance until the next unit turnaround.

(v) Actions you will take to minimize emissions during the period of planned maintenance.

§ 63.1576 What records must I keep, in what form, and for how long?

(a) You must keep the records specified in 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 that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(1)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity and visible emission observations as required in § 63.10(b)(2)(viii).

(b) For each continuous emission monitoring system and continuous opacity monitoring system, you must keep the records required in 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 systems during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (i.e., superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Requests for alternatives to the relative accuracy test for continuous emission monitoring systems 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 in § 63.6(h) for visible emission observations.

(d) You must keep records required by Tables 6, 7, 13, and 14 of this subpart (for catalytic cracking units); Tables 20, 21, 27 and 28 of this subpart (for catalytic reforming units); Tables 34 and 35 of this subpart (for sulfur recovery units); and Table 39 of this subpart (for bypass lines) to show continuous compliance with each emission limitation that applies to you.

(e) You must keep a current copy of your operation, maintenance, and monitoring plan onsite and available for inspection. You also must keep records to show continuous compliance with the procedures in your operation, maintenance, and monitoring plan.

(f) You also must keep the records of any changes that affect emission control system performance including, but not limited to, the location at which the vent stream is introduced into the flame zone for a boiler or process heater.

(g) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1).

(h) 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.

(i) 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

§ 63.1577 What parts of the General Provisions apply to me?

Table 44 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.1578 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the non-opacity emission limitations and work practice standards in §§ 63.1564 through 63.1569 under § 63.6(g).

(2) Approval of alternative opacity emission limitations in §§ 63.1564 through 63.1569 under § 63.6(h)(9).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.1579 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 of this part (§§ 63.1 through 63.15), and in this section as listed.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator.

Catalytic cracking unit means a refinery process unit in which petroleum derivatives are continuously charged; hydrocarbon molecules in the presence of a catalyst suspended in a fluidized bed are fractured into smaller molecules, or react with a contact material suspended in a fluidized bed to improve feedstock quality for additional processing; and the catalyst or contact material is continuously regenerated by burning off coke and other deposits. The unit includes, but is not limited to, the riser, reactor, regenerator, air blowers, spent catalyst or contact material stripper, catalyst or contact material recovery equipment, and regenerator equipment for controlling air pollutant emissions and equipment used for heat recovery.

Catalytic cracking unit catalyst regenerator means one or more regenerators (multiple regenerators) which comprise that portion of the catalytic cracking unit in which coke burn-off and catalyst or contact material

regeneration occurs and includes the regenerator combustion air blower(s).

Catalytic reforming unit means a refinery process unit that reforms or changes the chemical structure of naphtha into higher octane aromatics through the use of a metal catalyst and chemical reactions that include dehydrogenation, isomerization, and hydrogenolysis. The catalytic reforming unit includes the reactor, regenerator (if separate), separators, catalyst isolation and transport vessels (e.g., lock and lift hoppers), recirculation equipment, scrubbers, and other ancillary equipment.

Catalytic reforming unit regenerator means one or more regenerators which comprise that portion of the catalytic reforming unit and ancillary equipment in which the following regeneration steps typically are performed: depressurization, purge, coke burn-off, catalyst rejuvenation with a chloride (or other halogenated) compound(s), and a final purge. The catalytic reforming unit catalyst regeneration process can be done either as a semi-regenerative, cyclic, or continuous regeneration process.

Coke burn-off means the coke removed from the surface of the catalytic cracking unit catalyst or the catalytic reforming unit catalyst by combustion in the catalyst regenerator. The rate of coke burn-off is calculated using Equation 2 in § 63.1564.

Combustion device means an individual unit of equipment such as a flare, incinerator, process heater, or boiler used for the destruction of organic HAP or VOC.

Combustion zone means the space in an enclosed combustion device (e.g., vapor incinerator, boiler, furnace, or process heater) occupied by the organic HAP and any supplemental fuel while burning. The combustion zone includes any flame that is visible or luminous as well as that space outside the flame envelope in which the organic HAP continues to be oxidized to form the combustion products.

Contact material means any substance formulated to remove metals, sulfur, nitrogen, or any other contaminants from petroleum derivatives.

Continuous regeneration reforming means a catalytic reforming process characterized by continuous flow of catalyst material through a reactor where it mixes with feedstock, and a portion of the catalyst is continuously removed and sent to a special regenerator where it is regenerated and continuously recycled back to the reactor.

Control device means any equipment used for recovering, removing, or oxidizing HAP in either gaseous or solid form. Such equipment includes, but is not limited to, condensers, scrubbers, electrostatic precipitators, incinerators, flares, boilers, and process heaters.

Cyclic regeneration reforming means a catalytic reforming process characterized by continual batch regeneration of catalyst in situ in any one of several reactors (e.g., 4 or 5 separate reactors) that can be isolated from and returned to the reforming operation while maintaining continuous reforming process operations (i.e., feedstock continues flowing through the remaining reactors without change in feed rate or product octane).

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 emission limit, operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or visible emission limit.

Flame zone means the portion of a combustion chamber of a boiler or process heater occupied by the flame envelope created by the primary fuel.

Flow indicator means a device that indicates whether gas is flowing, or whether the valve position would allow gas to flow, in or through a line.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous streams generated by the source, may blend them with sources of gas, if available, and transports the blended gaseous fuel at suitable pressures for use as fuel in heaters, furnaces, boilers, incinerators, gas turbines, and other combustion devices located within or outside of the refinery. The fuel is piped directly to each individual combustion device, and the system typically operates at pressures over atmospheric. The gaseous streams can contain a mixture of methane, light hydrocarbons, hydrogen, and other miscellaneous species.

HCl means for the purposes of this subpart, gaseous emissions of hydrogen chloride that serve as a surrogate measure for total emissions of hydrogen chloride and chlorine as measured by Method 26 or 26A in appendix A to part 60 of this chapter or an approved alternative method.

Incinerator means an enclosed combustion device that is used for destroying organic compounds, with or without heat recovery. Auxiliary fuel may be used to heat waste gas to combustion temperatures. An incinerator may use a catalytic combustion process where a substance is introduced into an exhaust stream to burn or oxidize contaminants while the substances itself remains intact, or a thermal process which uses elevated temperatures as a primary means to burn or oxidize contaminants.

Ni means, for the purposes of this subpart, particulate emissions of nickel that serve as a surrogate measure for total emissions of metal HAP, including but not limited to: antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium as measured by Method 29 in appendix A to part 60 of this chapter or by an approved alternative method.

Oxidation control system means an emission control system which reduces emissions from sulfur recovery units by converting these emissions to sulfur dioxide.

PM means, for the purposes of this subpart, emissions of particulate matter that serve as a surrogate measure of the total emissions of particulate matter and metal HAP contained in the particulate matter, including but not limited to: antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium as measured by Methods 5B or 5F in appendix A to part 60 of this chapter or by an approved alternative method.

Process heater means an enclosed combustion device that primarily transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Process vent means, for the purposes of this subpart, a gas stream that is continuously or periodically discharged during normal operation of a catalytic cracking unit, catalytic reforming unit, or sulfur recovery unit, including gas streams that are discharged directly to the atmosphere, gas streams that are routed to a control device prior to discharge to the atmosphere, or gas streams that are diverted through a product recovery device line prior to control or discharge to the atmosphere.

Reduced sulfur compounds means hydrogen sulfide, carbonyl sulfide, and carbon disulfide.

Reduction control system means an emission control system which reduces emissions from sulfur recovery units by converting these emissions to hydrogen sulfide.

Responsible official means responsible official as defined in 40 CFR 70.2.

Semi-regenerative reforming means a catalytic reforming process characterized by shutdown of the entire reforming unit (e.g., which may employ three to four separate reactors) at specified intervals or at the owner's or operator's convenience for in situ catalyst regeneration.

Sulfur recovery unit means a process unit that recovers elemental sulfur from gases that contain reduced sulfur compounds and other pollutants, usually by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide. This definition does not include a unit where the modified reaction is carried out in a water solution which contains a metal ion capable of oxidizing the sulfide ion to sulfur, e.g., the LO–CAT II process.

TOC means, for the purposes of this subpart, emissions of total organic compounds, excluding methane and ethane, 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 non-HAP VOC as measured by Method 25 or 25A in appendix A to part 60 of this chapter or an approved alternative method.

TRS means, for the purposes of this subpart, emissions of total reduced sulfur compounds, expressed as an equivalent sulfur dioxide concentration, that serve as a surrogate measure of the total emissions of sulfide HAP carbonyl sulfide and carbon disulfide as measured by Method 15 in appendix A to part 60 of this chapter or by an approved alternative method.

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.

TABLE 1 TO SUBPART UUU OF PART 63.—METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1564(a)(1), you must meet each emission limitation in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	You must meet the following emission limits for each catalyst regenerator vent * * *
1. Subject to the new source performance standard (NSPS) for PM in 40 CFR 60.102.	PM emissions must not 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 supplemental liquid or solid fossil fuel, you must limit the incremental rate of PM to no more than 43.0 grams per Megajoule (g/MJ) 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 in supplemental liquid or solid fossil fuel, you must limit the incremental rate of PM to no more than 43.0 g/MJ or 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.
3. Option 2: PM limit 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 lbs) of coke burn-off in the catalyst regenerator.
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	Nickel (Ni) emissions must not exceed 13,000 milligrams per hour (mg/hr) (0.029 lb/hr).
5. Option 4: Ni Lb/1,000 lbs of coke burn-off not subject to the NSPS for PM in 40 CFR 60.102.	Ni emissions must not exceed 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.

TABLE 2 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	For this type of continuous monitoring system * * *	For this type of control device * * *	You must meet this operating limit * * *
1. Subject to the NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable	Not applicable.
2. Option 1: NSPS requirements not subject to the NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable	Not applicable.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	Electrostatic precipitator	Maintain the hourly average opacity of emissions from your catalyst regenerator vent no higher than the site-specific opacity limit established during the performance test.

TABLE 2 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	For this type of continuous monitoring system * * *	For this type of control device * * *	You must meet this operating limit * * *
	b. Continuous parameter monitoring systems.	Electrostatic precipitator	Maintain the daily average gas flow rate no higher than the limit established in the performance test; and maintain the daily average voltage and secondary current (or total power input) above the limit established in the performance test.
	c. Continuous parameter monitoring systems.	Wet scrubber	Maintain the daily average pressure drop above the limit established in the performance test (not applicable to a wet scrubber of the non-venturi jet-ejector design); and maintain the daily average liquid-to-gas ratio above the limit established in 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.	Electrostatic precipitator	Maintain the daily average Ni operating value no higher than the limit established during the performance test.
	b. Continuous parameter monitoring systems.	i. Electrostatic precipitator	Maintain the daily average gas flow rate no higher than the limit established during the performance test; maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test; and maintain the daily average voltage and secondary current (or total power input) above the established during the performance test.
		ii. Wet scrubber	Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test; maintain the daily average pressure drop above the limit established during the performance test (not applicable to a non-venturi wet scrubber of the jet-ejector design); and maintain the daily average liquid-to-gas ratio above the limit established during the performance test.
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. Continuous opacity monitoring system	Electrostatic precipitator	Maintain the daily average Ni operating value no higher than the Ni operating limit established during the performance test.
	b. Continuous parameter monitoring systems.	i. Electrostatic precipitator	Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test; and maintain the daily average voltage and secondary current for total power input) above the limit established during the performance test.

TABLE 2 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	For this type of continuous monitoring system * * *	For this type of control device * * *	You must meet this operating limit * * *
		ii. Wet scrubber	Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test; maintain the daily average pressure drop above the limit established during the performance test (not applicable to a non-venturi wet scrubber of the jet-ejector design); and maintain the daily average liquid-to-gas ratio above the limit established during the performance test.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(b)(1), you must 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 must 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.	Continous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.
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	Continous 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 to the control device 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 to the scrubber, and total liquid (or scrubbing liquor) flow rate to the scrubber. (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.	Continous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(1), you must 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 must install, operate, and maintain a * * *
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	Continous 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.
	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; or continuous parameter monitoring systems to measure and record the gas flow rate and the voltage and secondary current (or total power input) to the control device.
	c. Any size	Wet scrubber	(1) Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate to the scrubber, and total liquid (or scrubbing liquor) flow rate to the scrubber. (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.
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.
	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; or continuous parameter monitoring systems to measure and record the gas flow rate 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 to the scrubber, and total liquid (or scrubbing liquor) flow rate to the scrubber.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(1), you must 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 must install, operate, and maintain a * * *
	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.

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 STANDARD (NSPS) FOR PARTICULATE MATTER (PM)

[As stated in § 63.1564(b)(2), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit catalyst regenerator vent * * *	You must * * *	Using * * *	According to these requirements * * *
1. If you elect Option 1 in item 2 of Table 1, Option 2 in item 3 of Table 1, Option 3 in item 4 of Table 1, or Option 4 in item 5 of Table 1 of this subpart.	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A in appendix A to part 60 of this chapter.	Sampling sites must be located at the outlet of the control device or the outlet of the regenerator, as applicable, and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter, as applicable.	
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter, as applicable.	
	d. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
	e. If you use an electro-static precipitator, record the total number of fields in the control system and how many operated during the applicable performance test.		
	f. If you use a wet scrubber, record the total amount (rate) of water (or scrubbing liquid) and the amount (rate) of make-up liquid to the scrubber during each test run.		
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 initial Method 5 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	

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 STANDARD (NSPS) FOR PARTICULATE MATTER (PM)—Continued

[As stated in § 63.1564(b)(2), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit catalyst regenerator vent * * *	You must * * *	Using * * *	According to these requirements * * *
	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 initial Method 5 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).	You must maintain a sampling rate of at least 0.028 dscm/min (0.74 dscf/min).
	b. Compute Ni emission rate (lb/hr).	Equation 5 of § 63.1564	
	c. Determine the equilibrium catalyst Ni concentration.	EPA Method 6010B or 6020 or EPA Method 7520 or 7521 in SW–846 [1]; or, you can use an alternative method satisfactory to the Administrator.	You must obtain 1 sample for each of the 3 runs; determine and record the average equilibrium catalyst Ni concentration for each of the 3 runs; and you may adjust the results for an individual run to the maximum value using Equation 1 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 metal HAP.	Method 29 (40 CFR part 60, appendix A).	You must maintain a sampling rate of at least 0.028 dscm/min (0.74 dscf/min).
	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.	EPA Method 6010B or 6020 or EPA Method 7520 or 7521 (SW–846) [1]; or, you can use an alternative 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.

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 STANDARD (NSPS) FOR PARTICULATE MATTER (PM)—Continued

[As stated in § 63.1564(b)(2), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit catalyst regenerator vent * * *	You must * * *	Using * * *	According to these requirements * * *
	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, 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 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.		
6. If you elect Option 2 in Entry 3 in Table 1, Option 3 in Entry 4 in Table 1, or Option 4 in Entry 5 in Table 1 of this subpart and you use continuous parameter monitoring systems.	a. Establish each operating limit in Table 2 of this subpart that applies to you.	Data from the continuous parameter monitoring systems and applicable performance test methods.	
	b. Electrostatic precipitator or wet scrubber: gas flow rate.	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the maximum hourly average gas flow rate from all the readings.
	c. Electrostatic precipitator: voltage and secondary current (or total power input).	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect voltage and secondary current (or total power input) monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the minimum hourly average voltage and secondary current (or total power input) from all the readings.
	d. Electrostatic precipitator or wet scrubber: equilibrium catalyst Ni concentration.	Results of analysis for equilibrium catalyst Ni concentration.	You must determine and record the average equilibrium catalyst Ni concentration for the 3 runs based on the laboratory results. You may adjust the value using Equation 1 or 2 of § 63.1571 as applicable.
	e. Wet scrubber: pressure drop (not applicable to non-venturi scrubber of jet ejector design).	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect pressure drop monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the minimum hourly average pressure drop from all the readings.

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 STANDARD (NSPS) FOR PARTICULATE MATTER (PM)—Continued

[As stated in § 63.1564(b)(2), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit catalyst regenerator vent * * *	You must * * *	Using * * *	According to these requirements * * *
	f. Wet scrubber: liquid-to-gas ratio	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect gas flow rate and total water (or scrubbing liquid) flow rate monitoring data every 15 minutes during the entire period of the initial performance test; determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate from all the readings; and determine and record the minimum liquid-to-gas ratio.
	g. Alternative procedure for gas flow rate.	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect air flow rate monitoring data or determine the air flow rate using control room instrumentation every 15 minutes during the entire period of the initial performance test; determine and record the hourly average rate of all the readings; and determine and record the maximum gas flow rate using Equation 1 of § 63.1573.

[1] 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 Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

TABLE 5 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1564(b)(5), you must meet each requirement in the following table that applies to you]

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, you must limit the incremental rate of PM to no more than 43.0 grams per Megajoule (g/MJ) 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 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/MJ or 0.010 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 of emissions 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 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, you must limit the incremental rate of PM to no more than 43.0 grams per Megajoule (g/MJ) 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.	The average PM emission rate, measured using EPA method 5 over the period of the initial performance test, is no higher than 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off in the catalyst regenerator. The PM emission rate is calculated using Equations 1 and 2 of the § 63.1564. If applicable, the average PM emission rate, measured using EPA Method 5 over the period of the initial performance test, is no higher than 43.0 g/MJ or 0.010 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.

TABLE 5 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(5), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit catalyst regenerator vent * * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
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 5 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 lbs) 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.
4. Option 3: not subject to the NSPS for PM	Nickel (Ni) emissions from your catalyst regenerator vent must not exceed 13,000 mg/hr (0.029 lb/hr).	The average Ni emission rate, measured using Method 29 over the period of the initial performance test, is not more than 13,000 mg/hr (0.029 lb/hr). The Ni emission rate is calculated using Equation 5 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.
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM.	Ni emissions from your catalyst regenerator vent must not exceed 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.	The average Ni emission rate, measured using Method 29 over the period of the initial performance test, is not more than 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator. The Ni emission rate is calculated using Equation 8 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 6 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1564(c)(1), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit * * *	Subject to this emission limit for your catalyst regenerator vent * * *	You must demonstrate continuous compliance by * * *
1. Subject to the NSPS for PM in 40 CFR 60.102.	a. PM emissions must not exceed 1.0 lb/1,000 lbs 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, incremental rate of PM can't exceed 43.0 g/MJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and opacity of emissions can't 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 2 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) using Equation 3 of § 63.1564 and the hours of operation during which liquid or solid fossil-fuels are combusted in the incinerator-waste heat boiler; if applicable, maintaining PM rate below 43 g/MJ (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.
2. Option 1: Elect NSPS not subject to the NSPS for PM in 40 CFR 60.102.	See item 1.a. of this table	See item 1.a.i. of this table.

TABLE 6 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

[As stated in §63.1564(c)(1), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit * * *	Subject to this emission limit for your catalyst regenerator vent * * *	You must demonstrate continuous compliance by * * *
3. Option 2: PM limit not subject to the NSPS for PM.	PM emissions must not exceed 1.0 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 2 of §63.1564. You can use process data to determine the volumetric flow rate; and maintaining PM emission rate below 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off.
4. Option 3: Ni lb/hr not subject to the NSPS for PM.	Ni emissions must not exceed 13,000 mg/hr (0.029 lb/hr).	Maintaining Ni emission rate below 13,000 mg/hr (0.029 lb/hr).
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 2 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.

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 must 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 must 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 each 6-minute average in each 1-hour period at or below the site-specific limit.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate to 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 limit or below the 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 press drop above the 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 must 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 must demonstrate continuous compliance by * * *
		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 § 63.1572; determining and recording equilibrium catalyst Ni concentration at least once a week 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 the performance test.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate to the control device must notice exceed the level established in 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 equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	Determining the recording the equilibrium catalyst Ni concentration at least once a week; 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—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.

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 must 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 must demonstrate continuous compliance by * * *
		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; 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 burn-off 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; 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.
		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 for gas flow rate instead of a continuous parameter monitoring system if you used the alternative method in the initial performance test. If so, you must continuously monitor and record the air flow rate to the regenerator and the temperature of the gases entering the control device as described in §63.1573. You must determine and record the hourly average gas flow rate using Equation 1 of §63.1573 and the daily average gas flow rate. You must maintain the daily average gas flow rate below the operating limit established during the performance test.

TABLE 8 TO SUBPART UUU OF PART 63.—ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1565(a)(1), you must meet each emission limitation in the following table that applies to you]

For each new and existing catalytic cracking unit * * *	You must meet the following emission limit for each catalyst regenerator vent * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103. 2. Not subject to the NSPS for CO in 40 CFR 60.103.	CO emissions from the catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 parts per million volume (ppmv) (dry basis). a. CO emissions from the catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis). b. If you use a flare to meet the CO limit, the flare must meet the requirements for control devices in § 63.11(b): visible emissions must not exceed a total of 5 minutes during any 2 consecutive hours.

TABLE 9 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1565(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	For this type of continuous monitoring system * * *	For this type of control device * * *	You must meet this operating limit * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	Continuous emission monitoring system.	Not applicable	Not applicable.
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. Continuous emission monitoring system.	Not applicable	Not applicable.
	b. Continuous parameter monitoring systems.	i. Thermal incinerator	Maintain the daily average combustion zone temperature above the limit established during the performance test; and maintain the daily average oxygen concentration in the vent stream (percent, dry basis) above the limit established during the performance test.
		ii. Boiler or process heater with a design heat input capacity under 44 MW or a boiler or process heater in which all vent streams are not introduced into the flame zone.	Maintain the daily average combustion zone temperature above the limit established in the performance test.
		iii. Flare	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.

TABLE 10 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1565(b)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	And you use this type of control device for your vent * * *	You must install, operate, and maintain this type of continuous monitoring system * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	Not applicable	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent.
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. Thermal incinerator	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the combustion zone temperature and oxygen content (percent, dry basis) in the incinerator vent stream.
	b. 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 the flame zone.	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the combustion zone temperature.

TABLE 10 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1565(b)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	And you use this type of control device for your vent * * *	You must install, operate, and maintain this type of continuous monitoring system * * *
	c. Flare	Monitoring device such as a thermocouple, an ultraviolet beam sensor, or infrared sensor to continuously detect the presence of a pilot flame.
	d. No control device	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent.

TABLE 11 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR CARBON MONOXIDE (CO)

[As stated in § 63.1565(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For * * *	You must * * *	Using * * *	According to these requirements * * *
1. Each new or existing catalytic cracking unit catalyst regenerator vent.	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A in appendix A to part 60 of this chapter.	Sampling sites must be located at the outlet of the control device or the outlet of the regenerator, as applicable, and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2D, 2F, or 2G in appendix A to part 60 of this chapter, as applicable.	
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter, as applicable.	
	d. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
2. For each new or existing catalytic cracking unit catalyst regenerator vent if you use a continuous emission monitoring system.	Measure CO emissions	Data from your continuous emission monitoring system.	Collect CO monitoring data for each vent for 24 consecutive operating hours; and reduce the continuous emission monitoring data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period.
3. Each catalytic cracking unit catalyst regenerator vent if you use continuous parameter monitoring systems.	a. Measure the CO concentration (dry basis) of emissions exiting the control device.	Method 10, 10A, or 10B in appendix A to part 60 of this chapter, as applicable.	
	b. Establish each operating limit in Table 9 of this subpart that applies to you.	Data from the continuous parameter monitoring systems.	
	c. Thermal incinerator combustion zone temperature.	Data from the continuous parameter monitoring systems.	Collect temperature monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average combustion zone temperature from all the readings.
	d. Thermal incinerator: oxygen, content (percent, dry basis) in the incinerator vent stream.	Data from the continuous parameter monitoring systems.	Collect oxygen concentration (percent, dry basis) monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average percent excess oxygen concentration from all the readings.

TABLE 11 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR CARBON MONOXIDE (CO)—Continued

[As stated in § 63.1565(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For * * *	You must * * *	Using * * *	According to these requirements * * *
	e. If you use a 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 the flame zone, establish operating limit for combustion zone temperature.	Data from the continuous parameter monitoring systems.	Collect the temperature monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average combustion zone temperature from all the readings.
	f. If you use a flare, conduct visible emission observations.	Method 22 (40 CFR part 60, appendix A).	Maintain a 2-hour observation period; and record the presence of a flame at the pilot light over the full period of the test.
	g. If you use a flare, determine that the flare meets the requirements for net heating value of the gas being combusted and exit velocity.	40 CFR 60.11(b)(6)through(8).	

TABLE 12 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1565(b)(4), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit * * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured CO emissions are less than or equal to 500 ppm (dry basis). As part of the Notification of Compliance Status, you must certify that your vent meets the CO limit. You are not required to conduct 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 conduct another performance evaluation to demonstrate initial compliance.
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	i. If you use a continuous parameter monitoring system, the average CO emissions measured by Method 10 over the period of the initial performance test are less than or equal to 500 ppmv (dry basis). ii. If you use a continuous emission monitoring system, the hourly average CO emissions over the 24-hour period for the initial performance test are not more than 500 ppmv (dry basis); and your performance evaluation shows your continuous emission monitoring system meets the applicable requirements in § 63.1572.
	b. If you use a flare, visible emissions must not exceed a total of 5 minutes during any 2 operating hours.	Visible emissions, measured by Method 22 during the 2-hour observation period during the initial performance test, are no higher than 5 minutes.

TABLE 13 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1565(c)(1), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit * * *;	Subject to this emission limit for your catalyst regenerator vent * * *	If you must * * *	You must demonstrate continuous compliance by * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	Continuous emission monitoring system.	Collecting the hourly average CO monitoring data according to § 63.1572; and maintaining the hourly average CO concentration at or below 500 ppmv (dry basis).
2. Not subject to the NSPS for CO in 40 CFR 60.103.	i. CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	Continuous emission monitoring system.	Same as above.
	ii. CO emissisons from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	Continuous parameter monitoring system.	Maintaining the hourly average CO concentration below 500 ppmv (dry basis).
	iii. Visible emissions from a flare must not exceed a total of 5 minutes during any 2-hour period.	Control device-flare	Maintaining visible emissions below a total of 5 minutes during any 2-hour operating period.

TABLE 14 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1565(c)(1), you must meet each requirement in the following table that applies to you]

For each new existing catalytic cracking unit * * *	If you use * * *	For this operating limit * * *	You must demonstrate continuous compliance by * * *
1. Subject to NSPS for carbon monoxide (CO) in 40 CFR 60.103.	Continuous emission monitoring system.	Not applicable	Complying with Table 13 of this subpart.
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. Continuous emission monitoring system.	Not applicable	Complying with Table 13 of this subpart.
	b. Continuous parameter monitoring systems—thermal incinerator.	i. The daily average combustion zone temperature must not fall below the level established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to § 63.1572; and maintaining the daily average combustion zone temperature above the limit established during the performance test.
		ii. The daily average oxygen concentration in the vent stream (percent, dry basis) must not fall below the level established during the performance test.	Collecting the hourly and daily average oxygen concentration monitoring data according to § 63.1572; and maintaining the daily average oxygen concentration above the limit established during the performance test.
	c. Continuous parameter monitoring systems—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 combustion zone temperature must not fall below the level established in the performance test.	Collecting the average 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.
	d. Continuous parameter monitoring system—flare.	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 the 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 15 TO SUBPART UUU OF PART 63.—ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1566(a)(1), you must meet each emission limitation in the following table that applies to you]

For each new or existing catalytic reforming unit * * *	You must meet this emission limit for each process vent during depressuring and purging operation * * *
1. Option 1	Vent emissions to a flare that meets the requirements for control devices in § 63.11(b). Visible emissions from a flare must not exceed a total of 5 minutes during any 2-hour operating period.
2. Option 2	Using a control device, reduce uncontrolled emissions of total organic compounds (TOC) from your process vent by 98 percent by weight or to a concentration of 20 ppmv (dry basis), 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.

TABLE 16 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic reforming unit * * *	For this type of control device * * *	You must meet this operating limit during depressuring and purging operations * * *
1. Option 1: vent to flare	Flare that meets the requirements for control devices 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.
2. Option 2: percent reduction or concentration limit.	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.

TABLE 17 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(b)(1), you must meet each requirement in the following table that applies to you]

For each new or exiting catalytic reforming unit * * *	If you use this type of control device * * *	You must install and operate this type of continuous monitoring system * * *
1. Option 1: vent to a flare	Flare that meets the requirements for control devices in § 63.11(b).	Monitoring device such as a thermocouple, an ultraviolet beam sensor, or infrared sensor to continuously detect the presence of a pilot flame.
2. Option 2: percent reduction or concentration limit.	Thermal incinerator, 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 the flame zone.	Continuous parameter monitoring systems to measure and record the combustion zone temperature.

TABLE 18 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For each new or exiting catalytic reforming unit * * *	You must * * *	Using * * *	According to these requirements * * *
1. Option 1: vent to a flare.	a. Conduct visible emission observations.	Method 22 (40 CFR 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 60.11(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.

TABLE 18 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1566(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For each new or exiting catalytic reforming unit * * *	You must * * *	Using * * *	According to these requirements * * *
	b. Measure gas volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A), as applicable.	
	c. Measure TOC concentration (for percent reduction standard).	Method 25 (40 CFR part 60, appendix A) to measure TOC concentration at the inlet and outlet of the control device. If the TOC outlet concentration is expected to be less than 50 ppm, you can use Method 25A to measure TOC concentration at the inlet and the outlet of the control device.	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 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. Measure TOC concentration (for concentration standard).	Method 25A (40 CFR part 60, appendix A) to measure TOC concentration at the outlet of the control device.	
	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. Correct the measured TOC concentration for oxygen content.	Equation 4 of § 63.1566	
	h. Established 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 the 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.

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 must 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 and existing catalytic reforming unit.	a. 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.
	b. Reduce uncontrolled emissions of TOC from your process vent using a control device, by 98 percent by weight or to a concentration of 20 ppmv, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent.	The mass emission reduction measured using Method 25 over the period of the performance test, is at least 98 percent by weight. The mass emission reduction is calculated using Equations 1 (or 2) and 3 of § 63.1566 or the TOC concentration, measured by Method 25A over the period of the performance test, does not exceed 20 ppmv (dry basis), corrected to 3 percent oxygen using Equation 4 of § 63.1566.

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 must meet each requirement in the following table that applies to you]

For * * *	For this emission limit * * *	You must demonstrate continuous compliance during depressuring and purging by * * *
1. Option 1: Each new or existing catalytic reforming unit.	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: Each new or existing catalytic reforming unit.	Using a control device, reduce uncontrolled emissions of TOC from your process vent by 98 percent by weight or to a concentration of 20 ppmv, (dry basis), corrected to 3 percent oxygen, whichever is less stringent.	Maintaining a 98 percent by weight TOC emission reduction; or maintaining a TOC concentration of not more than 20 ppmv (dry basis), corrected to 3 percent oxygen, whichever is less stringent.

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 must meet each requirement in the following table that applies to you]

For * * *	If you use * * *	For this operating limit * * *	You must demonstrate continuous compliance during depressuring and purging by * * *
1. Each new or existing catalytic reforming unit.	a. 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.
	b. Thermal incinerator, boiler or process heater with a design input capacity under 44 MW or boiler or process heater in which 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.

TABLE 22 TO SUBPART UUU OF PART 63—INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(a)(1), you must meet each emission limitation in the following table that applies to you]

For * * *	You must meet this emission limit for your process vent during coke burn-off and catalyst rejuvenation * * *
1. Each existing semi-regenerative catalytic reforming unit.	Reduce uncontrolled emissions of hydrogen chloride (HC1) by 92 percent by weight using a control device or to a concentration of 30 ppmv (dry basis), corrected to 3 percent oxygen.
2. Each existing cyclic or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HC1 by 97 percent by weight using a control device or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.
3. Each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HC1 by 97 percent by weight using a control device or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.

TABLE 23 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR INORGANIC HAP EMISSION LIMITATIONS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(a)(2), you must meet each operating limit in the following table that applies to you]

For * * *	If you use this type of control device * * *	You must meet this operating limit during coke burn-off and catalytst rejuvenation . . .
1. Each new or existing catalytic reforming unit	a. Wet scrubber	The daily average pH 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.
	b. Internal scrubbing system (i.e., no add-on control device).	The HCl concentration in the catalyst regenerator exhaust gas must not exceed the limit established during the performance test.

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 must meet each requirement in the following table that applies to you]

If you use this type of control device for your vent * * *	You must install and operate this type of continuous monitoring system * * *
1. Wet scrubber	Continuous parameter monitoring system to measure and record the pH of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation. If applicable, you can use the alternative in § 63.1573 instead of a continuous parameter monitoring system for pH of the water (or scrubbing liquid); and continuous parameter monitoring systems to measure and record the gas flow rate to the scrubber and the total water (or scrubbing liquid) flow rate to the scrubber during coke burn-off and catalyst rejuvenation.
2. Internal scrubbing system (i.e., no add-on control device).	Colormetric tube sampling system to measure the HCl concentration in the catalyst regenerator exhaust gas during coke burn-off and catalyst rejuvenation.

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(2) and (3), you must meet each requirement in the following table that applies to you]

If you use this type of control device or system * * *	You must * * *	Using * * *	According to these requirements * * *
1. Wet scrubber	a. Measure the HCl concentration at the outlet of the control device (for the concentration standard) or at the inlet and outlet of the control d4evice (for the percent reduction standard).	i. Method 26A (40 CFR part 60, appendix A).	(1) Sampling rate must be at least 0.014 dscm/min (0.5 dscf/min). You must do the test during the coke burn-off and catalyst rejuvenation cycle, but don't make any test runs during the first hour or the last 6 hours of the cycle. (2) Record the total amount (rate) of scrubbing liquid or solution and the amount (rate) of make-up liquid to the scrubber during each test run.
	b. Establish operating limit for pH level.	.....	(1) Measure and record the pH of the water (or scrubbing liquid) exiting the scrubber every 15 minutes during the entire period of the performance test. Determine and record the hourly average pH level from the recorded values. (2) If you use the alternative method in § 63.1573, 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 run. Determine and record the average pH level.
	c. Establish operating limit for liquid-to-gas ratio.	Data from the continuous parameter monitoring systems.	Measure and record the gas flow rate to the scrubber and the total water (or scrubbing liquid) flow rate to 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.
2. Internal scrubbing system (i.e., no add-on control device).	a. Measure the concentration of HCl in the catalyst regenerator exhaust gas.	Method 26 (40 CFR part 60, appendix A).	Sampling rate must be at least 0.014 dscm/min (0.5 dscf/min). You must do the test during the coke burn-off and catalyst rejuvenation cycle, but don't make any test runs during the first hour or the last 6 hours of the cycle.

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(b)(2) and (3), you must meet each requirement in the following table that applies to you]

If you use this type of control device or system * * *	You must * * *	Using * * *	According to these requirements * * *
	b. Establish operating limit for HCl concentration.	Measure and record the HCl concentration in the catalyst regenerator exhaust gas using the colorimetric tube sampling system at least three times during each test run. Determine and record the average HCl concentration.	

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 must 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 using a control device or to a concentration of 30 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 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 using a control device, 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.

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 must meet each requirement in the following table that applies to you]

For * * *	For this emission limit * * *	You must 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 using a control device 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 using a control device, 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 using a control device, 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.

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 must meet each requirement in the following table that applies to you]

For * * *	For this operating limit * * *	If you use this type of control device * * *	You must demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by * * *
1. Each new or existing catalytic reforming unit.	a. The daily average pH of the water (or scrubbing and liquid) exiting the scrubber must not fall below the level established during the performance test.	i. Wet scrubber	(1) Collecting the hourly and daily average pH monitoring data according to § 63.1572; and maintaining the daily average the pH above the operating limit established during the performance test. (2) If you use the alternative in § 63.1573, measuring and recording the pH of the water (or scrubbing liquid) exiting the scrubber every hour according to § 63.1572; determining and recording the daily average pH; and maintaining the daily average pH 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.	Wet scrubber	Collecting the hourly average gas flow rate and total water (or scrubbing liquid) flow rate monitoring data; 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.
	c. The HCl concentration in the catalyst regenerator exhaust gas must not exceed the applicable operating limit established during the performance test.	Internal scrubbing system (e.g., no add-on control device).	Measuring and recording the concentration of HCl every 4 hours using a colormetric tube sampling system; and maintaining the HCl concentration below the applicable operating limit.

TABLE 29 TO SUBPART UUU OF PART 63.—HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

[As stated in § 63.1568(a)(1), you must meet each emission limitation in the following table that applies to you]

For * * *	You must meet this emission limit for each process vent * * *
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 sulfur dioxide (SO_2) at zero percent excess air if you use an oxidation or reduction control system followed by incineration. 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.
2. 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): Option 1 (Elect NSPS).	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. 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.
3. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in paragraph (a)(2) of 40 CFR 60.104: Option 2 (TRS limit).	300 ppmv of total reduced sulfur (TRS) compounds, expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen.

TABLE 30 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

[As stated in § 63.1568(a)(2), you must meet each operating limit in the following table that applies to you]

For * * *	If use this type of control device	You must meet this operating limit* * *
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).	Not applicable	Not applicable.
2. 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): Option 1 (Elect NSPS).	Not applicable	Not applicable.
3. 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): Option 2 (TRS limit).	Thermal incinerator	Maintain the daily average combustion zone temperature above the limit established during the performance test; and maintain the daily average oxygen concentration in the vent stream (percent, dry basis) above the limit established during the performance test.

TABLE 31 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

[As stated in § 63.1568(b)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this limit * * *	You must install and operate this continuous monitoring system * * *
1. Each new or existing Claus sulfur recovery unit part to a sulfur recovery plant of 20 long tons per day and subject to the NSPS for sulfur oxides in 40 CFR 60.104 (1) (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.
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 paragraph (a) (2) of 40 CFR 60.104.	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 O_2 emissions for each exhaust stack. 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 O_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.

TABLE 31 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(b)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this limit * * *	You must install and operate this continuous monitoring system * * *
3. Option 2: TRS limit Each new or existing sulfur recovery unit (Claus or Other type, regardless or 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.	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 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.

TABLE 32 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS FOR SULFUR OXIDES

[As stated in § 63.1568(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For * * *	You must * * *	Using * * *	According to these requirements * * *
1. Each new and existing sulfur recovery unit: Option 1 (Elect NSPS).	Measure SO_2 concentration (for an oxidation or reduction system followed by incineration) or the concentration of reduced sulfur (or SO_2 if you use an instrument to convert the reduced sulfur to SO_2) for a reduction control system without incineration.	Data from continuous emission monitoring system.	Collect SO_2 monitoring data every 15 minutes for 24 consecutive operating hours. Reduce the data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period.
2. Each new and existing sulfur recovery unit: Option 2 (TRS limit).	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A appendix A to part 60 of this chapter.	Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter, as applicable.	
	c. Conduct gas molecular weight analysis; obtain the oxygen concentration needed to correct the emission rate for excess air.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter, as applicable.	Take the samples simultaneously with reduced sulfur or moisture samples.
	d. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	Make your sampling time for each Method 4 sample equal to that for 4 Method 15 samples.
	e. Measure the concentration of TRS.	Method 15 or 15A in appendix A to part 60 of this chapter, as applicable.	If the cross-sectional area of the duct is less than 5 square meters (m^2) or 54 square feet, you must use the centroid of the cross section as the sampling point. If the cross-sectional area is 5 m^2 or more and the centroid is more than 1 meter (m) from the wall, your sampling point may be at a point no closer to the walls than 1 m or 39 inches. Your sampling rate must be at least 3 liters per minute or 0.10 cubic feet per minute to ensure minimum residence time for the sample inside the sample lines.
	f. Calculate the SO_2 equivalent for each run after correcting for moisture and oxygen.	The arithmetic average of the SO_2 equivalent for each sample during the run.	
	g. Correct the reduced sulfur samples to zero percent excess air.sa	Equation 1 of § 63.1568.	

TABLE 32 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS FOR SULFUR OXIDES—Continued

[As stated in § 63.1568(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For * * *	You must * * *	Using * * *	According to these requirements * * *
	h. Establish each operating limit in Table 30 of this subpart that applies to you.	Data from the continuous parameter monitoring system.	
	i. Measure thermal incinerator: combustion zone temperature.	Data from the continuous parameter monitoring system.	Collect temperature monitoring data every 15 minutes during the entire period of the performance test; and determine and record the minimum hourly average temperature from all the readings.
	j. Measure thermal incinerator: oxygen concentration (percent, dry basis) in the vent stream.	Data from the continuous parameter monitoring system.	Collect oxygen concentration (percent, dry basis) data every 15 minutes during the entire period of the performance test; and determine and record the minimum hourly average percent excess oxygen concentration.
	k. If you use a continuous emission monitoring system, measure TRS concentration.	Data from continuous emission monitoring system.	Collect TRS data every 15 minutes for 24 consecutive operating hours. Reduce the data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period.

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 must 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 Clause sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day 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 the hourly average SO_2 emissions measured by the continuous emission monitoring system are 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.
	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 the hourly average SO_2 emissions measured by your continuous emission monitoring system are 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 do 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 must meet each requirement in the following table that applies to you]

For * * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
		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 control system followed by incineration.	The hourly average SO_2 emissions measured by the continuous emission monitoring system over the 24-hour period of the initial performance test are not more than 250 ppvm (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.	The hourly average reduced sulfur emissions measured by the continuous emission monitoring system over the 24-hour period of the performance test no more than 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 do not use a continuous emission monitoring system, the average TRS emissions measured using Method 15 over the period of the initial performance test are 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 the hourly average TRS emissions measured by the continuous emission monitoring system over the 24-hour period of the performance test are no more than 300 ppmv expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen; and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.

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 must meet each requirement in the following table that applies to you.]

For * * *	For this emission limit * * *	You must demonstrate continuous compliance by * * *
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per 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.	Collecting the hourly average SO_2 monitoring data (dry basis, percent excess air) according to § 63.1572; maintaining the hourly average SO_2 concentration at or below the applicable limit; determining and recording each 12-hour average SO_2 day concentration; and reporting any 12-hour average SO_2 concentration greater than the applicable emission limitation in the compliance report required in § 63.1575.

TABLE 34 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(c)(1), you must meet each requirement in the following table that applies to you.]

For * * *	For this emission limit * * *	You must demonstrate continuous compliance by * * *
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv (dry basis) SO_2 at zero percent excess air if you use a reduction control system without incineration.	Collecting the hourly average reduced sulfur and O_2 data according to § 63.1572; and maintaining the hourly average concentration of reduced sulfur at or below the applicable limit; and determining and recording each 12-hour average concentration of reduced sulfur; and reporting any 12-hour average concentration of reduced sulfur greater than the applicable emission limitation in the compliance report required in § 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 (for oxidation or reduction system followed by incineration).	Collecting the hourly average SO_2 monitoring data (dry basis, percent excess air) according to § 63.1572; maintaining the hourly average SO_2 concentration at or below the applicable limit; determining and recording each 12-hour average SO_2 concentration; and reporting any 12-hour average SO_2 concentration greater than the applicable emission limitation in the compliance report required in § 63.1575.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air (for reduction control system without incineration).	Collecting the hourly average reduced sulfur (and air or O_2 dilution and oxidation data) according to § 63.1572; maintaining the hourly average SO_2 concentration at or below the applicable limit; reducing the monitoring data to 12-hour averages; and reporting any 12-hour average SO_2 concentration greater than the applicable limit 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.	Collecting the hourly average TRS monitoring data according to § 63.1572, if you use a continuous emission monitoring system; maintaining the hourly average concentration of TRS at or below the applicable limit; reducing the TRS monitoring data to 12-hour averages; reporting any 12-hour average TRS greater than the applicable limit in the compliance report required by § 63.1575; and maintaining the hourly average concentration of TRS below the applicable limit if you use continuous parameter monitoring systems.

TABLE 35 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

[As stated in § 63.1568(c)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this operating limit * * *	You must 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 paragraph 40 CFR 60.104(a)(2).	Not applicable	Meeting the requirements of Table 34 of this subpart.
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).	Not applicable	Meeting the requirements of Table 34 of this subpart.
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)	a. Maintain the daily average combustion zone temperature above the level established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to § 63.1572; and maintaining the daily average combustion zone temperature at or above the limit established during the performance test.

TABLE 35 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(c)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this operating limit * * *	You must demonstrate continuous compliance by * * *
	b. The daily average oxygen concentration in the vent stream (percent, dry basis) must not fall below the level established during the performance test.	Collecting the hourly and daily average O_2 monitoring data according to § 63.1572; and maintaining the average O_2 concentration above the level established during the performance test.

TABLE 36 TO SUBPART UUU OF PART 63.—WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

[As stated in § 63.1569(a)(1), you must meet each work practice standard in the following table that applies to you]

Option	You must 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 continuously detect, at least every hour, whether flow is present in the 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.
2. 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.
3. Option 3	Seal the bypass line by installing a solid blind between piping flanges.
4. Option 4	Vent the bypass line to a control device that meets the appropriate requirements in this subpart.

TABLE 37 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR BYPASS LINES

[As stated in § 63.1569(b)(1), you must meet each requirement in the following table that applies to you]

For this standard . . .	You must . . .
1. Option 1: Install and operate a flow indicator, level recorder, or electronic valve position monitor.	Record during the performance test for each type of control device whether the flow indicator, level recorder, or electronic valve position monitor was operating and whether flow was detected at any time during each hour of level the three runs comprising the performance test.

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 must meet each requirement in the following table that applies to you]

For * * *	For this work practice standard * * *	You have demonstrated initial compliance if * * *
1. Each new or existing bypass line associated with a catalytic cracking unit, catalylic 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 continuously detect, at least every hour, whether flow is present in the 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.

TABLE 39 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

[As stated in § 63.1569(c)(1), you must meet each requirement in the following table that applies to you]

If you elect this standard * * *	You must demonstrate continuous compliance by * * *
1. Option 1: Flow indicator, level recorder, or electronic valve position monitor.	Continuously monitoring and recording 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.
2. Option 2: Car-seal or lock-and-key device	Visually inspecting the seal or closure mechanism at least once every month; and recording whether the bypass line valve is maintained in the closed position and whether flow is present in the line.
3. Option 3: Solid blind flange	Visually inspecting the blind at least once a month; and recording whether the blind is maintained in the correct position such that the vent stream cannot be diverted through the bypass line.
4. Option 4: Vent to control device	Monitoring the control device according to appropriate subpart requirements.
5. Option 1, 2, 3, or 4	Recording and reporting the time and duration of any bypass.

TABLE 40 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS OPACITY MONITORING SYSTEMS AND CONTINUOUS EMISSION MONITORING SYSTEMS

[As stated in § 63.1572(a)(1) and (b)(1), you must meet each requirement in the following table that applies to you]

This type of continuous opacity or emission monitoring system * * *	Must meet these requirements * * *
1. Continuous opacity monitoring system	Performance specification 1 (40 CFR part 60, appendix B).
2. CO continuous emission monitoring system	Performance specification 4 (40 CFR part 60, appendix B); span value of 1,000 ppm; and procedure 1 (40 CFR part 60, appendix F) except relative accuracy test audits are required annually instead of quarterly.
3. CO continuous emission monitoring system used to demonstrate emissions average under 50 ppm (dry basis).	Performance specification 4 (40 CFR part 60, appendix B); and span value of 100 ppm.
4. SO_2 continuous emission monitoring 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 values of 500 ppm SO_2 and 10 percent O_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 and 10 percent O_2; use Methods 15 or 15A and 3A or 3B (40 CFR part 60, appendix A) for certifying O_2 monitor; 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 O2 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 and 10 percent O_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.
7. TRS continuous emission monitoring system for sulfur recovery unit; this monitor must include an O_2 monitor for correcting the data for excess air.	Performance specification 5 (40 CFR part 60, appendix B).
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; span value for O_2 sensor is 10 percent; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.

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 must meet each requirement in the following table that applies to you]

If you use a continuous parameter monitoring system to measure and record * * *	You must * * *
1. Voltage and secondary current or total power input.	At least monthly, inspect all components of the continuous parameter monitoring system for integrity and all electrical connections for continuity; and record the results of each inspection.

TABLE 41 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS PARAMETER MONITORING SYSTEMS—Continued

[As stated in §63.1572(c)(1), you must meet each requirement in the following table that applies to you]

If you use a continuous parameter monitoring system to measure and record * * *	You must * * *
2. Pressure drop [1]	Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure; minimize or eliminate pulsating pressure, vibration, and internal and external corrosion; use a gauge with an accuracy ± 2 percent over the operating range; check pressure tap for plugs at least once a week; using a manometer, check gauge calibration quarterly and transducer calibration monthly; for a semi-regenerative catalytic reforming unit, you can check the calibration quarterly and monthly or prior to regeneration, whichever is longer; record the results of each calibration; conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor; at least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage; and record the results of each inspection.
3. Air flow rate, gas flow rate, or total water (or scrubbing liquid) flow rate.	Locate the flow sensor(s) and other necessary equipment such as straightening vanes in a position that provides representative flow; use a flow rate sensor with an accuracy within ±5 percent; reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances; conduct a flow sensor calibration check at least semiannually; for a semi-regenerative catalytic reforming unit, you can check the calibration at least semiannually or prior to regeneration, whichever is longer; record the results of each calibration; if you elect to comply with Option 3 (Ni lb/hr) or Option 4 (Ni lb/1,000 lbs of coke burn-off) for the HAP metal emission limitations in §63.1564, install the continuous parameter monitoring system for gas flow rate as close as practical to the continuous opacity monitoring system; and if you don't use a continuous opacity monitoring system, install the continuous parameter monitoring system for gas flow rate as close as practical to the control device.
4. Combustion zone temperature	Install the temperature sensor in the combustion zone or in the ductwork immediately downstream of the combustion zone before any substantial heat exchange occurs; locate the temperature sensor in a position that provides a representative temperature; use a temperature sensor with an accuracy of ±1 percent of the temperature being measured, expressed in degrees Celsius (C) or ±0.5 degrees C, whichever is greater; shield the temperature sensor system from electromagnetic interference and chemical contaminants; if you use a chart recorder, it must have a sensitivity in the minor division of at least 20 degrees Fahrenheit; perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual; following the electronic calibration, 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 16.7 degrees C of the process temperature sensor's reading; record the results of each calibration and validation check; conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range, or install a new temperature sensor; and at least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.
5. pH	Locate the pH sensor in a position that provides a representative measurement of pH; ensure the sample is properly mixed and representative of the fluid to be measured; check the pH meter's calibration on at least two points every 8 hours of process operation; at least monthly, inspect all components for integrity and all electrical components for continuity; record the results of each inspection; and if you use pH strips to measure the pH of the water exiting a wet scrubber as an alternative to a continuous parameter monitoring system, you must use pH strips with an accuracy of ±10 percent.
6. HCl concentration	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.

[1] Not applicable to non-venturi wet scrubbers of the jet-ejector design.

TABLE 42 TO SUBPART UUU OF PART 63.—ADDITIONAL INFORMATION FOR INITIAL NOTIFICATION OF COMPLIANCE STATUS

[As stated in §63.1574(d), you must meet each requirement in the following table that applies to you]

For * * *	You must provide this additional information * * *
1. Identification of affected sources and emission points.	Nature, size, design, method of operation, operating design capacity of each affected source; identify each emission point for each HAP; identify any affected source or vent associated with an affected source not subject to the requirements of subpart UUU.

TABLE 42 TO SUBPART UUU OF PART 63.—ADDITIONAL INFORMATION FOR INITIAL NOTIFICATION OF COMPLIANCE STATUS—Continued

[As stated in § 63.1574(d), you must meet each requirement in the following table that applies to you]

For * * *	You must provide this additional information * * *
2. Initial compliance	Identification of each emission limitation you will meet for each affected source, including any option you select (i.e., NSPS, PM or Ni, flare, percent reduction, concentration, options for bypass lines); if applicable, certification that you have already conducted a performance test to demonstrate initial compliance with the NSPS for an affected source; certification that the vents meet the applicable emission limit and the continuous opacity or that the emission monitoring system meets the applicable performance specification; if applicable, certification that you have installed and verified the operational status of equipment by your compliance date for each bypass line that meets the requirements of Option 2, 3, or 4 in § 63.1569 and what equipment you installed; identification of the operating limit for each affected source, including supporting documentation; if your affected source is subject to the NSPS, certification of compliance with NSPS emission limitations and performance specifications; a brief description of performance test conditions (capacity, feed quality, catalyst, etc.); an engineering assessment (if applicable); and if applicable, the flare design (e.g., steam-assisted, air-assisted, or non-assisted), all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the Method 22 test.
3. Continuous compliance	Each monitoring option you elect; and identification of any unit or vent for which monitoring is not required; and the definition of "operating day." (This definition, subject to approval by the applicable permitting authority, must specify the times at which a 24-hr operating day begins and ends.)

TABLE 43 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.1575(a), you must meet each requirement in the following table that applies to you]

You must submit a(n) * * *	The report must contain * * *	You must submit the report * * *
1. Compliance report	If there are not deviations from any emission limitation or work practice standard that applies to you, a statement that there were no deviations from the standards during the reporting period and that no continuous opacity monitoring system or continuous emission monitoring system was inoperative, inactive, out-of-control, repaired, or adjusted; and if you have a deviation from any emission limitation or work practice standard during the reporting period, the report must contain the information in § 63.1575(d) or (e)	Semiannually according to the requirements in § 63.1575(b).

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU

[As stated in § 63.1577, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart 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).
§ 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 no later than 90 days (rather than 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(d)(4)		Yes.	
§ 63.5(e)	Approval of Construction or Reconstruction.		

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in §63.1577, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart UUU	Explanation
§63.5(f)(1)	Approval of Construction or Reconstruction Based on State Review.	Yes.	
§63.5(f)(2)		Yes	Except that 60 days is changed to 90 days and cross-reference to §63.9(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 for 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.	
§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.	

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.6(h)(9)	Adjusted Opacity Standard	Yes.	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes	Not applicable to an affected source with Tier II compliance date. May be applicable to an affected source exempt from Tier II rule.
§ 63.6(i)(15)	[Reserved]	Not applicable.	
§ 63.6(i)(16)		Yes.	

[FR Doc. 02–7222 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–P