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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0505, EPA–HQ–OAR–2020–0532; FRL–7523–03–OAR]

RIN 2060–AU66

National Emission Standards for Hazardous Air Pollutants: Carbon Black Production and Cyanide Chemicals Manufacturing Residual Risk and Technology Reviews, and Carbon Black Production Area Source Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology reviews (RTR) conducted for the Carbon Black Production and Cyanide Chemicals Manufacturing major source categories, and the technology review conducted for Carbon Black Production area sources, regulated under National Emission Standards for Hazardous Air Pollutants (NESHAP). In addition, we are taking final action to add new emissions standards for the Carbon Black Production and Cyanide Chemicals Manufacturing major source categories to address hazardous air pollutant (HAP) emissions not previously covered by these NESHAP. The EPA is also finalizing amendments for both source categories that address the startup, shutdown, and malfunction (SSM) provisions of the existing standards, and require electronic reporting of certain notifications, performance test results, and semiannual reports.

DATES: These final rules are effective on November 19, 2021. The incorporation by reference (IBR) of certain publications listed in the final rule is approved by the Director of the Federal Register as of November 19, 2021.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for the Carbon Black Production source category under Docket ID No. EPA–HQ–OAR–2020–0505, and a docket for the Cyanide Chemicals Manufacturing source category under Docket ID EPA–HQ–OAR–2020–0532. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. Hand Deliveries and couriers may be received by scheduled appointment only. For further information and updates on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about the Carbon Black Production source category final action, contact Korbin Smith, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2416; fax number: (919) 541–4991; and email address: *smith.korbin@epa.gov.* For questions about the Cyanide Chemicals Manufacturing source category final action, contact Nathan Topham, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0483; fax number: (919) 541–4991; and email address: *topham.nathan@epa.gov.*

For specific information regarding the risk modeling methodology for both Carbon Black Production and Cyanide Chemicals Manufacturing, contact James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *hirtz.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CCD combustion control device
CCMPU cyanide chemicals manufacturing process unit
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CO carbon monoxide
CRA Congressional Review Act
EAV equivalent annual value
EPA U.S. Environmental Protection Agency
GMACT Generic Maximum Achievable Control Technology
HAP hazardous air pollutant(s)
HCN hydrogen cyanide
HON Hazardous Organic NESHAP
HQ hazard quotient
ICBA International Carbon Black Association
ICR Information Collection Request
LEL lower explosive limit
MACT maximum achievable control technology
MUF main unit filter
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
NESHAP national emission standards for hazardous air pollutants
NOCS Notification of Compliance Status
NSPS New Source Performance Standards
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PEL permissible exposure limit
ppm parts per million
ppmv parts per million by volume
ppmw parts per million by weight
PRA Paperwork Reduction Act
PV present value
REL reference exposure level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SSM startup, shutdown, and malfunction
SSP startup and shutdown plan
STEL short term exposure limit
TOSHI target organ-specific hazard index
tpy tons per year

Background information. On January 14, 2021, the EPA proposed revisions to the Carbon Black Production NESHAP based on our RTR, and proposed no revisions to the Carbon Black Production area source rule based on our technology review. On January 15, 2021, the EPA proposed revisions to the Cyanide Chemicals Manufacturing NESHAP based on our RTR. In this action, we are finalizing decisions for, and revisions of, the NESHAP for these source categories. We summarize some of the more significant comments we timely received regarding the proposed rules and provide our responses in this preamble. A summary of all other public comments on these proposals and the EPA's responses to those comments are available in the *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air*

Pollutants Carbon Black Production Residual Risk and Technology Review and Carbon Black Production Area Sources Technology Review Proposed Rule (see Docket ID No. EPA–HQ–OAR–2020–0505) for the Carbon Black Production source category, and *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants: Cyanide Chemicals Manufacturing Residual Risk and Technology Review Proposed Rule* (see Docket ID No. EPA–HQ–OAR–2020–0532) for the Cyanide Chemicals Manufacturing source category. ''Track changes'' versions of the regulatory language that incorporates the changes in this action are available in the dockets.

Organization of this document. The information in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document and other related information?
- C. Judicial Review and Administrative Reconsideration

II. Background
- A. What is the statutory authority for this action?
- B. What are the source categories and how do the current NESHAP regulate HAP emissions from the source categories?
- C. What changes did we propose for the Carbon Black Production source category in our January 14, 2021, RTR proposal?
- D. What changes did we propose for the Cyanide Chemicals Manufacturing source category in our January 15, 2021, RTR proposal?

III. What is included in these final rules?
- A. What are the final rule amendments based on the risk reviews for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories?
- B. What are the final rule amendments based on the technology reviews for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories?
- C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories?
- D. What are the final rule amendments addressing emissions during periods of SSM for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories?
- E. What other changes have been made to the NESHAP?
- F. What are the effective and compliance dates of the standards?

IV. What is the rationale for our final decisions and amendments for the Carbon Black Production source category?
- A. Residual Risk Review for the Carbon Black Production Source Category
- B. Technology Review for the Carbon Black Production Source Category
- C. What are the final rule amendments pursuant to 112(d)(2) and (3) for the Carbon Black Production source category?
- D. Amendments Addressing Emissions During Periods of SSM for the Carbon Black Production Source Category
- E. Other Technical Amendments to the Carbon Black Production NESHAP

V. What is the rationale for our final decisions and amendments for the Cyanide Chemicals Manufacturing source category?
- A. Residual Risk Review for the Cyanide Chemicals Manufacturing Source Category
- B. Technology Review for the Cyanide Chemicals Manufacturing Source Category
- C. Amendments Addressing Emissions During Periods of SSM for the Cyanide Chemicals Manufacturing Source Category
- D. Other Technical Amendments to the Cyanide Chemicals Manufacturing NESHAP

VI. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
- A. Carbon Black Production
- B. Cyanide Chemicals Manufacturing

VII. Statutory and Executive Order Reviews
- A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. The source categories that are the subject of this final action are cyanide chemicals manufacturing and carbon black production major sources regulated under 40 CFR part 63, subpart YY and carbon black production area sources regulated under 40 CFR part 63, subpart MMMMMM. The North American Industry Classification System (NAICS) codes for the cyanide chemicals manufacturing industry are 325188 and 325199. The NAICS code for the carbon black production industry is 325182.

This list of categories and NAICS codes is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the dockets for these source categories, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *https://www.epa.gov/stationary-sources-air-pollution/acetal-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule and key technical documents at this same website.

Additional information is available on the RTR website at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes an overview of the RTR program, links to project websites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by January 18, 2022. Under CAA section 307(b)(2), the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the

Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). The EPA is required to address regulatory gaps, such as missing standards for listed air toxics known to be emitted from the source category. *Louisiana Environmental Action Network (LEAN)* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this action, see 86 FR 3054, for the Carbon Black Production NESHAP and 86 FR 3906, for the Cyanide Chemicals Manufacturing NESHAP.

B. What are the source categories and how do the current NESHAP regulate HAP emissions from the source categories?

The MACT standards for both the Carbon Black Production and Cyanide Chemicals Manufacturing source categories are contained in the Generic Maximum Achievable Control Technology (GMACT) NESHAP, which also includes MACT standards for several other source categories. Section II.B.1 of this preamble discusses the current Carbon Black Production major and area source rules and section II.B.2 discusses the Cyanide Chemicals Manufacturing source category standards.

1. Carbon Black Production

The EPA promulgated the Carbon Black Production NESHAP for major sources on July 12, 2002 (67 FR 46258). The major source standards are codified at 40 CFR part 63, subpart YY. Additionally, the Carbon Black Production area source NESHAP was promulgated on July 16, 2007 (72 FR 38864). The area source standards are codified at 40 CFR part 63, subpart MMMMMM. Subpart MMMMMM was subsequently amended by a direct final rule on March 26, 2008 (73 FR 15923). As promulgated, the Carbon Black Production major source and area source NESHAP apply to carbon black production facilities that are, respectively, major sources and area sources of HAP. The affected source covered by the major and area source subparts is each new, reconstructed, or existing facility that produces carbon black by either the furnace, thermal, acetylene decomposition, or lampblack processes. The source category covered by this MACT standard currently includes 15 major source facilities; no area source facilities were identified.

Emissions limits in the 2002 major source NESHAP for the Carbon Black Production source category were set for process vents associated with the main unit filter (MUF). Process vents at the MUF that have a HAP concentration of equal to or greater than 260 parts per million by volume (ppmv) are required to reduce emissions of HAP by the use of a flare meeting the requirements of 40 CFR part 63, subpart SS, or reduce emissions of total HAP by 98 weight-

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

percent or to a concentration of 20 ppmv, whichever is less stringent. The Carbon Black Production area source NESHAP requires area source facilities to meet the requirements of the Carbon Black Production major source NESHAP found at 40 CFR 63.1103(f) of subpart YY.

2. Cyanide Chemicals Manufacturing

The EPA promulgated the Cyanide Chemicals Manufacturing NESHAP on July 12, 2002 (67 FR 46258). The standards are codified at 40 CFR part 63, subpart YY. The cyanide chemicals manufacturing industry consists of facilities producing hydrogen cyanide or sodium cyanide. The source category covered by this MACT standard currently includes 13 facilities. As promulgated in 2002, the cyanide chemicals manufacturing standards regulate HAP emissions from cyanide chemicals manufacturing units located at major sources. The HAP emitted from the source category include cyanide compounds (hydrogen cyanide and sodium cyanide), acetonitrile, and acrylonitrile.

The NESHAP defines the affected source as each cyanide chemicals manufacturing process unit (CCMPU). The rule states that the CCMPU is the equipment assembled and connected by hard-piping or duct work to process raw materials to manufacture, store, and transport a cyanide chemicals product. Section II.B of the proposed cyanide chemicals manufacturing RTR provides more information about the source category (86 FR 3906, 3910).

The 2002 NESHAP established emissions standards for process vents, storage vessels, transfer racks, equipment leaks, and some wastewater sources. Cyanide process vents are subject to either a 98 weight-percent reduction of total HAP [2] performance standard or a 20 ppmv total HAP outlet exit concentration limit. For storage vessels in the Cyanide Chemicals Manufacturing source category, sources may either choose to comply with a 98 weight-percent reduction of hydrogen cyanide performance standard, a 20 ppmv hydrogen cyanide exit outlet concentration limit, or equipment standards (*e.g.,* use of a flare). Transfer racks are subject to either equipment standards or the same performance standard or concentration limit [3] as cyanide process vents. Equipment leaks are subject to work practice standards required by either 40 CFR part 63, subpart TT or subpart UU.

During development of the initial MACT standards, we identified process wastewater at existing sources as a potential source of emissions of hydrogen cyanide, acetonitrile, and acrylonitrile. See 65 FR 76408, 76411, and 76413, December 6, 2000, for a discussion of the HAP emitted from cyanide chemicals manufacturing. The 2002 NESHAP established requirements that HAP emissions from applicable process wastewater streams be controlled while the wastewater is being conveyed to treatment and specified requirements for the controls to reduce the hydrogen cyanide and acetonitrile concentration in the process wastewater. For a new CCMPU that generates process wastewater, the NESHAP requires a combined 93 weight-percent removal and control of HAP from process wastewater generated from hydrogen cyanide purification, ammonia purification, or flare blowdown. At the time the initial MACT standards were developed, we identified measures undertaken at cyanide chemicals manufacturing facilities to comply with other NESHAP as the "MACT floor" for process wastewater at existing sources, but we did not include these measures in subpart YY for existing CCMPUs. For a cyanide chemicals manufacturing process unit that generates maintenance wastewater, the NESHAP requires that an owner or operator comply with Hazardous Organic NESHAP (HON) maintenance wastewater requirements.

C. What changes did we propose for the Carbon Black Production source category in our January 14, 2021, RTR proposal?

On January 14, 2021, the EPA published a proposed rule in the **Federal Register** for the Carbon Black Production NESHAP, 40 CFR part 63, subpart YY, that took into consideration the RTR analyses. In the proposed rule, we proposed to find that the risk from the source category is acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Based on the technology review, we proposed that it is not necessary to revise the existing standards because we did not identify developments in practices, processes, or control technologies that would result in cost-effective emission reductions for the Carbon Black Production source category.

The EPA did, however, propose to broaden the scope of the original NESHAP, which applied to process vents associated with the MUF only, to include previously unregulated process vents associated with the carbon black production unit. The EPA proposed to require all process vents that have a HAP concentration of the emission stream equal to or greater than 260 ppmv, including those located after the MUF, to reduce emissions of HAP by using a flare meeting the requirements of 40 CFR part 63, subpart SS, or to reduce emissions of total HAP by 98 weight-percent or to a concentration of 20 ppmv, whichever is less stringent. The EPA also proposed to require facilities to conduct performance testing on the additional process vents located after the MUF.

The proposal preamble also stated that the EPA did not identify any currently operating area sources in the carbon black production source category. The EPA is not proposing to change the existing area source standards. However, the area source standard requires all facilities to meet all the requirements in 40 CFR 63.1103(f) of subpart YY (major source standard). The provisions in 40 CFR 63.1103(f) include carbon black production applicability, definitions, and requirements. Therefore, all changes discussed below, which impact the requirements laid out in 40 CFR 63.1103(f), also impact the requirements of the area source rule for carbon black production.

The EPA proposed the following amendments to the Carbon Black Production major source NESHAP:

- Expansion of the process vent emission standards to cover all applicable (based on an applicability threshold) carbon black production process vents;
- A requirement for boilers/process heaters that receive tail gas for use as fuel gas to comply with annual tune-up requirements specified in 40 CFR 63.1103(f)(3)(iii);
- Addition of a work practice standard for periods of startup, as specified in 40 CFR 63.1103(f)(5);
- Revision of the MACT standard compliance provisions for the Carbon Black Production source category to require owners and operators of carbon black production process vent affected sources to conduct periodic performance tests every 5 years;

[2] "Dry end" process vents at sodium cyanide units must meet a 98 percent reduction performance standard for emissions of sodium cyanide since this is the form of cyanide compounds emitted from these emission points. The HAP emitted from other process vents that make up the "total HAP" emitted from these sources are hydrogen cyanide, acetonitrile, and acrylonitrile.

[3] Transfer racks emissions limits are expressed in terms of hydrogen cyanide as this is the only HAP emitted from these sources.

- Elimination of the startup, shutdown, malfunction (SSM) exemption, which currently appears at 40 CFR 63.1108, and any references to SSM requirements in subpart YY that apply to Carbon Black Production source category affected sources;
- Requirements for submission of electronic copies of required performance test reports, Notification of Compliance Status (NOCS), and periodic reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI); and
- Minor editorial and technical changes in the subpart.

D. What changes did we propose for the Cyanide Chemicals Manufacturing source category in our January 15, 2021, RTR proposal?

On January 15, 2021, the EPA published a proposed rule in the **Federal Register** for the Cyanide Chemicals Manufacturing NESHAP (86 FR 3906) that took into consideration the RTR analyses. In the proposed rule, we proposed to find that the risk from the source category is acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Based on the technology review, we proposed that it is not necessary to revise the existing standards because we did not identify developments in practices, processes, or control technologies that would result in cost-effective emission reductions for the Cyanide Chemicals Manufacturing source category.

However, the EPA proposed standards pursuant to CAA section 112(d)(2) for process wastewater from existing CCMPUs, which was previously unregulated.[4] We proposed that process wastewater sources at existing sources comply with HON wastewater requirements. Specifically, for an existing cyanide chemicals manufacturing process unit that generates process wastewater from hydrogen cyanide purification, ammonia purification, or flare blowdown, we proposed that owners or operators comply with the requirements of 40 CFR 63.138(a)(1) of the HON if the total annual average concentration of Table 9 of 40 CFR part 63, subpart G compounds and cyanide compounds[5] is greater than or equal to 10,000 parts per million by weight (ppmw) at any flow rate, or the total annual average concentration of Table 9 compounds and cyanide compounds is greater than or equal to 1,000 ppmw, and the annual average flow rate is greater than or equal to 10 liters per minute (according to the procedures in 40 CFR 63.144(a)). We also proposed revising the new source standard to add the HON requirements for waste management units upstream of an open or closed biological treatment process to ensure demonstrable compliance measures are in place for these sources.

The EPA also proposed the following amendments:

- Revisions to the MACT rule at 40 CFR 63.1108 through 40 CFR 63.1112 to eliminate references to SSM requirements in subpart YY to reduce confusion that may result from referenced subparts associated with the GMACT that may contain SSM exemptions for other source categories;
- Requirements for submission of electronic copies of required performance test reports, NOCS, and periodic reports through the EPA's CDX using CEDRI; and
- Minor editorial and technical changes in the subpart.

III. What is included in these final rules?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories.

For the Carbon Black Production source category, this action finalizes changes to the major source NESHAP, including elimination of the SSM exemption and any reference to SSM requirements for carbon black production facilities, inclusion of a work practice standard for startup and shutdown periods, inclusion of boiler and process heater annual tune-up requirements, expansion of process vent standard applicability, addition of periodic process vent performance testing requirements, inclusion of electronic reporting requirements, and editorial and technical changes. This final action also reflects several changes to the RTR proposal in consideration of comments received during the public comment period. Section IV presents our rationale for our final decisions and changes to the proposed amendments based on comments received on the proposal.

For the Cyanide Chemicals Manufacturing source category, this action finalizes changes to the NESHAP, including: Eliminating any reference to SSM exemptions for cyanide chemicals manufacturing facilities, adding electronic reporting requirements, adding HON requirements for process wastewater from existing cyanide chemical manufacturing process units, adding HON requirements for waste management units upstream of an open or closed biological treatment process to the new source standard, and making editorial/technical changes. This action also reflects several changes to the RTR proposal in consideration of comments received during the public comment period as described in section V of this preamble.

A. What are the final rule amendments based on the risk reviews for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories?

This section introduces the final determinations for the Carbon Black Production and Cyanide Chemicals Manufacturing NESHAP pursuant to CAA section 112(f). Section III.A.1 presents the final decisions based on the risk review for the Carbon Black Production source category. Section III.A.2 presents the final decisions based on the risk review for the Cyanide Chemicals Manufacturing source category.

1. Carbon Black Production

The EPA is not amending the major source Carbon Black Production NESHAP based on the risk reviews conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that the risk from HAP emissions from the Carbon Black Production source category is acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

2. Cyanide Chemicals Manufacturing

The EPA is not amending the Cyanide Chemicals Manufacturing NESHAP based on the risk review conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that the risk from HAP emissions from the Cyanide Chemicals Manufacturing source category is acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

[4] The EPA not only has authority under CAA sections 112(d)(2) and (3) to set MACT standards for previously unregulated HAP emissions at any time but is required to address any previously unregulated HAP emissions as part of its periodic review of MACT standards under CAA section 112(d)(6). *LEAN* v. *EPA*, 955 F3d at 1091–1099.

[5] In the final rule, we have clarified that this requirement applies to "free cyanide" rather than "cyanide compounds" in response to public comments.

B. What are the final rule amendments based on the technology reviews for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories?

This section summarizes the results of the technology reviews for the Carbon Black Production and Cyanide Chemicals Manufacturing NESHAP. Section III.B.1 presents the final decisions based on the technology review for the Carbon Black Production source category. Section III.B.2 presents the final decisions based on the technology review for the Cyanide Chemicals Manufacturing source category.

1. Carbon Black Production

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards for this source category under CAA section 112(d)(6). However, as part of the technology review, we identified regulatory gaps (previously unregulated processes or pollutants), and are establishing new standards to fill those gaps as described in section III.C of this preamble.

As discussed in the Carbon Black Production source category proposal preamble, we also performed a technology review of the Carbon Black Production area source NESHAP. As part of that review, the EPA did not identify any currently operating area source facilities. We are finalizing our conclusion that it is not necessary to make changes to the existing area source standards as a result of this review.

2. Cyanide Chemicals Manufacturing

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards for this source category under CAA section 112(d)(6). However, as part of the technology review, we identified regulatory gaps (previously unregulated processes or pollutants), and are establishing new standards to fill those gaps as described in section III.C of this preamble.

C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories?

This section describes the final rule amendments to the Carbon Black Production and Cyanide Chemicals Manufacturing NESHAP pursuant to CAA sections 112(d)(2) and (3). Section III.C.1 presents the final rule amendments for the Carbon Black Production source category. Section III.C.2 presents the final rule amendments for the Cyanide Chemicals Manufacturing source category.

1. Carbon Black Production

Pursuant to CAA sections 112(d)(2) and (3), the EPA is finalizing its proposal to broaden the scope of the current emission limits for new and existing sources in the major source NESHAP, which applies to process vents associated with the MUF, to include all process vents associated with the carbon black production unit. This amendment requires all process vents, including those located after the MUF that meet the applicability threshold, to reduce emissions of total HAP by 98 weight-percent or to a concentration of 20 ppmv, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of 40 CFR 63.982(a)(2). Additionally, these final amendments require facilities to conduct an applicability determination test on the additional process vents located after the MUF.

2. Cyanide Chemicals Manufacturing

Pursuant to CAA sections 112(d)(2) and (3), the EPA is finalizing its proposal to add standards for process wastewater at existing CCMPUs with minor applicability-related clarifications (see section V.D.3.d (Request for Clarification)). The final standards require that individual wastewater streams from CCMPU HCN purification, ammonia purification, or flare blowdown, comply with the requirements of 40 CFR 63.138(a)(1) of the HON if the total annual average concentration of Table 9 of 40 CFR part 63, subpart G compounds and free cyanide from each process wastewater stream is greater than or equal to 10,000 ppmw at any flow rate, or the total annual average concentration of Table 9 compounds and free cyanide from each process wastewater stream is greater than or equal to 1,000 ppmw and the annual average flow rate is greater than or equal to 10 liters per minute (according to the procedures in 40 CFR 63.144(a)). The EPA is also finalizing its proposal to add the HON requirements for waste management units upstream of an open or closed biological treatment process for process wastewater at new sources.

D. What are the final rule amendments addressing emissions during periods of SSM for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories?

This section describes the final rule amendments to the Carbon Black Production and Cyanide Chemicals Manufacturing NESHAP that address emissions during periods of SSM. Section III.D.1 presents the final rule amendments for the Carbon Black Production source category. Section III.D.2 presents the final rule amendments for the Cyanide Chemicals Manufacturing source category.

1. Carbon Black Production

The EPA is finalizing the proposed SSM provision amendments for the Carbon Black Production major source NESHAP in subpart YY in order to ensure consistency with the decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008). As noted in the proposal for the Carbon Black Production source category, under this decision, the Court vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We proposed and are finalizing revisions to the MACT rule at 40 CFR 63.1108 through 40 CFR 63.1112 that remove the SSM exemption under the Carbon Black Production NESHAP and any references to SSM-related requirements.

The EPA is also finalizing startup and shutdown work practice standards to address safety and combustibility concerns in the absence of the SSM exemption. The work practice standard, as amended under the final rule, is discussed in greater detail in section IV.C of this preamble.

2. Cyanide Chemicals Manufacturing

The EPA is finalizing the proposed SSM provision amendments for the Cyanide Chemicals Manufacturing NESHAP in order to ensure consistency with the decision in *Sierra Club* v. *EPA*, 551 F. 3d 1019 (D.C. Cir. 2008). The Cyanide Chemicals Manufacturing NESHAP promulgated in 2002 is consistent with the Court decision mentioned above. However, we proposed and are finalizing revisions to the NESHAP at 40 CFR 63.1108 through 40 CFR 63.1112 to ensure that no confusion results from referenced subparts in subpart YY that may contain SSM exemptions for other source categories. See section V.C of this preamble for more information regarding SSM provisions under subpart YY.

E. What other changes have been made to the NESHAP?

This section describes other amendments to the final Carbon Black Production and Cyanide Chemicals Manufacturing NESHAP. Section III.E.1 presents the other final rule amendments for the Carbon Black Production source category. Section III.E.2 presents the other final rule amendments for the Cyanide Chemicals Manufacturing source category.

1. Carbon Black Production

Other final amendments to the Carbon Black Production NESHAP include boiler and process heater annual tune-up requirements, electronic reporting requirements, and periodic performance testing requirements for process vents to demonstrate initial and continued compliance with the standards, as discussed below.

a. Boiler and Process Heater Annual Tune-Up Provisions

The EPA is finalizing annual tune-up requirements for boilers and process heaters that utilize tail gas for use as fuel. These provisions are specified in 40 CFR 63.1103(f)(3)(iii) of the final rule. To better reflect boilers and process heaters used in the carbon black production source category, the final annual boiler and process heater tune-up requirements were revised from the proposal, based on comments received (see section IV.D of this preamble for detail related to comments received, as well as the EPA's revisions and rationale).

b. Electronic Reporting Requirements

The EPA is finalizing its proposal that owners and operators of carbon black production facilities submit electronic copies of required performance test reports, NOCS, and periodic reports through the EPA's CDX using CEDRI. A description of the electronic data submission process is provided in the memorandum, "*Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*", available in the docket for the Carbon Black Production NESHAP (see Docket ID No. EPA–HQ–OAR–2020–0505–0018).

c. Periodic Performance Testing

The EPA is finalizing rule amendments, as proposed, that require owners and operators of carbon black production process vents subject to the rule, in addition to the already required initial performance test, to conduct performance tests every 5 years to demonstrate continued compliance with the NESHAP.

2. Cyanide Chemicals Manufacturing

The EPA is finalizing its proposal that owners and operators of cyanide chemicals manufacturing facilities submit electronic copies of required performance test reports, NOCS, and periodic reports through the EPA's CDX using CEDRI. A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for the Cyanide Chemicals Manufacturing NESHAP action (see Docket ID No. EPA–HQ–OAR–2020–0532–0003). Specific comments received on the proposed periodic report electronic data template and the EPA's response to those comments are provided in a memorandum to the docket, *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants: Cyanide Chemicals Manufacturing Residual Risk and Technology Review Proposed Rule,* available in the Cyanide Chemicals Manufacturing NESHAP docket (see EPA HQ–OAR–2020–0532).

F. What are the effective and compliance dates of the standards?

This section describes the effective dates and compliance dates for the final amendments to the Carbon Black Production and Cyanide Chemicals Manufacturing NESHAP. Section III.F.1 presents the effective dates and compliance dates for the Carbon Black Production NESHAP amendments. Section III.F.2 presents the effective dates and compliance dates for the Cyanide Chemicals Manufacturing NESHAP amendments.

1. Carbon Black Production

a. Effective Date of the Final Rule

The revisions to the Carbon Black Production MACT standards being promulgated in this action are effective on November 19, 2021.

b. Compliance Dates

For new sources (affected sources that commenced construction or reconstruction after January 14, 2021), the EPA is finalizing, as proposed, that affected sources must comply with all of the final rule requirements immediately upon the effective date of the rule, November 19, 2021, or upon startup, whichever is later.

The EPA is finalizing, as proposed, that existing Carbon Black Production affected sources that commenced construction or reconstruction on or before January 14, 2021 (existing sources), must comply with the following requirements of the rule no later than November 20, 2022: (1) Process vent emission standards applicability testing for carbon black production process vents; (2) the requirement to conduct performance tests no more than 60 months after the preceding test when demonstrating compliance with process vent emission control requirements; and (3) boiler and process heater annual tune-up requirements.

The EPA is finalizing a requirement that previously unregulated process vents from Carbon Black Production sources that commenced construction or reconstruction on or before January 14, 2021, will have until November 19, 2024 to comply with final rule requirements for process vents. This represents a change from the proposal. The EPA determined that changing the proposed compliance period is necessary, in the event that the applicability test indicates that previously unregulated process vents are required to route emissions to an existing control device or to a newly constructed control device. Based on comments received, the EPA believes providing a 3-year compliance period for newly subject process vents, instead of 1 year, is necessary and appropriate in order to ensure sufficient time for facilities to conduct the necessary process design planning, purchases, construction, and changes to come into compliance and then perform the initial performance test.

For requirements related to SSM-related amendments and electronic reporting, the EPA is finalizing, as proposed, that all existing sources must be in compliance with the: (1) SSM-related amendments (changes proposed as a result of removing the SSM exemption from the requirements); (2) the alternative work practice standard specified in 40 CFR 63.1103(f)(5) related to the requirement that a closed vent system route the collected vapors to a control device when demonstrating compliance; and (3) the addition of requirements to submit reports electronically by May 18, 2022. Based on our assessment for existing sources, 180 days is the most expeditious compliance period practicable for complying with SSM-related and electronic reporting requirements.

The EPA considers 180 days to be sufficient for owners and operators of affected sources to comply with the

alternative work practice standard for startup and shutdown.[6] Many of the work practice standard requirements included in the final rule are already implemented by industry.

Our experience with similar industries that are required to convert reporting mechanisms, to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting, shows that a time period of a minimum of 90 days, and, more typically, 180 days is generally necessary to successfully accomplish these revisions.

Our experience with similar industries further shows that owners and operators generally require a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plan to reflect the revised requirements.

2. Cyanide Chemicals Manufacturing

a. Effective Date of the Final Rule

The revisions to the Cyanide Chemicals Manufacturing standards being promulgated in this action are effective on November 19, 2021.

b. Compliance Dates

New sources (affected sources that commenced construction or reconstruction after January 15, 2021) must comply with all of the standards immediately upon the effective date of the standard, November 19, 2021, or upon startup, whichever is later.

The compliance date for existing Cyanide Chemicals Manufacturing affected sources (affected sources that commenced construction or reconstruction on or before January 15, 2021) to comply with the final process wastewater standards is November 20, 2022. The EPA determined that affected sources are already complying with similar or substantially equivalent process wastewater requirements. The EPA is allowing one year to comply with the final process wastewater requirements in order to provide owners and operators the time to evaluate process wastewater rule requirements and applicability to their operations, perform compliance calculations, and adjust plans and reports, as necessary.

For requirements related to SSM-related amendments (removing references to SSM-related exemptions in other subparts) and electronic reporting, the compliance date is May 18, 2022. Based on our assessment for existing sources, 180 days is the most expeditious compliance period practicable for complying with SSM-related and electronic reporting requirements.

For SSM-related amendments, our experience with similar industries indicates that regulated facilities generally require a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operations to reflect the revised requirements.

For electronic reporting changes, our experience with similar industries that are required to convert reporting mechanisms, to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting indicates that a time period of a minimum of 90 days, and, more typically, 180 days is generally necessary to successfully accomplish these revisions.

IV. What is the rationale for our final decisions and amendments for the Carbon Black Production source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket for this source category.

A. Residual Risk Review for the Carbon Black Production Source Category

1. What did we propose pursuant to CAA section 112(f) for the Carbon Black Production source category?

On January 14, 2020 (86 FR 3056), the EPA proposed that risk posed by major sources in the Carbon Black Production source category is acceptable, that the current NESHAP provides an ample margin of safety to protect public health, and that additional standards are not necessary to prevent an adverse environmental effect. The estimated cancer risks were below the presumptive limit of acceptability and the noncancer risk results indicate there is minimal likelihood of adverse noncancer health effects due to HAP emissions from this source category. The proposed decision on ample margin of safety was based on weighing factors relevant to this particular source category, including the risk posed by point sources and the costs and cost-effectiveness of additional controls to reduce risk further, as well as uncertainties in the baseline emissions estimates used in estimating risk, the costs and effectiveness of the work practices we considered to reduce these emissions, and the amount of risk reduction that could be achieved with the work practices. The EPA sets standards under CAA section 112(f)(2) using "a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual risk (MIR) of approximately 1-in-10 thousand." (54 FR 38045, September 14, 1989). In the proposal, the EPA estimated risks based on actual and allowable emissions from carbon black production sources, and we considered these in determining acceptability. A more thorough discussion of the risk assessment is included in the *Residual Risk Assessment for the Carbon Black Production Source Category in Support of the Risk and Technology Review 2021 Final Rule document,* available in the docket for this final rule (Docket–EPA–HQ–OAR–2020–0505).

In the proposed rule, as presented in Table 1 below, based on modeling actual emissions from the Carbon Black Production source category for all 15 facilities, we estimated inhalation cancer risk to the individual most exposed was less than 1-in-1 million. The estimated incidence of cancer due to inhalation exposures resulting from emissions from the source category was 0.00004 excess cancer cases per year, or one excess case every 25,000 years with no-one exposed to an excess cancer risk greater than or equal to 1-in-1 million due to inhalation exposure to HAP emissions from this source category. The Agency estimated that the maximum chronic noncancer target

[6] Section 63.983(a)(1) of 40 CFR part 63, subpart SS requires that each closed vent system be designed and operated to collect the regulated material vapors from the emission point, and to route the collected vapors to a control device, apply at all times.

organ-specific hazard index (TOSHI) from inhalation exposure from this source category was 0.06. In the screening assessment of worst-case acute inhalation impacts, we estimated a maximum hazard quotient (HQ) of 0.09 (due to hydrogen cyanide) based on the reference exposure level (REL). As shown in Table 1, the chronic cancer and non-cancer risks are the same for allowable and facility-wide emissions as they are for actuals.

TABLE 1—INHALATION RISK ASSESSMENT SUMMARY FOR CARBON BLACK PRODUCTION [1] SOURCE CATEGORY

Risk assessment	Number of facilities [2]	Maximum individual cancer risk (1-in-1 million) [3]	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated population at increased risk of cancer ≥10-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]	Maximum screening acute noncancer HQ [5]
Baseline Actual Emissions							
Source Category.	15	0.06	0	0	0.00004	<1 (neurological)	0.09 (REL)
Facility-wide	15	0.06	0	0	0.00004	<1 (neurological).	
Baseline Allowable Emissions							
Source Category.	15	0.06	0	0	0.00004	<1 (neurological).	

[1] Based on actual and allowable emissions.
[2] Number of facilities evaluated in the risk assessment. Includes 15 operating facilities subject to 40 CFR part 63, subpart YY.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[4] Maximum TOSHI. The target organ with the highest TOSHI for the Carbon Black Production source category is the neurological system.
[5] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. The acute HQ shown was based upon the lowest acute 1-hour dose-response value, the REL for hydrogen cyanide. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

We also conducted a multipathway screening assessment for the source category, and the results of the screening assessment are presented in the risk report titled *Residual Risk Assessment for the Carbon Black Production Source Category in Support of the 2021 Risk and Technology Review Final Rule,* and section IV of the proposal preamble (86 FR 3054), January 14, 2021) available in the docket for this action.

A screening value is not an estimate of the cancer risk or a noncancer HQ (or HI). Rather, a screening value represents a high-end estimate of what the risk or HQ may be. For the Carbon Black Production source category, the highest cancer screening value was from arsenic emissions, with a Tier 2 cancer screening value of 9, and the highest non-cancer screening value was from mercury emissions, with a Tier 3 non-cancer screening value of 2. We are confident that if a refined multipathway risk assessment was conducted, the HQ for mercury would be lower than 2. Further details on the Tier 3 screening assessment can be found in Appendix 11 of the *Residual Risk Assessment for the Carbon Black Production Source Category in Support of the Risk and Technology Review 2021 Final Rule.* Arsenic emissions resulted in a Tier 2 cancer screening value of 9, which means that we are confident that the multipathway cancer risk is lower than 9-in-1 million. The EPA has determined that it is not necessary to go beyond the Tier 3 assessment for mercury (to a site-specific assessment) or beyond the Tier 2 cancer screening assessment. As explained above, the mercury screening value of 2 is a high-end estimate of what the risk or hazard may be and can be interpreted to mean that we are confident that the HQ would be lower than 2. Similarly, we are confident that the excess cancer risk is less than 9-in-1 million, and evaluation under Tier 3 or a site-specific assessment would further reduce the estimated risk. Further, risk results from five site-specific mercury assessments the EPA has conducted for five RTR source categories resulted in noncancer HQs that range from 50 times to 800 times lower than the respective Tier 2 mercury screening value for those facilities (refer to the identified Docket ID No. EPA–HQ–OAR–2017–0015 for a copy of these reports).[7] Based on our review of these analyses, we expect if we were to perform a site-specific assessment for the Carbon Black Production source category, the mercury HQ would be at least a one order of magnitude less than the modeled Tier 3 non-cancer screening value of 2 for mercury. Thus, the EPA is confident that the mercury HQ would be less than 1, if further refined to incorporate enhanced site-specific analyses such as improved model boundary identification with improved soil/water run-off calculations and AERMOD deposition outputs used in the TRIM.FaTE model.

In evaluating the potential for multipathway effects from emissions of lead for the Carbon Black Production source category, the EPA compared modeled annual lead concentrations to the secondary National Ambient Air Quality Standards (NAAQS) level for lead (0.15 micrograms per cubic meter ($\mu g/m^3$), arithmetic mean concentration over a 3-month period). The highest annual average lead concentration, 0.000099 $\mu g/m^3$, is far below the NAAQS level for lead, indicating a low potential for multipathway impacts from lead.

In determining whether risk is acceptable for this source category, the EPA considered all available health information and risk estimation

[7] EPA Docket records: EPA–HQ–OAR–2017–0015, Appendix 11 of the *Residual Risk Assessment for the Taconite Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* Appendix 11 of the *Residual Risk Assessment for the Integrated Iron and Steel Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* Appendix 11 of the *Residual Risk Assessment for the Portland Cement Manufacturing Source Category in Support of the 2018 Risk and Technology Review Final Rule,* and Appendix 11 of the *Residual Risk Assessment for the Coal and Oil-Fired EGU Source Category in Support of the 2018 Risk and Technology Review Proposed Rule* and EPA Docket record: EPA–HQ–OAR–2019–0373, Appendix 11 of the *Residual Risk Assessment for the Iron and Steel Foundries Source Category in Support of the Risk and Technology Review 2019 Proposed Rule.*

uncertainty that includes the uncertainty in the data (See proposal at 86 FR 3054, section III.C.7, *How do we consider uncertainties in risk assessment?*). The maximum cancer risk for all facilities was below 1-in-1 million; in addition, there were no facilities with an estimated maximum chronic noncancer HI or maximum HQ greater than or equal to 1. The EPA weighed all health risk factors in our risk acceptability determination, and we proposed that the risk from this source category is acceptable. We then considered whether the NESHAP provides an ample margin of safety to protect public health, and whether more stringent standards were necessary to prevent an adverse environmental effect, by taking into consideration costs, energy, safety, and other relevant factors. Based upon these considerations, we proposed and are finalizing the determination that the 2002 Carbon Black Production NESHAP requirements provide an ample margin of safety to protect public health. Based on the results of our environmental risk screening assessment, we also proposed and are finalizing the determination that more stringent standards are not necessary to prevent an adverse environmental effect.

2. How did the risk review change for the Carbon Black Production source category?

We did not receive any information that changed our determination concerning risk and we are finalizing our proposed conclusion on the risk review.

3. What key comments did we receive on the risk review, and what are our responses?

We received several comments regarding the proposed risk review and our proposed determination that no revisions to the standard were warranted under CAA section 112(f)(2). One commenter supported the proposed determination, while another, stated that EPA underestimated risks. After review of these comments, we disagreed with the commenter's assertion that risks were underestimated and determined no changes to the standard were necessary. The comments and our specific responses can be found in the document, *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants Carbon Black Production Residual Risk and Technology Review and Carbon Black Production Area Sources Technology Review Proposed Rule,* which is available in docket: EPA–HQ–OAR–2020–0505.

4. What is the rationale for our final approach and final decisions for the risk review?

We evaluated all the comments on the EPA's risk review and determined that no changes are needed. For the reasons explained in the proposed rule, we determined that the risk from the Carbon Black Production source category is acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing our residual risk determination as proposed.

B. Technology Review for the Carbon Black Production Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Carbon Black Production source category?

We proposed a determination that it is not necessary to revise the existing standards because we did not identify developments in practices, processes, or control technologies that would result in cost-effective emission reductions for the Carbon Black Production source category. However, we did identify a potential gap in the regulation, and proposed to broaden the scope of the standards under the CAA sections 112(d)(2) and (3). The final approach related to that issue is discussed in section IV.C of this preamble. Additional information on our technology review can be found in the memorandum, *Technology Review for Carbon Black Production Source Category,* which is available in docket: EPA–HQ–OAR–2020–0505.

We also performed a technology review of the Carbon Black Production area source NESHAP. As part of that review, the EPA did not identify any currently operating sources in the Carbon Black Production area source category, and therefore, we proposed no changes. In this action, we are finalizing our proposed determination. For more information on the review of potential area source facilities see the memorandum, *Identification of Area Sources for the Carbon Black Production NESHAP,* which is available in docket: EPA–HQ–OAR–2020–0505.

2. How did the technology review change for the Carbon Black Production source category?

The technology review did not change from proposal. Therefore, we are finalizing our determination that no revisions to the NESHAP are necessary pursuant to CAA section 112(d)(6) for both the major and area source categories.

3. What key comments did we receive on the technology review, and what are our responses?

We received two comments regarding the major source proposed technology review and our proposed determination that no revisions were warranted under CAA section 112(d)(6). Comments suggested changes to our technology review to include additional technologies mentioned in consent decrees, including incinerators, wet or dry gas scrubbers, and selective catalytic reduction technologies. After review of these comments, we determined that no changes to the standards were necessary. Specifically, we determined that these technologies were not cost-effective for controlling HAP from carbon black facilities. The comments and our specific responses can be found in the document, *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants Carbon Black Production Residual Risk and Technology Review and Carbon Black Production Area Sources Technology Review Proposed Rule,* which is available in docket: EPA–HQ–OAR–2020–0505. We did not receive any comments on the area source category proposed technology review.

4. What is the rationale for our final approach and final decisions for the technology review?

Our technology review sought to identify add-on control technology that was not identified during the original NESHAP development and improvements to existing add-on controls. We also sought to identify new work practices, operational procedures, process changes, pollution prevention alternatives, or techniques that have the potential to reduce emissions. Based on our review, we did not identify any technologies, that would result in cost-effective emission reductions for the Carbon Black Production source category. Since proposal, no information has been presented to cause us to change the proposed determination. Consequently, we are finalizing our CAA section 112(d)(6) determination as proposed.

C. What are the final rule amendments pursuant to 112(d)(2) and (3) for the Carbon Black Production source category?

1. What did we propose pursuant to CAA sections 112(d)(2) and (3) for the Carbon Black Production source category?

Under CAA sections 112(d)(2) and (3) we proposed to broaden the scope of the existing emission limit in the major source NESHAP, which applies to process vents associated with the MUF, to include all process vents associated with the carbon black production unit. The expansion to cover all process vents under the Carbon Black Production MACT standard is in accordance with *LEAN* v. *EPA,* 955 F. 3d. 1088 (D.C. Cir. 2020), in which the Court held that the EPA has an obligation to set standards for unregulated pollutants which the EPA is required to regulate as part of technology reviews under CAA section 112(d)(6).

We proposed to require all process vents that have a HAP concentration of the emission stream equal to or greater than 260 ppmv, including those located after the MUF, to reduce emissions of total HAP by 98 weight-percent or to a concentration of 20 ppmv, whichever is less stringent. We also proposed to require applicability testing of process vents located after the MUF and compliance with process vent standards (where applicability threshold was exceeded) within 1 year after the effective date of the final rule.

2. What changed since proposal?

We are finalizing a longer timeframe for previously unregulated process vents to come into compliance with the requirements, since this may require the addition of add-on controls. The extension changes the proposed compliance date of 1 year from the effective date of the final rule to 3 years from the effective date of the final rule.

3. What are the key comments and responses?

The EPA received comments generally supporting the proposal to broaden the emission limit to apply to all process vents that have a HAP concentration of the emission stream equal to or greater than 260 ppmv, associated with the carbon black production unit. One commenter requested an extension to the compliance date.

a. Compliance Date Extension

Comment: The commenter stated that they do not believe carbon black facilities will be able to implement the carbon black process vent requirements for any previously unregulated process vents within 1 year of the effective date. In support of their comment, the commenter stated that the EPA has addressed similar situations in final rules by allowing up to 3 years from the effective date of the final rule for facilities to complete any necessary capital projects as allowed for by CAA section 112(i). For a detailed summary of the comment, see the document *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants Carbon Black Production Residual Risk and Technology Review and Carbon Black Production Area Sources Technology Review Proposed Rule,* available in the docket for this source category.

Response: The EPA agrees with the commentor that, in the event that the applicability test indicates that any newly identified process vents are subject and require re-routing to an existing control device or the construction of a new control device, the 1-year time period that the EPA proposed to allow for carbon black facilities to bring the process vents into compliance may be insufficient. As noted by the commenter, while the 1-year time frame is sufficient for conducting the applicability test, it may not provide enough time to complete the process of safely designing and constructing the ductwork necessary to either re-route the vent to an existing control device or design and construct ductwork for re-routing the vent and a new control device. To address this concern, the EPA is extending this time period in the final rule and allowing up to 3 years from the effective date of the final rule for facilities to complete any necessary capital projects as allowed for by CAA section 112(i). The language at 40 CFR 63.1102(e) has been amended in the final rule to reflect this change.

D. Amendments Addressing Emissions During Periods of SSM for the Carbon Black Production Source Category

1. What amendments did we propose to address emissions during periods of SSM?

The EPA proposed to remove the exemption for periods of startup and shutdown. Additionally, we proposed a work practice standard during periods of startup that would have allowed carbon black manufacturing facilities to vent tail gas upon startup for a period not to exceed 13 minutes, and to begin running control devices thereafter. The proposed work practice standard sought to address safety concerns surrounding startup processes at carbon black manufacturing facilities. The EPA proposed the work practice standard to mitigate the risk of explosion at carbon black manufacturing facilities upon startup due to the characteristics of the tail gas. The proposed work practice standard addressed combustibility concerns by allowing tail gas to be vented through the MUF vent for a short, time-limited period in order to prevent excess oxygen from mixing with tail gas. The EPA time-limited the proposed work practice standard to ensure sources would begin routing tail gas to control devices as soon as practicable, while accounting for variability across facilities that impact startup procedures.

2. How did the proposed amendments to address emissions during periods of SSM requirements change in the final rule?

The EPA initially proposed that the work practice standard would apply for 13 minutes upon startup. Due to comments received on the proposal, the EPA is finalizing a work practice standard that applies to both startup and shutdown of the reactor. The work practice standard allows the closed vent system to the control device to be bypassed, during both startup and shutdown of a reactor, when the excess oxygen concentration in the closed vent system is greater than or equal to 3 percent. Additionally, the maximum bypass period for the work practice standard is extended from 13 minutes to 15 minutes. To determine when the oxygen concentration of the closed vent system falls below 3 percent, each facility must use the calculated purge duration method or oxygen sensors. The language at 40 CFR 63.1003(f)(5) has been amended in the final rule to reflect these changes.

3. What key comments did we receive on the SSM revisions and what are our responses?

The EPA received comments on several aspects of the proposed work practice standard. Comments received include requests for (1) site-specific procedures, (2) expansion of the standard to shutdown periods (in addition to startup periods), (3) an increase in the time period allowed under the work practice standard, and (4) specific regulatory language changes. We are only revising requirements where credible technical and/or safety issues were identified, while maintaining the goal of minimizing emissions during periods of startup and shutdown to the maximum extent practicable. These comments and the

EPA's response to these comments are provided below.

a. Site-Specific Startup and Shutdown Procedures

Comment: The commenter stated that factors affecting the time needed for startup and shutdown procedures are specific to each facility because the time needed to purge the closed vent system and/or open and close valves depends on the configuration of the facility, common tail gas header, and the production line; the volume of the production line; the size of the valves; the production rate; and the facility-specific operating procedures and provides an example. To allow for this source-specific variability, the commenter suggested that instead of relying solely on oxygen concentration, the regulation should allow bypass of the control device during startup and shutdown of a reactor in accordance with the maximum duration calculated using the calculated purge duration method located in the startup and shutdown plan (SSP) and that the startup and shutdown occur "as expeditiously as possible." The commenter stated that the use of oxygen sensors in the MUF is not current industry practices, and that of the current 15 major source facilities, only two of them have oxygen sensors. The commenter also stated that the calculated purge duration method in the SSP would include a calculation of the amount of time it takes to purge the production line, as well as a safety factor that accounts for the physical and technological constraints of the facility; the maximum duration could not be more than 15 minutes. The commenter stated that the SSP would provide the amount of time needed when completing startup and shutdown "as expeditiously as possible." For a more detailed summary of the comment, see the document *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants Carbon Black Production Residual Risk and Technology Review and Carbon Black Production Area Sources Technology Review Proposed Rule,* which is available in docket: EPA–HQ–OAR–2020–0505.

Response: The EPA agrees that the bypass time allowed for a reactor to startup or shutdown should be source specific. The EPA acknowledges that most facilities currently do not operate oxygen sensors and relying solely on oxygen sensors to detect oxygen content in the ductwork upon startup and shutdown could lead to undetected pockets of high-oxygen concentration gases escaping the sensors, creating an explosion risk within the ductwork at a facility.

Additionally, the EPA agrees that during startup the MUF vent must be open and the common tail gas header closed when initially burning feedstock oil to purge the line of excess oxygen. If the common tail gas header is opened while the oxygen level was above 3 percent, there is a risk of explosion due to the combustible nature of the tail gas. Once the oxygen level falls below 3 percent (determined by using the calculated purge duration method discussed below), the MUF vent must gradually close while the common tail gas header is gradually opened. This gradual change helps to ensure that constant pressure is maintained within the closed vent system and common tail gas header. The EPA acknowledges that maintaining constant pressure is important. A sudden surge or interruption in tail gas flow could extinguish the flame on the control device located downstream of the common tail gas header. If the flame is extinguished, there is a risk that combustible gases will build up in the common tail gas header; if combustible gases build up in the common tail gas header, then these gases could cause an explosion when the flame is relit.

The EPA found that all facilities currently use the calculated purge duration method to predict when the oxygen level in the ductwork drops below 3 percent. The calculated purge duration method estimates the total time a facility needs to safely startup or shutdown a carbon black production line by taking into account several factors, including the volume of tail gas in the closed vent system, the flowrate within the closed vent system, a safety factor, and the time needed to balance pressure by opening and closing the necessary valves. Using the calculated purge duration method is industry practice for facilities to determine when oxygen levels are below 3 percent.

Since all facilities currently utilize the calculated purge duration method, the EPA finds this practice to be representative of the best performing facilities within the industry. The EPA is declining to require SSPs in the final rule; instead, the EPA is finalizing a change from proposal at 40 CFR 63.1103(f) to require facilities to utilize the calculated purge duration method to determine a site-specific maximum bypass duration upon startup and shutdown. The EPA determined that including site-specific requirements at 40 CFR 63.1103(f) would accomplish the same goal as SSPs without adding additional reporting burden.

b. Work Practice Standard Should Apply During Startup and Shutdown

Comment: The commenter requested that the proposed work practice standard be revised to apply during shutdown as well as during startup. In support of their comment, the commenter provided a comprehensive discussion of the carbon black production startup and shutdown processes and the reasoning for their request for modifications to the proposed work practice standard requirements. Reasons for expanding the work practice to shutdown as well as startup include the similarities in the need to maintain constant pressure and to reduce the oxygen content in the closed vent system to under 3 percent due to the risk of explosion for both startup and shutdown. For a summary of their detailed comments regarding startup and shutdown, see the document *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants Carbon Black Production Residual Risk and Technology Review and Carbon Black Production Area Sources Technology Review Proposed Rule,* available in the docket for this rulemaking.

Response: Based on the information provided by the commenter, EPA agrees that shutdown operations present safety concerns similar to those associated with startup. Accordingly, the EPA is finalizing a revision to the proposed work practice standard so that it applies to both startup and shutdown operations.

The EPA agrees that the shutdown process presents combustibility concerns similar to startup. When facilities stop burning feedstock oil, higher oxygen content is created in the closed vent system. This creates an explosion risk if the oxygen level rises above 3 percent. Therefore, prior to removing feedstock oil from the reactor, the common tail gas header vent must be closed completely, diverting closed vent system emissions from the common tail gas header to the MUF, before the oxygen content begins to increase.

Similar to startup, constant pressure must be maintained within the closed vent system during shutdown operations to reduce the risk of explosion. To achieve constant pressure within the closed vent system, the MUF vent must be slowly opened while the tail gas header vent is slowly closed. Once the tail gas header has been completely closed and the MUF vent is completely open, the burning of feedstock oil in the reactor ceases. The

EPA acknowledges that maintaining constant pressure is important. A sudden surge or interruption in tail gas flow could extinguish the flame on the CCD or other combustion device located downstream of the common tail gas header. If the flame is extinguished, there is a risk that combustible gases will build up in the common tail gas header; if combustible gases build up in the common tail gas header, then these gases create an explosion risk when the flame is relit.

c. Work Practice Standard Time Allotment

Comment: The commenter requested that the maximum time allowed to bypass the control device during startup and shutdown of a reactor be increased from 13 minutes to 15 minutes. The commenter explained that their request for this increase in time is based on the minimum time necessary to completely purge the ductwork and MUF of certain facilities. The commenter provided that this was previously agreed to by the EPA in the consent decrees below.

In 2007, the EPA began a National Enforcement Initiative to investigate the carbon black manufacturing sector. As a result of this initiative, each of the International Carbon Black Association (ICBA) member companies in the United States entered into a settlement with the EPA and the Department of Justice regarding CAA claims (hereinafter, the "Consent Decrees"). The implementation of the terms of these Consent Decrees has and will result in substantial changes to the facilities as flares are removed and different control technologies are installed at a significant cost. Many facilities have already implemented the agreed upon technologies and others are in the procurement stages.

The commenter stated that, in the preamble, the EPA explains that "the 13-minute allotment to bypass the control device, corresponds with the minimum time necessary to completely purge the ductwork and primary bag filter of the facility representing the lowest production rate." However, the commenter suggested that when setting the 13-minute limit, it appears that the EPA did not fully consider the agreed-upon time limit in all of the consent decrees or all of the factors which affect how long it takes a facility to purge excess oxygen and introduce tail gas to the common tail gas header while balancing pressure. The commenter stated that the consent decree for Sid Richardson Carbon, Ltd. allowed a 15-minute bypass.[8] [9]

Response: The EPA acknowledges that the consent decree cited by the commenter allows a 15-minute control device bypass upon startup for the facility subject to the consent decree allotment to bypass the control device. In their comment, the commenter provided information to the EPA concerning the source-specific nature of startup and shutdown operations at carbon black manufacturing facilities, including technical support demonstrating that one source subject to this rulemaking may need up to 15 minutes to purge the excess oxygen content in the MUF vent during startup and shutdown operations in order to mitigate combustibility concerns. To address this comment, in the final rule, the EPA is extending the proposed 13-minute bypass period to a maximum 15-minute bypass period. However, this time period is further constrained by the calculated purge duration method. The EPA is also finalizing a requirement that facilities subject to this rule use the calculated purge duration method to determine the length of the startup and/or shutdown bypass period required for a specific facility before that specific facility may begin to safely operate control devices, and the facility must begin operating control devices as soon as the facility may safely do so. In no case do the finalized requirements allow the startup or shutdown bypass period to exceed 15 minutes for any facility. The EPA is also amending the work practice standard to apply to periods of shutdown as well as startup.

As previously mentioned, carbon black production facilities currently use the calculated purge duration method to predict when the oxygen level in the closed vent system drops below 3 percent. The calculated purge duration method considers the volume of tail gas in the closed vent system, with an appropriate safety factor, and the time needed to balance pressure and close or open the necessary valves. Using the calculated purge duration method is common industry practice for facilities to determine when oxygen levels are below 3 percent.

Since all facilities currently utilize the calculated purge duration method, the EPA finds this practice to be representative of the best performing facilities within the industry. As previously discussed, the EPA is declining to require SSPs. Instead, the EPA is modifying the proposed standard at 40 CFR 63.1103(f)(5) to require facilities to utilize the calculated purge duration method or oxygen sensors to determine a site-specific maximum bypass duration upon startup and shutdown. In no case shall the maximum bypass duration period exceed 15 minutes for any facility. The calculated purge duration method is the same approach underlying the control device bypass timeframes included in the enforcement-related consent decrees for the carbon black industry.

4. What is the rationale for our changes to the proposed amendments to address emissions during periods of SSM in the final rule?

Based on the consideration of comments received concerning technical and safety concerns with the proposed work practice standard, the EPA revised the work practice standard provisions in the final rule. As discussed in our responses to comments in section IV.C.3 of this preamble, we are only revising requirements where credible technical and/or safety issues were identified, while maintaining the goal of minimizing emissions during periods of startup and shutdown to the maximum extent practicable.

E. Other Technical Amendments to the Carbon Black Production NESHAP

1. Boiler and Process Heater Annual Tune-Up Requirements

a. What amendments did we propose for boiler and process heater annual tune-up requirements?

As a result of the EPA's assessment of the MACT standards that currently apply to the Carbon Black Production source category under subpart YY, the EPA received a comment that there may be instances where carbon black production process vents at affected sources route emissions to a boiler or process heater for use as fuel gas and may not be subject to any requirements. Under the existing standards, although emission streams may be subject to the Carbon Black Production MACT, these streams are exempt from any requirements under the rule when emissions are routed to a boiler or process heater for use as fuel gas. Under the Boiler MACT, process heaters and boilers covered under another standard (as with the Carbon Black Production MACT) are not subject to the Boiler MACT.

The EPA proposed to revise subpart YY to include boiler and process heater annual tune-up requirements for those boilers and process heaters that receive

[8] *United States* v. *Sid Richardson Carbon, Ltd.*, 3:17–cv–01792–SDD–RLB (M.D. La.), Consent Decree, filed Dec. 22, 2017, at § III.8.oo.

[9] *United States* v. *Sid Richardson Carbon, Ltd.*, 3:17–cv–01792–SDD–RLB (M.D. La.), Consent Decree, filed Dec. 22, 2017, at § III.8.oo.

tail gas for use as fuel gas. These provisions were proposed in 40 CFR 63.1103(f)(3)(iii) of the final rule. The annual tune-up provisions paralleled those specified under the Boiler MACT.

b. How did the proposed boiler and process heater tune-up requirements change in the final rule?

The final rule revises the definition for "process vent" to remove the fuel gas exemption for the Carbon Black Production source category. This revised change ensures that the annual tune-up requirements apply to process heaters and boilers, as intended.

The final rule also revises the text at 40 CFR 63.1103(f)(3)(iii)(A) (first sentence) to require inspection to be of the "combustion device" instead of the "burner," and at 40 CFR 63.1103(f)(iii)(B), (C), (D) and (E) to provide industry-specific clarification on tune-up requirements.

c. What key comments did we receive on the proposed annual boiler and process heater tune-up requirements and what are our responses?

The EPA received comments on the proposed boiler and process heater tune-up requirements related to the applicability language and specified tune-up procedures. These comments and the EPA's responses and subsequent changes to the proposed boiler and process heater tune-up provisions are provided below.

i. Applicability

Comment: The commenter suggested that the proposed language for the annual tune-up requirement be changed so that it applies to the process heaters and boilers that the EPA intended. The commenter noted that the EPA explained that it added the annual tune-up requirement to close a perceived loophole. The commenter stated that they are unsure whether the proposed modifications in the proposal achieved the EPA's goal. The commenter noted that while the preamble to the proposed rule identifies the target of the annual tune-up requirements to be boilers and process heaters receiving emissions to use as fuel gas, the language in the proposed rule may not apply to the intended boilers or process heaters.

The commenter explained that, in the current regulations, emission streams that are routed to a boiler or process heater for fuel gas are not regulated as a process vent, because "[g]as streams transferred for fuel value (*i.e.,* net positive heating value), use reuse, or sale for fuel value, use, or reuse," are excluded from the definition of process vent. 40 CFR 63.1101. Therefore, the commenter noted that when emissions are routed to a boiler or process heater for use as fuel gas at a carbon black production facility, those points of discharge are not process vents. The proposed rule does not alter the definition of process vent, and the commenter was uncertain what effect the changes to Table 8 of the proposed regulatory text would have on the current standards. The commenter stated that changes in Table 8 of the proposed regulatory text apply only to "process vents" and under the definition of process vents, this would necessarily mean that it could not include gas streams routed to boilers or process heaters for fuel value. For a more detailed summary of the comment, see *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants Carbon Black Production Residual Risk and Technology Review and Carbon Black Production Area Sources Technology Review Proposed Rule,* which is available in docket: EPA–HQ–OAR–2020–0505.

Response: The EPA acknowledges that the proposed regulatory text was unclear and could lead to subject facilities not complying with the added boiler and process heater requirements. To resolve this issue, the EPA is revising the definition for process vent to remove the fuel gas exemption for the Carbon Black Production source category. Specifically, the EPA is finalizing an amended definition of "process vent" to remove the exemption for gas streams transferred for fuel value, use, reuse, or sale for fuel value, use, or reuse for the carbon black production source category.

ii. Annual Tune-Up Requirements

Comment: Commenters also requested tailored modifications to the tune-up requirements to better reflect the specifications of combustion devices typically used in the carbon black production process. The commenter noted that carbon black combustion devices differ significantly from natural gas combustion devices such that not all of the proposed tune-up requirements apply In support of their comment, the commenter states that additional optimization outside of inspection and cleaning may not be possible for all facilities. For a more detailed summary of the comment, see *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants Carbon Black Production Residual Risk and Technology Review and Carbon Black Production Area Sources Technology Review Proposed Rule,* which is available in docket: EPA–HQ–OAR–2020–0505.

Response: The EPA agrees with the commenter that, as a result of the nature of the burner configuration and design of tail gas fired boilers and process heaters in the Carbon Black Production source category, the tune-up requirements of the proposed rule may not be able to be performed as written. As the commenter noted, due to the lack of an inspection port for the "typical" burner configuration used in the carbon black production process, it may not be possible to perform a direct inspection of the burner in operation, as described in 40 CFR 63.1103(f)(3)(iii)(A). Thus, the EPA is finalizing the suggested revision to the regulatory text at 40 CFR 63.1103(f)(3)(iii)(A) to read "[i]nspect the combustion device for damage, wear, and buildup of material that could impact effectiveness" rather than "inspect the burner." The EPA disagrees in part with the other changes suggested by the commenter. As noted by the commenter, a "typical" burner configuration may not be amenable to inspection of the flame pattern and adjustment of the burner, but it is possible in some configurations. The regulatory text at 40 CFR 63.1103(f)(iii)(B) has been amended to require the inspection and adjustment only when possible based upon the physical configuration of the burner. Similarly, the requirements of 40 CFR 63.1103(f)(iii)(C) state to "[i]nspect the system controlling the air-to-fuel ratio, as applicable, and ensure that it is correctly calibrated and functioning properly." The EPA agrees that not all configurations of systems controlling air-to-fuel ratio have calibrated components, but some systems may have components that are calibrated and would need that calibration verified. However, if a burner system does not have anything to be calibrated, then ensuring proper calibration is not necessary; the inspection of the fuel to air ratio controlling mechanism in that case could be as simple as verifying that there are no obstructions to the air intake in a natural draft system and verifying proper fan operation for a fixed air flow fan. For these reasons, the EPA also agrees that 40 CFR 63.1103(f)(iii)(C) should not be finalized as proposed and is amending the final language to reflect that ensuring proper calibration is only necessary for calibrated components of the air-to-fuel system.

The EPA disagrees with the commenter that 40 CFR 63.1103(f)(iii)(D) and (E) should not be finalized and disagrees that measurement of carbon monoxide (CO)

is a poor indicator of optimized performance. As CO is a primary component of tail gas, any tail gas not combusted by the boiler or process heater will result in CO emissions. Additionally, CO is produced from the incomplete combustion of hydrocarbons in the tail gas. During proper operation of the combustion device, the output of CO from either uncombusted tail gas or from incomplete combustion is minimized. The EPA agrees that optimization beyond the inspection and cleaning required in 40 CFR 63.1103(f)(iii)(A) may not be possible for the configuration of some carbon black facility combustion devices. In such a scenario, the proposed language of 40 CFR 63.1103(f)(iii)(D) was clear that ''[t]his optimization should be consistent with the manufacturer's specifications, if available.'' In instances where there are no manufacturer's recommendations for optimization, the cleaning of the combustion device constitutes the optimization procedure, and CO measurement should be taken before and after cleaning the combustion device. The regulatory text at 40 CFR 63.1103(f)(iii)(D) has been amended from that proposed to more clearly reflect that, in the cases where no manufacturer's specification for optimization are available, the inspection and cleaning procedures of 40 CFR 63.1103(f)(iii)(A) fulfill the requirements of optimization and that when available, manufacturer's specification should be used for the optimization procedure. The regulatory text at 40 CFR 63.1103(f)(iii)(E) has been amended from that proposed to reflect that if adjustments are not or cannot be made, the measurements of CO are performed after the inspection and cleaning procedures of 40 CFR 63.1103(f)(iii)(A) are performed.

d. What is the rationale for our final changes to the proposed boiler and process heater annual tune-up provisions?

Based on the consideration of comments received on the combustion devices typically used in the carbon black production process, we clarified and revised the applicability and requirements of the annual boiler and process heater tune-up requirements to better reflect the combustion devices typically used. See our comment response directly above in subsection ii, for our rationale for revisions based on our evaluation of comments.

V. What is the rationale for our final decisions and amendments for the Cyanide Chemicals Manufacturing source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses (when applicable). For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket for this source category.

A. Residual Risk Review for the Cyanide Chemicals Manufacturing Source Category

1. What did we propose pursuant to CAA section 112(f) for the Cyanide Chemicals Manufacturing source category?

On January 15, 2021 (86 FR 3906), the EPA proposed that risk posed by emissions from the source category is acceptable, that the current NESHAP provides an ample margin of safety to protect public health, and that additional standards are not necessary to prevent an adverse environmental effect. The EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand.'' (54 FR 38045, September 14, 1989). The maximum estimated cancer risk was below the presumptive limit of acceptability and the noncancer risk results indicate there is minimal likelihood of adverse noncancer health effects due to HAP emissions from this source category. The proposed decision on ample margin of safety was based on weighing factors relevant to this particular source category, including the risk posed by emissions from the category and the costs and cost-effectiveness of additional controls to reduce risk further, as well as uncertainties in the baseline emissions estimates used in estimating risk, the costs and effectiveness of the work practices we considered to reduce these emissions, and the amount of risk reduction that could be achieved with the work practices. A more thorough discussion of the risk assessment is included in the *Residual Risk Assessment for the Cyanide Chemicals Manufacturing Source Category in Support of the Risk and Technology Review 2021 Final Rule* document, available in the docket for cyanide chemicals manufacturing (Docket–EPA–HQ–OAR–2020–0532). In the proposed rule, as presented in Table 2 below, based on modeling actual emissions from the source category for all 13 facilities, we estimated inhalation cancer risk to the individual most exposed was equal to 5-in-1 million. The estimated incidence of cancer due to inhalation exposures resulting from emissions from the source category was 0.004 excess cancer cases per year, or one excess case every 250 years with 61,653 people exposed to an excess cancer risk greater than or equal to 1-in-1 million due to inhalation exposure to HAP emissions from the source category. Emissions of acrylonitrile from process vents account for 95 percent of the cancer incidence. The Agency estimated that the maximum chronic noncancer TOSHI from inhalation exposure for this source category was equal to 1. In the screening assessment of worst-case acute inhalation impacts, we estimated a maximum HQ of 1 (due to hydrogen cyanide) based on the REL. In the proposal, the EPA estimated risks based on actual and allowable emissions from cyanide chemicals manufacturing sources, and we considered these in determining acceptability. As shown in Table 2, the chronic cancer and non-cancer risks are the same for allowable emissions as they are for actual emissions.

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR CYANIDE CHEMICALS MANUFACTURING [1] SOURCE CATEGORY

Risk assessment	Number of facilities [2]	Maximum individual cancer risk (1-in-1 million) [3]	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated population at increased risk of cancer ≥10-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]	Maximum screening acute noncancer HQ [5]
Baseline Actual Emissions							
Source Category	13	5	61,653	0	0.004	1 (neurological)	1 (REL).
Facility-wide	13	200	266,532	58,000	0.04	1 (neurological).	

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR CYANIDE CHEMICALS MANUFACTURING [1] SOURCE CATEGORY—Continued

Risk assessment	Number of facilities [2]	Maximum individual cancer risk (1-in-1 million) [3]	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated population at increased risk of cancer ≥10-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]	Maximum screening acute noncancer HQ [5]
Baseline Allowable Emissions							
Source Category	13	5	61,653	0	0.004	1 (neurological).	

[1] Based on actual and allowable emissions.
[2] Number of facilities evaluated in the risk assessment. Includes 13 operating cyanide chemicals manufacturing facilities subject to 40 CFR part 63, subpart YY.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions.
[4] Maximum TOSHI. The target organ with the highest TOSHI for the Cyanide Chemical Manufacturing source category is the neurological system.
[5] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. The acute HQ shown was based upon the lowest acute 1-hour dose-response value, the REL for hydrogen cyanide. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

The EPA also estimated inhalation risk based on facility-wide emissions. The estimated maximum individual excess lifetime cancer risk based on facility-wide emissions was 200-in-1 million, with 0.04 excess cancer cases per year, or one case every 25 years. This cancer risk is driven by emissions sources that are not in the Cyanide Chemicals Manufacturing source category; specifically, emissions of ethylene oxide and polycyclic organic matter from non-category sources account for 95 percent of the cancer incidence. Approximately 150 people are exposed to an excess cancer risk greater than or equal to 100-in-1 million, with 266,532 people exposed to an excess cancer risk above 1-in-1 million. The estimated maximum chronic noncancer TOSHI values for the facility-wide assessment was the same as estimated based on actual and allowable emissions from the source category. The TOSHI value was equal to 1 for neurological effects driven by hydrogen cyanide emissions from process vents, wastewater, and equipment leaks.

Regarding the facility-wide risks due to ethylene oxide emissions, which are emitted by sources that are not part of the Cyanide Chemicals Manufacturing source category, we intend to continue to evaluate those facility-wide estimated emissions and risks further and may address these in separate actions, as appropriate. In particular, the EPA is addressing ethylene oxide in response to the results of the latest National Air Toxics Assessment (NATA) released in August 2018, which identified the chemical as a potential concern in several areas across the country.[10] The latest NATA estimates that ethylene oxide significantly contributes to potential elevated cancer risks in some census tracts across the U.S. (less than 1 percent of the total number of tracts). These elevated risks are largely driven by an EPA risk value that was updated in late 2016. The EPA is taking steps to address ethylene oxide emissions by: (1) Reviewing and, as appropriate, revising CAA regulations for facilities that emit ethylene oxide—starting with air toxics emissions standards for miscellaneous organic chemical manufacturing facilities (85 FR 49084, August 12, 2020) and commercial sterilizers; and (2) working with industry and state, local, and tribal air agencies to achieve near-term emission reductions. The EPA posts updates on its work to address ethylene oxide at: *https://www.epa.gov/ethylene-oxide.*

We also conducted a multipathway screening assessment for the source category, and the results of the screening assessment are presented in the risk report titled *Residual Risk Assessment for the Cyanide Chemicals Manufacturing Source Category in Support of the 2021 Risk and Technology Review Final Rule,* and section IV of the proposal preamble (86 FR 3906, January 15, 2021) available in the docket for this action. A screening value is not an estimate of the cancer risk or a noncancer HQ (or HI). Rather, a screening value represents a high-end estimate of what the risk or HQ may be. For this source category the highest cancer screening value was a Tier 2 cancer screening value less than 1 for arsenic emissions, which means that we are confident that the multipathway cancer risk is lower than 1-in-1 million. The highest Tier 2 non-cancer screening value for the category was less than 1 for mercury emissions, which can be interpreted to mean that we are confident that the chronic HQ for mercury is less than 1.

In evaluating the potential for multipathway effects from emissions of lead, the EPA compared modeled annual lead concentrations to the secondary NAAQS level for lead (0.15 micrograms per cubic meter (ug/m^3), arithmetic mean concentration over a 3-month period). The highest annual average lead concentration, 0.000004 ug/m^3, is far below the NAAQS level for lead, indicating a low potential for multipathway impacts from lead.

Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category. For further additional detail on the environmental risk screening assessment, refer to the *Residual Risk Assessment for the Cyanide Chemicals Manufacturing Source Category in Support of the Risk and Technology Review 2021 Final Rule.*

In determining whether risk is acceptable for this source category, the EPA considered all available health information and risk estimation uncertainty, including the uncertainty in the emissions data. Further discussion of the uncertainties in our risk assessment can be found in section III.C.7 of the preamble to the proposed rule at 86 FR 3918. Under the ample margin of safety analysis, we evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to this source category to further reduce the risks (or potential risks) due to emissions of HAP from the source category. At proposal, we determined that the risk from Cyanide Chemicals Manufacturing emissions is acceptable and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. In this action, we are finalizing our proposed determination. See section IV.C of the proposal preamble (86 FR 3906, 3923–3924) for a discussion of the results of our risk assessment and analyses and our proposed decisions

[10] NATA is the Agency's nationwide air toxics screening tool, designed to help the EPA and state, local, and tribal air agencies identify areas, pollutants, or types of sources for further examination.

regarding risk acceptability, ample margin of safety, and adverse environmental effects. The EPA is not amending the Cyanide Chemicals Manufacturing NESHAP based on the risk review conducted pursuant to CAA section 112(f). The maximum cancer risk for all facilities was 5-in-1 million, which is 20 times below 100-in-1 million, the presumptive upper limit of acceptable risk. In addition, there were no facilities with an estimated maximum chronic noncancer HI or maximum HQ greater than 1. Based upon these considerations and the lack of additional cost-effective control technologies to reduce risk further, we proposed and are finalizing a determination that the 2002 Cyanide Chemicals Manufacturing NESHAP requirements provide an ample margin of safety to protect public health. Based on the results of our environmental risk screening assessment, we also proposed and are finalizing a determination that more stringent standards are not necessary to prevent an adverse environmental effect.

2. How did the risk review change for the Cyanide Chemicals Manufacturing source category?

We did not receive any information that changed our determination concerning risk and we are finalizing our proposed conclusion on the risk review.

3. What key comments did we receive on the risk review, and what are our responses?

We received several comments regarding the proposed risk review and our proposed determination that no revisions to the standard were warranted under CAA section 112(f)(2). Comments both supported and suggested changes to our risk review. Commenters opposed our proposed decisions regarding risk acceptability and certain aspects of our risk assessment methodology. After review of these comments, we determined that no changes to the standard were necessary because the current standards provide an ample margin of safety to protect public health. The comments and our specific responses can be found in the document, *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants: Cyanide Chemicals Manufacturing Residual Risk and Technology Review Proposed Rule,* which is available in docket: EPA–HQ–OAR–2020–0532.

4. What is the rationale for our final approach and final decisions for the risk review?

We evaluated all the comments on the EPA's risk review and determined that no changes are needed. For the reasons explained in the proposed rule, we determined that the risk from the Cyanide Chemicals Manufacturing source category is acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing our residual risk determination as proposed.

B. Technology Review for the Cyanide Chemicals Manufacturing Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Cyanide Chemicals Manufacturing source category?

At proposal, we proposed to determine that it is not necessary to revise the existing standards pursuant to CAA section 112(d)(6) because we did not identify developments in practices, processes, or control technologies that would result in cost-effective emission reductions for the Cyanide Chemicals Manufacturing source category. Additional information on our technology review can be found in the memorandum, *Technical Support Document for the Cyanide Chemicals Manufacturing NESHAP Residual Risk and Technology Review Proposal,* which is available in the docket for this action (see Docket ID No. EPA–HQ–OAR–2020–0532–0025) and section IV.D of the proposal preamble (86 FR 3924). The EPA is not amending the Cyanide Chemicals Manufacturing NESHAP based on our technology review. However, we did identify a potential gap in the regulation, and proposed standards for process wastewater at existing sources and upstream suppression of process wastewater at new sources under CAA sections 112(d)(2) and (3). The final approach related to that issue is discussed in section V.C of this preamble.

2. How did the technology review change for the Cyanide Chemicals Manufacturing source category?

The technology review did not change from proposal. Therefore, we are finalizing our determination that no revisions to the NESHAP are necessary pursuant to CAA section 112(d)(6).

3. What key comments did we receive on the technology review, and what are our responses?

We received two comments regarding the proposed technology review and our proposed determination that no revisions were warranted under CAA section 112(d)(6). One commenter suggested changes to our technology review to include additional technologies related to flares and equipment leaks. After review of these comments, we determined that no changes to the standards were necessary because these technologies would not result in cost-effective emission reductions for the cyanide chemicals manufacturing source category. The comments and our specific responses can be found in the document, *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air Pollutants: Cyanide Chemicals Manufacturing Residual Risk and Technology Review Proposed Rule,* which is available in docket: EPA–HQ–OAR–2020–0532.

4. What is the rationale for our final approach and final decisions for the technology review?

Our technology review sought to identify add-on control technology that was not identified during the original NESHAP development and improvements to existing add-on controls. We also sought to identify new work practices, operational procedures, process changes, pollution prevention alternatives, or techniques that have the potential to reduce emissions. Based on our review, we did not identify any such developments that would result in cost-effective emission reductions for the Cyanide Chemicals Manufacturing source category. Since proposal, no information has been presented to cause us to change the proposed determination. Consequently, we are finalizing our CAA section 112(d)(6) determination as proposed.

C. Amendments Addressing Emissions During Periods of SSM for the Cyanide Chemicals Manufacturing Source Category

1. What amendments did we propose to address emissions during periods of SSM?

Consistent with the 2008 decision in *Sierra Club* v. *EPA,* the EPA evaluated the Cyanide Chemicals Manufacturing NESHAP requirements to identify the need to eliminate any SSM exemptions in the rule to ensure that standards that apply during normal operations apply at all times. As noted at proposal (86 FR 3906, 3924), the Cyanide Chemicals

Manufacturing source category NESHAP did not include an exemption for SSM events, and already included standards that apply at all times, including periods of SSM. Therefore, we determined that the NESHAP was already consistent with *Sierra Club* v. *EPA,* in which the Court vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. However, we proposed revisions to subpart YY at 40 CFR 63.1108 through 40 CFR 63.1112 to remove any references associated with the GMACT that contained SSM exemptions for other source categories and from referenced subparts to reduce confusion. The EPA did not propose any other amendments addressing emissions during SSM periods because of our determination that the NESHAP already included standards that apply at all times, including periods of SSM.

2. How did the proposed SSM-related amendments change in the final rule?

We are finalizing our proposal to remove SSM exemption language included in 40 CFR 63.1108 through 40 CFR 63.1112 and GMACT referenced subparts.

3. What key comments did we receive on SSM-related emissions and what are our responses?

While one commenter provided support for the EPA's removal of references to provisions that contained SSM exemptions for other source categories and from referenced subparts to reduce confusion, the commenter expressed concern that the EPA had not removed references to SSM exemptions in HON-referenced provisions and that the EPA must assure full removal of SSM exemptions in the final rule to assure compliance with the CAA.

Other commenters expressed concern that the EPA had not established work practice standards to cover situations that they contend had been covered under their SSM plan included under the SSM exemption requirements that were proposed to be removed. The commenter requested that the EPA include provisions for specified circumstances that were previously covered under their SSM plan similar to what was included for the ethylene production source category in subpart YY.

These comments and the EPA's responses to these comments are provided below.

a. Elimination of the SSM Exemption

Comment: One commenter noted that SSM events play a considerable role in the issue of pollution and environmental contamination as these processes increase an industrial plant's pollution and noted concern that the EPA would continue to maintain SSM exemptions in this rule. Another commenter supported the removal of the SSM exemptions, stating that removal of these provisions is required to assure compliance with the CAA because this is a 'necessary' revision under CAA section 112(d)(6).

Response: As discussed in section V.C.1 of this preamble, we are finalizing revisions (as proposed) to subpart YY at 40 CFR 63.1108 through 40 CFR 63.1112 to remove any references associated with the GMACT that contained SSM exemptions for other source categories and referenced subparts.

Comment: One commenter stated that the EPA's proposed standards are illegal because the HON standard the EPA is proposing to incorporate for wastewater requirements includes the illegal SSM exemption that the EPA admits it must remove from the cyanide chemical manufacturing rules here under CAA section 112(d)(6). The commenter stated that the EPA may not lawfully remove the exemption and then immediately reinstate it by incorporation of an equally illegal SSM exemption in the HON.

Response: The EPA assessed the specific HON wastewater provisions referenced in the proposed Cyanide Chemicals Manufacturing MACT rule and did not identify any language containing exemptions for periods of SSM. The commenter made a general allegation about exemptions and did not identify any specific provisions that contained exemptions. The EPA has therefore not made changes to the final rule based on this comment.

b. Pressure Relief Devices (PRD) in HAP Service

Comment: One commenter stated, "[p]ressure relief discharges to the atmosphere from cyanide chemicals manufacturing covered processes are rare. However, if a discharge from a [PRD] occurs, it would currently be addressed under the SSM plan and the emissions would be reported to the appropriate regulatory entities if the amount is greater than an applicable Reportable Quantity (RQ) for any air contaminant." The commenter contended that, because the SSM plan will be proposed to be withdrawn 180 days after the rule is amended, "any modifications to the process or additions of emissions control equipment are not feasible in this timeframe." Therefore, the commenter suggested including in this rule the same work practice requirements for PRDs that are in the subpart YY regulation for the ethylene production source category, which the commenter alleges also has a small number of PRDs venting to the atmosphere.

Specifically, the commenter recommended that the EPA incorporate the work practice standards of 40 CFR 63.1107(h)(3) through (8) within the Cyanide Chemicals manufacturing rule in order to "address any potential discharge from a [PRD] that is on fixed equipment and to exempt any [PRD] from infeasible monitoring for portable containers and mobile equipment." The commenter requested that any referenced citations in the aforementioned section be aligned with the Cyanide Chemicals Manufacturing MACT rule and noted that certain ethylene flare provisions are not applicable to this source category.

Additionally, the commenter suggested that the associated recordkeeping and reporting requirements in 40 CFR 63.1109(i) and 63.1110(e)(8) may also be appropriate to add to the rule in support of the PRD work practice standards.

Response: The EPA has not added the provisions requested by the commenter. While these or similar provisions exist in NESHAP for some source categories, the EPA does not have data (nor was sufficient data provided) to demonstrate that such provisions are warranted for the cyanide chemicals manufacturing NESHAP. The commenter requested these provisions be added to the Cyanide Chemicals Manufacturing NESHAP because they exist in the Ethylene Production NESHAP. The commenter did not definitively assert that any PRDs exist that would be subject to this action, nor whether they are controlled or atmospheric PRDs.

The commenter stated that there is insufficient time to implement process modifications/add emissions control equipment within 180 days after the rule is amended. This statement acknowledged that the process can be modified and emissions control equipment can be used to meet standards at all times. Without data to support the need for specific work practice provisions for PRDs, including the prevalence of PRDs, whether they are routed to control devices, the frequency of releases, magnitude of emissions during releases, and costs of further controls, we have insufficient basis to add these requirements for the

cyanide chemicals manufacturing source category.

c. Maintenance Vents

Comment: One commenter requested that, since the SSM plan and various exceptions are proposed to be removed within 180 days after the rule is amended, the same work practice requirements for maintenance vents that are in the subpart YY regulation for the ethylene production source category be included "so that it is clear that equipment can be cleared and opened for maintenance or other similar work."

The commenter provided that some covered facilities include similar work practice provisions in Texas New Source Review air permits for routine maintenance activities. According to the commenter, "[i]ncluding provisions for maintenance vents in the final rule will clarify the requirements when these maintenance activities occur."

The commenter suggested the following requirements and options when incorporating the subpart YY regulation for the ethylene production source category maintenance vents language:

- Limit the lower explosive limit (LEL) to 10 percent; and
- Limit the concentration of hydrocarbons or hydrogen cyanide to 500 ppmv measured using one of the following options:
  - The use of an instrument that complies with EPA Method 21 in 40 CFR part 60, appendix A (measures total hydrocarbon concentration)
  - The use of colorimetric gas detector tubes provided the tube is used in accordance with manufacturer's guidelines (measures hydrogen cyanide concentration); or
  - The use of an electrochemical sensor for hydrogen cyanide (measures hydrogen cyanide concentration).

Furthermore, the commenter suggested that the recordkeeping and reporting requirements in 40 CFR 63.1109(f) and 63.1110(e)(5) may also be appropriate to add to the rule in support of the maintenance venting provisions.

Response: The EPA has not made the commenter's suggested revisions. The commenter did not provide sufficient information regarding why they could not meet the standards or why their suggested requirements should be included.

Additionally, neither limiting the LEL to 10 percent nor limiting the concentration to 500 ppmv when considering hydrogen cyanide are defensible. The 10 percent LEL for hydrogen cyanide in air is 5,600 ppm. Hydrogen cyanide is highly toxic by all routes of exposure and may cause central nervous system, cardiovascular, and respiratory effects that could lead to death. The Occupational and Safety and Health Administration (OSHA) has concluded that a variety of symptoms are associated with exposure to hydrogen cyanide at levels less than 10 ppm and has established a 4.7-ppm 15-minute short term exposure limit (STEL) as the permissible exposure limit (PEL).[11]

d. Storage Vessel Degassing—Fixed Roof Storage Tanks

Comment: One commenter requested that the EPA include the same requirements for storage vessel degassing for fixed roof tanks that are in the subpart YY regulation for the ethylene production source category. The commenter suggested the following requirements and options when incorporating the subpart YY regulation for ethylene production storage vessel degassing language:

- Limit the LEL to 10 percent; and
- Limit the concentration of hydrocarbons or hydrogen cyanide to 500 ppmv measured using one of the following options:
  - The use of an instrument that complies with EPA Method 21 in 40 CFR part 60, appendix A (measures total hydrocarbon concentration)
  - The use of colorimetric gas detector tubes provided the tube is used in accordance with manufacturer's guidelines (measures hydrogen cyanide concentration); or
  - The use of an electrochemical sensor for hydrogen cyanide (measures hydrogen cyanide concentration).

Response: The EPA has not made the commenter's requested revisions. However, insufficient information was provided to support their contention that they could not meet the standards during storage vessel degassing or why their suggested requirements should be included.

As discussed in section V.C.3.c above for Maintenance Vents, neither limiting the LEL to 10 percent or limiting the concentration to 500 ppmv when considering hydrogen cyanide are defensible. The 10 percent LEL for hydrogen cyanide in air is 5,600 ppm. Hydrogen cyanide is highly toxic by all routes of exposure and may cause central nervous system, cardiovascular, and respiratory effects that could lead to death. The OSHA has concluded that a variety of symptoms are associated with exposure to hydrogen cyanide at levels less than 10 ppm and has established a 4.7-ppm 15-minute STEL as the PEL.[12]

4. What is the rationale for our final changes to the SSM-related amendments?

We evaluated all of the comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule (86 FR 3906, 3924), we determined that these amendments, which remove and revise provisions related to SSM, are necessary to ensure there is no confusion that standards are required to apply at all times, consistent with *Sierra Club* v. *EPA.* More information concerning the amendments we are finalizing for SSM is in the preamble to the proposed rule and in our specific responses to the comments above (section V.C.3). Therefore, we are finalizing our amendments for the SSM provisions as proposed.

D. Other Technical Amendments to the Cyanide Chemicals Manufacturing NESHAP

1. What wastewater provision amendments did we propose?

As discussed in section II.D of this preamble and in the proposal preamble for the Cyanide Chemicals Manufacturing NESHAP (see 86 FR 3906, 3920–3921), the EPA proposed standards pursuant to CAA sections 112(d)(2) and (d)(3) for process wastewater from existing cyanide chemical manufacturing process units, which was previously unregulated. We proposed that process wastewater sources at existing sources comply with HON wastewater requirements. We proposed the HON requirements for cyanide chemicals manufacturing existing sources because the HON requirements represented: (1) The measures employed by the best performing sources in the category; and (2) an acceptable means of compliance for wastewater emissions at sources subject to subpart YY. We also proposed adding the HON requirements for waste management units upstream of an open or closed biological treatment process to the new source standard to ensure demonstrable compliance measures are in place for these sources.

[11] *https://www.cdc.gov/niosh/idlh/74908.html,* 1988 OSHA PEL Project—Hydrogen Cyanide | NIOSH | CDC.

[12] *https://www.cdc.gov/niosh/idlh/74908.html,* 1988 OSHA PEL Project—Hydrogen Cyanide | NIOSH | CDC.

2. How did the proposed wastewater provision amendments change in the final rule?

We are finalizing the proposed wastewater provision amendments with minor clarifications (see section V.D.3.d).

3. What key comments did we receive on the proposed wastewater provision amendments and what are our responses?

Environmental groups provided comments on the basis for the EPA's selected standards and contended that the proposed limits were not sufficient to satisfy CAA sections 112(d)(2)-(3), which requires the maximum achievable degree of emission limitation.

Industry commenters requested that clarifications of the applicability of the wastewater requirements be included in the final rule and that the EPA provide additional compliance options to what was proposed in the final rule. These commenters also requested that the EPA include a test method for hydrogen cyanide or cyanide compounds in the final rule.

These comments and the EPA's responses are provided below.

a. Basis-Support for Wastewater Provisions

Comment: One commenter supported the EPA's recognition that it must set limits on uncontrolled HAP emissions from process wastewater under CAA section 112(d)(6)—including hydrogen cyanide, acetonitrile, and acrylonitrile,[13] but contended that the limits are not strong enough to satisfy CAA sections 112(d)(2)–(3), which requires the maximum achievable degree of emission limitation.

The commenter stated that the EPA proposes "to just require compliance with the [HON] wastewater requirements for process wastewater and upstream waste management units at existing sources—and to add HON requirements for waste management units." [14] The commenter claimed that the EPA does not discuss what the proposed requirements are in the preamble other than referencing the outdated standard.

According to the commenter, the EPA's proposed wastewater standards are "illegally and arbitrarily weak and must be strengthened before finalizing." The commenter stated that the EPA has not performed any floor analysis as required by CAA section 112(d)(3) and instead appears to rely on the outdated 2008 HON rule and old and unreliable data, not included here, as its justification for not requiring stronger wastewater standards. The commenter noted that there is no assessment of what the best-performing standards have achieved, or what the average emission limitation achieved is. The commenter added that the EPA also does not demonstrate that the 2008 HON standards satisfy the CAA sections 112(d)(2)–(3) test for cyanide chemical manufacturing wastewater process sources.

Lastly, the commenter asserted that the EPA's proposed wastewater standards are illegal and arbitrary because the EPA has given only a conclusory statement to attempt to satisfy the beyond-the-floor requirement of CAA section 112(d)(2). According to the commenter, the EPA has failed to show how its proposal reflects the "maximum achievable" degree of emission limitation for these sources. The commenter stated that citing to data not in the record from 2004, without discussion or any rational explanation, does not meet the EPA's statutory obligation. The commenter contended that the EPA should collect current data, review more recent wastewater control methods, and perform a lawful beyond-the-floor analysis to ensure that it requires the "maximum achievable" degree of emission reduction in the final standards.

Response: The EPA evaluated the data available to the Agency at the time the proposed MACT standards for process wastewater at existing cyanide chemicals manufacturing sources were developed. We also reviewed title V permits for all cyanide chemicals manufacturing facilities and determined that all existing facilities subject to the cyanide NESHAP are also subject to the HON wastewater requirements or other NESHAP that also incorporate those requirements. We concluded that these requirements constitute the performance of the best performing facilities in the source category. These standards represent the best measures that we identified for minimizing wastewater emissions from the category, and we did not identify additional measures that could further reduce emissions "beyond the floor". The commenter did not provide any data to support their conclusion that these requirements are not representative of the best performers.

Our conclusion at proposal that the HON process wastewater requirements represent the MACT floor has not changed and we are finalizing those requirements with minor clarifications (see section V.D.3.d of this preamble for minor clarification changes made in the final rule).

b. Fraction Measured (Fm)/Fraction Removal (Fr) Values for Hydrogen Cyanide/Cyanide Compounds

Comment: One commenter recommended that the EPA provide a Fm value for hydrogen cyanide or cyanide compounds so that the regulated entity can comply with the applicability option described in 40 CFR 63.144(b)(1) of subpart G. Similarly, the commenter also requested that the EPA provide a Fr value for hydrogen cyanide or cyanide compounds so that the regulated entity can comply with the option available in 40 CFR 63.138(e)(2) of subpart G. The commenter recommended that this value would be no greater than 0.93, as it is the removal requirement for new cyanide chemicals manufacturing process units, but also noted it could be less based on the physical properties of hydrogen cyanide or cyanide compounds.

Response: 40 CFR 63.144(b)(1) allows several options for determining how to calculate the annual average concentration, including knowledge of the wastewater, bench-scale or pilot scale test data, or test data from sampling at the point of determination or at a location downstream of the point of determination. For free cyanide, the final rule adds specific procedures for determining the annual average concentration of free cyanide (see 40 CFR 63.1103(g)(5)(vi) of the final rule). For compliance with the wastewater free cyanide analysis provisions of Table 9 to 40 CFR 63.1103(g), free cyanide is to be measured according to ASTM D4282–15 (Standard Test Method for Determination of Free Cyanide in Water and Wastewater by Microdiffusion) or ASTM D7237 (Standard Test Method for Free Cyanide and Aquatic Free Cyanide with Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection). Under 40 CFR 63.144(b)(1) of subpart G, Fm adjustment factors are allowed under specified circumstances (*e.g.,* when concentration is determined by Method 305 as specified in 40 CFR 63.144(b)(5)(i)(B), concentration may be adjusted by dividing by the compound-specific Fm). For free cyanide measured according to ASTM D4282–15 or ASTM D7237 (as required under the final rule), the EPA is not including an Fm adjustment factor option.

In addition to the compliance option available under 40 CFR 63.138(e)(2) of the rule that requires an Fr value to demonstrate compliance, an owner or operator has other compliance options that do not require an Fr value.

[13] 86 FR at 3920 & n.23, 3921.

[14] 86 FR at 3921.

However, the EPA acknowledges that existing sources complying with 40 CFR part 63 subpart G wastewater provisions may already be complying with wastewater requirements under the 40 CFR part 63 subpart G wastewater provisions that require an Fr value for individual HAP in order to demonstrate compliance. To allow flexibility to owners and operators in complying with the process wastewater options that we proposed for cyanide chemicals manufacturing existing sources under 40 CFR 63.138(a)(1), the final rule has added that, for compliance options and calculations requiring an Fr value under 40 CFR 63.138(a)(1), an owner or operator may use a value of 0.93 for free cyanide (see Table 9 to 40 CFR 63.1103(g), line entry (g) of the final rule). This value is based on the requirement that new sources meet an emissions control level of 93 percent for process wastewater streams.

c. Hydrogen Cyanide/Cyanide Compound Test Methods To Measure Wastewater Stream Concentration

Comment: One commenter stated that the HON regulation includes a number of options for determining the concentration of the regulated organic HAP compounds in a process wastewater stream. The commenter provided that the existing 40 CFR 63.144(b)(5)(i) of the HON regulation does not have a listed test method for hydrogen cyanide or cyanide compounds. The commenter recommended that the EPA include any approved test methods in Table 1B of 40 CFR 136.3 in the final Cyanide Chemicals manufacturing rule (subpart YY) for these measurements that the regulated entity can use if they opt to make measurements.

The commenter also requested that EPA include any updates to the test method(s) automatically in the rule as an option for the regulated entities to use. The commenter suggested that, if EPA Method 335.4 is updated in the future, the regulated entity should be able to use either EPA Method 335.4 or the updated method.

Response: The EPA has added 40 CFR 63.1103(g)(5)(vi) to include two test methods for measuring the concentration of cyanide in water (ASTM 4282–15 and ASTM 7237–18). The test methods in the table submitted by the commenter were not included because they corresponded to parameters that were irrelevant (total cyanide concentration and available cyanide concentration) or were, subsequent to the submission of the comment, supplanted by a new version of the method in Table 1B. Available cyanide refers to cyanide that is loosely bound in metal-ion complexes, and total cyanide refers to the sum of available and free cyanide. Free cyanide is toxic and bioavailable cyanide, and this is the form of cyanide that the EPA intends to limit. Table 1B of 40 CFR 136.3 was updated July 19, 2021 (86 FR 27226) to incorporate updated versions of the free cyanide methods. The updated versions of the two ASTM methods for free cyanide are included in the final rule, but the OI Analytical method was excluded, as the method text actually describes how to measure available cyanide and does not include information on the modifications necessary to test for free cyanide. EPA Method 335.4 was not included as this method is only available in draft and has not yet been finalized.

d. Request for Clarifications

Comment: One commenter requested that the EPA clarify the text in the proposed paragraph (g) of Table 9 of the proposed 40 CFR part 63 subpart YY regulation to confirm that the provisions apply to each individual wastewater stream.

Response: The EPA has revised line entries (g)(1) and (g)(2) (for existing sources) of Table 9 to 63.1103(g) in the final rule as recommended by the commenter to clarify the EPA's intent that the wastewater requirements apply to each individual wastewater stream.

Comment: One commenter recommended that the EPA clarify that the term "cyanide compounds" is the same as "cyanide chemicals product".

Response: The EPA has added a definition for the term "free cyanide" in 40 CFR 63.1103(g)(2) to clarify the EPA's intent that hydrogen cyanide and cyanide ion (both of which may be present in wastewater due to dissolution of cyanide salts) are the cyanide chemical compounds subject to the Cyanide Chemicals Manufacturing source category wastewater provisions.

4. What is the rationale for our final changes to proposed wastewater provision amendments?

We evaluated the comments on the EPA's proposed process wastewater amendments for existing and new sources. For the reasons explained in the proposed rule (86 FR 3906, 3920–3921), we determined that the process wastewater amendments for existing and new sources are necessary to ensure all affected sources in the cyanide chemicals manufacturing source category are subject to MACT standards, and that the requirements for waste management units upstream of an open or closed biological treatment process for new sources are necessary to ensure demonstrable compliance measures are in place for these sources. More information concerning the amendments we are finalizing is in the preamble to the proposed rule and in our specific responses to the comments above (section V.D.3). Therefore, we are finalizing the wastewater amendments as proposed, with minor clarifications (see section V.D.3.b–e).

VI. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A summary of cost, environmental, and economic impacts is presented in section VI.A for the Carbon Black Production NESHAP and section VI.B for Cyanide Chemicals Manufacturing NESHAP final rule amendments.

A. Carbon Black Production

1. What are the affected facilities?

The EPA estimates that there are 15 production facilities in the Carbon Black Production major source category that are subject to the Carbon Black Production NESHAP and affected by the final amendments to 40 CFR part 63, subpart YY. The basis of our estimates of affected facilities is provided in the memorandum, *Identification of Major Sources for the Carbon Black Production NESHAP,* which is available in the docket for this action (see Docket ID No. EPA–HQ–OAR–2020–0505–0022). We are not currently aware of any planned or potential new or reconstructed carbon black production facilities in the source category. No carbon black production area sources were identified; therefore, there are no area sources subject to this rulemaking.

2. What are the air quality impacts?

While we are broadening the scope of the current Carbon Black Production standard, setting annual tune-up requirements for process heaters and boilers, removing the SSM exemption, and establishing a work practice standard for periods of startup and shutdown, we do not have data to determine quantitatively the reduction in HAP emissions resulting from this action. Through discussions with industry members, it is our understanding that process vents located after the MUF are likely already below the applicability threshold where additional controls will be required. The other requirements we are adding are based on current industry practices. For this reason, we do not anticipate that this action will result in significant HAP emission reductions.

3. What are the cost impacts?

Costs were developed on a per facility basis for Carbon Black Production facilities, and all facilities were determined to have similar costs. Costs are presented in 2019 dollars. Costs were broken into three separate categories based on final requirements: Initial Applicability Test, Performance Test, and Boiler/Process Heater Maintenance Costs.

Initial applicability testing costs include costs associated with the final requirements for process vents located after the MUF to meet the standard, which will require facilities to determine whether emissions control is needed for process vents after the MUF process vent. We estimate this to be a one-time cost of $21,350 per facility, due to the assumption that the majority of HAP is removed and controlled at the MUF, which likely results in the vent stream concentration located after the MUF falling below the HAP applicability concentration threshold (260 ppmv).

Performance test costs include costs associated with the requirement to conduct emissions tests at the subject process vents every 5 years starting in the first year after promulgation. Based on our understanding of industry practices and emissions profiles, we do not expect any process vents located after the MUF to exceed the applicability threshold, which would require them to conduct performance tests. Facilities must conduct performance tests no more than 60 months after the preceding test when demonstrating compliance with process vent emission control requirements. We estimate that 20 percent of subject facilities will conduct a performance test each year resulting in an annual cost of $15,241 per facility.

Boiler/process heater maintenance costs include costs associated with the final requirement to ensure that boilers and process heaters are operating at peak efficiency and not creating excess emissions through inefficient operation. Initial tune-up costs are assumed to be higher to get the units back to peak efficiency. We assume that subsequent year costs would be lower because less maintenance would be needed. As such, we estimate the initial tune-up cost to be $6,750 per facility and subsequent annual tune-ups to cost $1,350 per facility.

Costs were based primarily on labor, equipment, and travel costs. Labor costs are based on Bureau of Labor Statistics data for relevant employees necessary to perform the tests and maintenance. A detailed cost analysis can be found in the memorandum, *Carbon Black Cost Memorandum,* available in the docket for this action (see Docket ID No. EPA–HQ–OAR–2020–0505–0007).

4. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs associated with the final requirements and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a final rule. Economic costs to carbon black producers were measured in Present Value (PV) total costs and Equivalent Annual Value (EAV) costs. All producer facilities were estimated to have similar costs. All costs are presented in 2019 dollars. Refer to the memorandum, *Carbon Black Economic Impact Analysis,* in the docket for this rulemaking for more information (see Docket ID No. EPA–HQ–OAR–2020–0505–0008). PV total costs and EAV costs were measured at the 3-percent and 7-percent discount rate. The duration of analysis was 10 years which represented two full cycles of cost analysis for the final requirements. Per facility PV total costs were estimated to be $70,000 and $63,000 at the 3-percent and 7-percent discount rates, respectively. EAV costs per facility were estimated to be $8,000 and $9,000 at the 3-percent and 7-percent discount rates, respectively. The combined PV total cost of the final requirements for all facilities was estimated to be $1,005,000 and $945,000 at the 3-percent and 7-percent discount rates, respectively. The combined EAV cost of the final requirements for all facilities was estimated to be $118,000 and $135,000 at the 3-percent and 7- percent discount rates, respectively. No carbon black production facilities subject to this rule are small businesses based on Small Business Administration standards. Because the PV and EAV costs associated with the final revisions are minimal, no significant economic impacts from the final amendments are anticipated. Refer to the *Carbon Black Economic Impact Memorandum,* available in the docket (see Docket ID No. EPA–HQ–OAR–2020–0505–0008), for more information.

5. What are the benefits?

As discussed in section VI.A.2 of this preamble, we do not anticipate the finalized amendments to the Carbon Black Production source category to significantly impact air quality. The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports; is in keeping with current trends in data availability and transparency; will further assist in the protection of public health and the environment; will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements; will improve compliance by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance; and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

Although the EPA does not anticipate any significant reductions in HAP emissions as a result of the final amendments to the Carbon Black Production NESHAP, we believe that the final action will result in improvements to the rule by broadening the current emission limit, requiring an annual tune-up for boilers and process heaters, and revising the SSM standards such that a standard applies at all times, including periods covered by the final work practice standard. Additionally, the final amendments requiring electronic submittal of NOCS reports, performance test results, and periodic reports will increase the usefulness of the data, are in keeping with current trends of data availability, will further assist in the protection of public health and the environment, and will ultimately result in reduced reporting burden on the regulated community.

6. What analysis of environmental justice did we conduct?

Executive Order 12898 directs the EPA staff to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 was signed to advance racial equity and support underserved communities through federal government actions (86 FR 7009, January 20, 2021). The EPA defines environmental justice (EJ) as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income

with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies'' (*https://www.epa.gov/environmentaljustice*). In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

To examine the potential for any EJ issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we also evaluated the distribution of HAP-related cancer and noncancer risks from the Carbon Black Production major source category across different demographic groups within the populations living near facilities. The demographic analysis and the risk analysis are contained in the docket and were summarized in the proposed rule preamble.

When examining the risk levels of those exposed to emissions from carbon black production facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

Results of the demographic analysis indicate that, of the total population residing within 5km of facilities in the source category, the percentages of people who are African American, age greater than or equal to 65, age greater than or equal to 25 years of age without a high school diploma, and below the poverty level are greater than the national average percentages of people in those demographic groups. The EPA also provided demographic results for populations residing within 50km.

Based on analyses of exposed populations, the EPA determined that this action is unlikely to pose a disproportionately high adverse health impact on minority populations and/or low-income populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) and referenced in Executive Order 13985 (86 FR 7009, January 20, 2021).

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Carbon Black Production Source Category Operations,* available in the docket for the Carbon Black Production source category NESHAP (see Docket Item No. EPA–HQ–OAR–2020–0505–0014).

7. What analysis of children's environmental health did we conduct?

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessment are documented in the risk report, *Residual Risk Assessment for the Carbon Black Production Source Category in Support of the Risk and Technology Review 2021 Final Rule,* available in the docket for the Carbon Black Production source category NESHAP (see Docket No. EPA–HQ–OAR–2020–0505).

B. Cyanide Chemicals Manufacturing

1. What are the affected facilities?

There are 13 cyanide chemicals manufacturing facilities currently operating as major sources of HAP subject to the final amendments. A list of facilities that are currently subject to the MACT standards is available in the memorandum titled *Technical Support Document for the Cyanide Chemicals Manufacturing NESHAP Residual Risk and Technology Review Proposal,* available in the docket for this action (see Docket ID No. EPA–HQ–OAR–2020–0532–0025).

2. What are the air quality impacts?

The final amendments add wastewater requirements to the Cyanide Chemicals Manufacturing NESHAP, however the EPA does not anticipate that the amendments to the cyanide chemicals manufacturing NESHAP will impact air quality. We are not proposing changes to the standard that will result in additional emission reductions beyond the levels already achieved by the NESHAP.

3. What are the cost impacts?

The final amendments will have a limited cost impact on affected cyanide chemicals manufacturing facilities. Total estimated costs are $47,527, based on a $3,656 per facility cost for all 13 facilities. The costs result from reading and understanding rule requirements and adjusting compliance plans based on the rule proposal. All costs other than wastewater testing are one-time expenses expected to occur in the first year after the rule is finalized. Costs are based on Agency knowledge and experience with the NESHAP program, related Information Collection Requests (ICRs), and Bureau of Labor Statistics data.

4. What are the economic impacts for Cyanide Chemicals Manufacturing?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs associated with the final requirements and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a rule.

Economic costs to owners of Cyanide Chemicals Manufacturing facilities were measured in PV total costs and EAV costs. All Cyanide Chemicals Manufacturing facilities were estimated to have similar costs. All costs are presented in 2019 dollars.

PV total costs and EAV costs were measured at the 3 percent and 7 percent discount rates. The duration of analysis was 8 years. Per facility PV total cost estimate is $3,968 at 3 percent and $3,925 at 7 percent discount rates. EAV costs per facility are measured to be $565 and $657 at the 3 percent and 7 percent discount rates, respectively. Combined total PV cost of the final requirements for all facilities is measured to be $51,577 at 3 percent and $51,030 at 7 percent discount rates. Combined EAV costs of the final requirements for all facilities are measured to be $7,346 and $8,546 at the 3 percent and 7 percent discount rates, respectively.

As required by the Regulatory Flexibility Act (RFA), we performed an analysis to determine if any small entities would be unduly burdened by the final amendments. No cyanide chemicals manufacturers are small businesses based on Small Business Administration standards. No significant economic impacts from the final amendments are anticipated because the PV and EAV costs associated with the final revisions are minimal.

5. What are the benefits?

As discussed in section VI.B.2 of this preamble, we do not anticipate the finalized amendments to the NESHAP for the Cyanide Chemicals Manufacturing source category to

impact air quality. The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and, by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

6. What analysis of environmental justice did we conduct?

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations. Additionally, Executive Order 13985 was signed to advance racial equity and support underserved communities through federal government actions (86 FR 7009, January 20, 2021). The EPA defines EJ as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies'' (*https://www.epa.gov/environmentaljustice*). In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

To examine the potential for any EJ issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we also evaluated the distribution of HAP-related cancer and noncancer risks from the Cyanide Chemicals Manufacturing major source category across different demographic groups within the populations living near facilities. The demographic analysis and the risk analysis are contained in the docket and were summarized in the proposed rule preamble.

When examining the risk levels of those exposed to emissions from cyanide chemical manufacturing facilities, we find that 61,653 people nationwide are exposed to an incremental cancer risk at or above 1-in-1 million with no one exposed to an excess cancer risk greater than 5-in-1 million based upon actual or allowable emissions. Also, no people are exposed to a chronic noncancer TOSHI greater than 1.

Results of the demographic analysis indicate that of the 61,653 people residing within 50 km of facilities in the source category whose risk is at or above 1-in-1 million (but less than 5-in-1 million) as a result of emissions from the source category, the percent of individuals in three demographic groups, African American, below poverty level, and greater than or equal to 25 years of age without a high school diploma, are greater than the corresponding national average percentage of people in those demographic groups. Specifically, the population with risks greater than 1-in-1 million live in areas where 19 percent of the population is African American compared to 12 percent nationally, 23 percent are below the poverty level [15] compared to 14 percent nationally, and 16 percent are greater than or equal to 25 years of age without a high school diploma compared to 14 percent nationally. Because the final amendments to the rule are not anticipated to result in emissions reductions, implementation of the final rule will not result in a significant increase or decrease in any existing risk disparities for the demographic groups.

Based on the analyses of exposed populations described above, the EPA determined that this action is unlikely to pose a disproportionately high and adverse health impact on minority populations and/or low-income populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) and referenced in Executive Order 13985 (86 FR 7009, January 20, 2021).

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Cyanide Chemicals Manufacturing Source Category Operations,* available in the docket for this action; (see Docket Item No. EPA–HQ–OAR–2020–0532–0006).

7. What analysis of children's environmental health did we conduct?

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessment are documented in the risk report, *Residual Risk Assessment for the Cyanide Chemicals Manufacturing Source Category in Support of the Risk and Technology Review 2021 Final Rule,* available in the docket for the Cyanide Chemicals Manufacturing source category rule (see Docket No. EPA–HQ–OAR–2020–0532).

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Paperwork Reduction Act (PRA)

Section VII.B.1 presents PRA considerations related to the Carbon Black Production NESHAP, and section VII.B.2 presents the PRA considerations related to the Cyanide Chemicals Manufacturing NESHAP.

1. Carbon Black Production

The information collection activities in the final rule for the Carbon Black Production source category have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2677.02. A copy of the ICR is available in the docket for the

[15] Table 2 of the proposed rule preamble erroneously listed this percentage as 16 percent rather than 23 percent.

Carbon Black Production source category NESHAP (see Docket No. EPA–HQ–OAR–2020–0505), and is briefly summarized here. We are finalizing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart YY, in the form of eliminating the SSM plan and reporting requirements; broadening the initial emission limit to include process vents located after the MUF; and including the requirement for electronic submittal of reports. In addition, the number of facilities subject to the standards changed. The number of respondents was reduced from 18 to 15 based on consultation with industry representatives and state and local agencies.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners and operators of carbon black production facilities subject to 40 CFR part 63, subpart YY.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YY).

Estimated number of respondents: 15 facilities.

Frequency of response: The frequency of responses varies depending on the burden item. Responses include one-time review of rule amendments, reports of periodic performance tests, and semiannual compliance reports.

Total estimated burden: The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 289 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 213 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be $180,928 (per year). There are no estimated capital and operation and maintenance costs. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $10,247. 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 in 40 CFR are listed in 40 CFR part 9.

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 in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities in this final rule.

2. Cyanide Chemicals Manufacturing

The information collection activities in the final rule have been submitted to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2678.02. A copy of the ICR is available in the docket for the Cyanide Chemicals Manufacturing source category NESHAP (see Docket No. EPA–HQ–OAR–2020–0532), and is briefly summarized here.

The EPA is finalizing amendments that revise provisions pertaining to emissions during periods of SSM, add requirements for electronic reporting of NOCS, periodic reports, and performance test results, and make other minor clarifications and corrections. This information will be collected to assure compliance with the Cyanide Chemicals Manufacturing NESHAP. The ICR burdens for these final amendments are summarized below.

Respondents/affected entities: Owners or operators of cyanide chemicals manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YY).

Estimated number of respondents: 13 (assumes no new respondents over the next 3 years).

Frequency of response: Initially, occasionally, and annually.

Total estimated burden: 169 hours (per year) to comply with all of the requirements in the NESHAP. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $17,108 (per year). Includes total capital costs of $1,300 incurred in the first year ($433 per year over 3 years) for process wastewater stream sampling to determine applicability and compliance with the final rule amendments. There are no annualized operation and maintenance costs to comply with under the final amendments to the NESHAP.

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 in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities, since there are no small entities in the affected source categories.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. None of the carbon black production or cyanide chemicals manufacturing production facilities that have been identified as being affected by this proposed action are owned or operated by tribal governments. However, we determined that one carbon black facility and two cyanide facilities are located within 50 miles of tribal lands. Consistent with the EPA Policy on Coordination and Consultation with Indian Tribes, the EPA offered tribal leadership the opportunity for government-to-government consultation with no response. In addition, the EPA held multiple outreach activities that included a webinar and participation on tribal partnership calls.

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

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action

present a disproportionate risk to children.

The health and risk assessments for the Carbon Black Production and Cyanide Chemicals Manufacturing source categories are discussed in sections IV.A and V.A of this preamble. The document, *Residual Risk Assessment for the Carbon Black Production Source Category in Support of the Risk and Technology Review 2021 Final Rule,* is available in the docket for the Carbon Black Production source category (see Docket ID No. EPA–HQ–OAR–2020–0505). The document, *Residual Risk Assessment for the Cyanide Chemicals Manufacturing Source Category in Support of the Risk and Technology Review 2021 Final Rule,* is available in the docket for the Cyanide Chemicals Manufacturing source category (see Docket ID No. EPA–HQ–OAR–2020–0532).

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve technical standards for the Carbon Black Production source category.

This action does involve technical standards for the Cyanide Chemicals Manufacturing source category. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards (VCS). However, the Agency identified no such standards. A thorough summary of the search and results are included in the memorandum titled *Voluntary Consensus Standard Results for Cyanide Chemicals Manufacturing Residual Risk and Technology Review,* which is available in the docket for this action/source category (see Docket ID No. EPA–HQ–OAR–2020–0532–0004).

In the final rule, the EPA is incorporating by reference the VCS ASTM D4282–15, Standard Test Method for Determination of Free Cyanide in Water and Wastewater by Microdiffusion and ASTM D7237–18, Standard Test Method for Free Cyanide and Aquatic Free Cyanide with Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection. Both methods are water and wastewater methods for the determination of free cyanide. In ASTM D4282–15, the reactions are carried out in a microdiffusion cell. The sample is treated with cadmium ion to precipitate hexacyanoferrates and buffered to pH 6. The HCN then diffuses into a sodium hydroxide solution which is subsequently treated, and the concentration of free cyanide determined by spectrophotometric analysis. In ASTM–7237–18, the sample is introduced into the carrier solution of the flow injection analysis system with a phosphate buffer solution at pH 6. The released hydrogen cyanide gas diffuses through a hydrophobic gas diffusion membrane into an alkaline receptor stream where the cyanide ion is captured and sent to an amperometric flowcell detector with a silver-working electrode. In the presence of cyanide, silver in the working electrode is oxidized at the applied potential. The anodic current measured if proportional to the concentration of cyanide in the sample. These methods are reasonably available from ASTM at *https://www.astm.org* or 1100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 832–9555 email: *service@astm.org.*

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this final action for both the Carbon Black Production source category and the Cyanide Chemicals Manufacturing source category does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898.

The documentation for this decision for the Carbon Black Production source category is contained in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Carbon Black Production Facilities,* available in the docket for this action (see Docket ID No. EPA–HQ–OAR–2020–0505–0014) and discussed in Section VI.A.6 of this final rule.

The documentation for this decision for the Cyanide Chemicals Manufacturing is contained in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Cyanide Chemicals Manufacturing Facilities,* available in the docket for this action (see Docket ID No. EPA–HQ–OAR–2020–0532–0006) and discussed in Section VI.B.6 of this final rule.

The EPA provided opportunities to engage with the EPA on these proposals. The Agency offered a public hearing and also reached out to communities in other ways, including a webinar held on February 10, 2021, to exchange information with stakeholders about these proposals. We did not receive any requests for a public hearing and we did not receive feedback regarding EJ during the webinar. The EPA remains committed to engaging with communities and stakeholders throughout the development of air pollution regulations.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report for this action to each House of the Congress and to the Comptroller General of the United States. Neither of the NESHAP amended by this action constitute 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 procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending part 63 of title 40, chapter I, of the Code of Federal Regulations as follows:

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

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

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by:

■ a. Redesignating paragraphs (h)(105) through (h)(117) as (h)(107) through (h)(119);

■ b. Redesignating paragraphs (h)(63) through (h)(104) as (h)(64) through (h)(105);

■ c. Adding new paragraphs (h)(63) and (h)(106);

The additions read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(h) * * *

(63) ASTM D4282–15, Standard Test Method for Determination of Free Cyanide in Water and Wastewater by

Microdiffusion, Approved July 15, 2015, IBR approved for § 63.1103(g).

* * * * *

(106) ASTM D7237–18, Standard Test Method for Free Cyanide and Aquatic Free Cyanide with Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection, Approved December 1, 2018, IBR approved for § 63.1103(g).

* * * * *

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

■ 3. Section 63.1101 is amended by revising the definition for ''Process vent'' to read as follows:

§ 63.1101 Definitions.

* * * * *

Process vent means the point of discharge to the atmosphere (or the point of entry into a control device, if any) of a gas stream from a unit operation within a source category subject to this subpart. Process vent excludes the following gas stream discharges:

(1) Relief valve discharges;

(2) Leaks from equipment subject to this subpart;

(3) Gas streams exiting a control device complying with this subpart;

(4) Gas streams transferred to other processes (on-site or off-site) for reaction or other use in another process (*i.e.,* for chemical value as a product, isolated intermediate, byproduct, or co-product for heat value);

(5) Gas streams transferred for fuel value (*i.e.,* net positive heating value), use, reuse, or sale for fuel value, use, or reuse. On or after November 19, 2021 this exclusion no longer applies to the Carbon Black Production source category;

(6) Gas streams from storage vessels or transfer racks subject to this subpart;

(7) Gas streams from waste management units subject to this subpart;

(8) Gas streams from wastewater streams subject to this subpart;

(9) Gas streams exiting process analyzers; and

(10) Gas stream discharges that contain less than or equal to 0.005 weight-percent total organic HAP.

* * * * *

■ 4. Section 63.1102 is amended by revising paragraph (a) introductory text and adding paragraphs (d) and (e) to read as follows:

§ 63.1102 Compliance schedule.

(a) *General requirements.* Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production, § 63.1103(b)(1)(i) for acrylic and modacrylic fiber production, § 63.1103(c)(1)(i) for hydrogen fluoride production, § 63.1103(d)(1)(i) for polycarbonate production, § 63.1103(e)(1)(i) for ethylene production, § 63.1103(f)(1)(i) for carbon black production, § 63.1103(g)(1)(i) for cyanide chemicals manufacturing, or § 63.1103(h)(1)(i) for spandex production shall comply with the appropriate provisions of this subpart and the subparts referenced by this subpart YY according to the schedule in paragraph (a)(1) or (2) of this section, as appropriate, except as provided in paragraph (b) of this section. Affected sources in ethylene production also must comply according to paragraph (c) of this section. Affected sources in cyanide chemicals manufacturing also must comply according to paragraph (d) of this section. Affected sources in carbon black production also must comply according to paragraph (e) of this section. Proposal and effective dates are specified in table 1 to this section and in paragraph (d) for cyanide chemicals manufacturing affected sources and paragraph (e) for carbon black production affected sources of this section.

* * * * *

(d) *Cyanide chemicals manufacturing.* (1) If applicable, all cyanide chemicals manufacturing affected sources that commenced construction or reconstruction on or before January 15, 2021, must be in compliance with the requirements listed in paragraphs (d)(1)(i) and (ii) of this section upon initial startup or November 20, 2022, whichever is later. If applicable, all cyanide chemicals manufacturing affected sources that commenced construction or reconstruction after January 15, 2021, must be in compliance with the requirements listed in paragraphs (d)(1)(i) and (ii) of this section upon initial startup, or November 19, 2021, whichever is later.

(i) Requirements specified in Table 9 to § 63.1103(g), table entry (f)(1)(ii), for new cyanide chemicals manufacturing process units that generate process wastewater.

(ii) Requirements specified in Table 9 to § 63.1103(g), table entry (g), for existing cyanide chemicals manufacturing process units that generate process wastewater.

(2) All cyanide chemicals manufacturing affected sources that commenced construction or reconstruction on or before January 15, 2021, must be in compliance with the requirements listed in paragraphs (d)(2)(i) through (iii) of this section upon initial startup or May 18, 2022, whichever is later. All cyanide chemicals manufacturing affected sources that commenced construction or reconstruction after January 15, 2021, must be in compliance with the requirements listed in paragraphs (d)(2)(i) through (iii) of this section upon initial startup, or November 19, 2021, whichever is later.

(i) The exceptions specified in § 63.1103(g)(6) related to 40 part 63, subparts SS, TT, and UU startup, shutdown, and malfunction requirements.

(ii) The compliance requirements specified in § 63.1108(a)(4)(i), (b)(1)(ii), (b)(2), and (b)(4)(ii)(B).

(iii) The electronic reporting requirements specified in § 63.1110(a)(10).

(e) *Carbon black production.* (1) If applicable, all carbon black production affected sources that commenced construction or reconstruction on or before January 14, 2021, must be in compliance with the requirements listed in paragraphs (e)(1)(i) through (iii) of this section upon initial startup or November 20, 2022, whichever is later. If applicable, all carbon black production affected sources that commenced construction or reconstruction after January 14, 2021, must be in compliance with the requirements listed in paragraphs (e)(1)(i) through (iii) of this section upon initial startup, or November 19, 2021, whichever is later.

(i) The process vent applicability determination requirements specified in § 63.1103(f)(3)(iv).

(ii) The performance test frequency requirements specified in § 63.1108(b)(4)(ii).

(iii) The boiler and process heater tune up requirements specified in § 63.1103(f)(3)(iii).

(2) All carbon black production affected sources that commenced construction or reconstruction on or before January 14, 2021, must be in compliance with the requirements listed in paragraphs (e)(2)(i) through (iv) of this section upon initial startup or May 18, 2022, whichever is later. All carbon black production affected sources that commenced construction or reconstruction after January 14, 2021, must be in compliance with the requirements listed in paragraphs (e)(2)(i) through (iv) of this section upon initial startup, or November 19, 2021, whichever is later.

(i) The exceptions specified in § 63.1103(f)(4) related to 40 part 63, subpart SS, startup, shutdown, and malfunction requirements.

(ii) The exception specified in § 63.1103(f)(5) related to the requirement that a closed vent system route the collected vapors to a control device when demonstrating compliance.

(iii) The compliance requirements specified in § 63.1108(a)(4)(i), (b)(1)(ii), (b)(2), and (b)(4)(ii)(B).

(iv) The electronic reporting requirements specified in § 63.1110(a)(10).

(3) All carbon black production affected sources that commenced construction or reconstruction on or before January 14, 2021, must be in compliance with the requirements specified in line entry (b) in Table 8 to § 63.1103(f) on or before November 19, 2024. All carbon black production affected sources that commenced construction or reconstruction after January 14, 2021, must be in compliance with the requirements specified in line entries (b) and (c) in Table 8 to § 63.1103(f) upon initial startup or November 19, 2021, whichever is later.

■ 5. Section 63.1103 is amended by:
■ a. Revising paragraph (f)(3)(i) and adding paragraphs (f)(3)(iii) through (v).
■ b. Adding entries (b) and (c) to table 8 to § 63.1103(f).
■ c. Adding paragraphs (f)(4) and (5).
■ d. Revising paragraph (g)(1)(ii).
■ e. In paragraph (g)(2) adding the definition for "free cyanide" in alphabetical order.
■ f. Revising paragraph (g)(3).
■ g. Adding paragraph (g)(5)(vi).
■ h. Adding paragraph (g)(6).
■ i. In table 9 to § 63.1103(g), revising entries (f) through (i) and adding entry (j).

The additions and revisions read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(f) * * *

(3) * * *

(i) Table 8 to this section specifies the carbon black production standards applicability for existing and new sources. Applicability assessment procedures and methods are specified in § 63.1104. An owner or operator of an affected source is not required to perform applicability tests or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Before May 18, 2022, minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. A startup, shutdown, and malfunction plan is not required on and after May 18, 2022 and the requirements specified in § 63.1111 no longer apply; however, for historical compliance purposes, a copy of the plan must be retained and available on-site for 5 years after May 18, 2022. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

* * * * *

(iii) The boiler and process heater tune up requirements of paragraphs (f)(3)(iii)(A) through (F) of this section apply beginning no later than the compliance dates specified in § 63.1102(e) for carbon black production affected sources and as specified in Table 8 to § 63.1103(f), line entry (c).

(A) Inspect the combustion device for damage, wear, and buildup of material that could impact effectiveness, and clean or replace any components of the burner as necessary. Units that produce electricity for sale may delay the combustion device inspection until the first outage after the annual inspection is required, not to exceed 36 months from the previous inspection. At units where entry into a piece of process equipment or into a storage vessel is required to complete the tune-up inspections, inspections are required only during planned entries into the storage vessel or process equipment;

(B) When possible based upon the configuration of the burner, inspect the flame pattern and adjust the burner if needed to optimize the flame pattern. If manufacturer's specifications for an optimized flame pattern are available, the adjustment should be consistent with the manufacturer's specifications;

(C) Inspect the system controlling the air-to-fuel ratio, and ensure that it is functioning properly. For any calibrated components ensure that it is correctly calibrated The annual inspection may be delayed until the next scheduled unit shutdown. Units that produce electricity for sale may delay the inspection until the first outage after the annual inspection is required, not to exceed 36 months from the previous inspection;

(D) Optimize total emissions of CO. If manufacturer's specifications for optimization are available, this optimization should be consistent with the manufacturer's specifications and with any NO_X requirement to which the unit is subject. If no manufacturer's specifications are available, the inspection and cleaning procedures of paragraph (f)(3)(iii)(A) fulfill the obligations of this paragraph;

(E) Measure the concentrations in the effluent stream of CO in parts per million, by volume, and oxygen in volume percent, before and after the adjustments are made. Measurements may be taken using a portable CO analyzer and may be either on a dry or wet basis, as long as it is the same basis before and after the adjustments are made. If adjustments are not or cannot be made, make the measurements before and after the inspection and cleaning procedures specified in paragraph (f)(3)(iii)(A); and

(F) Maintain on-site and submit, if requested by the Administrator, a report containing the information in paragraphs (f)(3)(iii)(F)(*1*) through (*3*) of this section,

(*1*) The concentrations of CO in the effluent stream in parts per million by volume, and oxygen in volume percent, measured at high fire or typical operating load, before and after the tune-up of the boiler or process heater;

(*2*) A description of any corrective actions taken as a part of the tune-up; and

(*3*) The type and amount of fuel used over the 12 months prior to the tune-up, but only if the unit was physically and legally capable of using more than one type of fuel during that period. Units sharing a fuel meter may estimate the fuel used by each unit.

(iv) When determining the applicability of the carbon black production process vent requirements specified in line entry (b) to Table 8 to § 63.1103(f), an owner or operator is required to determine the HAP concentration of the process vent streams, at a minimum, as specified in paragraphs (f)(3)(iv)(A) through (D) of this section.

(A) As an alternative to testing all carbon black production process carbon black or product vent streams after the main unit filter to determine applicability, an owner or operator has the option of testing the first carbon black production process or product vent stream after the main unit filter. If the concentration of the emission stream is less than 260 parts per million by volume as determined by the process vent applicability determination requirements specified in § 63.1103(f)(3)(iv), then all process vents after the main unit filter and before the dryer are deemed to be in compliance and are not subject to the emission limits in Table 8 below.

(B) As an alternative to testing all carbon black production process carbon

black or product vent streams after the dryer to determine applicability, an owner or operator has the option of testing the first carbon black production process carbon black or product vent stream after the dryer. If the concentration of the emission stream is less than 260 parts per million by volume as determined by the process vent applicability determination requirements specified in § 63.1103(f)(3)(iv), then all process vents after the dryer are deemed to be in compliance and are not subject to the emission limits in Table 8 below.

(C) Report the results of the applicability assessment according to paragraph § 63.1110(a)(10)(i).

(D) A test meeting the requirements of § 63.1104(e) conducted after November 18, 2016 and where no process changes have occurred since the test that may affect emissions, may be submitted according to § 63.1110(a)(10)(i)(A) through (C) in lieu of performing a new applicability determination.

(v) When determining the applicability of the carbon black production main unit filter process vent requirements specified in line entry (a) to Table 8 to § 63.1103(f), an owner or operator is required to determine the HAP concentration of the main unit filter process vent streams. Beginning November 19, 2021, report the results of any applicability assessment conducted after November 19, 2021, the applicability assessment according to paragraph § 63.1110(a)(10)(i).

TABLE 8 TO § 63.1103(f)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CARBON BLACK PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
* *	* *	* * *
(b) A carbon black production process vent not subject to line entry (a) of this table.	(1) The HAP concentration of the emission stream is equal to or greater than 260 parts per million by volume [a] as determined by the process vent applicability determination requirements specified in § 63.1103(f)(3)(iv).	Beginning no later than the compliance dates specified in § 63.1102(e): (i) Reduce emissions of HAP by using a flare meeting the requirements of subpart SS of this part; or (ii) Reduce emissions of total HAP by 98 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).
(c) A carbon black production process vent subject to (a) or (b) above.	(1) The process vent complies by routing emissions to a boiler/process heater for use as fuel gas.	(i) Beginning no later than the compliance dates specified in § 63.1102(e), conduct annual tune up requirements as specified in § 63.1103(f)(3)(iii) of this subpart.

[a] The weight-percent organic HAP is determined according to the procedures specified in § 63.1104(e).

* * * * *

(4) Beginning no later than the compliance dates specified in § 63.1102(e), the referenced provisions specified in paragraphs (f)(4)(i) through (xiii) of this section do not apply when demonstrating compliance with paragraph (f)(3) of this section.

(i) The phrase "except during periods of start-up, shutdown and malfunction as specified in the referencing subpart" in § 63.984(a) of subpart SS(equipment and operating requirements for fuel gas systems and processes requirements).

(ii) The phrase "except during periods of start-up, shutdown and malfunction as specified in the referencing subpart" in § 63.985(a) of subpart SS (nonflare control device equipment and operating requirements).

(iii) The phrase "other than start-ups, shutdowns, or malfunctions" in § 63.994(c)(1)(ii)(D) of subpart SS (halogen scrubber and other halogen reduction device monitoring requirements).

(iv) Section 63.996(c)(2)(ii) of subpart SS (operation and maintenance of continuous parameter monitoring systems) "(ii) If under the referencing subpart, an owner or operator has developed a start-up, shutdown, and malfunction plan, the plan is followed, and the CPMS is repaired immediately, this action shall be recorded as specified in § 63.998(c)(1)(ii)(E)."

(v) The last sentence of § 63.997(e)(1)(i) (performance test procedures) of subpart SS (general procedures for continuous unit operations): "Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test."

(vi) Section 63.998(b)(2)(iii) (excluded data) of subpart SS: "(iii) Startups, shutdowns, and malfunctions, if the owner or operator operates the source during such periods in accordance with § 63.1111(a) and maintains the records specified in paragraph (d)(3) of this section."

(vii) The phrase "other than periods of startups, shutdowns, and malfunctions" from § 63.998(b)(5)(i)(A) (alternative recordkeeping) of subpart SS.

(viii) The phrase "other than a start-up, shutdown, or malfunction" from § 63.998(b)(5)(i)(B)(3) (alternate recordkeeping) of subpart SS.

(ix) The phrase "other than periods of startups, shutdowns, and malfunctions" from § 63.998(b)(5)(i)(C) (alternate recordkeeping) of subpart SS.

(x) The phrase "other than a start-up, shutdown, or malfunction" from § 63.998(b)(5)(ii)(C) (alternate recordkeeping) of subpart SS.

(xi) The phrase "except as provided in paragraphs (b)(6)(i)(A) and (B) of this section" from § 63.998(b)(6)(i) (alternative recordkeeping) of subpart SS.

(xii) The second sentence of § 63.998(b)(6)(ii) (alternative recordkeeping) of subpart SS. "If a source has developed a startup, shutdown and malfunction plan, and a monitored parameter is outside its established range or monitoring data are not collected during periods of start-up, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.1111(a)) or during periods of nonoperation of the process unit or portion thereof (resulting in cessation of the emissions to which monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count as the excused excursion for determining compliance."

(xiii) Section 63.998(c)(1)(ii)(D) through (G) (nonflare control and

recovery device regulated source monitoring records) of subpart SS.

(xiv) Section 63.998(d)(3) (regulated source and control equipment start-up, shutdown, and malfunction records) of subpart SS.

(5) Beginning no later than the compliance dates specified in § 63.1102(e), the provisions specified in § 63.983(a)(1) of subpart SS that each closed vent system shall be designed and operated to collect the regulated material vapors from the emission point shall apply at all times, with the following exception: The closed vent system to the control device may be bypassed during startup or shutdown of a reactor when the excess oxygen concentration in the closed vent system is greater than or equal to 3 percent. Startup and shutdown of a reactor must be completed as expeditiously as possible, and in fewer than 15 minutes whenever possible. In no case shall the time period allowed be permitted to exceed 15 minutes. The bypass of the control device must use one of the methods specified in paragraphs (f)(5)(i) through (ii):

(i) *Calculated Purge Duration Method:* Each facility must calculate the purge duration of their closed vent system by evaluating the volume of the closed vent system and the flowrate of the contents of the closed vent system from the reactor to the common tail gas header. Additionally, each facility must calculate the amount of time it takes to open and/or close the common tail gas header and open and/or close the main unit filter vent to maintain constant pressure. The time required to completely purge the closed vent system is added to the time required to open and close the associated vents along with a safety factor that accounts for the physical and technological constraints of the facility, to determine the total calculated purge duration in minutes.

(ii) *Oxygen Sensors:* Facilities may use oxygen sensors located within the closed vent system to determine when the oxygen level falls below 3 percent.

* * * * *

(g) * * *

(1) * * *

(ii) *Compliance schedule.* The compliance schedule for the affected source, as defined in paragraph (g)(1)(i) of this section, is specified in § 63.1102.

(2) * * *

Free cyanide means chemical species of cyanide that are dissolved in water and are bioavailable and known for their toxic effects on living organisms. This refers to the sum of molecular hydrogen cyanide (HCN) and cyanide ion (CN^-) dissolved in water. Included in this definition are the dissolved products of cyanide salts (including potassium cyanide [KCN] and sodium cyanide [NaCN]), as these salts dissociate to cyanide ion and hydrogen cyanide when added to water.

* * * * *

(3) *Requirements.* Table 9 to this section specifies the cyanide chemicals manufacturing standards applicable to existing and new sources. Applicability assessment procedures and methods are specified in § 63.1104. An owner or operator of an affected source is not required to perform applicability tests or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Before May 18, 2022, minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. A startup, shutdown, and malfunction plan is not required on and after May 18, 2022 and the requirements specified in § 63.1111 no longer apply; however, for historical compliance purposes, a copy of the plan must be retained and available on-site for 5 years after May 18, 2022. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

* * * * *

(5) * * *

(vi) For compliance with the wastewater free cyanide analysis provisions of table 9 to § 63.1103(g), free cyanide is to be measured according to ASTM D4282–15 or ASTM D7237–18 (both incorporated by reference, see § 63.14).

(6) *Startup, shutdown, and malfunction referenced provisions.* Beginning no later than the compliance dates specified in § 63.1102(d), the referenced provisions specified in paragraphs (g)(6)(i) through (xxiii) of this section do not apply when demonstrating compliance with paragraph (g)(3) of this section.

(i) The second/last sentence of § 63.983(a)(5) (requirements for pressure relief devices in a transfer rack's closed vent system requirements) of subpart SS: "Pressure relief devices needed for safety purposes are not subject to this paragraph."

(ii) The phrase "except during periods of start-up, shutdown and malfunction as specified in the referencing subpart" in § 63.984(a) of subpart SS (equipment and operating requirements for fuel gas systems and processes requirements).

(iii) The phrase "except during periods of start-up, shutdown and malfunction as specified in the referencing subpart" in § 63.985(a) of subpart SS (nonflare control device equipment and operating requirements).

(iv) The phrase "other than start-ups, shutdowns, or malfunctions" in § 63.994(c)(1)(ii)(D) of subpart SS (halogen scrubber and other halogen reduction device monitoring requirements).

(v) Section 63.996(c)(2)(ii) of subpart SS (operation and maintenance of continuous parameter monitoring systems) "(ii) If under the referencing subpart, an owner or operator has developed a start-up, shutdown, and malfunction plan, the plan is followed, and the CPMS is repaired immediately, this action shall be recorded as specified in § 63.998(c)(1)(ii)(E)."

(vi) The last sentence of § 63.997(e)(1)(i) (performance test procedures) of subpart SS (general procedures for continuous unit operations): "Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test."

(vii) Section 63.998(b)(2)(iii) (excluded data) of subpart SS: "(iii) Startups, shutdowns, and malfunctions, if the owner or operator operates the source during such periods in accordance with § 63.1111(a) and maintains the records specified in paragraph (d)(3) of this section."

(viii) The phrase "other than periods of startups, shutdowns, and malfunctions" from § 63.998(b)(5)(i)(A) (alternative recordkeeping) of subpart SS.

(ix) The phrase "other than a start-up, shutdown, or malfunction" from § 63.998(b)(5)(i)(B)(3) (alternate recordkeeping) of subpart SS.

(x) The phrase "other than periods of startups, shutdowns, and malfunctions" from § 63.998(b)(5)(i)(C) (alternate recordkeeping) of subpart SS.

(xi) The phrase "other than a start-up, shutdown, or malfunction" from § 63.998(b)(5)(ii)(C) (alternate recordkeeping) of subpart SS.

(xii) The phrase "except as provided in paragraphs (b)(6)(i)(A) and (B) of this section" from § 63.998(b)(6)(i) (alternative recordkeeping) of subpart SS.

(xiii) The second sentence of § 63.998(b)(6)(ii) (alternative recordkeeping) of subpart SS. "If a source has developed a startup, shutdown and malfunction plan, and a monitored parameter is outside its

established range or monitoring data are not collected during periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.1111(a)) or during periods of nonoperation of the process unit or portion thereof (resulting in cessation of the emissions to which monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count as the excused excursion for determining compliance."

(xiv) Section 63.998(c)(1)(ii)(D) through (G) (nonflare control and recovery device regulated source monitoring records) of subpart SS.

(xv) Section 63.998(d)(3) (regulated source and control equipment start-up, shutdown and malfunction records) of subpart SS.

(xvi) The phrase "may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or" from § 63.1005(e)(4)(i) (leak repair records written procedures) of subpart TT.

(xvii) The phrase "(except periods of startup, shutdown, or malfunction)" from § 63.1007(e)(1)(ii)(A) (dual mechanical seal system special provisions for pumps) of subpart TT.

(xviii) The phrase "(except periods of startup, shutdown, or malfunction)" from § 63.1009(e)(1)(i)(A) (dual mechanical seal system special provisions for agitators) of subpart TT.

(xix) The phrase "(except periods of startup, shutdown, or malfunction)" from § 63.1012(b)(1) (compressor seal system standard) of subpart TT.

(xx) The phrase "may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or" from § 63.1024(f)(4)(i) (leak repair records written procedures) of subpart UU.

(xxi) The phrase "(except periods of startup, shutdown, or malfunction)" from § 63.1026(e)(1)(ii)(A) (dual mechanical seal system special provisions for pumps) of subpart UU.

(xxii) The phrase "(except periods of startup, shutdown, or malfunction)" from § 63.1028(e)(1)(i)(A) (dual mechanical seal system special provisions for agitators of subpart UU.

(xxiii) The phrase "(except periods of startup, shutdown, or malfunction)" from § 63.1031(b)(1) (compressor seal system standard) of subpart UU.

TABLE 9 TO § 63.1103(g)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
* *	* *	* * *
(f) A new cyanide chemicals manufacturing process unit that generates process wastewater.	(1) The process wastewater is from HCN purification, ammonia purification, or flare blowdown.	(i) Achieve a combined removal and control of HAP from wastewater of 93 weight-percent; and (ii) Beginning no later than the compliance dates specified in § 63.1102(d), waste management units upstream of an open or closed biological treatment process shall meet the requirements of § 63.133 through § 63.137 of subpart G of this part, as applicable.
(g) An existing cyanide chemicals manufacturing process unit that generates process wastewater.	(1) The process wastewater stream is from HCN purification, ammonia purification, or flare blowdown; and. (2) the total annual average concentration of Table 9 of 40 CFR part 63, subpart G compounds (Table 9 compounds) and free cyanide measured according to § 63.1103(g)(5)(vi) from each process wastewater stream are greater or equal to 10,000 ppmw at any flow rate, or the total annual average concentration of Table 9 compounds and free cyanide from each process wastewater stream are greater or equal to 1,000 ppmw, and the annual average flow rate is greater or equal to 10 liters per minute, according to the procedures in § 63.144(a).	(i) Beginning no later than the compliance dates specified in § 63.1102(d), comply with the requirements of § 63.138(a)(1). (ii) For compliance options and calculations requiring an Fr value under § 63.138(a)(1); owners and operators may use a value of 0.93 for free cyanide.
(h) A cyanide chemicals manufacturing process unit that generates maintenance wastewater.	(1) The maintenance wastewater contains hydrogen cyanide or acetonitrile.	(i) Comply with the requirements of § 63.1106(b).
(i) An item of equipment listed in § 63.1106(c)(1) that transports or contains wastewater liquid streams from a cyanide chemicals manufacturing process unit.	(1) The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	(i) Comply with the requirements in Table 35 of subpart G of this part.
(j) Equipment, as defined under § 63.1101.	(1) The equipment contains or contacts hydrogen cyanide and operates equal to or greater than 300 hours per year.	(i) Comply with either subpart TT or UU of this part, and paragraph (g)(5) of this section, with the exception that open-ended lines that contain or contact hydrogen cyanide are exempt from any requirements to install a cap, plug, blind flange, or second valve to be capped.

■ 6. Section 63.1104 is amended by revising paragraph (c) to read as follows:

§ 63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.

* * * * *

(c) *Applicability assessment requirements.* The TOC or organic HAP concentrations, process vent volumetric flow rates, process vent heating values,

process vent TOC or organic HAP emission rates, halogenated process vent determinations, process vent TRE index values, and engineering assessments for process vent control applicability assessment requirements are to be determined during maximum representative operating conditions for the process, except as provided in paragraph (d) of this section, or unless the Administrator specifies or approves alternate operating conditions. For acrylic and modacrylic fiber production affected sources, carbon black production affected sources, cyanide chemicals manufacturing affected sources, polycarbonate production affected sources, and ethylene production affected sources, operations during periods of malfunction shall not constitute representative conditions for the purpose of an applicability test. For all other affected sources, operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of an applicability test.

* * * * *

■ 7. Section 63.1108 is amended by:
■ a. Revising paragraphs (a) introductory text and paragraph (a)(4)(i).
■ b. Revising paragraphs (b)(1)(ii), (b)(2) introductory text, and paragraphs (b)(4)(ii)(A) and (B).

The revisions read as follows:

§ 63.1108 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* The requirements of paragraphs (a)(1), (2), and (5) of this section apply to all affected sources except acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c) for ethylene production affected sources, specified in § 63.1102(d) for cyanide chemicals manufacturing affected sources, and specified in § 63.1102(e) for carbon black production affected sources. The requirements of paragraph (a)(4) of this section apply only to acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources and beginning no later than the compliance dates specified in § 63.1102(c) for ethylene production affected sources, specified in § 63.1102(d) for cyanide chemicals manufacturing affected sources, and specified in § 63.1102(e) for carbon black production affected sources. The requirements of paragraphs (a)(3), (6), and (7) of this section apply to all affected sources.

* * * * *

(4) * * *

(i) For acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c) for ethylene production affected sources, specified in § 63.1102(d) for cyanide chemicals manufacturing, and specified in § 63.1102(e) for carbon black production affected sources, the emission limitations and established parameter ranges of this part shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. Equipment leak requirements shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which the equipment leak requirements apply.

* * * * *

(b) * * *

(1) * * *

(ii) Excused excursions are not allowed for acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c) for ethylene production affected sources, specified in § 63.1102(d) for cyanide chemicals manufacturing affected sources, and specified in § 63.1102(e) for carbon black production affected sources. For all other affected sources, including ethylene production, cyanide chemicals manufacturing, and carbon black production affected sources, prior to the compliance dates specified in § 63.1102(c) through (e), an excused excursion, as described in § 63.998(b)(6)(ii), is not a violation.

(2)*Parameter monitoring: Excursions.* An excursion is not a violation in cases where continuous monitoring is required and the excursion does not count toward the number of excused excursions (as described in § 63.998(b)(6)(ii)), if the conditions of paragraph (b)(2)(i) or (ii) of this section are met, except that the conditions of paragraph (b)(2)(i) of this section do not apply for acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c) for ethylene production affected sources, specified in § 63.1102(d) for cyanide chemicals manufacturing affected sources, and specified in § 63.1102(e) for carbon black production affected sources. Nothing in this paragraph shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart or a subpart referenced by this subpart.

* * * * *

(4) * * *

(ii) * * *

(A) The Administrator may determine compliance with emission limitations of this subpart based on, but not limited to, the results of performance tests conducted according to the procedures specified in § 63.997, unless otherwise specified in this subpart or a subpart referenced by this subpart. For carbon black production affected sources, beginning no later than the compliance dates specified in § 63.1102(e), in addition to initial performance test requirements to demonstrate compliance with process vent requirements, subsequent performance tests are required no later than 60 months after the preceding performance test in accordance with the procedures specified in § 63.997(e) for initial performance tests.

(B) For acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c) for ethylene production affected sources, specified in § 63.1102(d) for cyanide chemicals manufacturing affected sources, and specified in § 63.1102(e) for carbon black production affected sources, performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 8. Section 63.1110 is amended by:
■ a. Revising paragraph (a) introductory text.

■ b. Revising paragraphs (a)(7), (a)(10)(i) introductory text, (a)(10)(i)(A) through (C), and (a)(10)(ii).
■ c. Revising paragraph (d)(2).
The revisions read as follows:

§ 63.1110 Reporting requirements.

(a) *Required reports.* Each owner or operator of an affected source subject to this subpart shall submit the reports listed in paragraphs (a)(1) through (8) of this section, as applicable. Each owner or operator of an acrylic and modacrylic fiber production affected source or polycarbonate production affected source subject to this subpart shall also submit the reports listed in paragraph (a)(9) of this section in addition to the reports listed in paragraphs (a)(1) through (8) of this section, as applicable. Beginning no later than the compliance dates specified in § 63.1102(c) for ethylene production affected sources, specified in § 63.1102(d) for cyanide chemicals manufacturing affected sources, and specified in § 63.1102(e) for carbon black production affected sources, each owner or operator of an ethylene production affected source, cyanide chemicals manufacturing affected source, and carbon black production affected source subject to this subpart shall also submit the reports listed in paragraph (a)(10) of this section in addition to the reports listed in paragraphs (a)(1) through (8) of this section, as applicable.

* * * * *

(7) Startup, Shutdown, and Malfunction Reports described in § 63.1111 (except for acrylic and modacrylic fiber production affected sources, carbon black production affected sources, cyanide chemicals manufacturing affected sources, ethylene production affected sources, and polycarbonate production affected sources).

* * * * *

(10) * * *

(i) Beginning no later than the compliance dates specified in § 63.1102(c) for ethylene production affected sources, specified in § 63.1102(d) for cyanide chemicals manufacturing affected sources, and specified in § 63.1102(e) for carbon black production affected sources, within 60 days after the date of completing each performance test required by this subpart or applicability assessment required by § 63.1103(f)(3)(iv), the owner or operator must submit the results of the performance test or applicability assessment following the procedures specified in paragraphs (a)(10)(i)(A) through (C) of this section.

(A) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test or applicability assessment to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(B) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test or applicability assessment must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(C) *CBI.* Do not use CEDRI to submit information you claim as CBI. Anything submitted to CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if an owner or operator wishes to assert a CBI claim for some of the information submitted under paragraph (a)(10)(i)(A) or (B) of this section, then the owner or operator must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described in paragraphs (a)(10)(i)(A) and (B) of this section. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(ii) Beginning no later than the compliance dates specified in § 63.1102(c) through (e), the owner or operator must submit all subsequent Notification of Compliance Status reports required under paragraph (a)(4) of this section in PDF format to the EPA via CEDRI, which can be accessed through EPA's CDX (*https://cdx.epa.gov/*). All subsequent Periodic Reports required under paragraph (a)(5) of this section must be submitted to the EPA via CEDRI using the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart beginning no later than the compliance dates specified in § 63.1102(c) through (e) or once the report template has been available on the CEDRI website for 1 year, whichever date is later. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim, then submit a complete report, including information claimed to be CBI, to the EPA. Periodic Reports must be generated using the appropriate template on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, MD C404–02, 4930 Old Page Road, Durham NC 27703 to the attention of the applicable person specified in paragraphs (A) through (C) of this section. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(A) Ethylene Production Sector Lead
(B) Cyanide Chemicals Manufacturing Sector Lead
(C) Carbon Black Production Sector Lead

* * * * *

(d) * * *

(2) *Due date.*The owner or operator shall submit the Notification of Compliance Status for each affected source 240 days after the compliance date specified for the affected source under this subpart, or 60 days after completion of the initial performance

test or initial compliance assessment/ subsequent required performance test or subsequent compliance assessment, whichever is earlier. Notification of Compliance Status reports may be combined for multiple affected sources as long as the due date requirements for all sources covered in the combined report are met.

* * * * *

■ 9. Section 63.1111 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (c) introductory text to read as follows:

§ 63.1111 Startup, shutdown, and malfunction.

(a) *Startup, shutdown, and malfunction plan.* Before May 18, 2022, the requirements of this paragraph (a) apply to all affected sources except for acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after May 18, 2022, the requirements of this paragraph (a) apply to all affected sources except for acrylic and modacrylic fiber production affected sources, carbon black production affected sources, cyanide chemicals manufacturing affected sources, and polycarbonate production affected sources. On and after July 6, 2023, the requirements of this paragraph (a) apply to all affected sources except for acrylic and modacrylic fiber production affected sources, carbon black production affected sources, cyanide chemicals manufacturing affected sources, ethylene production affected sources, and polycarbonate production affected sources.

* * * * *

(b) *Startup, shutdown, and malfunction reporting requirements.* Before May 18, 2022, the requirements of this paragraph (b) apply to all affected sources except for acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after May 18, 2022, the requirements of this paragraph (b) apply to all affected sources except for acrylic and modacrylic fiber production affected sources, carbon black production affected sources, cyanide chemicals manufacturing affected sources, and polycarbonate production affected sources. On and after July 6, 2023, the requirements of this paragraph (b) apply to all affected sources except for acrylic and modacrylic fiber production affected sources, carbon black production affected sources, cyanide chemicals manufacturing affected sources, ethylene production affected sources, and polycarbonate production affected sources.

* * * * *

(c) *Malfunction recordkeeping and reporting.* Before May 18, 2022, the requirements of this paragraph (c) apply only to acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after May 18, 2022, the requirements of this paragraph (c) apply only to acrylic and modacrylic fiber production affected sources, carbon black production affected sources, cyanide chemicals manufacturing affected sources, and polycarbonate production affected sources. On and after July 6, 2023, the requirements of this paragraph (c) apply only to acrylic and modacrylic fiber production affected sources, carbon black production affected sources, cyanide chemicals manufacturing affected sources, ethylene production affected sources, and polycarbonate production affected sources.

* * * * *

[FR Doc. 2021–24204 Filed 11–18–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0572; FRL–7526–03–OAR]

RIN 2060–AU57

National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations Residual Risk and Technology Review and Flexible Polyurethane Foam Production and Fabrication Area Source Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Flexible Polyurethane Foam Fabrication Operations source category regulated under national emission standards for hazardous air pollutants (NESHAP). This action also finalizes the NESHAP technology review for two area source categories, Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication, which are combined in one subpart. In this action, the EPA is finalizing the proposed revisions to the Flexible Polyurethane Foam Fabrication Operations major source NESHAP, which include adding a numeric emission limit for existing flame lamination units, removing exemptions for periods of startup, shutdown, and malfunction (SSM) and specifying that the emissions standards always apply, requiring periodic performance tests, and requiring electronic reporting of performance test results and compliance reports. In this action, the EPA is also finalizing the proposed revisions to the NESHAP for Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area sources to remove references to the provisions of another NESHAP that has been revised and no longer contains the referenced provisions. Implementation of these final rules is not expected to result in significant changes to the hazardous air pollutant (HAP) emissions from affected facilities in these three source categories or to human health impacts or environmental impacts associated with those emissions. However, this action will result in improved monitoring, compliance, and implementation of the existing standards and codifies existing industry practices to prevent backsliding.

DATES: This final rule is effective on November 18, 2021.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2020–0572. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov/.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. There is a temporary suspension of mail delivery to the EPA, and no hand deliveries are currently accepted. For further information and updates on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Lisa Sutton, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3450; fax number: (919) 541–4991; and email address: *sutton.lisa@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. The Agency uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting
CFR Code of Federal Regulations
CRA Congressional Review Act
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
GACT generally available control technology
HAP hazardous air pollutants(s)
HCl hydrochloric acid
HQ hazard quotient
HQREL hazard quotient reference exposure level
ICR Information Collection Request
km kilometer
MACT maximum achievable control technology
MIR maximum individual risk
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
RATA relative accuracy test audit
REL reference exposure level
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RIN Regulatory Information Number
RTR risk and technology review
SSM startup, shutdown, and malfunction
UMRA Unfunded Mandates Reform Act
TOSHI target organ-specific hazard index
tpy tons per year
UPL upper prediction limit
XML extensible markup language

Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA.

Background information. On January 11, 2021, the EPA proposed revisions to the major source Flexible Polyurethane Foam Fabrication Operations NESHAP based on our RTR and to the NESHAP for Flexible Polyurethane Foam Production and Fabrication area sources based on our technology review. In this action, we are finalizing decisions and revisions for the rules. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in *Summary of Public Comments and Responses on the Proposed Rule for the Major Source Flexible Polyurethane Foam Fabrication NESHAP and the NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources (86 FR 1868, January 11, 2021),* Docket ID No. EPA–HQ–OAR–2020–0572. A "track changes" version of the regulatory language that incorporates

the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What are the source categories and how do the current NESHAPs regulate their HAP emissions?
C. What changes did we propose for flexible polyurethane foam fabrication operations for major sources and flexible polyurethane foam production and fabrication area sources in our January 11, 2021, proposal?
III. What is included in these final rules?
A. What are the final rule amendments based on the risk review for the major source Flexible Polyurethane Foam Fabrication Operations source category?
B. What are the final rule amendments based on the technology reviews for the major source Flexible Polyurethane Foam Fabrication Operations source category and the Flexible Polyurethane Foam Production and Fabrication area source categories?
C. What are the final rule amendments pursuant to section 112(d)(2) and (3) for the major source Flexible Polyurethane Foam Fabrication Operations source category?
D. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?
E. What other changes have been made to the NESHAP?
F. What are the effective and compliance dates of the standards?
IV. What is the rationale for our final decisions and amendments for the major source Flexible Polyurethane Foam Fabrication Operations source category and the Flexible Polyurethane Foam Production and Fabrication area source categories?
A. Residual Risk Review for the Major Source Flexible Polyurethane Foam Fabrication Operations Source Category
B. Technology Review for the Major Source Flexible Polyurethane Foam Fabrication Operations Source Category and the Flexible Polyurethane Foam Production and Fabrication Area Source Categories
C. Actions Taken Pursuant to CAA Sections 112(d)(2) and 112(d)(3)
D. Removal of the SSM Exemptions
E. Electronic Reporting
V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
A. What are the affected facilities?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
F. What analysis of environmental justice did we conduct?
G. What analysis of children's environmental health did we conduct?
VI. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

The source categories that are the subject of this final action are the Flexible Polyurethane Foam Fabrication Operations major source category regulated under 40 CFR part 63, subpart MMMMM, and the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories, regulated under 40 CFR part 63, subpart OOOOOO. The North American Industry Classification System (NAICS) code for fabricators of flexible polyurethane foam is 326150, ''Urethane and Other Foam Product (except Polystyrene) Manufacturing.'' This list of categories and NAICS codes is not intended to be exhaustive but rather provides a guide for readers regarding the entities that this final action is likely to affect. The final standards will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this action.

The Flexible Polyurethane Foam Fabrication Operations major source category was added to the EPA's HAP source category list in 1996. (61 FR 28197, June 4, 1996.) The NESHAP for that major source category, 40 CFR part 63, subpart MMMMM, was promulgated in 2003. (68 FR 18062, April 14, 2003.) The Flexible Polyurethane Foam Fabrication area source category was added to the EPA's HAP source category list in 1999. (64 FR 38706, July 19, 1999.) The Flexible Polyurethane Foam Production area source category was added to the EPA's HAP source category list in 2002. (67 FR 70427, November 22, 2002.) The Flexible Polyurethane Foam Production major source category, Part 63, subpart III, was included on the EPA's initial HAP source category list. (57 FR 31576, July 16, 1992.) The maximum achievable control technology (MACT) standards for subpart III were initially promulgated in 1998. (63 FR 53980, October 7, 1998.) The EPA established one area source NESHAP at 40 CFR part 63, subpart OOOOOO, that applies to the two area source categories due to the similarity of their operations and because they are often collocated. (72 FR 38864, July 16, 2007.)

The Flexible Polyurethane Foam Fabrication Operations major source category and the Flexible Polyurethane Foam Fabrication area source category include facilities engaged in cutting, gluing, and/or laminating pieces of flexible polyurethane foam. These source categories include fabrication operations that are collocated with foam production plants as well as those located offsite from foam production plants. Emissions from foam fabrication primarily result from the lamination of polyurethane foam to adhere foam to other substrates and from the use of HAP-based adhesives in the gluing process. The Flexible Polyurethane Foam Production area source category includes facilities that manufacture foam made from a polymer containing a plurality of carbamate linkages in the chain backbone (polyurethane). Polyurethane is commonly made by reacting a polyisocyanate with an organic polyhydroxyl material in the presence of water. Application of blowing agents, catalysts, surfactants, and fillers transform the polyurethane into a foam with specialized properties.

This final action addresses the major source NESHAP that applies to the Flexible Polyurethane Foam Fabrication Operations major source category and addresses the area source NESHAP that applies to the Flexible Polyurethane Foam Production area source category and the Flexible Polyurethane Foam Fabrication area source category. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the

EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 18, 2022. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

In the second stage of the NESHAP regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, which is applicable to both MACT and GACT standards, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, which is limited to the MACT standards, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see the proposal preamble (86 FR 1868, January 11, 2021) and the memorandum, *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* December 14, 2017, available in the docket for this action (Document ID EPA–HQ–OAR–2020–0572–0016).

B. What are the source categories and how do the current NESHAPs regulate their HAP emissions?

The EPA promulgated MACT standards for major source Flexible Polyurethane Foam Fabrication

[1] The court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

Operations facilities in 2003 under 40 CFR part 63, subpart MMMMM. The standards apply to major sources of HAP at existing and new flexible polyurethane foam fabrication facilities. Because of their potential to generate HAP emissions, the processing units of interest at foam fabrication facilities are loop slitters and flame lamination units. The 2003 MACT standards for Flexible Polyurethane Foam Fabrication Operations require HAP emissions reductions and control for new flame lamination units and prohibit use of HAP-based adhesives in new and existing loop slitting operations. For new flame lamination units, a 90 percent reduction in HAP emissions is required. For existing flame lamination units, the 2003 rule had no MACT emission limits. For new and existing loop slitters, the 2003 MACT standards prohibited use of any adhesive containing 5 percent or more (by weight) of total HAP. The EPA estimates that there are currently three facilities subject to subpart MMMMM.

In 2007, the EPA promulgated GACT standards for the Flexible Polyurethane Foam Production area source category and the Flexible Polyurethane Foam Fabrication area source category together under 40 CFR part 63, subpart OOOOOO. The GACT standards required that methylene chloride be significantly reduced or eliminated from slabstock foam production, molded foam release agents, equipment cleaning, rebond foam mold release agents, and foam fabrication adhesive use. Although both area source categories were listed for regulation due to emissions of the urban HAP methylene chloride, the EPA finds that methylene chloride is no longer used within either source category. The Flexible Polyurethane Foam Production area source category includes facilities that manufacture foam made from polyurethanes, which are in the class of compounds called "reaction polymers." There are three types of polyurethane foam production facilities: Slabstock flexible polyurethane foam (slabstock foam), molded flexible polyurethane foam (molded foam), and rebond foam. Slabstock foam is produced in large continuous buns that are then cut in the desired size and shape. Molded foam is produced by "shooting" the foam mixture into a mold of the desired shape and size. Rebond foam is made from scrap foam that is converted into a material primarily used for carpet underlay. The EPA estimates that there are 32 facilities currently subject to the area source standards, of which approximately 20 are believed to be owned by small businesses.

For both the Flexible Polyurethane Foam Operations major source category and the Flexible Polyurethane Foam Fabrication area source category, operations involve cutting, bonding, and/or laminating pieces of flexible polyurethane foam together or to other substrates. Typical bonding techniques include gluing, taping, and flame lamination.

Both the Flexible Polyurethane Foam Production and Flexible Polyurethane Fabrication Operations area source categories were listed for regulation due to emissions of the urban HAP methylene chloride. At the time of the initial area source standards promulgation, methylene chloride was the only urban HAP used at foam production and foam fabrication facilities. Now, however, there are no known urban HAP used at foam production and foam fabrication facilities. In the past, slabstock foam production facilities sometimes used methylene chloride as an auxiliary blowing agent to control the density and other properties of the foam as it expanded during the pouring process. Methylene chloride was also sometimes used as an equipment cleaner, in particular for mix heads. A small number of molded and rebond foam facilities used methylene chloride in mold release agents, and some molded foam facilities used it as a mixhead cleaner. Foam fabricators used methylene chloride-based adhesives to adhere pieces of foam to one another. Flame laminators have never used methylene chloride and, as such, are not regulated by the area source standards.

C. What changes did we propose for flexible polyurethane foam fabrication operations for major sources and flexible polyurethane foam production and fabrication area sources in our January 11, 2021, proposal?

On January 11, 2021, the EPA published a proposed rule in the **Federal Register** (86 FR 1868) for the Flexible Polyurethane Foam Fabrication Operations NESHAP for major sources, 40 CFR part 63, subpart MMMMM, and the NESHAP for Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication Area Sources, 40 CFR part 63, subpart OOOOOO, that took into consideration the RTR analyses for major sources and the technology review for area sources.

For the major source Flexible Polyurethane Foam Fabrication Operations NESHAP, we proposed that the health risks due to HAP emissions from the source category are acceptable, that the NESHAP provides an ample margin of safety to protect public health and that additional standards are not necessary to prevent an adverse environmental effect. To address emissions sources that do not have an emissions limit in the existing NESHAP, we proposed a numeric limit for HCl emissions from existing flame laminators under CAA section 112(d)(2) and (3). As a result of the technology review, we proposed to lower the amount of HAP that could be contained in an adhesive for that material to be considered a HAP-based adhesive. For this change, the definition of "HAP-based adhesive" was revised from adhesive with a HAP weight of 5 percent or more to adhesive with a HAP weight of 1 percent or more. In addition, we proposed to amend the NESHAP to list specific carcinogenic HAP that must be included in the adhesive HAP content calculation, rather than including references to other rules where these HAP were previously but are no longer listed. We also proposed revisions to the SSM provisions of this NESHAP to ensure it is consistent with the court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008). Finally, we proposed revisions to the recordkeeping and reporting requirements of the NESHAP to require the use of electronic reporting of performance test reports and semiannual reports and to require initial and periodic performance testing (every 5 years) for flame lamination units.

For the NESHAP for Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication Area Sources, we proposed that no revisions to the NESHAP are necessary based on our technology review. Where subpart OOOOOO references the NESHAP for flexible polyurethane foam production major sources (40 CFR part 63, subpart III), we proposed to make conforming changes to reflect amendments made to subpart III. For additional information regarding the proposed rule, see the January 11, 2021, proposal (86 FR 1868).

III. What is included in these final rules?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Flexible Polyurethane Foam Fabrication Operations major source category and the CAA technology review provisions for the Flexible Polyurethane Foam Production and Fabrication area source categories. This action amends the Flexible Polyurethane Foam Fabrication Operations major source NESHAP and the NESHAP for the Flexible

Polyurethane Foam Production and Fabrication area source categories based on those determinations. This action also finalizes other changes to the Flexible Polyurethane Foam Fabrication Operations major source NESHAP, including the proposed addition of a numeric emissions limit for existing flame lamination units under the authority of CAA section 112(d)(2) and (3), revisions to the SSM requirements, addition of electronic reporting requirements, and editorial corrections. For the Flexible Polyurethane Foam Production and Fabrication area sources NESHAP, this action finalizes the proposed revisions to the rule to eliminate references to another NESHAP (Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production) that has been revised and no longer contains the referenced provisions.

A. What are the final rule amendments based on the risk review for the major source Flexible Polyurethane Foam Fabrication Operations source category?

The EPA proposed no changes to the Flexible Polyurethane Foam Fabrication Operations major source NESHAP based on the risk review conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks from the Flexible Polyurethane Foam Fabrication Operations major source category are acceptable, the standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. The EPA received no new data or other information during the public comment period that causes us to change that proposed determination. Therefore, we are not making any revisions to the existing standards under CAA section 112(f), and we are readopting the existing standards. Further information regarding these decisions is provided in section IV of this preamble.

B. What are the final rule amendments based on the technology reviews for the major source Flexible Polyurethane Foam Fabrication Operations source category and the Flexible Polyurethane Foam Production and Fabrication area source categories?

We determined that there are developments in practices, processes, and control technologies that warrant revisions to the MACT standards for the major source Flexible Polyurethane Foam Fabrication Operations source category. Therefore, to satisfy the requirements of CAA section 112(d)(6), consistent with the proposal, we are revising the MACT standards to include a revised definition of HAP-based adhesive. The analyses and rationale for these decisions are described in section IV.B of this preamble. As part of the technology review, we also identified a regulatory gap (a previously unregulated process) and are establishing a new standard to fill that gap as described in section III.C of this preamble.

C. What are the final rule amendments pursuant to section 112(d)(2) and (3) for the major source Flexible Polyurethane Foam Fabrication Operations source category?

During the technology review, we identified existing flame laminators as an unregulated process in the major source category. For major sources, the EPA is required to set technology-based standards for sources of HAP emissions that reflect the maximum reductions of HAP emissions achievable (after considering cost, energy requirements, and non-air health and environmental impacts). However, these standards must be no less stringent than the average emission performance of the best performing five sources for a source category with fewer than 30 sources, as is the case here. Therefore, to satisfy the requirements of CAA section 112(d)(2) and (3), consistent with the proposal, we are revising the major source Flexible Polyurethane Foam Fabrication Operations NESHAP to include a MACT standard for existing source flame laminators. The analyses and rationale for this standard are described in section IV.C of this preamble.

D. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?

We are finalizing the proposed amendments to the major source Flexible Polyurethane Foam Fabrication Operations NESHAP to remove and revise provisions related to SSM. In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. Previously, the 2003 Flexible Polyurethane Foam Fabrication Operations NESHAP included exemptions for standards during SSM. As explained in section IV.E of the January 2021 proposal preamble (86 FR 1868 at 1885, January 11, 2021), the EPA proposed that the Flexible Polyurethane Foam Fabrication Operations NESHAP would require that the standards always apply, consistent with the court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008).

Table 7 to subpart MMMMM of 40 CFR part 63 (General Provisions applicability table) is being revised to change the specification of the requirements that apply during periods of SSM. We eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemptions. The EPA also made other harmonizing changes to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemptions. We proposed to remove the SSM exemptions such that the standards always apply because we determined that facilities in this source category can always meet the applicable emission standards in the NESHAP, including periods of startup and shutdown, without additional standards or work practices. We received no information to cause us to change our conclusion; therefore, the EPA is finalizing the removal of the SSM exemptions and is requiring that the standards always apply. The legal rationale and detailed changes for startup and shutdown periods that we are finalizing here are set forth in the January 11, 2021, preamble to the proposed rule. See 86 FR 1868 at 1885 and 1886.

Further, as proposed, the EPA is not including standards for malfunctions. As discussed in the proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. See 86 FR 1868 at 1885 and 1886.

E. What other changes have been made to the NESHAP?

The EPA is requiring owners or operators of flexible polyurethane foam fabrication operations major sources to submit electronic copies of certain required performance test reports, performance evaluation reports, and semiannual reports through the EPA's Central Data Exchange using the Compliance and Emissions Data Reporting Interface (CEDRI). The final rule requires that performance test results and performance evaluation results be submitted using the Electronic Reporting Tool. For

semiannual reports, the final rule requires that owners or operators use the appropriate spreadsheet template to submit information to CEDRI. The final version of the templates for these reports are located on the CEDRI website.[2]

The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. For a more thorough discussion of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action (Document ID EPA–HQ–OAR–2020–0572–0012).

F. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on November 18, 2021.

Affected sources that commenced construction or reconstruction on or before January 11, 2021, must comply with all amendments, except for the electronic format for submitting compliance reports, no later than 180 days after the effective date of the final rule, or upon startup, whichever is later. Affected sources that commence construction or reconstruction after January 11, 2021, must comply with all requirements of the subpart, including the amendments being finalized, except for the electronic format for submitting compliance reports, no later than the effective date of the final rule or upon startup, whichever is later. All affected sources must comply with the electronic compliance report requirements no later than either 180 days after the effective date of the final rule or once the report template for this subpart has been available on the CEDRI website for 1 year, whichever date is later. All affected facilities must continue to meet the current requirements of 40 CFR part 63, subpart MMMMM, until the applicable compliance date of the amended rule.

This final action is not a "major rule" as defined by 5 U.S.C. 804(2), so the effective date of the final rule is the promulgation date as specified in CAA section 112(d)(10). For existing sources, we are finalizing four changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart MMMMM. As discussed elsewhere in this preamble, we are adding a numeric limit for HCl emissions from existing flame laminators. We are also adding a requirement that notifications, performance test results, and compliance reports be submitted electronically. Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a period of a minimum of 90 days, and, more typically, 180 days, is generally necessary to accomplish these revisions. For the final SSM revisions, we recognize that there are no facilities that are currently using the SSM provisions for new flame laminators, since there have not been any new sources since the standard was promulgated. As a result, we understand that no additional time is needed for compliance with the revised SSM provisions. Prior to proposal, we consulted with the regulated industry regarding the proposed limits for existing flame laminators and the requirement to conduct performance testing to demonstrate initial compliance within 180 days of the publication of the final rule and no less than every 5 years thereafter, to better understand the likely implications of the proposed revisions. Representatives of the company that owns the two impacted facilities indicated that performance testing could be done within the 180-day time frame for compliance. For the flame lamination unit existing sources that would be subject to the newly established emission limit, we understand that the facilities are able to meet the limit without add-on controls. However, we do recognize that facilities need time to conduct performance tests and demonstrate compliance with the emission limit.

To reduce the complication that different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose, considering our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA is finalizing a period of 180 days after the regulation's effective date within which all affected sources that commenced construction or reconstruction on or before January 11, 2021, must be in compliance with the regulation's revised requirements, with the exception of the electronic reporting requirements.

IV. What is the rationale for our final decisions and amendments for the major source Flexible Polyurethane Foam Fabrication Operations source category and the Flexible Polyurethane Foam Production and Fabrication area source categories?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket.

A. Residual Risk Review for the Major Source Flexible Polyurethane Foam Fabrication Operations Source Category

1. What did we propose pursuant to CAA section 112(f) for the major source Flexible Polyurethane Foam Fabrication Operations source category?

We proposed that the health risks due to emissions of HAP from the major source Flexible Polyurethane Foam Fabrication Operations source category are acceptable and that the NESHAP provides an ample margin of safety to protect public health and that no additional standards are necessary to prevent an adverse environmental effect. Table 1 of this preamble provides a summary of the results of the inhalation risk assessment for the source category. More detailed information on the risk assessment can be found in the *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Source Category in Support of the 2021*

[2] See *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

Risk and Technology Review Final Rule in the docket for this action.

TABLE 1—FLEXIBLE POLYURETHANE FOAM FABRICATION SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [3]		Maximum screening acute noncancer HQ [4]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	0	0	0	0	0	0	0.002	0.002	HQREL = <1
Whole Facility	0.1		0		0.00001		0.2		

The results of the inhalation risk assessment using actual emissions data, as shown in Table 1 of this preamble, indicate that no carcinogens are emitted by this category. Therefore, the cancer MIR based on actual emissions (lifetime) is zero and the total estimated annual cancer incidence (national) from these facilities based on actual emission levels is zero excess cancer cases per year. The maximum chronic noncancer target organ-specific hazard index (TOSHI) value based on actual emissions is 0.002 driven by HCl. The maximum screening acute noncancer HQREL value (off-facility site) is 0.003 driven by HCl. No persistent and bio-accumulative HAP (PB–HAP) are emitted from the Flexible Polyurethane Foam Fabrication Operations source category, therefore, a multipathway assessment was not conducted. A screening-level evaluation of the potential adverse environmental risk associated with emissions of HCl indicated that no ecological benchmarks were exceeded.

As shown in Table 1, the maximum facility-wide cancer MIR is 0.1-in-1 million, driven by 2,4/2,6-toluene diisocyanate mixture (TDI) emissions from a vertical non-category point source and a non-category fugitive point source. The total estimated cancer incidence from the whole facility is 0.00001 excess cancer cases per year, or one excess case in every 100,000 years. The maximum facility-wide TOSHI for the source category is estimated to be 0.2, mainly driven by 2,4/2,6-TDI emissions from a vertical non-category point source and a non-category fugitive point source. Considering all the health risk information and factors discussed above, the EPA proposed that the risks are acceptable.

No carcinogens are emitted by the Flexible Polyurethane Foam Fabrication Operations source category. Therefore, there are no individuals in the exposed population with lifetime cancer risks above 1-in-1 million as a result of actual or allowable emissions from this category. In addition, the maximum chronic noncancer TOSHI value based on actual and allowable emissions is well below 1 (0.002 and 0.2, respectively) and the maximum screening acute noncancer HQ value (off-facility site) is also well below 1 (0.003). Therefore, the EPA proposed that additional emissions controls for flexible polyurethane foam fabrication operations facilities are not necessary to provide an ample margin of safety to protect public health. In addition, based on our screening-level evaluation of the potential for adverse environmental effects, we concluded that more stringent standards were not necessary to prevent an adverse environmental effect. Considering all analyses, we did not propose any changes to the NESHAP based on the risk review. For more details regarding the risk review, see the proposal preamble (86 FR 1868 at 1876).

2. How did the risk review change for the major source Flexible Polyurethane Foam Fabrication Operations source category?

The EPA has not made any changes to either the risk assessments or our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects for the major source Flexible Polyurethane Foam Fabrication Operations source category since the proposal was published on January 11, 2021 (86 FR 1868). We are finalizing the risk review as proposed with no changes.

3. What key comments did we receive on the risk review, and what are our responses?

We received one comment in support of and one comment against the proposed residual risk review and our determination is that no revisions are warranted under CAA section 112(f)(2) for the source category. The comment in support of the determination noted that the residual risk review was reasonable and supported by the available data. The comment opposed to the determination was related to a concern that the EPA may not have included all HAP emitted from the source category, particularly from flame retardants. After review of these comments, and with no information from which to conclude that any HAP emissions are missing from the data or analyses performed, we determined that no changes are needed to the risk assessment. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses on the Proposed Rule for the Major Source Flexible Polyurethane Foam Fabrication NESHAP and the NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources,* available in the docket for this rulemaking.

4. What is the rationale for our final approach and final decisions for the risk review?

As noted in our proposal, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand'' (see 54 FR 38045, September 14, 1989). We weigh all health risk factors in our risk acceptability determination, including the cancer MIR, cancer incidence, the maximum chronic noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties.

In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health

[3] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.

[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.*

For the Flexible Polyurethane Foam Fabrication Operations major source category, the risk analysis indicates that no carcinogens are emitted by the source category, and therefore, there is no cancer risk. In addition, the maximum chronic noncancer TOSHI value based on actual and allowable emissions is well below 1 and the maximum screening acute noncancer HQ value (off-facility site) is also well below 1. In addition, the screening-level evaluation of the potential for adverse environmental effects indicated that that no ecological benchmarks were exceeded.

We evaluated all comments on the risk review and determined that no changes to the review are needed. For the reasons explained in the proposal, we determined that the risks from the major source Flexible Polyurethane Foam Fabrication Operations source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing our residual risk review as proposed and readopting the standards for the major source Flexible Polyurethane Foam Fabrication Operations source category.

B. Technology Review for the Major Source Flexible Polyurethane Foam Fabrication Operations Source Category and the Flexible Polyurethane Foam Production and Fabrication Area Source Categories

1. What did we propose pursuant to CAA section 112(d)(6) for the major source Flexible Polyurethane Foam Fabrication Operations Source Category and the Flexible Polyurethane Foam Production and Fabrication area source categories?

During the technology review, one development in a practice, process, or control technology was identified for loop slitter use in the Flexible Polyurethane Foam Fabrication Operations major source category. In addition, we identified existing flame laminators as an unregulated process in the major source category, and we proposed standards for those sources under CAA section 112(d)(2) and (3), as described in section IV.C of this preamble.

At the time of the development of the NESHAP, the EPA found that the foam fabrication industry had effectively discontinued the use of adhesives containing methylene chloride, which was the primary HAP in the adhesives used, and had switched to other adhesives that did not contain methylene chloride and contained only small amounts of other HAP. As a result, for both existing and new loop slitters, the definition of HAP-based adhesive included in the 2003 rule was an adhesive containing 5 percent (by weight) or greater of HAP. As part of the technology review, we reviewed other air toxics MACT standards and noted that several other NESHAP, developed both before and after the major source Flexible Polyurethane Foam Fabrication Operations NESHAP, include a definition of non-HAP adhesive or coating (where the coating definition included adhesives) with a lower percentage of HAP content than that of the definition included in the Flexible Polyurethane Foam Fabrication Operations rule. Additionally, through review of information provided by industry, we found that the current adhesives used in loop slitting operations are less than 1-percent HAP content by total weight. Based on the current industry standards of adhesive usage containing less than 1-percent HAP and the definition for HAP-based adhesive from similar source categories regulating adhesives, we proposed to revise the definition of ''HAP-based adhesive'' to read: ''an adhesive containing 1 percent (by weight) or more of HAP, according to EPA Method 311 (appendix A to 40 CFR part 63) or another approved alternative.''

We also proposed to amend 40 CFR 63.8802(a)(1)(i) and (a)(3)(i), which describe how to determine the mass fraction of HAP in each material used, to remove references to Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4). The references to 29 CFR 1910.1200(d)(4) were intended to specify which compounds must be included in calculating the total HAP content of a coating material if the compounds are present at 0.1-percent or greater by mass; however, 29 CFR 1910.1200(d)(4) has been amended and no longer readily defines which compounds are carcinogens. We proposed to replace these references to OSHA-defined carcinogens and 29 CFR 1910.1200(d)(4) with a list (in a proposed new Table 8 to 40 CFR part 63, subpart MMMMM) of those HAP that must be included in calculating total HAP content of a coating material if they are present at 0.1 percent or greater by mass. We proposed to include HAP in this table if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (May 9, 2014), as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[5] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).[6] Detailed information of the technology review can be found in the memorandum titled *Technology Review for the Flexible Polyurethane Foam Manufacturing Source Category,* which is available in the docket for this action (Document ID EPA–HQ–OAR–2020–0572–0003).

For the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories, we found the listed urban HAP methylene chloride is no longer used within either source category. Additionally, we did not find any advances in technologies during our review of the source categories. Detailed information of the technology review can be found in the memorandum titled *Technology Review for the Flexible Polyurethane Foam Production and Fabrication Area Source Categories,* which is available in the docket for this action (Document ID EPA–HQ–OAR–2020–0572–0004).

2. How did the technology review change for the major source Flexible Polyurethane Foam Fabrication Operations Source Category and the Flexible Polyurethane Foam Production and Fabrication area source categories?

The EPA has not made any changes to the technology review since the proposal was published on January 11, 2021. We are finalizing the technology review as proposed with no changes.

3. What key comments did we receive on the technology reviews, and what are our responses?

We received comments in support of the proposed technology reviews and the revisions we proposed to the definition of HAP-based adhesive resulting from the findings of the

[5] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

[6] See *https://www.epa.gov/risk/guidelinescarcinogen-risk-assessment.*

technology review. All commenters supported the proposed revision to the definition of HAP-based adhesive. One commenter noted that the proposed revision should not have an adverse impact on loop-slitting and that it is supported by the industry. Two commenters specifically supported this revision in its effect in limiting backsliding. After review of these comments, we determined that no changes are needed to the technology reviews or the proposed revised definition of HAP-based adhesive. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses on the Proposed Rule for the Major Source Flexible Polyurethane Foam Fabrication NESHAP and the NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources,* available in the docket for this rulemaking.

4. What is the rationale for our final approach for the technology review?

We evaluated all comments on the technology reviews and determined that no changes to the reviews are needed. Commenters identified no developments in practices, processes, or control technologies advances in technologies to consider, beyond the technology-related development identified in the proposal (industry practice of using lower-HAP adhesive in loop-slitting operations). Therefore, pursuant to CAA section 112(d)(6), we are finalizing our technology reviews as proposed.

C. Actions Taken Pursuant to CAA Sections 112(d)(2) and 112(d)(3)

1. What did we propose for the major source Flexible Polyurethane Foam Fabrication Operations Source Category?

Pursuant to CAA section 112(d)(2) and (3), we proposed to establish a numeric limit in the Flexible Polyurethane Foam Fabrication Operations major source NESHAP for HCl emissions from existing flame laminators. Through the technology review, we identified these units as sources of HAP emissions that did not have MACT standards in the NESHAP. For the four existing source flame lamination units in the source category, HCl emissions data from only one of these units is available, and the proposed MACT floor was based on the HCl data for this unit. To determine the level of the MACT floor, the Upper Prediction Limit method was used to account for variability in flame laminator emissions performance, and the MACT floor was calculated at 1.45 pounds per hour of HCl.[7]

The EPA also evaluated whether a beyond-the-floor emissions limit would be appropriate; specifically, we evaluated whether the incremental emissions reduction achievable with a venturi scrubber would be cost effective. The venturi scrubber was the only control technology in use at flame lamination sources that was identified by the EPA with the initial promulgation of the NESHAP, and no other developments in control technologies were identified in the review of these standards. The EPA estimated that the average incremental cost per ton of HCl emissions reduced with this technology would be approximately $26,000 and found that this would not be cost effective for the control of HCl. Therefore, we proposed that floor-level MACT controls are appropriate for existing flame laminators.

2. What changed since proposal?

In the final rule, we have made revisions in several sections to clarify that the flame lamination emission limit applies to each flame lamination line individually. As 40 CFR 63.8784(b)(2) states that the flame lamination affected source is the collection of all flame lamination lines, these revisions will make it clear that the limit is for each flame lamination line within an affected source rather than the collection of all flame lamination lines of an affected source.

For existing flame lamination units, we have also revised the final rule to include a more appropriate method of calculating the HCl emissions rate. In the proposed rule, we proposed to require existing sources to use the same method of calculating the HCl emissions rate as that required for new and reconstructed sources. However, while that method is appropriate for determining compliance with an emissions limit that requires a certain emissions percentage reduction using a control device, it is not appropriate for the existing source emissions limit that requires emissions to be below a specified numeric value, regardless of the use of a control device. Therefore, to correct this deficiency in the final rule, we have added an HCl calculation method that is appropriate to the emissions limit format and is based on the concentration of HCl and the volumetric flow rate of the flame lamination line's outlet gas stream to the atmosphere.

3. What are the key comments and what are our responses?

Comment: Several commenters support the establishment of emission standards for HCl emissions from existing flame lamination units; however, one commenter states that the proposed limits need to be strengthened. The commenter observes that there are four existing flame lamination units and that due to data availability, the EPA used data from only one of these to set the proposed MACT floor. The commenter states the EPA should have required the other sources to provide the necessary data for analysis and that there is no indication that the one source for which the EPA has data represents the average emission limitation achieved by the best-performing sources. The commenter adds that the EPA used the upper prediction limit (UPL) approach, which moves the floor further from the average emissions limitation achieved by the best-performing sources. Due to these aspects of the proposed MACT floor, the commenter states that the EPA has not met the CAA requirements to set the limits at the maximum achievable degree.

The commenter also states that the EPA fails to meet the beyond-the-floor requirements by failing to assure the maximum achievable degree of emission limitation. According to the commenter, the EPA decided not to require additional reductions beyond the floor purely based on cost data from its analysis conducted for the proposal of the NESHAP in 2001. The commenter states that the EPA did not provide evidence to support its assumption that the cost effectiveness today would be similar to what it was in 2001 after adjusting for inflation and that the EPA provided no information to support its claim that nothing has substantially changed with the control technology of a venturi scrubber since that time. The commenter adds that the EPA did not consider the health benefits of the emissions reduction.

Response: In setting the MACT floor for these sources, we have used all data available to the Agency. As provided for by CAA section 112(d)(3)(B), this limit was set at the average emission limitation achieved by the best performing sources for which the Administrator has or could reasonably obtain emissions information. In this instance, one of the four flame lamination units in operation in the source category has been tested for HAP emissions. Therefore, this one emissions

[7] See *MACT Floor and Beyond-the-Floor Analysis for Existing Flame Laminators in the Flexible Polyurethane Foam Fabrication Source Category* (Document ID EPA–HQ–OAR–2020–0572–0002).

test, which represents performance of 25 percent of the flame lamination units in operation, represents the whole of the data available for these emissions sources and constitutes the basis for the MACT floor. Based on the information above, the EPA determined that the emissions information on which the MACT floor is based is representative of the source category. While it may have been possible for the EPA to require the facilities to conduct further HAP emissions testing to use in setting the MACT floor, due to several factors (including the additional time this would have added to the rulemaking process, the availability of at least one emissions test, and the expected types and levels of emissions expected from these units), the EPA determined, consistent with the Agency's discretion under the CAA, not to require additional emissions testing to be performed. Additionally, we note that while the commenter is concerned that the emissions limit set using the available data for one source may not be as stringent as the average of the best performing sources in the source category, the Administrator is required to set standards based on available data.

We disagree with the commenter that use of the UPL moves the floor further from the average emission limitation achieved by the best performing sources. To develop the proposed HCl MACT standard for existing flame lamination units, the EPA used the UPL statistical methodology, which the EPA has used in many rulemakings and which was upheld by the D.C. Circuit Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579 (D.C. Cir. 2016). That is, the best performers, and their level of performance, are determined after accounting for sources' normal operating variability. The UPL represents the value below which one can expect the mean of a specified number of future observations (*e.g.,* 3-run average) to fall, for the specified level of confidence, based upon the results of an independent sample from the same population.

The UPL approach allows for the development of the average emissions value that the source is achieving, given that the MACT floor is derived from short-term emissions test data and such data are not representative of the range of operating conditions that the facility faces on a day-to-day basis. In statistical terms, each test produces a limited data sample, not a complete enumeration of the available data for performance of the unit over a long period of time. Therefore, the EPA needs to adjust the short-term data to account for these varying conditions to properly estimate the source's performance over time.

In calculating the UPL that we proposed as the MACT floor for existing flame lamination lines, we tested the dataset (three runs) for skewness and kurtosis to determine that the non-normal (lognormal) data distribution is the best representation of the sample set, and we used the UPL equation appropriate to that data distribution. Because the floor is based on the performance of a single unit, our evaluation of the data was limited to ensuring that the emission limit is a reasonable estimate of the performance of the unit based on our knowledge about the process and controls. The wide range in HCl emissions shown by the available data for this best-performing unit indicates that variability is significant, and we determined that the emission limit is representative of the actual performance of the unit upon which the limit is based, considering variability.

We note that after MACT standards are promulgated, we are required to review those standards periodically, and for such reviews, we typically have significant additional HAP emissions data from the intervening years of compliance with which to further assess the actual performance of the various emission sources. We anticipate that this will be the case for existing flame lamination lines.

As part of the technology review, a search for information on venturi scrubbers was undertaken and no new information on their performance or costs was found that would indicate that our previous cost analysis is not representative of current costs. No information was received during the comment period to suggest that these assumptions were incorrect.

We concluded in the residual risk assessment that risks from the source category are acceptable and that the standards provide an ample margin of safety. The addition of new MACT standards for HCl for existing sources will further reduce risks from the source category.

Comment: One commenter asserts that the EPA, in setting emission standards for uncontrolled HAP emissions for this source category, must include emission standards for 1-bromopropane (1–BP, also known as n-propyl bromide) as a "necessary" revision to satisfy its legal obligation in this rulemaking, citing *Louisiana Environmental Action Network* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020) (*LEAN*). The commenter notes that the EPA has determined that 1–BP is an "air pollutant" that "may reasonably be anticipated to cause adverse effects to human health" and that it therefore qualifies as a HAP, and the commenter points out that the EPA, having granted 1–BP for listing as a HAP, has not yet completed that listing process.

Noting that at least one source reported using 1–BP, the commenter argues that the EPA should gather further information and ensure all sources meet emission standards for 1–BP that satisfy § 7412(d) and (f). The commenter cited a recent risk evaluation under TSCA, in which "EPA has determined that risk from emissions to the ambient air of 1–BP could be eliminated or reduced to a sufficient extent by actions taken under the CAA." The commenter believes the EPA acted unlawfully and in an arbitrary manner by failing in this rulemaking to assess 1–BP emissions and propose emission standards for 1–BP.

Response: The EPA does not agree that the *LEAN* decision compels regulation of 1–BP for this sector, because that decision only goes to timing; the EPA must address any regulatory gaps (that is, any unregulated HAP emissions from the source category which the EPA is required to regulate) when it conducts a technology review for that category. For this source category, the EPA received information indicating that no major sources are using 1–BP and few to no area sources may be using 1–BP in small quantities as an equipment cleaner. At this time, there is no requirement to set standards for 1–BP as part of the review for major sources in this category during the CAA section 112(d)(6) technology review because 1–BP is not emitted by any major sources in this source category. As for the area sources, the EPA need only review the standards set for the urban HAP for which this area source category was listed under CAA section 112(c)(3), which is methylene chloride. We are not obligated to set standards for other listed HAP that are emitted from this area source category.[8] *See Desert Citizens Against Pollution* v. *EPA,* 699 F.3d 524, 525–26 (D.C. Cir. 2012).

4. What is the rationale for our final approach for the actions taken pursuant to CAA sections 112(d)(2) and 112(d)(3)?

We evaluated all comments received regarding the proposed standard for existing flame lamination units and determined that no changes to the level of the standard are needed. We conclude that the standard, which is based on the UPL and emissions data

[8] The EPA notes that while 1–BP is not yet a listed HAP, it soon will be.

from a single unit, represents the average emission limitation achieved by the best performing sources for which the Administrator has or could reasonably obtain emissions information. A more detailed explanation for this decision may be found in responses provided earlier in this document. Through further review of the proposed rule, we determined that clarifications are needed for the final rule language to ensure it is clear the flame lamination emissions limits apply to each individual flame lamination line, and we have revised the final rule accordingly. In addition, to correct a deficiency in the proposed rule's HCl emissions calculation method for existing source flame lamination units, we have added an appropriate calculation method in the final rule.

D. Removal of the SSM Exemptions

1. What did we propose for the major source Flexible Polyurethane Foam Fabrication Operations NESHAP?

The EPA proposed amendments to the major source Flexible Polyurethane Foam Fabrication Operations NESHAP to remove the provisions related to SSM to ensure that they are consistent with the court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008) that standards always apply. As detailed in the January 2021 proposal, we proposed to change the requirements for SSM by removing the exemption for new flame laminators from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. The EPA proposed revisions to Table 7 of subpart MMMMM, The Applicability of General Provisions, to remove SSM exemptions and plan development for new flame lamination sources.

2. What changed since proposal?

We determined that no changes were necessary to the proposed revised requirements for SSM periods. Therefore, we are finalizing the revised provisions related to SSM periods as proposed (86 FR 1868 at 1885, January 11, 2021).

3. What are the key comments and what are our responses?

We received comments in support of the proposed revisions regarding SSM periods. Generally, commenters supported the proposed removal of the exemption for periods of SSM and the elimination of the requirement to develop an SSM plan, recognizing that these changes are consistent with court decisions requiring that the CAA standards always apply. After review of these comments, we determined that no changes are needed to the proposed revisions regarding SSM periods. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses on the Proposed Rule for the Major Source Flexible Polyurethane Foam Fabrication NESHAP and the NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources,* available in the docket for this rulemaking.

4. What is the rationale for our final approach for the SSM provisions?

We evaluated all comments on the EPA's proposed amendments to remove the SSM provisions. For the reasons explained in the proposed rule, we determined that the proposed removal of the SSM exemptions is required to be consistent with the 2008 court decision that standards always apply. Therefore, we are finalizing our approach for removing the SSM exemptions as proposed.

E. Electronic Reporting

1. What did we propose?

We proposed amendments to the major source Flexible Polyurethane Foam Fabrication Operations NESHAP to require owners or operators to submit electronic copies of initial notifications, notifications of compliance status, performance test reports, performance evaluation reports, and semiannual reports through the EPA's Central Data Exchange (CDX) using CEDRI. Additionally, we proposed two broad circumstances in which electronic reporting extensions may be provided at the discretion of the Administrator. The EPA proposed these extensions to protect owners or operators from noncompliance in cases where they are unable to successfully submit a report by the reporting deadline for reasons outside of their control, including CDX and CEDRI outages and *force majeure* events, such as acts of nature, war, or terrorism.

2. What changed since proposal?

We determined that no changes were necessary to the proposed requirements for owners or operators of flexible polyurethane foam fabrication operations major sources to submit initial notifications, notifications of compliance status, performance test reports, performance evaluation reports, and semiannual reports electronically using CEDRI. Therefore, we are finalizing the electronic reporting provisions as proposed (86 FR 1886, January 11, 2021).

3. What are the key comments and what are our responses?

The EPA received one comment that generally supported the proposed amendment to require electronic reporting but was opposed to the *force majeure* provisions due to concern that those provision would allow for unreported exceedances to go unchecked. After review and consideration of this comment, we determined that no changes are needed to the electronic reporting requirements or their force majeure provisions. This comment and our specific response can be found in the document, *Summary of Public Comments and Responses on the Proposed Rule for the Major Source Flexible Polyurethane Foam Fabrication NESHAP and the NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources,* available in the docket for this rulemaking.

4. What is the rationale for our final approach to electronic reporting?

We are finalizing as proposed a requirement in the major source NESHAP that owners or operators of flexible polyurethane foam fabrication operations submit electronic copies of notifications, performance evaluation reports, and semiannual compliance reports using CEDRI. We also are finalizing, as proposed, provisions that allow facility owners or operators a process to request extensions for submitting electronic reports for circumstances beyond the control of the facility (*i.e.,* for a possible outage in the CDX or CEDRI or for a *force majeure* event). Such extensions are intended to be available only in extraordinary circumstances; they are limited in duration and do not relieve owners or operators of their reporting obligations. The electronic reporting amendments will increase the ease and efficiency of data submittal for owners and operators of major source flexible polyurethane foam fabrication operations and will make the data more accessible to regulators and the public.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

Currently, there are three major sources operating in the United States that are subject to the major source Flexible Polyurethane Foam Fabrication Operations NESHAP. The affected sources under the NESHAP include flexible polyurethane foam fabrication plant sites that operate loop slitters and/or flame laminators. Facilities that use loop slitter adhesive processes would be

required to comply with a ban on the use of adhesives containing air toxics. However, the EPA estimates that current air toxic emissions from loop slitter adhesive users are essentially zero as the result of changes in adhesive composition required by OSHA's permissible exposure limit for methylene chloride that was enacted prior to the promulgation of the original MACT standard. Additionally, the EPA estimates that current air toxic emissions from flame laminators for the entire source category are less than 3.5 tpy.

Currently, there are approximately 32 area sources subject to the Flexible Polyurethane Foam Production and Fabrication NESHAP for area sources. The area source standard only regulates methylene chloride emissions, and, similar to the major source standards, emissions of methylene chloride are essentially zero, as required by OSHA's permissible exposure limit for methylene chloride that was enacted prior to the promulgation of the original GACT standards. Based on information provided by industry, there are no emissions of methylene chloride from these sources. For detailed information, please see the memorandum titled *Technology Review for Flexible Polyurethane Foam Production and Fabrication Area Sources,* available in the docket for this action (Document ID EPA–HQ–OAR–2020–0572–0004).

B. What are the air quality impacts?

Current estimated emissions from the Flexible Polyurethane Foam Fabrication Operations source category are approximately 3.5 tpy. We do not estimate any HAP emission reductions from the final amendment adding MACT limits for existing flame laminators nor from the final amendment revising the definition of HAP-based adhesives for loop slitters. Both revisions reflect current practices.

C. What are the cost impacts?

The final amendments to the Flexible Polyurethane Foam Fabrication Operations NESHAP for major sources are expected to have minimal cost impacts. The costs are associated with periodic emissions performance testing, recordkeeping and reporting, electronic reporting, and reviewing the proposed rule. Three major source facilities are affected by these costs, although only two of them are affected by the emissions performance testing requirement. The periodic performance test is required every 5 years, but only for major source facilities that perform flame lamination. Most of the information requirements in the final rule are unchanged from those of the proposed rule. However, after proposal of this action, the EPA revised its cost estimates to incorporate updated information about the costs associated with reporting and performance testing for sources in the flame lamination subcategory. The cost estimates are slightly higher than at proposal. The revised cost estimates reflect that a performance test is required for each flame lamination line at a facility, although the labor required for each test is estimated to be lower than at proposal. See the Economic Impact Analysis in the docket and the accompanying workbook for the updated assumptions and cost estimates (Docket ID No. EPA–HQ–OAR–2020–0572).

For the two affected facilities with flame lamination lines, the year 1 costs are estimated to be about $22,000 per facility, while the undiscounted costs related to reporting and recordkeeping in the following years are estimated at about $2,600 per facility per year except for year 6 when another emissions test is required. The undiscounted costs in year 6 are estimated to be about $17,000 per facility for the sources with flame laminators. For the major source that does not perform flame lamination and thus does not need to fulfill the testing requirement, the costs in year 1 are estimated to be about $6,000, while the undiscounted costs in the following years are estimated at about $2,600 per year.

Because the final amendments to the Flexible Polyurethane Foam Production and Fabrication Area Sources NESHAP impose no new requirements on area sources, there will be no cost impacts for area sources.

D. What are the economic impacts?

The final amendments to the Flexible Polyurethane Foam Fabrication Operations NESHAP for major sources and the Flexible Polyurethane Foam Production and Fabrication NESHAP for area sources are not expected to have market impacts. Over a 10-year timeframe from 2022 to 2031, the net present value of the estimated cost impacts is about $135,000 at a 3 percent discount rate and $121,000 at a 7 percent discount rate in 2019 dollars. The equivalent annualized value of the cost impacts is about $16,000 at a 3 percent discount rate and $17,000 at a 7 percent discount rate. Since there are no expected costs for area sources, and the estimated costs for major sources are minimal, no significant economic impacts are anticipated due to the final amendments. For more information regarding the facility-level cost estimates as well as the net present value and equivalent annualized value estimates, see the memorandum titled *Economic Impact Analysis for Final Residual Risk and Technology Review of the National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2020–0572).

E. What are the benefits?

This action will result in improvements to the rule and prevent backsliding. In general, backsliding is when a source uses a process, equipment, and/or ingredients that the industry in general has moved beyond in favor of processes, equipment, and/or ingredients with fewer potential adverse environmental impacts. Specifically, the final amendments codify existing industry practices both for existing flame laminators and for new and existing sources that use adhesives with loop slitters. The final amendments also revise the standards such that they always apply. Additionally, the final amendments requiring electronic submittal of initial notifications, performance test results, and semiannual reports will increase the usefulness of the data, are in keeping with current trends of data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms—specifically, minority populations, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 was signed to advance racial equity and support underserved communities through federal government actions (86 FR 7009, January 20, 2021). The EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and

commercial operations or programs and policies'' (*https://www.epa.gov/environmentaljustice*). In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

Based on an analysis of exposed populations, the EPA determined that the source categories do not pose a disproportionately high adverse health impact on minority populations and/or low-income populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) and referenced in Executive Order 13985 (86 FR 7009, January 20, 2021). The EPA remains committed to engaging with communities and stakeholders throughout the development of air pollution regulations.

To examine the potential for any environmental justice issues that might be associated with the major source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we also evaluated the distribution of HAP-related cancer and noncancer risks from the major source Flexible Polyurethane Foam Fabrication Operations source category across different demographic groups within the populations living near facilities.

The results of the demographic analysis for the major source category indicate that the minority population (being the total population minus the white population) is slightly higher within 5 km of the three facilities than the national percentage (40 percent versus 38 percent). This difference is accounted for by the larger African American population around the facilities (17 percent versus 12 percent nationally). In addition, the percentage of the population living within 5 km of facilities in the source category is greater than the corresponding national percentage for the demographic groups, ''Ages 0 to 17'' and ''Below the Poverty Level.'' When examining the risk levels of those exposed to emissions from Flexible Polyurethane Foam Fabrication facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1. The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Flexible Polyurethane Foam Fabrication Operations Source Category,* available in this docket for this action (Document ID EPA–HQ–OAR–2020–0572–0006).

G. What analysis of children's environmental health did we conduct?

The EPA determined that the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. The health risk assessments for this action are contained in the document titled *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Source Category in Support of the 2021 Risk and Technology Review Final Rule* available in the docket (Docket ID No. EPA–HQ–OAR–2020–0572).

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2027.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them. The ICR is specific to information collection associated with the Flexible Polyurethane Foam Fabrication Operations source category, through amendments to 40 CFR part 63, subpart MMMMM. (The subject rulemaking imposes no new information collection associated with either the Flexible Polyurethane Foam Production area source category or the Flexible Polyurethane Foam Fabrication area source category.) We are finalizing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart MMMMM, in the form of: Requiring periodic (every 5 years) performance tests at major sources that perform flame lamination; eliminating the SSM plan and reporting requirements; including reporting requirements for deviations in the semiannual (periodic) report; and including the requirement for electronic submittal of reports. In addition, the number of facilities subject to the standards has changed. The number of respondents was reduced from 20 to 3 based on consultation with industry representatives and state/local agencies.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of flexible polyurethane foam fabrication operations subject to 40 CFR part 63, subpart MMMMM.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MMMMM).

Estimated number of respondents: 3 facilities.

Frequency of response: The frequency of responses varies depending on the burden item. Responses include one-time review of rule amendments, reports of periodic performance tests, and semiannual compliance reports.

Total estimated burden: The annual recordkeeping and reporting burden for responding facilities to comply with all requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 113 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 51 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for responding facilities to comply with all requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be $21,600 (rounded, per year). The total operation and maintenance costs associated with performance test requirements, averaged over the 3 years of this ICR, is estimated to be $10,100 per year. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $2,500.

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 in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is

any significant adverse economic impact on small entities. 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, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. As finalized, this action will impose new requirements only on major sources, and none of the major sources in the Flexible Polyurethane Foam Fabrication Operations source category are considered a small entity. Because this action imposes no new requirements on area sources, there will be no significant impact on any small entities among area sources. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the industries that would be affected by this action nor are there any adverse health or environmental effects from this action. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections IV.A of this preamble.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Flexible Polyurethane Foam Fabrication Source Category Operations* and *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Source Category in Support of the 2021 Risk and Technology Review Final Rule,* available in the docket for this action (Document ID EPA–HQ– OAR–2020–0572–0006).

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 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 MMMMM—National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

■ 2. Section 63.8784 is amended by revising paragraphs (c)(2) and (e) to read as follows:

§ 63.8784 What parts of my plant does this subpart cover?

* * * * *

(c) * * *

(2) If you add one or more flame lamination lines at a plant site where flame lamination lines already exist, the added line(s) shall be a new affected source and meet new source requirements if the added line(s) are at a flexible polyurethane foam fabrication plant site that has the potential to emit 10 tons per year or more of any HAP or 25 tons or more per year of any combination of HAP.

* * * * *

(e) An affected source is existing if it commenced construction or reconstruction on or before August 8, 2001.

■ 3. Section 63.8786 is amended by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 63.8786 When do I have to comply with this subpart?

* * * * *

(b) If you have an existing affected source, you must comply with this subpart according to paragraphs (b)(1) and (b)(2) of this section, as applicable.

(1) If you have an existing loop slitter affected source, you must comply with the emission standards for existing sources no later than April 14, 2004.

(2) If you have an existing flame lamination affected source, you must comply with the emission standards for existing sources no later than May 17, 2022.

* * * * *

(f) You must comply with the electronic reporting requirements according to paragraphs (f)(1) and (f)(2) of this section.

(1) You must comply with the performance test and CMS performance evaluation requirements of § 63.8818(j) on or before May 17, 2022.

(2) You must comply with the compliance report requirements of

§ 63.8818(k) on or before May 17, 2022 or once the report template for this subpart has been available on the CEDRI website for 1 year, whichever date is later.

■ 4. Section 63.8794 is amended by:
■ a. Revising paragraphs (b), (c) and (d);
■ b. Removing and reserving paragraph (e); and
■ c. Revising paragraph (f) introductory text.

The revisions read as follows:

§ 63.8794 What are my general requirements for complying with this subpart?

* * * * *

(b) For each flame lamination affected source, you must be in compliance with the requirements in this subpart at all times.

(c) At all times, you 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. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements 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, review of operation and maintenance records, and inspection of the source.

(d) For flame lamination affected sources in § 63.8786 using a control device to comply with the emission limitations in Table 1 to this subpart, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment during the period between the compliance date specified for your flame lamination affected source in § 63.8786 and the date upon which continuous compliance monitoring systems required by § 63.8810(c) have been installed and verified and any applicable operating limits have been set.

* * * * *

(f) For each monitoring system required by § 63.8810(c) for flame lamination sources, you must develop and submit for approval a site-specific monitoring plan that addresses the requirements in paragraphs (f)(1) through (3) of this section.

* * * * *

■ 5. Section 63.8798 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 63.8798 By what date must I conduct performance tests or other initial compliance demonstrations?

* * * * *

(b) For each flame lamination affected source, you must conduct performance tests by the compliance date that is specified for your source in § 63.8786 and according to the provisions in § 63.7(a)(2).

(c) You must conduct subsequent performance tests to demonstrate compliance with the flame lamination emissions limitations in Table 1 to this subpart no less frequently than every 5 years from the date of the last performance test.

■ 6. Section 63.8800 is amended by:
■ a. Revising paragraphs (b), (c) and (e) introductory text;
■ b. Redesignating paragraph (f) as (g);
■ c. Adding new paragraph (f); and
■ d. Revising newly redesignated paragraph (g) introductory text.

The revisions and additions read as follows:

§ 63.8800 What performance tests and other procedures must I use to demonstrate compliance with the emission limit for flame lamination?

* * * * *

(b) Each performance test must be conducted according to the requirements in paragraph (c) of this section and under the specific conditions in Table 3 to this subpart.

(c) You must conduct each performance test under conditions representative of normal operations. You may not conduct performance tests during periods of SSM. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(e) For new and reconstructed affected sources, you must determine the percent reduction of HAP emissions during the performance test according to paragraphs (e)(1) through (3) of this section.

* * * * *

(f) For existing affected sources, you must determine the HCl emissions rate according to paragraphs (f)(1) through (3) of this section.

(1) Calculate the concentration of HCl in the vent outlet to the atmosphere or at the control device outlet, if a control device is used, using the procedures in the specified test method.

(2) Determine the vent outlet gas stream volumetric flow rate or if a control device is used, the control device outlet gas stream volumetric flow rate, using the procedures in the specified test method.

(3) Calculate the HCl emission rate for the period of the performance test using Equation 2 of this section:

$$E_{HCl} = C \times AOF \quad \text{Eq.2}$$

Where:

E_{HCl} = Emission rate of HCl, lbs/hr.
C= average HCl concentration of vent or control device outlet stream for all test runs, lb/dscft.
AOF = average outlet volumetric flow rate of gas stream, dry basis, dscft/hr.

(g) You must also meet the requirements in paragraphs (g)(1) and (2) of this section.

* * * * *

■ 7. Section 63.8802 is amended by revising paragraphs (a)(1)(i) and (3)(i) to read as follows:

§ 63.8802 What methods must I use to demonstrate compliance with the emission limitation for loop slitter adhesive use?

(a) * * *
(1) * * *

(i) Include in the HAP total each HAP in Table 8 of this subpart that is measured at 0.1 percent by weight or more and any other HAP that is measured at 1.0 percent by weight or more. Express the weight fraction of each HAP you measure as a value truncated to four places after the decimal point (for example, 0.1234).

* * * * *

(3) * * *

(i) Include in the HAP total each HAP in Table 8 of this subpart that is present at 0.1 percent by weight or more and any other HAP that is present at 1.0 percent by weight or more.

* * * * *

■ 8. Section 63.8810 is amended by revising paragraphs (b) introductory text, (c) introductory text and (c)(1) to read as follows:

§ 63.8810 How do I monitor and collect data to demonstrate continuous compliance?

* * * * *

(b) If you own or operate a flame lamination affected source, you must meet the requirements in paragraphs (b)(1) through (3) of this section if you use a scrubber, or paragraph (b)(4) of this section if you use any other control device.

* * * * *

(c) If you own or operate a control device to meet the emissions limitations for a flame lamination affected source, you must meet the requirements in paragraphs (c)(1) through (4) of this section.

(1) Except for periods of monitoring-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.

* * * * *

■ 9. Section 63.8812 is amended by:
■ a. Revising paragraph (b);
■ b. Removing and reserving paragraph (d); and
■ c. Revising paragraph (e) introductory text.

The revisions read as follows:

§ 63.8812 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(b) You must report each instance in which you did not meet each emission limit and each operating limit in Tables 1 and 2 to this subpart that applies to you. These instances are deviations from the operating limits in this subpart. These deviations must be reported according to the requirements in § 63.8818.

* * * * *

(e) You must meet the following requirements if you are complying with the adhesive use ban for loop slitter adhesive use described in § 63.8790(a).

* * * * *

■ 10. Section 63.8816 is amended by revising paragraphs (d), (f), (g) introductory text, and (h)(1) to read as follows:

§ 63.8816 What notifications must I submit and when?

* * * * *

(d) If you own or operate a flame lamination affected source, 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) If you own or operate a flame lamination affected source, submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) that includes the results of the performance test conducted according to the requirements in Table 3 to this subpart. You must submit the notification before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(g) For each flame lamination affected source, the Notification of Compliance Status must also include the information in paragraphs (g)(1) and (2) that applies to you.

* * * * *

(h) * * *

(1) A list of each adhesive used at the affected source, its HAP content (percent by weight), and the manufacturer or supplier of each.

* * * * *

■ 11. Section 63.8818 is amended by:
■ a. Revising paragraphs (b) introductory text and (f);
■ b. Removing and reserving paragraph (i); and
■ c. Adding paragraphs (j) through (m).

The revisions and additions read as follows:

§ 63.8818 What reports must I submit and when?

* * * * *

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each compliance report for flame lamination affected sources semiannually according to paragraphs (b)(1) through (4) of this section.

* * * * *

(f) The compliance report for flame lamination affected sources required by § 63.8810(c) to conduct continuous monitoring must also contain the following information in paragraphs (f)(1) and (2) of this section.

(1) If there were no periods during which the CPMS was out-of-control in accordance with the monitoring plan, a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(2) If there were periods during which the CPMS was out-of-control in accordance with the monitoring plan, the date, time, and duration of each out-of-control period.

* * * * *

(j) For Performance Test and CMS Performance Evaluation Reports, beginning on May 17, 2022, within 60 days after the date of completing each performance test or CMS performance evaluation (as defined in § 63.2) required by this subpart, the owner or operator must submit the results of the performance test or CMS performance evaluation following the procedures specified in paragraphs (j)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test or the performance evaluation of CMS measuring relative accuracy test audit (RATA) pollutants to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) *(https://cdx.epa.gov/).* The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test or the performance evaluation of CMS measuring RATA pollutants by methods that are not supported by the ERT, must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI).* Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (a)(1) or (2) of this section, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (a)(1) and (2) of this section. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions

data will not be protected as CBI and will be made publicly available.

(k) When submitting reports electronically, on and after the date specified in § 63.8786(f)(2), you must submit reports to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Anything submitted using CEDRI cannot later be claimed CBI. You must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/cedri*) for this subpart. The date report templates become available will be listed on the CEDRI website. Unless the Administrator or delegated state agency or other authority has approved a different schedule for submission of reports, the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (k). All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(l) For claims of EPA system outage, when you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (l)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(m) For claims of force majeure, when you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (m)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 12. Section 63.8820 is amended by revising paragraph (b) to read as follows:

§ 63.8820 What records must I keep?

* * * * *

(b) For each flame lamination affected source, you must also keep the following records specified in paragraphs (b)(1) through (3) of this section.

(1) Records of performance tests, as required in § 63.10(b)(2)(viii).

(2) Records of the operating parameter values required in § 63.8810(b).

(3) The records specified in paragraphs (b)(3)(i) through (iii) of this section.

(i) The number of deviations. For each deviation, record the date, time, cause, and duration of the deviation.

(ii) For each deviation, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(iii) Record actions taken to minimize emissions in accordance with § 63.8794(c), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

■ 13. Section 63.8830 is amended by revising the definitions of "Deviation" and "HAP-based adhesive" to read as follows:

§ 63.8830 What definitions apply to this subpart?

* * * * *

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

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including any operating limit); or

(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) in this subpart, regardless of whether such failure is permitted by this subpart.

* * * * *

HAP-based adhesive means an adhesive containing 1.0 percent by weight or more of any individual or combination HAP listed in Table 8 to this subpart or 1.0 percent by weight or more of any other individual HAP, according to information from the supplier or manufacturer of the material, EPA Method 311 (appendix A to 40 CFR part 63) or another approved alternative.

* * * * *

■ 14. Table 1 to subpart MMMMM is amended by revising entry 3 to read as follows:

TABLE 1 TO SUBPART MMMMM OF PART 63—EMISSION LIMITS

As stated in § 63.8790(a), you must comply with the emission limits in the following table:

For . . .	You must . . .
* * * * * * *	
3. Each existing flame lamination affected source	Emit no more than 1.45 pounds per hour of HCl per flame lamination line.

■ 15. Table 2 to subpart MMMMM is amended by revising the table title and introductory text to read as follows:

TABLE 2 TO SUBPART MMMMM OF PART 63—OPERATING LIMITS FOR EXISTING, NEW, OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES

As stated in § 63.8790(b), you must comply with the applicable operating limits in the following table:

* * * * *

■ 16. Table 3 to subpart MMMMM is revised to read as follows:

TABLE 3 TO SUBPART MMMMM OF PART 63—PERFORMANCE TEST REQUIREMENTS FOR EXISTING, NEW, OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES

As stated in § 63.8800, you must comply with the requirements for performance tests for flame lamination affected sources in the following table using the requirements in rows 1 through 5 of the table if you are measuring HCl and using a scrubber, row 6 for new or reconstructed sources measuring HCN and using a scrubber, and row 7 if you are using any other control device. For existing sources not using a control device, you must comply with row 8 and rows 1 through 4 of the table.

For each existing, new, or reconstructed flame lamination affected source, you must . . .	Using . . .	According to the following requirements . . .
1. 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 inlet and outlet of the scrubber and prior to any releases to the atmosphere.
2. Determine velocity	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter..	
3. Determine gas molecular weight	Not applicable	Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter..	
5. Measure HCl concentration	Method 26A in appendix A to part 60 of this chapter.	i. For new or reconstructed sources, determine the HCl reduction efficiency of the control device using Method 26A and the procedures specified in § 63.8800(e). ii. For existing sources, determine the HCl emission rate using Method 26A and the procedures specified in § 63.8800(f). iii. Collect scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) every 15 minutes during the entire duration of each 1-hour test run, and determine the average scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) over the period of the performance test by computing the average of all 15-minute readings.
6. Measure HCN concentration	A method approved by the Administrator.	i. Conduct the performance test according to the site-specific test plan submitted according to § 63.7(c)(2)(i). Measure total HCN emissions and determine the reduction efficiency of the control device. Any performance test which measures HCN concentrations must be submitted for the administrator's approval prior to testing. You must use EPA Method 301 (40 CFR part 63, Appendix A) to validate your method.

TABLE 3 TO SUBPART MMMMM OF PART 63—PERFORMANCE TEST REQUIREMENTS FOR EXISTING, NEW, OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES—Continued

As stated in § 63.8800, you must comply with the requirements for performance tests for flame lamination affected sources in the following table using the requirements in rows 1 through 5 of the table if you are measuring HCl and using a scrubber, row 6 for new or reconstructed sources measuring HCN and using a scrubber, and row 7 if you are using any other control device. For existing sources not using a control device, you must comply with row 8 and rows 1 through 4 of the table.

For each existing, new, or reconstructed flame lamination affected source, you must . . .	Using . . .	According to the following requirements . . .
		ii. Collect scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) every 15 minutes during the entire duration of each 1-hour test run, and determine the average scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) over the period of the performance test by computing the average of all 15-minute readings.
7. If you use any control device other than a scrubber, establish operating parameter limits with which you will demonstrate continuous compliance with the emission limit that applies to the source.	EPA-approved methods and data from the continuous parameter monitoring system.	i. Conduct the performance test according to the site-specific test plan submitted according to § 63.7(c)(2)(i). ii. For new or reconstructed sources, determine the HCl or HCN reduction efficiency of the control device using the EPA-approved method and the procedures specified in § 63.8800(e). iii. For existing sources, determine the HCl emission rate using the EPA-approved method and the procedures specified in § 63.8800(f). iv. Collect operating parameter data as specified in the site-specific test plan.
8. Measure HCl concentration	Method 26A in appendix A to part 60 of this chapter.	Determine the HCl emission rate using the appropriate test methods and the procedures specified in § 63.8800(f).

■ 17. Table 4 to subpart MMMMM is amended by adding entry 4 to read as follows:

TABLE 4 TO SUBPART MMMMM OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITS

* * * * * * *

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
* *	* * *	* *
4. Each existing flame lamination affected source	Emit no more than 1.45 pounds per hour of HCl per flame lamination line.	The average HCl emissions, measured over the period of the performance test(s) do not exceed 1.45 pounds per hour per flame lamination line.

■ 18. Table 5 to subpart MMMMM is amended by revising entries 2 and 3 to read as follows:

TABLE 5 TO SUBPART MMMMM OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

* * * * * * *

For . . .	For the following emission limits or operating limits . . .	You must demonstrate continuous compliance by . . .
* *	* * *	* *
2. Each existing, new, or reconstructed flame lamination affected source using a scrubber.	* * *	* * *
3. Each existing, new, or reconstructed flame lamination affected source using any other control device.	* * *	* * *

■ 19. Table 6 to subpart MMMMM is amended by revising table introductory text and entry 4 and removing entry 5 to read as follows:

TABLE 6 TO SUBPART MMMMM OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a compliance report that includes the information in § 63.8818(e) through (g) as well as the information in the following table, as applicable. Rows 1 and 3 of the following table apply to loop slitter affected sources. Rows 1 through 4 apply to flame lamination affected sources.

If . . .	Then you must submit a report or statement that . . .
* * * * * * *	
4. There were periods during which the operating parameter monitoring systems were out-of-control in information in accordance with the monitoring plan.	Contains the information in § 63.8818(f)(2).

■ 20. Table 7 to subpart MMMMM is revised to read as follows:

TABLE 7 TO SUBPART MMMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM

As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.8830.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements-applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved]	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources that become major.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)(i)	General duty to minimize emissions	No	§ 63.8794(c) specifies general duty requirements.
§ 63.6(e)(1)(ii)	Requirement to correct malfunctions as soon as possible	No.	
§ 63.6(e)(1)(iii)	Enforceability of requirements independent of other regulations.	Yes.	
§ 63.6(e)(2)	[Reserved]	Yes.	
§ 63.6(e)(3)	SSM plans	No.	
§ 63.6(f)(1)	Compliance except during SSM	No.	
§ 63.6(f)(2)–(3)	Methods for determining compliance	Yes.	
§ 63.6(g)	Use of an alternative nonopacity emission standard	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards	No	Subpart MMMMM does not specify opacity or visible emission standards.
§ 63.6(i)	Extension of compliance with emission standards	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Except for loop slitter affected sources as specified in § 63.8798(a).
§ 63.7(a)(3)	Administrator's section 114 authority to require a performance test.	Yes.	
§ 63.7(b)	Notification of performance test and rescheduling	Yes.	
§ 63.7(c)	Quality assurance program and site-specific test plans	Yes.	
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests	No	Requirements for performance test conditions are found in § 63.8800(b) and (c).
§ 63.7(e)(2)–(3)	Performance test data reduction and number of test runs	Yes.	
§ 63.7(f)	Use of an alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of performance tests	Yes.	
§ 63.8(a)(1)–(2)	Applicability of monitoring requirements	Yes	Unless otherwise specified, all of § 63.8 applies only to new or reconstructed flame lamination sources. Additional monitoring requirements for these sources are found in §§ 63.8794(f) and (g) and 63.8804.
§ 63.8(a)(3)	[Reserved]	Yes.	
§ 63.8(a)(4)	Monitoring with flares	No	Subpart MMMMM does not refer directly or indirectly to § 63.11.
§ 63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3)	Continuous monitoring system (CMS) operation and maintenance.	No	CMS requirements are found in § 63.8794(f) and (g).

TABLE 7 TO SUBPART MMMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by § 63.8794(g).
§ 63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart MMMMM does not have opacity or visible emission standards.
§ 63.8(c)(6)	Zero and high-level calibration checks	Yes	Applies as modified by § 63.8794(f).
§ 63.8(c)(7)–(8)	Out-of-control periods, including reporting	Yes.	
§ 63.8(d)–(e)	Quality control program and CMS performance evaluation	No	CMS requirements are found in § 63.8794(f) and (g).
§ 63.8(f)(1)–(5)	Use of an alternative monitoring method	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g)	Data reduction	Yes	Applies as modified by § 63.8794(g).
§ 63.9(a)	Notification requirements—applicability	Yes.	
§ 63.9(b)	Initial notifications	Yes	Except § 63.8816(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emissions/opacity test	No	Subpart MMMMM does not have opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§ 63.9(g)(2)	Use of COMS data	No	Subpart MMMMM does not require the use of COMS.
§ 63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§ 63.9(h)	Notification of compliance status	Yes.	
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.9(k)	Electronic reporting procedures	Yes	Only as specified in § 63.9(j).
§ 63.10(a)	Recordkeeping/reporting applicability	Yes.	
§ 63.10(b)(1)	General recordkeeping requirements	Yes	§§ 63.8820 and 63.8822 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i) and (ii)	Records related to SSM periods and CMS	No	See § 63.8820 for recordkeeping of (1) date, time, and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(b)(2)(iii)	Records of maintenance on air pollution control equipment..	Yes.	
§ 63.10(b)(2)(iv) and (v)	Records related to SSM	No.	
§ 63.10(b)(2)(vi)–(xi)	Records of CMS and other compliance records	Yes.	
§ 63.10(b)(2)(xii)	Records when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test ..	No	Applies only to sources with CEMS.
§ 63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes.	
§ 63.10(b)(3)	Recordkeeping requirements for applicability determinations.	Yes.	
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.8794(g).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.8818 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes.	
§ 63.10(d)(3)	Opacity or visible emissions observations	No	Subpart MMMMM does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions	Yes.	
§ 63.10(d)(5)	SSM reports	No.	
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.8794(g).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations	Yes	Applies as modified by § 63.8794(g).
§ 63.10(e)(2)	Results of continuous opacity monitoring systems performance evaluations.	No	Subpart MMMMM does require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(e)(4)	Continuous opacity monitoring system data reports	No	Subpart MMMMM does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes.	
§ 63.11	Control device requirements—applicability	No	Facilities subject to subpart MMMMM do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.8828 lists those sections of subparts MMMMM and A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes	Subpart MMMMM does not incorporate any material by reference.
§ 63.15	Availability of information/confidentiality.	Yes.	

■ 21. Table 8 to Subpart MMMMM of Part 63 is added to read as follows:

TABLE 8 TO SUBPART MMMMM OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY WEIGHT

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5

TABLE 8 TO SUBPART MMMMM OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY WEIGHT—Continued

Chemical name	CAS No.
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

Subpart OOOOOO—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources

■ 22. Section 63.11416 is amended by revising paragraphs (b) and (f) to read as follows:

§ 63.11416 What are the standards for new and existing sources?

* * * * *

(b) If you own or operate a new or existing slabstock polyurethane foam production affected source, you must not use any material containing methylene chloride for any purpose in any slabstock flexible foam production process.

* * * * *

(f) You may demonstrate compliance with the requirements in paragraphs (b) through (e) of this section using adhesive usage records, Material Safety Data Sheets, and engineering calculations.

■ 23. Section 63.11417 is amended by:

■ a. Revising paragraph (b) introductory text;

■ b. Removing and reserving paragraph (b)(1); and

■ c. Revising paragraph (b)(2) to read as follows:

§ 63.11417 What are the compliance requirements for new and existing sources?

* * * * *

(b) Each owner or operator of a new or existing slabstock flexible polyurethane foam production affected source must comply with paragraphs (b)(2) and (3) of this section.

(1) [Reserved]

(2) You must submit a notification of compliance status report no later than 180 days after your compliance date. The report must contain this certification of compliance, signed by a responsible official, for the standards in § 63.11416(b): "This facility uses no material containing methylene chloride for any purpose on any slabstock flexible foam process."

* * * * *

■ 24. Section 63.11418 is revised to read as follows:

§ 63.11418 What General Provisions apply to this subpart?

The provisions in 40 CFR part 63, subpart A, do not apply to sources subject to this subpart.

■ 25. Remove Table 1 to Subpart OOOOOO of Part 63—Applicability of General Provisions to Subpart OOOOOO.

[FR Doc. 2021–24019 Filed 11–17–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 43, 44, 46, 47, 49, 52, and 53

[FAC 2022–01; FAR Case 2018–018; Item I; Docket No. FAR–2018–0018, Sequence No. 1]

RIN 9000–AN76

Federal Acquisition Regulation: Revision of Definition of "Commercial Item"; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: DoD, GSA, and NASA published a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to change the definition of "commercial item." This document corrects an erroneous weblink in that rule.

DATES: Effective December 6, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or by email at *zenaida.delgado@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2022–01, FAR Case 2018–018.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA are correcting an erroneous weblink under the Background section of the rule.

In FR Doc. 2021–22144 appearing on pages 61017–61038 in the issue of November 4, 2021, make the following correction:

I. Background [Corrected]

1. On page 61017, in the second column, correct the weblink "*https://section809panel.org/wp-content/uploads/2018/04/Sec809Panel_Vol1-Report_Jan18_REVISED_2018-03-14.pdf*" to read "*https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume1/Sec809Panel_Vol1-Report_Jan2018.pdf.*"

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–25028 Filed 11–17–21; 8:45 am]

BILLING CODE 6820–EP–P

report filed for a period ended after December 15, 2021.

Release 21.4 also introduces, and Release 21.3.1 introduced, additional changes in EDGAR that do not require corresponding amendments to the Filer Manual. See the "Updates" section of Volume II of the Filer Manual.

IV. Amendments to Rule 301 of Regulation S–T

Along with the adoption of the updated Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* Typically, the EDGAR Filer Manual is also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room.

V. Administrative Law Matters

Because the Filer Manual, the related rule amendments, relate solely to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties, publication for notice and comment is not required under the Administrative Procedure Act ("APA").[11] It follows that the amendments do not require analysis under requirements of the Regulatory Flexibility Act [12] or a report to Congress under the Small Business Regulatory Enforcement Fairness Act of 1996.[13]

The effective date for the updated Filer Manual and related rule amendments is January 5, 2022. In accordance with the APA,[14] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the related system upgrades.

VI. Statutory Basis

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[15] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[16] Section 319 of the Trust Indenture Act of 1939,[17] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[18]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232 REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: "General Information," Version 39 (September 2021). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 60 (December 2021). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* Typically, the EDGAR Filer Manual is also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

By the Commission.

Dated: December 20, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–28445 Filed 1–4–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 5 U.S.C. 553(b)(A).

[12] 5 U.S.C. 601 through 612.

[13] 5 U.S.C. 804(3)(C).

[14] 5 U.S.C. 553(d)(3).

[15] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[16] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78*o*, 78o–4, 78w, and 78*ll*.

[17] 15 U.S.C. 77sss.

[18] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2014–0471; FRL–5562–08–OAR]

RIN 2060–AS26

Clean Air Act Section 112 List of Hazardous Air Pollutant: Amendments to the List of Hazardous Air Pollutants (HAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is amending the list of hazardous air pollutants (HAP) under Clean Air Act (CAA) to add 1-bromopropane (1-BP) in response to public petitions previously granted by the EPA. This action amends the list of hazardous air pollutants initially listed under the CAA.

DATES: This final rule is effective on February 4, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0471. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. With the exception of such material, publicly available docket materials are available electronically in *https://www.regulations.gov/.* Out of an

abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets* or call the Public Reading Room at (202) 566–1744 or the EPA Docket Center at (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Susan Miller, Sector Policies and Programs Division (D205–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2443; fax number: (919) 541–4991; email address: *miller.susan@epa.gov*. You may also consult your state or local permitting representative or the appropriate EPA Regional office representative.

SUPPLEMENTARY INFORMATION:

Organization of this document. The information in this preamble is organized as follows:

I. General Information
II. Background
III. What does this final rule do?
IV. Statutory and Executive Order Reviews

I. General Information

A. Why is the EPA issuing this final rule?

Having previously granted petitions to add 1-BP to the CAA HAP list, this current action is the final step in granting petitioners' request. Per CAA section 112(b)(3)(B), the Administrator "shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant, and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." On June 18, 2020, the EPA published its final decision to grant the petitions from two entities to list 1-BP. See 85 FR 36851. This final rule completes the listing action required when a petition is granted.

Having previously published the rationale for the decision to grant these petitions and provided an opportunity for public review and comment, the EPA has determined that there is good cause for amending the CAA HAP list without additional need for public review and comment. This final rule merely codifies a decision that was made in the June 2020 granting notice; therefore, we believe any additional public notice and comment is duplicative, unnecessary, and would serve no useful purpose.

B. Judicial Review

Under CAA section 112(e)(4), the Administrator's decision to add a pollutant to the CAA HAP list is not a final Agency action subject to judicial review, except that any such action may be reviewed when the Administrator promulgates emission standards for the pollutant. Accordingly, the decision to add 1-BP to the HAP list is not subject to judicial review until the Administrator promulgates applicable CAA section 112(d) standards that address emissions of 1-BP.

II. Background

A. What is the statutory authority for this action?

The CAA section 112(b)(3)(A) specifies that any person may petition the Administrator to modify the list of HAP contained in CAA section 112(b)(1), otherwise known as the CAA HAP list,[1] by adding or deleting a substance. CAA section 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list, "upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." The Administrator is required under the CAA section 112(b)(3)(A) to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition based solely on inadequate resources or time for review.

This is the first occasion on which the EPA is adding a substance to the CAA HAP list that Congress created in 1990. Since 1990, the EPA has amended the CAA HAP list four times to remove or delist a HAP. They are caprolactam (61 FR 30816; June 18, 1996); ethylene glycol monobutyl ether (69 FR 69320; November 29, 2004); surfactant alcohol ethoxylates and their derivatives (these are compounds that were considered to be included in glycol ethers, which is a listed HAP); (65 FR 47342; August 2, 2000); and methyl ethyl ketone (MEK) (70 FR 75047; December 19, 2005)). The EPA has also denied a petition to remove methanol from the CAA HAP list (66 FR 21929; May 2, 2001).

B. What is the history of the listing process for 1-BP?

The Halogenated Solvents Industry Alliance (HSIA) and New York State Department of Environmental Conservation (NYSDEC) submitted petitions requesting that the EPA add 1-BP to the CAA section 112(b)(1) HAP list on October 28, 2010, and November 24, 2011, respectively.[2] On November 28, 2012, in response to the EPA's requests for additional data, HSIA supplemented its petition. Following the receipt of these petitions and supplemental data, the EPA conducted a review to determine whether the petitions were complete according to Agency criteria for the CAA section 112(b)(3) actions, which we explained in the February 6, 2015, document (80 FR 6676). Specifically, the EPA determined that these petitions and supplemental data addressed all the necessary subject areas for the Agency to assess whether emissions, ambient concentrations, bioaccumulation, or deposition of 1-BP are known to cause or may reasonably be anticipated to cause adverse human health effects or adverse environmental effects. On February 6, 2015, the EPA determined these petitions to be complete and published a notification of receipt of a complete petition in the **Federal Register** (80 FR 6676), that invited the public to comment on the technical merits of these petitions and to submit any information relevant to the technical review of these petitions. Further, on March 11, 2015 (80 FR

[1] The CAA HAP list is a list or organic and inorganic substances that Congress identified as HAP in the 1990 CAA Amendments. CAA section 112(b)(1). These HAP are associated with a wide variety of adverse health effects, including, but not limited to cancer, neurological effects, reproductive effects, and developmental effects. The health effects associated with various HAP differ depending upon the toxicity of the individual HAP and the particular circumstances of exposure, such as the amount of chemical present, the length of time a person is exposed and the stage of life at which the person is exposed.

[2] Both the Halogenated Solvents Industry Alliance and the New York State Department of Environmental Conservation petitions referred to the chemical as n-propyl bromide and 1-bromopropane.

12794), the EPA extended the comment period for the notification of receipt of complete petitions to May 7, 2015. Subsequently, on January 9, 2017, the EPA published a draft notice in the **Federal Register** (82 FR 2354) containing the Agency's intended rationale for granting these petitions and solicited public comments on the rationale. In the draft notice, the EPA determined that these petitions met criteria specified in the CAA section 112(b)(3)(B): *i.e.,* 1-BP is an air pollutant and its emissions and ambient concentrations "may reasonably be anticipated to cause adverse effects to human health." Further, on June 6, 2017, the EPA extended the comment period until October 1, 2017, in response to the request by Albemarle Corporation, a U.S.-based manufacturer of 1-BP, that the Agency provide an opportunity for prospective commenters to review the 2017 Toxics Release Inventory (TRI), which included newly required reporting of 1-BP emissions. (82 FR 26091). On June 18, 2020, the EPA granted these petitions after reviewing and addressing public comments received on the draft notice containing the Agency's intended rationale for granting them. (85 FR 36851).[3] Finally, on June 11, 2021, the EPA published an advanced notice of proposed rulemaking (ANPRM), Addition of 1-Bromopropane to Clean Air Act Section 112 HAP List, that solicited data and comments on the potential regulatory impacts of the addition of a HAP to the Section 112 HAP list. (86 FR 31225).

Based on the information and comments received in response to the ANPRM, the Agency determined that a separate regulation is needed to ensure the effective and efficient implementation of requirements triggered by the addition of a new HAP. The Agency has thus begun working on a separate regulatory "infrastructure" to address the impacts, implications, and requirements associated with the addition of a new HAP to the HAP list. In the meantime, the Agency has also determined that additional guidance may be needed on the listing of 1-BP and intends to publish such guidance upon promulgation of this rule.

[3] On August 17, 2020, California Communities Against Toxics, Sierra Club and Gasp filed a petition for judicial review of the agency's decision to grant petitions that did not list 1-BP as a HAP under CAA section 112(b)(1). *California Communities Against Toxics* v. *EPA,* Case No. 20–1311 (D.C. Circuit). The State of New York is an intervenor on behalf of petitioners. This case is currently being held in abeyance and motions to govern further proceedings are now due on February 7, 2022.

C. What is 1-BP?

The compound 1-BP or n-propyl bromide (nPB),[4] CAS #106–94–5, is a brominated organic colorless liquid that is insoluble in water but soluble in ethanol and ether. Both petitioners and public commenters provided background information regarding 1-BP's chemical properties, physical properties, production, and usage as a part of the 1-BP petition granting process. [See Docket ID No. EPA–HQ–OAR–2014–0471]. Applications of 1-BP include solvent cleaning in electronic, metal, and precision cleaning operations; aerosols; adhesives; and as an intermediate chemical in the manufacture of pharmaceuticals and agricultural products.

III. What does this final rule do?

This final rule will amend 40 CFR part 63, subpart C, to add 1-BP to the list of CAA section 112 HAP. The effective date of the addition is February 4, 2022. Once added to the HAP list, 1-BP will become subject to regulation under CAA section 112. ("EPA has a clear statutory obligation under the statute to set emission standards for each listed HAP." *National Lime Association* v. *EPA,* 233 F.3d 625, 634 (D.C. Cir. 2000)). There is no specific period for promulgating standards for newly listed HAPs under CAA section 112(b)(1).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it was determined that it raised "novel legal or policy issues." Any changes made in response to OMB recommendations have been documented in the docket. This action will have no direct immediate impacts under 40 CFR part 63 on emissions of 1-BP, but the addition of 1-BP to the HAP list could have immediate impacts to facilities that emit 1-BP (*e.g.,* the operating permits program under title V of the CAA).

[4] For this action and for future regulations under the CAA, the EPA will refer to the chemical identified by CAS No. 106–94–5 as 1-bromopropane or 1-BP. The EPA notes that in an action published on November 23, 2015, the EPA added the chemical by the name 1-BP to the Community Right-to-Know Toxic Chemical Release Reporting requirements. In addition, the chemical is listed in the EPA's Substance Registry Services, EPA's authoritative resource for basic information about chemicals, as 1-BP. Finally, the chemical's final risk evaluation is currently undergoing reconsideration pursuant to Toxic Substances Control Act Section 6(a), under Docket ID No. EPA– HQ–OPPT–2015–0084 as 1-BP.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities if the rule has no net burden on the small entities subject to the rule. This regulatory action is ministerial in nature as it codifies a decision to list 1-BP as a HAP that was made when the petitions to list were granted. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. The action presents no additional burden on implementing authorities beyond existing requirements. Thus, Executive Order 13175 does not apply to this action. However, the EPA held two meetings with tribes to explain this action. The first meeting occurred on June 29, 2020, immediately after the petitions to add 1-BP were granted. The second meeting followed the June 11, 2021, publication of the ANPRM for 1-BP (86 FR 31225).

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action codifies a decision to list 1-BP as a HAP that was made when petitions were granted in 2020.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629; February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action is ministerial in nature as it codifies a decision to list 1-BP as a HAP that was made when petitions were granted in 2020 and does not have any direct impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule in section I of this preamble, including the basis for that finding.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, General Provisions, Hazardous substances.

Michael S. Regan,

Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency amends 40 CFR part 63 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.*

■ 2. Add § 63.64 to subpart C to read as follows:

§ 63.64 Additions of substances to the list of hazardous air pollutants.

(a) The substance 1-bromopropane, or 1-BP, also known as n-propyl bromide or nPB (CAS No. 106–94–5) is added to the list of hazardous air pollutants established by Clean Air Act (CAA) section 112(b)(1), 42 U.S.C. 7412(b)(1).

(b) [Reserved]

[FR Doc. 2021–28315 Filed 1–4–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 21–1631; FR ID 65075]

Annual Adjustment of Civil Monetary Penalties To Reflect Inflation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires the Federal Communications Commission (Commission) to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. The Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES:

Effective date: The rule is effective January 5, 2022.

Applicability date: The civil monetary penalties are applicable beginning January 15, 2022.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, Deputy Chief, Enforcement Bureau, at *Lisa.Gelb@fcc.gov* or 202–418–2019.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 21–1631, adopted and released on December 22, 2021. The complete text of this document is available for download at *https://www.fcc.gov/document/2022-annual-adjustment-civil-monetary-penalties-reflect-inflation.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, 45 L Street NE, Washington, DC 20554. To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

The Bipartisan Budget Act of 2015 included, as section 701 thereto, the Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Under the Inflation Adjustment Act, agencies are required to make annual inflationary adjustments by January 15 each year, beginning in 2017. The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance. OMB issued guidance on December 15, 2021, and this Order follows that guidance. The Commission therefore updates the civil monetary penalties for 2022, to reflect an annual inflation adjustment based on the percent change between each published October's CPI–U; in this case, October 2021 CPI–U (276.589)/October 2020 CPI–U (260.388) = 1.06222. The Commission multiplies 1.06222 by the most recent penalty amount and then rounds the result to the nearest dollar.

For 2022, the adjusted penalty or penalty range for each applicable penalty is calculated by multiplying the most recent penalty amount by the 2022 annual adjustment (1.06222), then rounding the result to the nearest dollar. The adjustments in civil monetary

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0560; FRL–7546–02–OAR]

RIN 2060–AU59

National Emission Standards for Hazardous Air Pollutants: Mercury Cell Chlor-Alkali Plants Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Mercury Cell Chlor-Alkali Plants source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, this action finalizes the beyond-the-floor determination that EPA performed in response to a petition for reconsideration of the 2003 NESHAP. These final amendments prohibit mercury emissions from existing mercury cell chlor-alkali plants based on the results of our technology review and our beyond-the-floor maximum achievable control technology (MACT) determination. The compliance date for this requirement is three years. Since mercury emissions will be eliminated as a result of the final rule standards, any adverse health or environmental effects from mercury emissions from the source category will also be eliminated in that three-year time frame. Furthermore, the EPA is finalizing work practice standards and instrumental monitoring of mercury to minimize fugitive mercury emissions from the cell rooms during the period of time before emissions are eventually eliminated. In addition, the EPA is finalizing work practice standards to minimize fugitive chlorine emissions from mercury cell chlor-alkali plants, which were not previously regulated under the NESHAP. The EPA is also finalizing revisions related to emissions during periods of startup, shutdown, and malfunction (SSM) and amendments to correct a few minor errors in compliance provisions in the 2003 rule.

DATES: This final rule is effective on May 6, 2022.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2020–0560. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. Hand Deliveries and couriers may be received by scheduled appointment only. For further information and updates on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Phil Mulrine, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5289; fax number: (919) 541–4991; and email address: *mulrine.phil@epa.gov.* For specific information regarding the risk modeling methodology, contact James Hirtz, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *hirtz.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. Throughout this document wherever "we," "us," or "our" is used, it is intended to refer to the EPA. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL acute exposure guideline level two
CAA Clean Air Act
CFR Code of Federal Regulations
Cl_2 Chlorine
CRA Congressional Review Act
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
HAP hazardous air pollutants(s)
HCl hydrochloric acid
Hg mercury
HI hazard index
HQ hazard quotient
MACT maximum achievable control technology
MATS Mercury and Air Toxics Standards
NAIC North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
NOCS Notification of Compliance Status report
NRDC Natural Resources Defense Council
OMB Office of Management and Budget
PB–HAP HAPs known to be persistent and bioaccumulative in the environment
PDF portable document format
PM particulate matter
ppm parts per million
ppmv parts per million by volume
PRA Paperwork Reduction Act
REL reference exposure limit
RTR risk and technology review
SSM startup, shutdown, and malfunction
SV screening value
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act

Background information. On January 8, 2021, the EPA proposed revisions to the 2003 Mercury Cell Chlor-Alkali Plants NESHAP, 40 CFR part 63, subpart IIIII, based on our RTR and MACT beyond-the-floor analyses (86 FR 1362, January 8, 2021). In this action, we are finalizing decisions and revisions for the rule. We summarize the comments we timely received regarding the proposed rule and provide our responses in this preamble. A "track changes" version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What is the Mercury Cell Chlor-Alkali Plants source category and how does the NESHAP regulate HAP emissions from the source category?
C. What changes did we propose for the Mercury Cell Chlor-Alkali Plants source category in our January 8, 2021 proposal?
III. What is included in this final rule?
A. What are the final rule amendments based on the risk review for the Mercury Cell Chlor-Alkali Plants source category?
B. What are the final rule amendments related to a non-mercury option for the Mercury Cell Chlor-Alkali Plants Source Category pursuant to CAA sections 112(d)(2), (3), and (6)?
C. What are the final rule amendments based on the technology review for the

Mercury Cell Chlor-Alkali Plants source category?
D. What are the final rule amendments pursuant to sections 112(d)(2) and (3) and (h) for the Mercury Cell Chlor-Alkali Plants source category?
E. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?
F. What are the effective and compliance dates of the standards?
IV. What is the rationale for our final decisions and amendments for the Mercury Cell Chlor-Alkali Plants source category?
A. Residual Risk Review for the Mercury Cell Chlor-Alkali Plants Source Category
B. Non-Mercury Option for the Mercury Cell Chlor-Alkali Plants Source Category
C. Technology Review for the Mercury Cell Chlor-Alkali Plants Source Category
D. Amendments Pursuant to Sections 112(d)(2) and (3) and (h) for the Mercury Cell Chlor-Alkali Plants Source Category
E. Amendments Addressing Emissions During Periods of Startup, Shutdown, and Malfunction and Other Topics
F. Public Notice and Comments
V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
A. What are the affected facilities?
B. What are the air quality and other environmental impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
F. What analysis of environmental justice did we conduct?
G. What analysis of children's environmental health did we conduct?
VI. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code
Mercury Cell Chlor-Alkali Plants	325180

[1] North America Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/mercury-cell-chloralkali-plants-national-emissions-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by July 5, 2022. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as MACT standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work

practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, pursuant to CAA section 112(d)(6). In conducting this review, the EPA is not required to recalculate the MACT floors that were established in earlier rulemakings. *Natural Resources Defense Council* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008) (*NRDC*). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6). The EPA is required to address regulatory gaps, such as missing standards for listed air toxics known to be emitted from the source category, and any new MACT standards must be established under CAA sections 112(d)(2) and (3), or, in specific circumstances, CAA sections 112(d)(4) or (h). *Louisiana Environmental Action Network* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020) (*LEAN*). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see *https://www.federalregister.gov/documents/2021/01/08/2021-00174/national-emission-standards-for-hazardous-air-pollutants-mercury-cell-chlor-alkali-plants-residual.*

B. What is the Mercury Cell Chlor-Alkali Plants source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Mercury Cell Chlor-Alkali Plants NESHAP on December 19, 2003 (68 FR 70904). The standards are codified at 40 CFR part 63, subpart IIII. The mercury cell chlor-alkali industry consists of facilities that use mercury cells to manufacture product chlorine, product caustic, and by-product hydrogen via an electrolytic process. The source category covered by these MACT standards currently includes one operating facility, Westlake located in West Virginia.

Subpart IIII covers both major and area sources. The single remaining operational mercury cell-chlor-alkali plant in the category is located at a major source site. In addition to subpart IIII, processes at this major source site are subject to subparts ZZZZ (Reciprocating Internal Combustion Engine NESHAP) and DDDDD (Industrial/Commercial/Institutional Boilers and Process Heaters). The mercury cell chlor-alkali NESHAP includes standards for mercury emissions from two types of affected sources at plant sites where chlorine and caustic are produced in mercury cells: Mercury cell chlor-alkali production facility affected sources and mercury recovery facility affected sources. The 2003 rule prohibited mercury emissions from new and reconstructed mercury cell chlor-alkali production affected sources. 40 CFR 63.8190(a)(1). For existing mercury cell chlor-alkali production affected sources, the 2003 standards included emission limitations for mercury emissions from process vents (including emissions from end-box ventilation systems and hydrogen systems) and work practices for fugitive mercury emissions from the cell room. 40 CFR 63.8190(a)(2), 63.8192(a) through (f).

For new, reconstructed, and existing mercury recovery facilities, the 2003 NESHAP included emission limitations for mercury emissions from oven type thermal recovery unit vents and non-oven type thermal recovery unit vents. 40 CFR 63.8190(a)(3). Note that the single remaining operational facility does not operate a mercury recovery facility, so there are no operating mercury recovery facilities subject to subpart IIII.

The 2003 rule did not promulgate standards for chlorine (Cl_2) or hydrochloric acid (HCl), citing the authority of section 112(d)(4) of the CAA (68 FR 70906). In its 2003 action (68 FR 70904), the EPA promulgated the initial Mercury Cell Chlor-Alkali Plants NESHAP pursuant to CAA section 112(d)(2) and (3) and added the source category to the EPA's Source Category List under CAA sections 112(c)(1), as well as under (c)(3), (c)(6) and (k)(3)(B), in each case because of the mercury emissions.

Following promulgation of the 2003 Mercury Cell Chlor-Alkali Plants NESHAP, the EPA received a petition to reconsider several aspects of the rule from the Natural Resources Defense Council (NRDC). NRDC also filed a petition for judicial review of the rule in the U.S. Court of Appeals for the District of Columbia Circuit. In a letter dated April 8, 2004, the EPA granted NRDC's petition for reconsideration and on July 20, 2004, the court placed the petition for judicial review in abeyance pending the EPA's action on reconsideration.

The EPA issued proposed revisions to the 2003 rule on June 11, 2008 (73 FR 33258) and on March 14, 2011 (76 FR 13852), to respond to the reconsideration petition. This final action completes EPA's rulemaking following those two proposals and the third action proposed on January 8, 2021 (86 FR 1362), and completes the EPA's action in response to the 2004 petition for reconsideration of the 2003 rule.

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC,* 529 F.3d at 1083 ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.").

C. What changes did we propose for the Mercury Cell Chlor-Alkali Plants source category in our January 8, 2021, proposal?

On January 8, 2021, the EPA published a proposed rule in the **Federal Register** for the Mercury Cell Chlor-Alkali Plants NESHAP, 40 CFR part 63, subpart IIIII, that took into consideration the RTR analyses and the MACT beyond-the-floor analysis. In the proposed rule, we proposed: (1) The determination that risks due to emissions of HAP are acceptable from the Mercury Cell Chlor-Alkali Plants source category and that the 2003 NESHAP provides an ample margin of safety to protect public health; (2) to amend the requirements for cell room fugitive mercury emissions to require work practice standards for the cell rooms plus instrumental monitoring of cell room fugitive mercury emissions under the technology review; (3) work practice standards for fugitive chlorine emissions from mercury cell chlor-alkali plants, which were not previously regulated under the NESHAP; (4) revisions related to emissions during periods of startup, shutdown and malfunction (SSM), which had also been addressed in the 2011 proposed rule; (5) provisions for electronic submission of performance test results, compliance reports, and Notification of Compliance Status (NOCS) reports; and (6) amendments to correct minor errors and improve the compliance provisions of the rule, which had also been addressed in the 2008 and 2011 proposals.

With regard to our technology review and an overdue beyond-the-floor determination, as explained in the January 2021 document (86 FR 1362, January 8, 2021), we evaluated two options: (1) Improved cell room mercury monitoring and work practices to minimize emissions; and (2) the elimination of Hg emissions by requiring the conversion to a non-Hg technology.

Based on this evaluation, we proposed option 1, as mentioned above, however we also described option 2 (mercury elimination) in detail in the January 2021 notice and solicited comments. Specifically, we explained that based on consideration of the updated costs and cost effectiveness and uncertainties, and given the passage of time, and the fact that the cost-effectiveness data and analysis done in 2011 were based on two facilities that are no longer operating, we questioned at that time whether those 2011 analyses would still be transferable to the one remaining operating facility. Consequently, we did not propose to require the elimination of mercury in the January 2021 document. However, we solicited comments, data, and other information regarding this proposed decision, including data and information regarding the capital and annual costs, cost effectiveness, non-air impacts, and other relevant information that would be relevant for the remaining facility regarding whether the NESHAP should include a zero-mercury standard as a beyond-the-floor MACT standard. We also stated that we intend to consider any such submitted data and information, in addition to the data and information contained in the records for the 2008 and 2011 proposals and in the 2021 proposal, in reaching final conclusions regarding a zero-mercury standard (see 86 FR 1362, January 8, 2021).

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR and MACT provisions of CAA section 112 for the Mercury Cell Chlor-Alkali Plants source category and amends the Mercury Cell Chlor-Alkali Plants NESHAP based on those determinations.

A. What are the final rule amendments based on the risk review for the Mercury Cell Chlor-Alkali Plants source category?

No changes to the Mercury Cell Chlor-Alkali Plants NESHAP are being promulgated to meet the requirements of CAA section 112(f). Under this action, for purposes of section 112(f), we are finalizing the risk assessments and our determination that the risks from the Mercury Cell Chlor-Alkali Plants source category are acceptable, the 2003 standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect.

B. What are the final rule amendments related to a non-mercury option for the Mercury Cell Chlor-Alkali Plants Source Category pursuant to sections 112(d)(2), (3), and (6)?

To satisfy the requirements of CAA sections 112(d)(2), (d)(3), and (6), including to respond to the petition for reconsideration of the 2003 rule by completing our MACT beyond-the-floor analysis, we are revising the MACT standards to prohibit mercury emissions from existing mercury cell chlor-alkali plants. Specifically, these amendments prohibit mercury emissions from existing mercury chlor-alkali production facility affected sources. This makes the mercury standard for existing sources the same as the standard for new and reconstructed sources that has been in the NESHAP since 2003. Since we conclude that it is improbable that a mercury cell chlor-alkali plant can be operated without mercury emissions, we expect this revision will effectively require the lone remaining mercury cell chlor-alkali plant in operation in the U.S. to cease production of chlorine with their single mercury cell production unit. We anticipate the facility will continue to produce chlorine through its other, higher-volume non-mercury chlorine production units located at the Westlake facility and may convert the mercury cell unit to a membrane cell or other non-mercury chlorine production process. There are no mercury recovery facilities still in operation in the U.S. This final rule provides a three-year period to comply with the requirement to eliminate mercury emissions from the single remaining existing affected source. To demonstrate compliance, the owner or operator will need to submit a notification certifying that all mercury emissions have been eliminated permanently no later than 120 days after the compliance date.

C. What are the final rule amendments based on the technology review for the Mercury Cell Chlor-Alkali Plants source category?

We determined that there are developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. As noted above, we are revising the MACT standards to include a prohibition of mercury emissions, which is based on both a section 112(d)(6) technology review and our beyond-the-floor review under section 112(d)(2) and (3) in response to NRDC's 2004 petition for reconsideration. Also based on the section 112(d)(6) technology review and in response to NRDC's 2004 petition, we are amending the requirements for cell room fugitive mercury emissions to require work practice standards for the cell rooms along with instrumental monitoring of cell room fugitive mercury emissions during the period of time before emissions are eventually eliminated. In addition, under the technology review, we identified a regulatory gap, and as discussed below, we are establishing new standards under CAA section 112(h).

D. What are the final rule amendments pursuant to sections 112(d)(2) and (3) and (h) for the Mercury Cell Chlor-Alkali Plants source category?

In addition to the requirements for mercury described above, we are also finalizing amendments pursuant to section 112(h) for chlorine emissions, similar to the standards we proposed in January 2021 (86 FR 1362), that require implementation of work practices to minimize chlorine emissions from the mercury cell chlor-alkali processes. Further details regarding these work practice standards are described in section IV.D of this document.

E. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?

We are finalizing amendments related to provisions that apply during periods of SSM that the EPA proposed on January 8, 2021. Further details are provided in section IV.E of this document.

F. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on May 6, 2022. The compliance date for existing mercury cell chlor-alkali plants to eliminate mercury emissions is May 6, 2025.

These final amendments will essentially require that the single remaining operating mercury cell chlor-alkali facility either convert its one mercury cell unit to a non-mercury technology (its other units are already using non-mercury technology) or close that mercury cell unit and thereafter rely solely on its other non-mercury units for chlorine production. Either of these options will require significant time for the company to reach a decision and to develop and implement a plan of action. For example, it is expected that it could take between six months and one year to develop an engineering design and plan for conversion. The facility would then need to solicit bids for the conversion, which could take up to six months. Construction could then take up to two years. In addition, arrangements will need to be made to dismantle the mercury cell facility, to store the elemental mercury removed from the cells and to dispose of the mercury-contaminated wastes. The most recent conversion in the U.S. was the facility in Ashtabula, Ohio. This Ashtabula facility was, like the West Virginia, facility, one of the smaller capacity mercury cell units in the U.S. (less than 75,000 tons of chlorine per year). It was also of similar age (Ashtabula constructed in 1963 and West Virginia in 1958) and was located in a neighboring state. The company announced the plans to convert their mercury cell process to membrane cells in 2014. They broke ground in 2017 and the conversion was complete in 2020. In conclusion, six years elapsed between the time the decision to convert was made and the conversion was completed, which included three full years for the dismantling/construction. Therefore, we conclude that the full three-year compliance period allowed by section 112(i)(3) of the CAA to meet new or revised emission standards is warranted. Moreover, as discussed further below, this period will provide ample time for the United States, via the elimination of mercury emissions from the plant, to meet its obligations to eliminate mercury emissions from this source category under the international treaty known as the Minamata Convention.

For existing sources, in 2021, we proposed two changes to the work practice standards. One of these changes was the requirement to operate a cell-room mercury monitoring program in addition to mercury work practices. This change was proposed in both 2008 and 2011. The second proposed change is a program to require work practices to reduce fugitive chlorine emissions. While these proposed work practice standards were based on the practices in place at the single facility in the source category, they will require some modifications to the procedures currently employed at the facility. Specifically, they will need to develop and implement a recordkeeping system to record and maintain the records required for the mercury cell and fugitive chlorine work practices and to incorporate the required material in the requisite reports. As proposed, we are providing 180 days for the facility to modify their current procedures. Therefore, the mercury and chlorine work practice standards being promulgated in this action require compliance on November 2, 2022.

We also proposed in January 2021, a change to the SSM requirements to remove the exemption from the requirements to meet the standards during SSM periods and to remove the requirement to develop and implement an SSM plan. This change was also proposed in 2008 and 2011. Our experience with similar industries shows that this sort of regulated facility generally requires a time period of 6 months to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plans to reflect the revised requirements. As proposed, we are providing 180 days for the facility to comply with the revised SSM requirements. As such, these revisions require compliance by November 2, 2022.

IV. What is the rationale for our final decisions and amendments for the Mercury Cell Chlor-Alkali Plants source category?

For each issue, this section provides a description of what we addressed in the proposed rules for the source category and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and the comments and responses.

A. Residual Risk Review for the Mercury Cell Chlor-Alkali Plants Source Category

1. What did we propose pursuant to CAA Section 112(f) for the Mercury Cell Chlor-Alkali Plants source category?

We proposed that health risks due to emissions of HAP from the Mercury Cell Chlor-Alkali Plants source category are acceptable, that the 2003 NESHAP provides an ample margin of safety to protect public health, and that no additional standards are necessary to prevent an adverse environmental effect.

A two-step evaluation approach was used, similar to the approach applied in the Benzene NESHAP, to determine whether or not risks are acceptable and to determine whether the 2003 standards provide an ample margin of safety to protect public health or needed to be revised to meet this goal. We considered health risk and other health information; information and additional factors relating to the appropriate level of control were also considered—*e.g.,* cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

Table 2 below provides a summary of the results of the inhalation risk assessment for the source category conducted for the January 2021 proposal. More detailed information on the risk assessment can be found in the *National Emission Standards for Hazardous Air Pollutants: Mercury Cell*

Chlor-Alkali Plants Residual Risk and Technology Review supporting document, available in the docket for this action (Docket No.: EPA–HQ–OAR–2020–0560–0014).

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR THE MERCURY CELL CHLOR-ALKALI PLANTS [1]

[Source category]

Risk assessment	Number of facilities [2]	Maximum individual cancer risk (1-in-1million) [3]	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]	Maximum screening acute noncancer HQ [5]
Baseline Actual Emissions						
Source Category	2	0.004	0	0.0000003	0.05 (respiratory)	2 (REL) 7E–4 (AEGL2).
Facility-Wide	2	0.3	0	0.0001	0.05 (respiratory).	
Baseline Allowable Emissions						
Source Category	2	0.004	0	0.0000003	0.05 (respiratory).	

[1] Based on actual and allowable emissions.

[2] When the risk assessment was completed in mid-2020, there were 2 operating facilities in the mercury cell chlor-alkali source category and both were subject to 40 CFR part 63, subpart IIIII. However, in late 2020 one of those facilities converted to a non-mercury process. Therefore, currently only one operating facility remains in the source category.

[3] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.

[4] Maximum TOSHI. The target organ with the highest TOSHI for the source category is the respiratory system.

[5] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. The acute HQ shown was based upon the lowest acute 1-hour dose-response value, the REL for mercury (elemental). When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

As shown in the table above, for the Mercury Cell Chlor-Alkali Plants source category, the maximum cancer risk to the individual most exposed is less than 1-in-1 million based on actual emissions and allowable emissions. The estimated incidence of cancer due to inhalation exposures for the source category is 0.0000003 excess cancer cases per year, or one excess case every 3 million years. No one is exposed to cancer risk greater than or equal to 1-in-1 million based upon actual and allowable emissions. We estimated that the maximum chronic noncancer TOSHI from inhalation exposure is less than 1 (0.05 [respiratory]). For both actual and allowable emissions, respiratory risks were driven by chlorine emissions from the mercury cell building.

Based on our refined screening analysis of reasonable worst-case acute exposure to actual emissions from the category, the facility exceeded an HQ of 1 (the HQ was 2), when compared to the 1-hour REL for mercury (elemental). As discussed in section III.C.3.c of the 2021 proposal preamble, we used an acute hourly multiplier of 10 for all emission processes. For this HAP, there are no AEGL–1 or ERPG–1 values for comparison, but AEGL–2 or ERPG–2 values are available. For elemental mercury, when the maximum off-site concentration is compared with the AEGL–2 and ERPG–2, the maximum acute noncancer HQ is well below 1 (0.0007). With regard to multipathway exposures, HAP known to be persistent and bioaccumulative in the environment (PB–HAP) emissions (based on estimates of actual emissions) were reported from both facilities in the source category with both exceeding the Tier 1 non-cancer screening threshold emission rate for mercury. A Tier 2 screening analysis was conducted, and the facility did not have a screening value (SV) greater than 1 for any scenario (the fisher and farmer had the highest SV at 0.4). There are no carcinogenic PB–HAP emitted from the source category, so there are no cancer SVs to report.

Considering all the health risk information and factors noted, the proposed determination was that the risks are acceptable and that no additional standards are necessary to prevent an adverse environmental effect. Under the ample margin of safety analysis, we evaluated the cost and feasibility of available control technologies and other measures that could be applied to further reduce the risks (or potential risks) due to emissions of HAP from the source category. After careful consideration of these options, since the risks due to mercury emissions were already low, we did not propose any additional standards for mercury under CAA section 112(f).

2. How did the risk review change for the Mercury Cell Chlor-Alkali Plants source category?

We made no changes to either the risk assessments or our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects for the Mercury Cell Chlor-Alkali Plants source category since the proposal was published on January 8, 2021. We are finalizing the risk review as proposed (86 FR 1362, January 8, 2021).

3. What key comments did we receive on the risk review, and what are our responses?

The only comment received regarding the risk assessment was that one commenter agreed with our assessment that emissions were low and that risks were low and at acceptable levels.

4. What is the rationale for our final approach and final decisions for the risk review?

As noted above, in 2021, we proposed that the 2003 Mercury Cell Chlor-Alkali NESHAP provides an ample margin of safety to protect public health without any revisions. Other than a general agreement with the results, there were no specific comments submitted on the risk review approach, results, or decision. Therefore, we are finalizing the proposed determination that the risks are acceptable, that the 2003 rule provides an ample margin of safety to protect public health and that no additional standards are necessary to prevent an adverse environmental effect.

B. Non-Mercury Option for the Mercury Cell Chlor-Alkali Plants Source Category

1. What did we propose related to the non-mercury option for the Mercury Cell Chlor-Alkali Plants source category?

We addressed this issue in all three of our proposed rules issued following promulgation of the 2003 rule, in response to the 2004 petition for reconsideration of the 2003 rule's consideration of section 112(d)(2) and (3) beyond-floor options and most recently as part of the technology review under section 112(d)(6). In the 2021 proposal, we further considered our two prior proposals, but did not re-propose the option to require non-mercury production technology for existing sources, which has been the requirement for new and reconstructed mercury cell chlor-alkali production sources since the rule was originally promulgated in 2003. This option was considered both as part of the technology review under the authority of section 112(d)(6) and as a "beyond-the-floor" option under sections 112(d)(2) and (3). As explained in the several proposed rules, selecting this option would eliminate all mercury emissions by forcing the remaining facility to either convert to a non-mercury technology or close its mercury cell chlor-alkali operations. While we did not in 2021, re-propose this option under either 112(d)(2) and (3) or (d)(6), we described this option in detail in the proposed rule's **Federal Register** (FR) notice published on January 8, 2021 (86 FR 1362), including the estimated capital costs, annualized costs and cost effectiveness if it were to be adopted, and we specifically solicited comments, data, and other information regarding this proposed decision. Furthermore, in the January 2021 FR document, we discussed and referred to the previous 2011 proposed rule in which the EPA also analyzed expected capital costs, annualized costs and cost effectiveness of the then proposed non-mercury option but for which EPA had not taken final action at the time of the 2021 proposal.

2. What changed related to the non-mercury option for the Mercury Cell Chlor-Alkali Plants source category?

After consideration of public comments received on the 2021 proposed rule and further assessment of the expected costs, we have changed our 2021 proposed decisions under sections 112(d)(2) and (3) and (6) regarding the non-mercury option and the final rule includes an amendment that prohibits mercury emissions from existing mercury cell chlor-alkali plants as was proposed in 2011 under section 112(d)(2) and (3). Existing mercury cell chlor-alkali plants will have three years to comply with this requirement.

3. What key comments did we receive on the non-mercury option, and what are our responses?

Comment: One commenter remarked that the EPA must revise MACT standards when it finds there have been developments in processes, products, or control technologies under CAA section 112(d)(6) to reduce emissions to the maximum achievable degree. They further stated that it is achievable for facilities to switch to membrane cell technology, as demonstrated by the number of facilities that have already made this switch since adoption of the 2003 rule, which would eliminate emissions of mercury. The commenter also stated that because the EPA is also responding to the 2004 petition for reconsideration in this rulemaking regarding whether eliminating mercury emissions is achievable, the EPA must either promulgate a zero-emissions standard or determine that such as standard is not achievable. The commenter added that under the CAA, the EPA cannot refuse to set such standards because it does not think they are "reasonable," but it must set them at the maximum degree of reduction that is achievable.

Response: We agree that it is technically achievable for facilities to switch from mercury cell to membrane cell technology, as there are many instances of successful switches spanning the last three decades. We also agree that it is technologically achievable, as a section 112(d)(2) and (3) beyond-floor measure, to require elimination of mercury emissions from the single remaining operating existing source. However, we disagree with the commenter's assertion that the EPA must promulgate a standard solely based on technical achievability in the context of section 112(d)(6). Section 112(d)(6) requires the EPA to review and revise emission standards as necessary, considering developments in practices, processes, or control technologies, but does not require revisions for all developments that are technically achievable. Other factors are considered, including cost, economic impacts, physical limitations of the site, etc.

Nevertheless, based on consideration of public comments, and after reassessing the costs and feasibility of converting to the non-mercury technology, we have determined that the non-mercury option is technically and economically feasible and is cost effective and therefore reasonable to impose under both sections 112(d)(2) and (3) and (d)(6). As explained elsewhere in this preamble, we estimate the annualized costs to convert to a membrane process would be $2.7 million per year (2019 dollars), with cost-effectiveness of $21,500 per pound of reduced mercury emissions. This cost effectiveness is within the range of cost effectiveness values the EPA has accepted historically for mercury reduction. For example, in the 2012 Mercury and Air Toxics (MATS) final rule, the EPA finalized a beyond-the-floor standard for mercury with a cost effectiveness of $22,496 per pound (based on 2007 dollars), which would be approximately $27,500 per pound based on 2019 dollars. Furthermore, we conclude that conversion to a non-mercury process is clearly feasible, as demonstrated by the six mercury cell facilities in the U.S. that have converted to the non-mercury membrane process since the year 2000. Additionally, non-mercury chlorine production accounts for more than 98% of chlorine production in the U.S.

Comment: One commenter maintained that the EPA's vague characterizations of costs and its ignorance of current costs for the one remaining facility to switch to membrane technology did not constitute an excuse for failing to determine whether the measure is achievable. The commenter said that the Agency has had 17 years since the 2004 petition for reconsideration to gather the data it needs, and any uncertainty about costs due to the EPA's failure to gather the necessary data is not a lawful or reasonable basis for not setting a zero-emissions standard for mercury.

Response: We disagree with the commenter's characterization of our assessment of the costs of conversion. While the EPA did not commission a comprehensive detailed study to assess the costs specifically for the conversion of the West Virginia mercury cell chlor-alkali unit to convert to membrane cells, the EPA did update the previous analysis to incorporate new information to ensure that the estimated costs reflected "current" costs expected to be incurred for a conversion. The commenter did not mention or provide any specific comments on the updated analysis.

The foundation for the analysis was the series of evaluations conducted by the EPA in 2008 through 2010, in support of the 2008 and 2011 proposed rules. The EPA first presented our evaluation of impacts of requiring conversion of all operating mercury cell

chlor-alkali production plants to non-mercury technology in 2008. Based on comments received after the June 11, 2008, proposed amendments (73 FR 33258), we updated this analysis and released it for public review in June 2009. Comments were received on this revised analysis, and a second revision was released for public review in September 2009. The EPA received comments on this second revision of the analysis and issued another revision in April 2010. Therefore, the 2010 analysis, which was based on extensive research by the EPA, had undergone three rounds of public review by the environmental community and the industry before it was relied upon to support the 2011 proposed rule.

The 2020 update to the 2010 conversion cost analysis involved several steps to ensure that the cost estimates were current. These included converting 2010 capital cost estimates, the savings associated with compliance with the mercury cell room monitoring program, and the electricity savings, to a 2019 base year. It also included incorporation of the reported costs of the latest conversion of a mercury cell facility in the U.S., which was the Ashta facility in Ohio that completed its conversion in late 2020. In addition, the 2020 analysis considered the conversion cost estimate specifically provided for the West Virginia facility by the previous owner in public comments on the 2011 proposal and updated that estimate to base year 2019.

Comment: One commenter (the owner of the single operating mercury cell facility) noted that the facility has not revisited the cost associated with converting to a non-mercury process since 2012, but they believe it is significantly higher than the EPA's estimate of $69 million.

Response: While the EPA recognizes that the facility may not have recently performed an update of the cost to convert their mercury cell unit to membrane technology, we believe there is sufficient information available to obtain a reasonable estimate of this cost. In our 2020 analysis, we estimated the conversion costs using three approaches. One was to base the capital cost of conversion solely on the highest cost factor (dollars per ton of chlorine production capacity) from the conversions considered in the 2010 analysis (after adjusting to a 2019 base year). The second approach used the cost factor calculated from the reported cost for the most recent conversion at the Ashta facility in Ohio. The cost factor for this Ashta conversion was over 20 percent higher than the highest cost factor from the previous conversions after updating them to a 2019 base year. The third approach was to incorporate the Ashta factor into an average of all the cost factors for conversions in the U.S. since 2003. These factors, which were in units of dollars per ton of chlorine production capacity, were then applied to the site-specific production capacity of the West Virginia mercury cell unit. The resulting estimates of the capital cost of conversion of the West Virginia facility using these three approaches were approximately $76 million, $92 million, and $58 million, respectively (in 2019 dollars). Given all the site-specific factors that are inherent in the cost of conversion, we do not believe it is appropriate to base an estimate on the factor from the conversion of a single facility. So, we did not select either of the first two options described above. We also did not want to potentially bias our estimate low, so we did not select the third option (average factor for five facilities that have converted since 2003). Therefore, we calculated the average cost between the three options ($69.3 million) and selected that average as our estimated cost of conversion for our consideration for our 2021 proposal. Considering the inflation that has occurred since 2019, the updated capital cost of conversion estimate is $80.7 million (in 2021 dollars). Our confidence in this estimate was bolstered by a comparison of this result with the estimate that was specifically provided earlier in 2011 for the West Virginia facility by its previous owner. This estimate, when converted to 2019 to be consistent with the year for our cost analysis, was $69.4 million (or $80.8 million for 2021 base year). Since the commenter did not provide any updated information in response to the 2020 analysis and 2021 proposed rule, we continue to maintain that our estimate is a reasonable estimate of the capital costs of converting the West Virginia mercury cell unit to membrane cell technology.

Comment: One commenter stated that the EPA's proposal ignored the U.S. obligations under the Minamata Convention on Mercury, which is a global treaty that requires the phase-out of manufacturing processes using mercury. The commenter remarked that under Article 5(2), the phase-out date for chlor-alkali production using mercury is 2025, unless an exemption is filed. The commenter noted that an exemption was filed for these processes in the U.S., and the phase-out date is now 2030. According to the commenter, since companies are typically given three years to comply with MACT standards, a final rule requiring the phase-out of mercury would be required to be promulgated by the end of 2027 for the U.S. to meet its obligations under the Minamata Convention. The commenter stated that since a final rule in 2021 that does not require elimination of mercury would put the next 8-year review completion time at the end of 2029 at the earliest, the U.S. will then be out of compliance with the Minamata Convention. The commenter stated that the EPA must issue a new proposal explaining how the 2030 phase-out deadline will be met.

Response: We agree with the commenter's summary of the U.S. obligations under the Minamata Convention agreement. We also agree that a NESHAP standard adopted under the authority of section 112 of the CAA is a valid approach to meet this obligation. In fact, during treaty negotiations, the U.S. specifically concluded that CAA section 112 gives the EPA the authority to require elimination of mercury emissions. We also agree with the commenter's conclusions about the timing of when a NESHAP would need to be promulgated. Assuming a 3-year compliance timeframe would be needed for a final rule requirement that prohibits mercury emissions, a section 112 NESHAP would need to either be finalized as part of this review, or a separate "out of cycle" review would be needed prior to 2027 to meet the current phase-out date of 2030 required under the Convention. (More information regarding the Minamata Convention is available at: *https://www.mercuryconvention.org/en/about*).

Comment: One commenter remarked that the environmental impacts the EPA cites as a reason not to require a zero-emission standard for mercury are actually environmental benefits. The commenter stated that the 1,000 pounds of mercury that are discharged to the environment every year would be eliminated. The commenter also stated that the EPA ignored the fact that mercury-contaminated piping and equipment must be removed at some point, and it is just a question of when. The commenter added that the costs of storing and moving mercury to a secure location is not a new expense, as the facility made a choice to continue operations with mercury past the date the Mercury Export Ban of 2008 (Pub. L. 110–414) went into effect in 2013, and it determined at that point to assume those costs.

Response: We estimate that the non-mercury requirement would eliminate just over 125 pounds of mercury released to the atmosphere per year.

Furthermore, at proposal we stated the following: ''The EPA also examined the non-air impacts associated with switching from mercury cell to non-mercury cell processes. For 2019, the West Virginia facility reported a total of 898.1 pounds of non-air mercury releases. This consists of 9 pounds to streams/water bodies, 883.3 pounds to Resource Conservation and Recovery Act, Subtitle C Landfills, and 5.8 pounds to other offsite sources. All these releases would be eliminated with the conversion to non-mercury cell processes.'' (86 FR 1382–1383)

We also acknowledge the point made by the commenter regarding the costs associated with moving the mercury recovered from a conversion and storing it. Even without a regulatory requirement to eliminate mercury emissions from existing sources, the mercury cell unit would eventually reach the end of its useful life and be shut down or replaced. Since the standards for new and reconstructed sources in subpart IIIII prohibit mercury emissions, the owner or operator could not replace the unit with another mercury cell process. Even without this standard, which has been in place since 2003, it is reasonable to assume that a new mercury cell facility would not be built. Prior to the promulgation of subpart IIIII, the use of the outdated mercury cell technology had been declining for decades and no new mercury cell facility had been constructed since the early 1970s. Hence, we agree that the owner most likely recognized this future cost when the decision was made not to convert prior to the effective date of the mercury export ban. Therefore, we conclude that the costs of the mercury storage should not be attributed to the non-mercury option under this rulemaking.

The cost of this mercury storage was estimated to be just over $53,000 per year in our 2020 conversion cost analysis. Removing these mercury storage costs lowers the overall estimated annual cost, which includes the annualized capital cost, electricity savings and reduced compliance costs from $2.77 million to just over $2.7 million. This improves the cost effectiveness from just over $22,000 per pound of mercury released to the air to around $21,500 per pound. In addition, as noted above, it also results in the reduction of around 900 pounds of mercury releases per year to other media.

Comment: One commenter registered agreement with the EPA's proposal to not require the elimination of mercury and stated that the NESHAP should not include a zero-mercury standard at this time. The commenter added that the single operating facility operates with low mercury emissions and pointed out that risks due to mercury are already low and at acceptable levels. However, another commenter expressed support for a zero-emission policy and a switch to non-mercury polluting processes at the West Virginia facility. This commenter stated that while the current mercury emissions may be in compliance with the 2003 NESHAP's standards, effort should be made to increase sustainable industrial processes if possible. According to the commenter, considering the cost-benefit analysis, it would be more beneficial for the chlor-alkali plant to transition sooner rather than later because the plant will eventually have to transition or adopt a zero-mercury emission policy as our green infrastructure increases. The commenter added that when considering pollution, especially mercury, the goal should be zero, regardless of its economic impact. Additionally, the commenter supported policies that are more proactive in tackling pollution because accidents can happen and they're typically more of an economic burden than taking proactive measures. Further, the commenter stated that even if the data shows no benefits to human health or the environment from further reducing the mercury emissions at the West Virginia plant, it would ultimately be one step closer to the national transition to cleaner, more sustainable industry.

Response: As discussed above in section IV.A of this preamble, the first commenter is correct that our conclusion of the section 112(f) residual risk assessment was that health risks due to emissions of HAP from the Mercury Cell Chlor-Alkali Plants source category are acceptable, that the 2003 NESHAP provides an ample margin of safety to protect public health, and that no additional standards are necessary to prevent an adverse environmental effect. While the recommendations of the second commenter generally lack any statutory authority to implement measures for a ''green infrastructure'' to ''transition to cleaner, more sustainable industry,'' their point about a transition to zero mercury pollution is recognized.

The residual risk assessment conducted under the authority of section 112(f) is focused on the local impacts (within 50km) directly resulting from HAP emissions from a NESHAP affected source. This type of assessment does not necessarily capture all the potential risks or impacts associated with mercury emissions. Mercury is a highly neurotoxic contaminant that enters the food web as a methylated compound, methylmercury. The contaminant is concentrated in higher trophic levels, including fish eaten by humans. Mercury is emitted to the air from various anthropogenic and natural sources. These emissions transport through the atmosphere and eventually deposit to land or water bodies. This deposition can occur locally, regionally, or globally, depending on the form of mercury emitted and other factors such as the weather. The form of mercury emitted from the single remaining operating plant is estimated to be about 98 percent elemental and two percent divalent mercury. Gaseous elemental mercury can be transported very long distances, even globally, to regions far from the emissions source (becoming part of the global ''pool'') before deposition occurs. Inorganic ionic (divalent) mercury has a shorter atmospheric lifetime and can deposit to land or water bodies closer to the emissions source. Furthermore, elemental mercury in the atmosphere can undergo transformation into ionic mercury, providing a significant pathway for deposition of emitted elemental mercury (UNEP, Global Mercury Assessments, available at: *https://www.unep.org/resources/publication/global-mercury-assessment-2018*).

Therefore, even though the estimated risks due to the mercury emissions are low based on our residual risk assessment, and the results of the residual risk assessment do not necessitate additional regulation to meet the requirements of CAA section 112(f), we agree that there is merit in eliminating mercury emissions where it is technically and economically feasible to do so, consistent with other statutory authority and requirements. And, as the second commenter points out, this is certainly possible in this situation, and the plant would need to ultimately eliminate mercury emissions anyway in order for the United States to meet its obligations under the Minamata Convention.

4. What is the rationale for our final approach for the non-mercury option?

As noted above, we are finalizing an amendment that prohibits mercury emissions from existing mercury cell chlor-alkali plants. Our rationale for this decision is based on the following points. First, our re-evaluation of the costs and associated emission reductions reveal that the cost effectiveness is within the range considered reasonable by the EPA for mercury and based on our economic analysis, the estimated annualized costs are only about 0.04 percent of the

annual revenue of the facility's ultimate parent company in 2020 and therefore the amendment is reasonable as a beyond-floor standard under section 112(d)(2) and (3). Second, this action will also eliminate the non-air releases that occur from the remaining mercury cell plant. Third, using the authority under section 112(d) of the CAA at this time is the most effective mechanism to ensure the U.S complies with the Minamata Convention agreement by the 2030 deadline. Finally, as mentioned above, we conclude that conversion to a non-mercury process is clearly feasible and has been shown to be a development in practices, processes and control technologies under section 112(d)(6), as demonstrated by six facilities in the U.S. that have converted to the non-mercury membrane process since the year 2000. Some of these points are discussed in more detail below.

In response to a comment discussed above, we adjusted the annual costs to remove the mercury storage cost. This resulted in the cost effectiveness of the non-mercury option decreasing slightly to $21,500 per pound of mercury emission reduction. While this cost effectiveness is near the upper end of the range of cost effectiveness values the EPA has accepted historically for achievable mercury control, the EPA has previously determined that cost effectiveness values higher than this are acceptable and achievable. For example, in the 2012 MATS final rule, the EPA finalized a beyond-the-floor standard for mercury of $22,496 per pound (based on 2007 dollars), which would be about $27,500 per pound based on 2019 dollars. Therefore, we conclude that the cost effectiveness of $21,500 per pound of mercury emissions reduction is reasonable especially given the other factors described above, and we have decided to finalize the amendment to prohibit mercury emissions from existing sources as an achievable beyond-floor measure under section 112(d)(2) and (3).

As noted above, we evaluated the economic impacts of this amendment and determined that the impacts are not substantial, with the annualized costs being less than 0.04 percent of sales for the subject facility's ultimate parent company (Westlake). We determined that the environmental benefit of the non-mercury option warranted these economic impacts.

The primary reasons provided at proposal for discussing but not re-proposing the non-mercury option were related to costs, cost effectiveness, and uncertainties. For example, in the January 2021 proposal FR document, the EPA stated that "first, mercury emissions are based on calculations and assumptions regarding the facility's emissions (no test data are available for this facility), and second, because there are uncertainties with the cost estimates from the 2011 proposal as being transferable to the remaining facility. In the 2011 proposal, the estimated cost effectiveness was $20,000 per pound for the industry (see 76 FR 13852, March 14, 2011), but this was substantially based on the studies conducted for the two no longer operating sources." (86 FR 1378–1379)

While no additional emissions data based on testing was submitted in response to the 2021 proposal, we point out that subpart IIIII requires that measurements of the stack emissions be taken. The estimates reported by the West Virginia facility that were used in our analyses for fugitive emissions (121.4 pounds per year) are lower than the average level of 362 pounds per year per plant found during the extensive study conducted by the EPA prior to the 2008 proposal (see description in the June 11, 2008, proposal at 73 FR 33263–33266). Therefore, if the confidence is lacking regarding these estimates, it is realistic to consider that emissions, and thus emission reductions, would likely only be higher. This would result in improved cost effectiveness values (*i.e.,* the requirements would be more cost effective), providing further justification for our decision to finalize the non-mercury option.

In the 2021 proposal we stated, "Based on consideration of the updated costs and cost effectiveness and uncertainties, and given the passage of time, and the fact that the cost-effectiveness data and analysis done in 2011 were based on two facilities that are no longer operating, we question whether those 2011 analyses would still be transferable to the one remaining operating facility." (86 FR 1378) Upon additional consideration, we have determined that this point is not relevant to the decision regarding the cost effectiveness of a non-mercury standard for the West Virginia facility. In 2011, we calculated an average cost effectiveness for the conversion of the four mercury cell facilities operating at that time. The range was between $13,000 to $31,000 per pound for the four individual facilities. However, the estimated cost effectiveness values for the two facilities that closed prior to 2020 is not determinative of the estimate of the conversion cost for the West Virginia facility. Also, the cost effectiveness for these two facilities does not compel what the EPA considers a reasonable cost effectiveness level for mercury. Therefore, we now reject the two major points used as rationale in the 2021 proposal for not accepting and proposing the non-mercury option. We are confident that the mercury emissions estimates for the West Virginia facility are reliable and, if anything, are underestimated. We also have determined that the cost estimate is reasonable and applicable and could be even more cost effective than presented here due to potential underestimation of the emissions. Consequently, the non-mercury option is a reasonable beyond-floor measure under section 112(d)(2) and (3), and the fact that six mercury cell facilities have converted to non-mercury membrane technology since 2000 and only a single mercury cell source remains at a facility that already has two non-mercury chlorine production units shows that is necessary to revise our existing source standard to take into account developments in practices, processes and control technologies.

Regarding the Minamata Convention on Mercury, this is a global treaty to protect human health and the environment from the adverse effects of mercury. It was agreed at the fifth session of the Intergovernmental Negotiating Committee on mercury in Geneva, Switzerland on January 19, 2013, and adopted later that year on October 10. The Minamata Convention entered into force on August 16, 2017.

Major highlights of the Minamata Convention include a ban on new mercury mines, the phase-out of existing ones, the phase out and phase down of mercury use in a number of products and processes, control measures on emissions to air and on releases to land and water, and the regulation of the informal sector of artisanal and small-scale gold mining. The Convention also addresses interim storage of mercury and its disposal once it becomes waste, sites contaminated by mercury, and health issues.

Under the Minamata Convention, the U.S. has specifically addressed mercury cell chlor-alkali production. For example, in the registration for an extension of the mercury phase out deadline from 2025 to 2030, the U.S. stated the following:

"Pursuant to Article 6, paragraph 1 of the Minamata Convention on Mercury, the United States hereby registers for an exemption from the phase-out date listed in Annex B for the use of mercury in chlor-alkali production." [2] The United States also provides the

[2] *https://www.mercuryconvention.org/en/parties/exemptions.*

following statement explaining the need for the exemption:

"The United States supports the phase-out of mercury use in chlor-alkali production facilities. It has implemented domestic strategies to encourage a timely transition to mercury-free alternative technologies with a view to phasing out all mercury use in domestic chlor-alkali production facilities. New or reconstructed chlor-alkali production facilities in the United States are already effectively prohibited from using mercury under section 112 of the Clean Air Act. See 40 CFR 63.8190. Most mercury cell chlor-alkali facilities in the United States have already closed or converted. While there were 14 such facilities in 1998, only two remained as of late 2013. The United States will, pursuant to Article 6, paragraph 7, withdraw this exemption if that becomes possible prior to its expiration date." [3]

Therefore, the U.S. is committed to phasing out all mercury emissions in domestic chlor-alkali facilities by 2030. The EPA is not aware of any plans by the owner of the lone remaining mercury cell chlor-alkali facility in West Virginia to close or convert their mercury cell facility before 2030. Therefore, we have determined that it is necessary to require this action to ensure the facility converts or closes the mercury cell chlor-alkali production process in order to eliminate mercury emissions and section 112 of the CAA provides an appropriate regulatory mechanism to enact such a requirement to eliminate emissions. The two main options regarding timing are: (1) Promulgate a non-mercury standard at this time under section 112(d)(2) and (3) and/or section 112(d)(6); or (2) promulgate a non-mercury standard by fall 2027 (*i.e.,* before the next 8-year cycle for a technology review required by section 112(d)(6)).

As pointed out by commenters, the next 8-year review will not be required until 2030. If a non-mercury standard was promulgated in 2030 and included the 3-year compliance date allowed by CAA section 112, the phase-out would not occur in time to comply with the 2030 deadline. We do not think it is prudent to plan a separate "out of cycle" review to promulgate a non-mercury standard in 2027, especially since the review shows that the non-mercury standard is technologically feasible, cost effective and will not impose significant economic impacts at this time, and there is no reason to think a decision would be any different in 2027. Therefore, we concluded that the best option to ensure compliance with the Minamata Convention is to promulgate a non-mercury standard at this time.

We recognize that we did not specifically propose this option in the January 2021 proposal. However, we did include it as an option that was considered and described it in detail, we provided our analysis of this option and specifically requested comment on the option. Specifically, we stated the following:

"However, we are soliciting comments, data, and other information regarding these proposed decisions, including data and information regarding the costs, cost effectiveness, non-air, and economic impacts and other relevant information regarding whether the NESHAP should include a non-mercury standard as either a beyond-the-floor MACT standard or a revised standard under the technology review, and whether the proposed work practices for chlorine emissions and proposed amendments to the mercury work practices would be necessary if a non-mercury standard were to be adopted."

EPA also stated that "We intend to consider any such submitted data and information, in addition to the data and information contained in the records for the 2008 and 2011 proposals and in this proposal, in reaching final conclusions under CAA sections 112(d)(2) and (6) regarding a non-mercury standard." (86 FR 1383)

Furthermore, the EPA proposed the non-mercury option in 2011 and referred to this 2011 proposal in the January 2021 FR document. Therefore, we provided sufficient notice of the potential that we would finalize a non-mercury option, and we are finalizing the non-mercury requirement based on a logical outgrowth of comments on our proposal and the record that public commenters had an opportunity to review and address.

C. Technology Review for the Mercury Cell Chlor-Alkali Plants Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Mercury Cell Chlor-Alkali Plants source category?

Pursuant to CAA section 112(d)(6), we proposed amendments to the rule that would have required the combination of both a cell room monitoring program to continuously monitor mercury vapor in the cell room and a suite of equipment standards and work practices to reduce fugitive mercury emissions. This is different from the NESHAP promulgated in 2003, which required either the equipment standards and work practices or the cell room monitoring program. As described above, we also evaluated the non-mercury option under our section 112(d)(6) technology review.

2. How did the technology review change for the Mercury Cell Chlor-Alkali Plants source category?

As discussed above in section IV.B, we changed our decision related to the non-mercury option and are promulgating a prohibition of mercury emissions from the source category. The result of this final amendment prohibiting mercury emissions will be that there will no longer be any operating mercury cell chlor-alkali plants in the U.S. after May 6, 2025.

3. What key comments did we receive on the technology review, and what are our responses?

The only comment received on our proposed technology review, other than those related to the non-mercury option discussed above in section IV.B.3, was one from the facility that clarified that the existing continuous monitor analyzers for mercury at the facility are capable of detecting mercury concentration of 0.1 $\mu g/m^3$, which would meet the EPA's proposed detection requirements.

4. What is the rationale for our final approach for the technology review?

The rationale for our final decision regarding the non-mercury option is discussed above in section IV.B.4. Regarding the cell room monitoring program and equipment and work practice standards to reduce fugitive mercury emissions, the facility complies with the fugitive mercury standards by operating a continuous cell room monitoring program in accordance with paragraph 63.8192(g) as an alternative to the equipment standards and work practices in paragraphs 63.8192(a) through (d). However, while not required to do so under the NESHAP promulgated in 2003, the facility also implements those equipment standards and work practices. Therefore, the EPA determined that the combination of implementing a cell room monitoring program and performing work practices constitutes a development in emissions control practices and is finalizing the proposed requirement that both a cell room monitoring program and equipment and work practices be implemented during the period of up to 3 years before the facility converts the mercury cell process to a non-mercury process or closes the mercury cell process.

[3] Ibid.

D. Amendments Pursuant to Sections 112(d)(2) and (3) and (h) for the Mercury Cell Chlor-Alkali Plants Source Category

1. What did we propose pursuant to CAA section 112(d)(2) and (3) and (h) for the Mercury Cell Chlor-Alkali Plants source category?

Pursuant to CAA sections 112(d)(2) and (3) and (h), in 2021 we proposed amendments to the rule that would have required a leak detection and repair program to identify chlorine equipment leaks in the cell room and throughout the other parts of the mercury cell chlor-alkali production facility affected source that handle and process the chlorine gas produced. The proposed rule would have also required that chlorine monitors be installed and operated continuously throughout the affected source and that each time one of these sensors measured a chlorine concentration of 2 ppmv or greater, a complete inspection for leaks of all equipment containing 5 percent chlorine by volume would have been required within 1 hour of detection.

In addition, we evaluated the beyond-the-floor non-mercury option under our consideration of section 112(d)(2) and (3); however, we did not propose the non-mercury standard in the January 8, 2021 proposal.

2. How did the decision related to CAA section 112(d)(2) and (3) change for the Mercury Cell Chlor-Alkali Plants source category?

As discussed above in section IV.B, we changed our decision related to the non-mercury option and are promulgating a prohibition of mercury emissions from the source category. The result of this final amendment prohibiting mercury emissions will be that there will no longer be any operating mercury cell chlor-alkali plants in the U.S. after May 6, 2025.

3. What key comments did we receive on our proposed decision related to CAA sections 112(d)(2) and (3) and (h), and what are our responses?

As discussed above in section IV.B.3, comments were received regarding the proposed determination not to require the non-mercury option as a beyond-the-floor requirement. Comments were also received related to the proposed fugitive chlorine requirements. In addition, comments were received claiming that standards should have been proposed for emissions of HCl. These comments, along with responses from the EPA, are provided below in this section.

Comment: The single operating facility provided several comments regarding the proposed requirements to reduce chlorine emissions. While they corrected the EPA's assumption that the cell room was under negative pressure, they noted that most of the equipment containing chlorine gas is under negative pressure, which would be excluded from the proposed leak detection requirements. They noted that the facility already complies with most of the proposed fugitive chlorine requirements, and they explained how they would comply with the additional requirements. They agreed that the proposed olfactory observations are appropriate versus visual or auditory inspections, due to the low odor threshold of chlorine. They did, however, register concern about the chlorine leak repair requirements, noting that final repairs to leaks from some causes may take more than one day to complete, as required in the proposal. They also provided responses to the EPA's requests for comments regarding the proposed requirements for continuous chlorine sensors and the proposed 2 parts per million by volume (ppmv) action level and averaging time. In response to the EPA's request for comment regarding whether the EPA should specify sensor placement locations, they expressed concern about placing chlorine sensors in the cell room, as they stated that the high magnetic field in the cell room has historically caused unreliable transmitter responses. They indicated that, if the EPA finalized a requirement to place chlorine sensors in the cell room, additional time would be needed to comply with the standard, as the facility would need to evaluate whether the use of a chlorine sensor(s) in the cell room is technically feasible and, if feasible, to procure and install the sensors.

Response: The EPA appreciates the effort provided by the commenter to carefully review the proposed fugitive chlorine requirements, to provide thoughtful comments, and to put forth preliminary ideas on how they would comply. We also appreciate the concerns raised about the repair timing requirement and the placement of chlorine sensors in the cell room. Based on these comments, we have revised the final requirements to add time to make repairs, which would allow time to obtain equipment that is not kept onsite, by increasing the time for final repairs to be made from 24 to 72 hours. Further, based on these comments and the technical feasibility of placing sensors in certain locations, we have not added requirements stipulating sensor locations in the final rule. Finally, we agree that an action level for equipment inspections based on a single sensor reading may not be indicative of a problem that warrants special investigation. Accordingly, we have revised the action level that triggers an inspection of all chlorine-containing equipment to be detection by a sensor of a one-hour average chlorine concentration of 2 ppmv or greater.

Comment: One commenter stated that the EPA must set emissions standards for HCl. The commenter contended that even if the HCl emissions are from direct synthesis HCl production units, these units are part of the mercury cell chlor-alkali plant and must be regulated. The commenter stated that these units would be affected sources because they are "cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a plant site" and "processes and associated operations needed for mercury recovery from wastes at a plant site."

Response: We disagree with the commenter's rationale of why the direct synthesis HCl production units would be part of an affected source under subpart IIII. They are not part of the cell room or the ancillary operations used in the manufacture of product chlorine, product caustic, or by-production hydrogen. In fact, the HCl production units are downstream operations from the chlor-alkali process, as they use the product chlorine and by-product hydrogen to create HCl. Additionally, these units are not associated with the processes needed for the recovery of mercury.

While not cited by the commenter, the EPA has previously considered direct synthesis HCl units co-located with chlor-alkali plants to be part of the chlor-alkali plant. In the July 3, 2002, proposal for the chlorine production source category, the EPA stated "Since chlor-alkali processes produce both chlorine and hydrogen, it is common for a direct synthesis HCl production unit to be incorporated into a chlor-alkali facility. Therefore, we consider these direct synthesis HCl production units to be a part of the chlor-alkali facilities." (67 FR 44713). The HCl (and chlorine) emissions from the co-located direct synthesis HCl plants were included in the risk assessment that led to the EPA's decision in 2003 not to develop any NESHAP for non-mercury cell chlor-alkali plants and to delete the non-mercury subcategory. Further, because these units were considered part of the deleted non-mercury cell chlorine production subcategory, they were specifically exempted from the HCl

NESHAP, 40 CFR subpart NNNNN, at 63.8985(d).

At the West Virginia facility, there are three chlor-alkali units: The mercury cell unit and two diaphragm cell units. According to the air permit for the facility, the diaphragm cell units produce approximately four times as much chlorine as the mercury cell unit. Therefore, if the HCl production units were assigned to one of the chlorine production subcategories based on the contribution of the chlorine and hydrogen contributed, they would be considered part of the non-mercury cell subcategory of chlor-alkali plants. In addition, when the EPA finalized the decision to delete the non-mercury subcategory on December 19, 2003, we stated "we have clarified that chlorine and HCl emissions from the absorber vents of direct synthesis HCl production units at chlor-alkali facilities, as well as the associated storage tanks and transfer operations specified above, are included in the non-mercury cell chlorine production subcategory . . ." (68 FR 70948)

As shown through this cited history, the EPA has clearly established that HCl direct synthesis units are not part of the mercury cell chlor-alkali source category, and we are not pursuing their regulation under subpart IIIII.

Comment: One commenter stated that the EPA proposed to limit the applicability of the rule with changes to –63.8182, –63.8184(a) and definitions in –62.8266. The commenter asserted that the EPA did not provide any explanation or justification for these proposed changes, which is a violation of the CAA and makes it impossible to determine what the EPA is intending to accomplish. The commenter's interpretation was that the EPA was changing the existing regulation to avoid regulating HCl emissions from the plant. The commenter stated that if that is the case, the EPA is acting unlawfully by attempting to bypass its statutory obligations to regulate all HAP and HAP emission points within a source category.

Response: The commenter is correct that these changes were not explained in the January 2021 proposal. They were changes that were proposed in both the 2008 proposal and the 2011 supplemental proposal, with the purpose of ensuring that a mercury thermal recovery unit affected source at a site where the mercury cell production facility was either converted or closed would continue to be subject to the emission limitations while processing the wastes from the closed mercury cell plant. Since the single remaining mercury cell chlor-alkali plant does not have a thermal mercury recovery unit, these changes are not necessary and should not have been included. They are in no way related to HCl emissions from the plant. In fact, as noted above, these amendments were holdovers from the 2008 proposal and the 2011 supplemental proposal when only mercury emissions were under consideration.

4. What is the rationale for our final approach for the CAA sections 112(d)(2) and (3) and (h)?

The rationale for our final decision regarding the non-mercury option is discussed above in section IV.B.4. For the fugitive chlorine work practices, the facility voluntarily implements work practices that are consistent with the proposed requirements and represents the MACT floor. As these chlorine emissions are fugitive in nature resulting from potential equipment leaks, they cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant or measured. Therefore, we are finalizing the proposed amendments requiring work practices to minimize chlorine emissions. Further, as discussed above, we are not developing standards under section 112(d)(2) and (3) for the HCl emissions from the direct synthesis HCl production units at the West Virginia site.

E. Amendments addressing emissions during periods of startup, shutdown, and malfunction and other topics?

1. What did we propose related to emissions during periods of startup, shutdown, and malfunction and other topics?

We proposed revisions related to emissions during periods of startup, shutdown, and malfunction (SSM); provisions for electronic submission of performance test results, performance evaluation reports, and Notification of Compliance Status (NOCS) reports; and corrections of various errors in compliance provisions in the NESHAP.

2. How did the decision related to emissions during periods of startup, shutdown, and malfunction and other topics change?

No changes have been made regarding our decisions concerning periods of SSM and the corrections of various compliance provisions in the current rule. For submission of performance test results, performance evaluation reports, and Notification of Compliance Status (NOCS) reports, we have determined it is necessary for the facility to switch to electronic reporting, considering the timing of the final non-mercury emission standard and related upcoming closure or conversion of the one remaining mercury cell chlor-alkali unit.

3. What key comments did we receive on proposed decision related to emissions during periods of startup, shutdown, and malfunction and other topics?

Comment: One commenter relayed several concerns regarding the proposed startup, shutdown, and malfunction provisions. According to the commenter, higher mercury emissions may occur during startup due to the hydrogen vent system and its control device, which will cause compliance concerns until alternative work practices can be developed to reduce emissions from this system. The commenter stated, at the time they submitted public comments, that the control device cannot be operated until the exhaust stream composition can be regulated, and the facility would need additional time to evaluate operational methods to improve operation of the control device. The commenter added that additional time would also be needed to determine the modifications necessary to reduce emissions during startup, to develop and implement a recordkeeping system, and perform operator training. The commenter requested a time frame of 12 months rather than 6 months for compliance with all the proposed SSM requirements.

Response: To understand the commenter's concerns better and to determine whether a different standard was needed for startup periods, the EPA had a teleconference meeting with the commenter to discuss the issue. During this discussion, the commenter indicated that the facility had found a way to comply with the emissions standards at all times, including startup. The notes of the meeting are in the docket for this rulemaking (EPA–HQ–OAR–2020–0560). Therefore, with the issue resolved, the EPA is finalizing the proposed requirements that the emissions limits apply at all times and no separate requirements are necessary for periods of startup, and further, no additional time is necessary or provided for compliance.

Comment: One commenter supported electronic reporting in general but stated a preference to submit any such information in PDF format.

Response: Given that the facility could operate for up to 3 more years before it converts to a non-mercury process or shut down, we have decided

to require the facility to switch to electronic reporting.

Comment: One commenter noted that the EPA proposed to add a performance testing requirement at 40 CFR 63.8232(a). The commenter believes that the annual calibration testing at the facility satisfies the requirements of a performance test, and additional performance testing is not needed.

Response: The commenter misinterpreted the proposed changes to 40 CFR 63.8323(a), which did not add a new performance testing requirement. Rather, these proposed changes clarified the conditions under which the performance test must be conducted. These changes establish that performance tests must be conducted during normal operations and remove a reference to 40 CFR 63.7(e)(1), which conflicts with the requirement to comply with the standards at all times, including during periods of SSM. As these requirements are simply clarifying performance test conditions and ensuring the standards are met at all times, we are finalizing the revised provisions as proposed.

4. What is the rationale for our final approach for requirements related to emissions during periods of startup, shutdown, and malfunction and other topics?

The rationale for our final decision regarding the non-mercury option is discussed above in section IV.B.4. As discussed in the responses in the previous section, we are finalizing the proposed electronic reporting amendments for the reasons described above. Furthermore, we have not changed our final approach to the requirements for periods of SSM, and we are finalizing these requirements as proposed based on the considerations described above.

F. Public Notice and Comments

In addition to the comments on the proposal, one commenter objected to the EPA's decision not to publish the proposed rule amendments in the **Federal Register**.

Comment: The commenter observed that the EPA proposed significant changes to the regulatory language, but these changes were not in the EPA's proposed rule. The commenter remarked that the CAA and the Administrative Procedures Act (APA) both make plain that proposed rules must be published in the **Federal Register** (42 U.S.C. 7607(d)(3); 5 U.S.C. 553(b)). Further, the commenter stated that the CAA requires the EPA to include a summary of the major legal interpretations and policy considerations underlying its proposed rules, and the EPA did not provide this explanation nor any explanation for its proposed changes to the regulatory text. The commenter states that if the EPA wishes to make changes to the Code of Federal Regulations, it must withdraw this proposal, publish the proposed changes in the **Federal Register** and provide a new opportunity for public comment.

Response: The proposal met all APA and CAA notice and comment requirements. Nothing in the APA or the CAA, including the language the commenter cites, requires the EPA to publish proposed rule text in the **Federal Register**. The commenter suggests that because the EPA did not publish the proposed rule text, the EPA failed to meet the CAA 307(d)(3) requirement to publish a "notice of proposed rulemaking." However, the requirement to publish a "notice of proposed rulemaking" is not a requirement to publish "proposed rule text." Section 307(d)(3) specifies the required elements of a "notice of proposed rulemaking" and "proposed rule text" is not a required element. The elements the commenter cites that are required to be included in the notice of proposed rulemaking (a "statement of basis and purpose," "a summary of . . . the major legal interpretations and policy considerations underlying the proposed rule, etc. . .") were included, and commenter does not suggest otherwise.

The APA does not require publication of proposed rule text in the **Federal Register** either. Section 553(b)(3) of the APA provides that a notice of proposed rulemaking shall include "*either* the terms or substance of the proposed rule or a description of the subjects and issues involved." (emphases added). Thus, the APA clearly provides flexibility to describe the "subjects and issues involved" as an alternative to inclusion of the "terms or substance" of the proposed rule. See also *Rybachek* v. *U.S. E.P.A.,* 904 F.2d 1276, 1287 (9th Cir. 1990). (The EPA's failure to propose in advance the actual wording of a regulation does not make the regulation invalid where the EPA's discussion of the regulatory provisions "clearly describe 'the subjects and issues involved.'").

The commenter claims that the EPA did not publish "any explanation for its proposed changes". However, the commenter does not identify any specific regulatory text that was not explained or specify any deficiency in any explanation of regulatory text in the **Federal Register** document. Such a generalized objection is not sufficiently specific. See, *e.g., Appalachian Power Co.* v. *E.P.A.,* 251 F.3d 1026, 1036 (D.C. Cir. 2001) ("'An objection must be made with sufficient specificity reasonably to alert the agency.'" (quoting *Tex Tin Corp.* v. *EPA,* 935 F.2d 1321, 1323 (D.C. Cir. 1991)).

The commenter makes a vague assertion that the EPA's approach was prejudicial to the ability of the public to be able to find and comment on the proposed regulatory changes but does not claim any actual difficulty in finding or commenting on the proposed rule language. The EPA approach was not prejudicial to the commenter or any member of the public. The notice of proposed rulemaking clearly explained that the proposed amendatory language and a redline strikeout version of the subpart IIII showing proposed changes were available in the docket and on EPA's website: *https://www.epa.gov/stationary-sources-air-pollution/mercury-cell-chloralkali-plants-national-emissions-standards.*

The proposed changes to the CFR that would be necessary to incorporate the changes proposed in this action are set out in an attachment to the memorandum titled Proposed Regulation Edits for 40 CFR part 63, subpart IIII, available in the docket for this action (EPA–HQ–OAR–2020–0560). The document includes the specific proposed amendatory language for revising the CFR and, for the convenience of interested parties, a redline version of the regulation.

Although the EPA's recent practice has generally been to publish proposed amendatory regulatory text, the EPA's practice has varied. See, *e.g.,* Hazardous Air Pollutants: Proposed Regulations Governing Constructed, Reconstructed or Modified Major Sources, 59 FR 15504 (April 1, 1994) ("The proposed regulatory text is not included in the **Federal Register** document, but is available in Docket No. A–91–64 or by request from the EPA contact persons designated earlier in this note. The proposed regulatory language is also available on the technology Transfer Network (TTN), of EPA's electronic bulletin boards."); Federal Standards for Marine Tank Vessel Loading and Unloading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading and Unloading Operations, 59 FR 25004 (May 13, 1994) ("The proposed regulatory text and other materials related to this rulemaking are available for review in the docket."). And even when we do include the proposed text in the **Federal Register**, we often include a redline version of proposed regulations in the docket for

rulemakings to assist the public in understanding the proposed regulatory changes. In our experience, stakeholders find the redline version far more useful than the proposed amendatory language in the format required by the Office of the Federal Register. Although appropriate for the task of revising the Code of Federal Regulations, this language can be difficult to assess without the accompanying full regulatory text. Given this and given that we rarely receive comments on the proposed amendatory language or on proposed regulatory language at all, we determined that for rulemakings such as these, it would be more efficient to take the approach here of making both easily accessible but not including the proposed amendatory text in the document.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

There is one facility affected by this action, which is the one remaining mercury cell chlor-alkali facility operating in the U.S. This facility is located in West Virginia.

B. What are the air quality and other environmental impacts?

The air quality impacts of this final action will be the elimination of approximately 125 pounds of mercury emissions annually. In addition to this air quality impact, this action will result in the elimination of around 900 pounds of mercury that are released annually to other media.

In addition, it is estimated that the conversion of the remaining mercury cell facility to membrane cells will result in an energy savings of around 25 percent which results in an estimated cost savings of around $1.5 million per year.

C. What are the cost impacts?

The capital cost of complying with the promulgation of the non-mercury requirement is estimated to be $69.4 million if the facility chooses to convert its mercury unit to a non-mercury process rather than rely on its two existing non-mercury units. The total estimated annual costs, including the annualized capital costs minus the savings realized from the lower electricity needs and the savings related to the elimination of the burden of the environmental regulations associated with mercury, are $2.7 million per year in 2019 dollars. Table 3 presents the estimated annual cost components for conversion from mercury cell to membrane cell technology.

TABLE 3—TOTAL ANNUAL COST OF CONVERSION OF THE WEST VIRGINIA MERCURY CELLS TO MEMBRANE CELLS

[2019$]

Annual cost component	Annual cost ($/yr)
Capital Recovery	$4,764,982
Mercury Storage	53,364
Compliance Savings	−546,572
Electricity Savings	−1,504,893
Total Annual	2,766,880

D. What are the economic impacts?

The net present value of the estimated cost impacts of the final amendments to the Mercury Cell Chlor-Alkali NESHAP is $43.0 million, discounted at a 7 percent rate to 2020 over a 20-year analytic time frame from 2021 to 2040 in 2019 dollars. Using a 3 percent discount rate, the net present value of the estimated cost impacts is $39.4 million. The equivalent annualized value, which is a measure of the annualized costs of the final rule consistent with the net present value, is $4.0 million and $2.6 million for 7 and 3 percent discount rates respectively.

As stated previously in section B.3., the estimated total annual costs are $2.7 million for the Westlake facility. Based on our analysis, the estimated annualized costs are only about 0.04 percent of the annual revenue of the facility's ultimate parent company in 2020. Since the estimated cost impacts are minimal, no significant economic impacts to the ultimate parent company nor its consumers are anticipated due to the final amendments. For additional details on the economic impact analysis please see the memorandum entitled *Economic Impact Analysis for the Final Mercury Cell Chlor-Alkali National Emission Standard for Hazardous Air Pollutants (NESHAP) Beyond-Floor Determination and Risk and Technology Review (RTR)* available in the docket (EPA–HQ–OAR–2020–0560).

E. What are the benefits?

The EPA anticipates a complete elimination of mercury emissions at the one remaining mercury cell chlor-alkali plant as a result of the final amendments to the Mercury Cell Chlor-Alkali Plants NESHAP. This is estimated to be a reduction of 125 pounds of mercury emitted to the atmosphere annually and approximately 900 pounds of mercury released annually to other media. EPA has not monetized the health benefits of reduced mercury emissions due to this rulemaking due to the lack of site specific data and insufficient economic research to support the valuation of the health impacts often associated with exposure to individual HAP. For the 2022 proposed rule for the Mercury Air Toxics Standard (MATS) EPA did develop bounding estimates for the risk and associated dollar valuation associated with mercury emitted from U.S. Electric Utility Steam Generating Units. These estimates focused on exposure of the general population to methylmercury through commercial fish consumption and included IQ loss for children exposed in-vitro and adult myocardial infarction (MI)-related mortality. These bounding estimates are subject to uncertainty which is discussed in the rule language.[4] While the risk assessment conducted for the RTR indicates that risks from the source category are already low, future risks from this source category will be reduced to zero. Furthermore, as described above, this action will eliminate the releases of mercury to the global pool from this source.

F. What analysis of environmental justice did we conduct?

Consistent with EPA's commitment to integrating environmental justice (EJ) in the agency's actions, and following the directives set forth in multiple Executive Orders, the Agency has carefully considered the impacts of this action on communities with EJ concerns. For this action, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the single Mercury Cell Chlor-Alkali facility associated with this rule. While there are three demographic groups (*i.e.,* over age 25 without a high school diploma, those below the poverty level, and those aged 65 and up) around this facility that are higher than the national average, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1. As such, the EPA determined that this action provides an ample margin of safety to protect public health for all populations, including communities already overburdened by pollution. Following is a more detailed description of how the agency considers

[4] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding; Notice of Proposed Rulemaking (87 FR 7624, February 9, 2022).

EJ in the context of regulatory development.

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, populations of people of color, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through federal government actions (86 FR 7009, January 20, 2021). Executive Order 14008 further declares a policy "to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized overburdened by pollution and under-investment in housing, transportation, water and wastewater infrastructure, and health care" (86 FR 7619, February 1, 2021). The EPA defines EJ as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies [5]". The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies". In recognizing that people of color and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Mercury Cell Chlor-Alkali Plants source category across different demographic groups within the populations living near facilities.

As mentioned above, the results of the demographic analysis for the source category indicate that three demographic groups included in the analysis are higher than the national average in percentage terms within 5 km of the facility.[6] These groups include those over 25 without a high school diploma (17 percent versus 14 percent nationally), those below the poverty level (25 percent versus 14 percent nationally) and those aged 65 and up (18 percent versus 14 percent nationally). When examining the risk levels of those exposed to emissions from Mercury Cell Chlor-Alkali plants, we determined that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1. The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Mercury Cell Chlor-Alkali Plants Source Category Operations,* which is available in the docket.

G. What analysis of children's environmental health did we conduct?

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The health risk assessments for this action are contained in the document titled *Residual Risk Assessment for the Mercury Cell Chlor-Alkali Plants Source Category in Support of the 2021 Risk and Technology Review Final Rule,* available in the docket (Docket ID No. EPA–HQ–OAR–2020–0560).

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at: *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2046.11. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information requirements in this rulemaking are based on the 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 notifications, reports, and records are essential in determining compliance, and are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The EPA is finalizing amendments to eliminate the SSM plan and reporting requirements; add requirements for electronic reporting of notifications and reports and performance test results; and add a reporting requirement for meeting the mercury emissions prohibitions. This information will be collected to assure compliance with the Mercury Cell Chlor-Alkali Plants NESHAP.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of flexible polyurethane foam fabrication operations subject to 40 CFR part 63, subpart IIIII.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart IIIII).

Estimated number of respondents: 1 facility.

Frequency of response: Initially, occasionally, and semi-annually.

Total estimated burden: 3,567 total hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $457,200 (per year), includes $29,200 annualized capital or operation & maintenance costs.

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 in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the

[5] See *https://www.epa.gov/environmentaljustice.*

[6] When the demographic analysis was completed in mid-2020, there were 2 facilities in the mercury cell chlor-alkali source category and both were subject to 40 CFR part 63, subpart IIIII. However, in late 2020 one of those facilities converted to a non-mercury process. Therefore, currently only one facility remains in the source category.

approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The ultimate parent company for the single affected facility in the source category is not a small entity given the Small Business Administration small business size definition for this industry (1,000 employees or greater for NAICS 325180).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more in any one year.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. The mercury cell chlor-alkali plant affected by this final action is not owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in section IV.A of this preamble and the document, *Residual Risk Assessment for the Mercury Cell Chlor-Alkali Plants Source Category in Support of the 2021 Risk and Technology Review Final Rule,* which is available in the docket for this rulemaking.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. New standards are proposed for 40 CFR part 63, subpart IIIII to limit mercury and Cl emissions from mercury cell chlor-alkali plants. The proposed limits will have lower electricity costs for the one affected facility so it will not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in the technical report titled, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Mercury Cell Chlor-Alkali Plants Source Category Operations,* available in the docket for this action.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 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.*

■ 2. The heading for subpart IIIII is revised to read as follows:

Subpart IIIII—National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-Alkali Plants

■ 3. Section 63.8180 is revised to read as follows:

§ 63.8180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for affected sources at mercury cell chlor-alkali plants. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and work practice standards in this subpart.

■ 4. Section 63.8182 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.8182 Am I subject to this subpart?

* * * * *

(c) Beginning on December 19, 2006, the provisions of subpart E of 40 CFR part 61 that apply to mercury cell chlor-alkali plants, which are listed in paragraphs (c)(1) through (3) of this section, are no longer applicable.

* * * * *

■ 5. Section 63.8184 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 63.8184 What parts of my plant does this subpart cover?

(a) * * *

(1) The mercury cell chlor-alkali production facility designates an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a plant site. This subpart covers mercury emissions from by-product hydrogen streams and end box ventilation system vents, mercury fugitive emissions associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes; and chlorine fugitive emissions associated with the mercury cell chlor-alkali production facility.

(2) The mercury recovery facility designates an affected source consisting of all processes and associated operations needed for mercury recovery

from wastes at a plant site. This subpart covers mercury emissions from mercury thermal recovery unit vents and fugitive emission sources of mercury associated with storage areas for mercury-containing wastes.

* * * * *

■ 6. Section 63.8186 is amended by revising paragraph (a) to read as follows:

§ 63.8186 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply according to the dates specified in paragraphs (a)(1) through (5) of this section, as applicable.

(1) You must comply with each emission limitation, each work practice standard specified in paragraphs § 63.8192(a) through (f) or each work practice standard in paragraphs § 63.8192(e) through (g), and with each recordkeeping and reporting requirement in this subpart that applies to you by December 19, 2006, except as specified in paragraphs (a)(2) through (5) of this section.

(2) You must comply with each work practice standard in § 63.8192(a) through (c) and (e) through (h) and the electronic reporting requirements in § 63.8232(g), § 63.8252(g), and § 63.8254(e) by November 7, 2022.

(3) Until November 7, 2022, you must comply with the requirements in § 63.8226(a) and the requirements specified in the startup, shutdown, and malfunction plan required at § 63.8226(b).

(4) On and after November 7, 2022, you must comply with the applicable requirements in paragraph § 63.8226(c).

(5) On and after May 6, 2025, you must comply with the emission limitations in § 63.8190(a)(2)(ii) and the notification requirement in § 63.8252(h).

* * * * *

■ 7. Section 63.8190 is amended by revising paragraph (a)(2) to read as follows:

§ 63.8190 What emission limitations must I meet?

(a) * * *

(2) Existing mercury cell chlor-alkali production facility. Until the compliance date listed in § 63.8186(a)(5), you must comply with paragraph (a)(2)(i) of this section. On and after the compliance date listed in § 63.8186(a)(5), you must comply with paragraph (a)(2)(ii) of this section.

(i) During any consecutive 52-week period, you must not discharge to the atmosphere total mercury emissions in excess of the applicable limit in paragraph (a)(2)(i)(A) or (B) of this section calculated using the procedures in § 63.8243(a).

(A) 0.076 grams of mercury per megagram of chlorine produced (1.5×10^{-4} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams and all end box ventilation system vents when both types of emission points are present.

(B) 0.033 grams of mercury per megagram of chlorine produced (6.59×10^{-5} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams when end box ventilation systems are not present.

(ii) Emissions of mercury are prohibited from an existing mercury cell chlor-alkali production facility.

* * * * *

■ 8. Section 63.8192 is amended by revising the introductory text, paragraph (a), and paragraph (g) introductory text, and adding paragraph (h) to read as follows:

§ 63.8192 What work practice standards must I meet?

In accordance with the compliance dates specified in § 63.8186(a)(1), you must meet the work practice requirements specified in paragraphs (a) through (f) of this section. As an alternative to the requirements specified in paragraphs (a) through (d) of this section, you may choose to comply with paragraph (g) of this section. On and after the compliance date specified in § 63.8186(a)(2) and until the compliance date specified in § 63.8186(a)(5), you must meet the work practice requirements specified in paragraphs (a) through (c) and (e) through (h) of this section.

(a) You must meet the work practice standards in Tables 1 through 4 to this subpart.

* * * * *

(g) You must institute a cell room monitoring program to continuously monitor the mercury vapor concentration in the upper portion of each cell room and to take corrective actions as quickly as possible when elevated mercury vapor levels are detected. As specified in § 63.8252(e)(1)(iv), you must prepare and submit to the Administrator, a cell room monitoring plan containing the elements listed in Table 5 to this subpart and meet the requirements in paragraphs (g)(1) through (4) of this section.

* * * * *

(h) You must comply with the requirements specified in paragraphs (h)(1) through (4) of this section to reduce fugitive chlorine emissions in the mercury cell chlor-alkali production facility affected source.

(1) You must identify each piece of equipment located throughout the mercury cell chlor-alkali production facility affected source that contains chlorine gas at a concentration of at least 5 percent by volume. You may identify equipment by a list or on a process or piping diagram. You may exclude equipment that is under negative pressure.

(2) You must install ambient chlorine sensors at the mercury cell chlor-alkali production facility affected source to measure the ambient chlorine concentration.

(i) Ambient chlorine sensors must have a detection limit of 0.5 ppmv or less.

(ii) The sensors must be operated continuously to obtain a measurement at least once each 15 minutes.

(iii) You must identify the location of the sensors by a list or on a process or piping diagram.

(iv) You must operate, calibrate, and maintain these sensors in accordance with manufacturer instructions.

(v) You must keep the necessary parts for routine repairs of the sensors readily available.

(3) You must perform inspections to identify leaks of chlorine using olfactory observations according to the schedules in paragraphs (h)(3)(i) and (ii) of this section. A leak is detected when there is an olfactory observation of a leak. If a leak is detected, you must comply with the repair provisions in paragraph (h)(4) of this section.

(i) At least once each 12 hours, you must inspect each piece of equipment located throughout the mercury cell chlor-alkali production facility affected source that contains chlorine gas at a concentration of greater than 5 percent by volume for chlorine leaks, excluding equipment that is under negative pressure.

(ii) Within 1 hour of detection of a 1-hour average chlorine concentration of 2 ppmv or greater by a sensor installed and operated in accordance with paragraph (h)(2) of this section, you must inspect each piece of equipment located throughout the mercury cell chlor-alkali production facility affected source that contains chlorine gas at a concentration of greater than 5 percent by volume for chlorine leaks, excluding equipment that is under negative pressure.

(4) You must undertake a first attempt at repair no later than 1 hour after the leak is detected, and the leak must be repaired no later than 72 hours after the leak is detected. A leak is repaired when there is no olfactory observation of a leak.

■ 9. Section 63.8222 is revised to read as follows:

§ 63.8222 What are my operation and maintenance requirements?

At all times you 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. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standards have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements 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, review of operation and maintenance records, reports and inspection of the source.

■ 10. Section 63.8226 is revised to read as follows:

§ 63.8226 What are my general requirements for complying with this subpart?

(a) Until November 7, 2022, you must be in compliance with the applicable emission limitations in § 63.8190 and the applicable work practice standards in § 63.8192 at all times, except during periods of startup, shutdown, and malfunction.

(b) Until November 7, 2022, you must develop and operate as specified by a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(c) On and after November 7, 2022, the provisions of paragraphs (a) and (b) of this section no longer apply, and you must be in compliance with the applicable emission limitations in § 63.8190 and the applicable work practice standards in § 63.8192 at all times.

■ 11. Section 63.8232 is amended by revising the introductory text and paragraph (a) and adding paragraph (g) to read as follows:

§ 63.8232 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits?

You must conduct a performance test for each by-product hydrogen stream, end box ventilation system vent, and mercury thermal recovery unit vent according to the conditions detailed in paragraphs (a) through (d) of this section.

(a) You must conduct each performance test under conditions representative of normal operations. You may not conduct performance tests during periods of startup, shutdown, or malfunction. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(g) Within 60 days after the date of completing each performance test specified in this section, you must submit the results of the performance test following the procedures specified in paragraphs (g)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI).* Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (g)(1) or (2) of this section, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (g)(1) and (2) of this section. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

■ 12. Section 63.8236 is amended by revising paragraph (c) introductory text and adding paragraphs (e) and (f) to read as follows:

§ 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?

* * * * *

(c) Prior to the compliance date specified in § 63.8186(a)(2), for each affected source, you have demonstrated initial compliance with the applicable work practice standards in § 63.8192 if you comply with paragraphs (c)(1) through (7) of this section.

* * * * *

(e) On and after the compliance date specified in § 63.8186(a)(2), for each affected source, you have demonstrated initial compliance with the applicable work practice standards for mercury emissions in § 63.8192(a) through (c) and (e) through (g) if you comply with paragraphs (e)(1) through (4) of this section.

(1) You have submitted a Revised Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8252(f).

(2) You certify in your Revised Notification of Compliance Status that you are operating according to the work practice standards for mercury emissions in § 63.8192(a) through (c), (e), and (f).

(3) You have submitted your cell room monitoring plan as part of your Revised Work Practice Notification of Compliance Status and you certify in your Revised Notification of Compliance Status that you are operating according to the continuous cell room monitoring program under § 63.8192(g).

(4) You have re-submitted your washdown plan as part of your Revised Notification of Compliance Status and you re-certify in your Revised

Notification of Compliance Status that you are operating according to your washdown plan under § 63.8192(e).

(f) On and after the compliance date specified in § 63.8186(a)(2), for each affected source, you have demonstrated initial compliance with the applicable work practice standards for chlorine emissions in § 63.8192(h) if you meet the requirements of paragraphs (f)(1) through (3) of this section.

(1) You have installed chlorine sensors in accordance with § 63.8192(h)(2).

(2) You have certified in your Revised Notification of Compliance Status that you are operating according to the work practice standards in § 63.8192(h).

(3) You have submitted your Revised Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8252(f).

■ 13. Section 63.8242 is amended by revising the section heading and paragraphs (a)(2) and (a)(3)(v) to read as follows:

§ 63.8242 What are the installation, operation, and maintenance requirements for my continuous mercury monitoring systems?

(a) * * *

(2) Each mercury continuous emissions monitor analyzer must have a detector with the capability to detect a mercury concentration of either 0.1 µg/m^3 or 0.5 times the mercury concentration level measured during the performance test conducted according to § 63.8232.

(3) * * *

(v) Ongoing data quality assurance procedures according to the requirements of § 63.8(d)(1) and (2). You shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you shall keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action shall be included in the plan required under § 63.8(d)(2).

* * * * *

■ 14. Section 63.8246 is amended by revising paragraphs (b)(1) introductory text and (c) and adding paragraph (d) to read as follows:

§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(b) * * *

(1) For each mercury thermal recovery unit vent, you must demonstrate continuous compliance with the applicable emission limit specified in § 63.8190(a)(3) by maintaining the outlet mercury daily-average concentration no higher than the applicable limit. To determine the outlet mercury concentration, you must monitor according to paragraph (b)(1)(i) or (ii) of this section.

* * * * *

(c) You must demonstrate continuous compliance with the applicable work practice standards for mercury emissions in § 63.8192 by maintaining records in accordance with § 63.8256(c) and (e).

(d) You must demonstrate continuous compliance with the applicable work practice standards for chlorine emissions in § 63.8192(h) by continuously operating the chlorine sensors required by § 63.8192(h)(2), inspecting equipment in accordance with § 63.8192(h)(3), repairing equipment in accordance with § 63.8192(h)(4) and maintaining records in accordance with § 63.8256(f).

■ 15. Section 63.8248 is amended by revising paragraphs (a) introductory text, (a)(1) and (2), and (2), and adding paragraph (b) introductory text to read as follows:

§ 63.8248 What other requirements must I meet?

(a) *Deviations.* The instances specified in paragraphs (a)(1) through (4) of this section are deviations and must be reported according to the requirements in § 63.8254 and recorded according to the requirements in § 63.8256(a)(2).

(1) You must report each instance in which you did not meet each emission limitation in § 63.8190 that applies to you.

(2) You must report each instance in which you did not meet each work practice standard in § 63.8192 that applies to you.

* * * * *

(b) * * * The provisions of paragraphs (b)(1) through (3) of this section apply until November 7, 2022. On and after November 7, 2022, the provisions of paragraphs (b)(1) through (3) of this section no longer apply.

* * * * *

■ 16. Section 63.8252 is amended by revising paragraphs (d) and (e)(1)(i) and adding paragraphs (f) through (h) to read as follows:

§ 63.8252 What notifications must I submit and when?

* * * * *

(d) For each performance test that you are required to conduct for by-product hydrogen streams and end box ventilation system vents and for mercury thermal recovery unit vents, 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).

(e) * * *

(1) * * *

(i) If you choose not to implement a cell room monitoring program according to § 63.8192(g), a certification that you are operating according to the applicable work practice standards for mercury emissions in § 63.8192(a) through (d) and your floor-level mercury vapor measurement plan required by § 63.8192(d).

* * * * *

(f) You must submit a Revised Notification of Compliance Status before the close of business on the date 30 days after the compliance date in § 63.8186(a)(2) containing the items in paragraphs (f)(1) through (5) of this section:

(1) A certification that you are operating according to the work practice standards for mercury emissions in § 63.8192(a) through (c) and (e) through (g).

(2) Your cell room monitoring plan, including your initial action level determined in accordance with § 63.8192(g)(2), and a certification that you are operating according to the continuous cell room monitoring program under § 63.8192(g).

(3) Your washdown plan, and a certification that you are operating according to your washdown plan under § 63.8192(e).

(4) Records of the mass of virgin mercury added to cells for every year since 2001.

(5) A certification that you have installed chlorine sensors in accordance with § 63.8192(h)(2) and that you are operating according to the work practice standards for chlorine emissions in § 63.8192(h).

(g) You must submit all subsequent Notification of Compliance Status reports and Revised Notification of Compliance Status reports in PDF format to the EPA via CEDRI, which can be accessed through EPA's CDX (*https://cdx.epa.gov/*).

(h) You must submit a notification of compliance with the prohibition of mercury emissions as specified in paragraphs (e)(1) and (2) of this section.

(1) The notification must include the information specified in paragraph (e)(1)(i) and (ii) of this section.

(i) A certification that the requirement of § 63.8190(a)(2)(ii) has been met.

(ii) A brief explanation of how the requirement of § 63.8190(a)(2)(ii) has been met.

(2) You must submit this notification before the close of business on the 30th calendar day following the date when compliance with § 63.8190(a)(2)(ii) is attained.

■ 17. Section 63.8254 is amended by:
■ a. Revising paragraph (b) introductory text;
■ b. Removing and reserving paragraph (b)(4);
■ c. Revising paragraphs (b)(7) through (9);
■ d. Adding paragraphs (b)(13) and (14);
■ e. Removing and reserving paragraph (c); and
■ f. Adding paragraph (e).

The revisions and additions read as follows:

§ 63.8254 What reports must I submit and when?

* * * * *

(b) *Compliance report contents.* Each compliance report must contain the information in paragraphs (b)(1) through (3) of this section, and as applicable, paragraphs (b)(5) through (13) of this section.

* * * * *

(7) For each deviation from the requirements for work practice standards in § 63.8192, the information in paragraphs (b)(7)(i) and (ii) of this section.

(i) For each deviation from the mercury work practice standards in Tables 1 through 4 to this subpart that occurs at an affected source (including deviations where the response intervals were not adhered to as described in § 63.8192(b)), each deviation from the cell room monitoring program monitoring and data recording requirements in § 63.8192(g)(3), and each deviation from the response intervals required by § 63.8192(g)(4) when an action level is exceeded, the compliance report must contain the information in paragraphs (b)(1) through (3) of this section and the information in paragraphs (b)(7)(i)(A) through (C) of this section.

(A) The total operating time of each affected source during the reporting period.

(B) Information on the number, date, time, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(C) A list of the affected sources or equipment.

(ii) For each deviation from the fugitive chlorine requirements in § 63.8192(h), including periods when the chlorine sensors required by § 63.8192(h)(2) were not operating; instances where the chlorine sensors required by § 63.8192(h)(2) were not calibrated and maintained in accordance with manufacturer instructions or spare parts were not maintained; instances where inspections were not performed in accordance with § 63.8192(h)(3)(i) and (ii); and instances where leak repair intervals in § 63.8192(h)(4) were not met; the compliance report must contain the information in paragraphs (b)(1) through (3) of this section and the information in paragraphs (b)(7)(ii)(A) through (C) of this section.

(A) The total operating time of each affected source during the reporting period.

(B) Information on the number, date, time, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(C) A list of the affected sources or equipment.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a mercury continuous emission monitor, according to the site-specific monitoring plan required in § 63.8242(a)(3), to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (3) of this section and the information in paragraphs (b)(8)(i) through (xv) of this section.

(i) A list of the affected sources and equipment.

(ii) The date and time that each deviation started and stopped.

(iii) For each deviation, the cause of the deviation (including unknown cause, if applicable), as applicable, and corrective action taken.

(iv) For each deviation, an estimate of the quantity of each regulated pollutant emitted over any emission limit.

(v) A description of the method used to estimate the emissions.

(vi) The date and time of each instance in which a continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration of each instance in which a continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(viii) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(ix) A breakdown of the total duration of the deviations during the reporting period including those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(x) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during the reporting period.

(xi) An identification of each hazardous air pollutant that was monitored at the affected source.

(xii) A brief description of the process units.

(xiii) A brief description of the continuous monitoring system.

(xiv) The date of the latest continuous monitoring system certification or audit.

(xv) A description of any changes in monitoring system, processes, or controls since the last reporting period.

(9) For each deviation from an operation and maintenance standard occurring at an affected source where you are using the periodic monitoring option specified in § 63.8240(b) and your final control device is not a nonregenerable carbon adsorber, the compliance report must include the information in paragraphs (b)(1) through (3) of this section and the information in paragraphs (b)(9)(i) through (xiii) of this section.

(i) A list of the affected sources or equipment.

(ii) The total operating time of each affected source during the reporting period.

(iii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(iv) For each deviation, an estimate of the quantity of each regulated pollutant emitted over any emission limit.

(v) A description of the method used to estimate the emissions.

(vi) The date and time of each instance in which a CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration of each instance in which a CPMS was out-of-control, including the information specified in § 63.8(c)(8).

(viii) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(ix) A breakdown of the total duration of the deviations during the reporting

period including those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(x) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during the reporting period.

(xi) A brief description of the CPMS.

(xii) The date of the latest CPMS certification or audit.

(xiii) A description of any changes in monitoring system, processes, or controls since the last reporting period.

* * * * *

(13) The compliance report must contain the information specified in paragraphs (b)(13)(i) through (iii) for each instance where the 1-hour average concentration of chlorine detected by a chlorine sensor required by § 63.8192(h)(2) was 2 ppmv or greater.

(i) The date and times a chlorine sensor detected chlorine concentrations of 2 ppmv or greater.

(ii) The location of the sensor.

(iii) The date and time that the sensor returned to a 1-hour average concentration of less than 2 ppmv.

(14) The compliance report must contain the information specified in paragraphs (b)(14)(i) and (ii) for all inspections conducted under either § 63.8192(h)(3)(i) or (ii). You must also record the information in paragraphs (b)(14)(iii) through (vii) of this section for each leak identified.

(i) The date of each inspection.

(ii) The reason for each inspection (*i.e.,* a routine inspection conducted each 12 hours or an inspection conducted in response to a 2 ppmv or greater 1-hour average concentration of chlorine, as detected by a sensor).

(iii) Location of the leak.

(iv) Date and time the leak was identified.

(v) Date and time of initial repair attempt.

(vi) Date and time the leak is repaired.

(vii) A description of the repair made to stop the leak.

* * * * *

(e) The owner or operator must submit semiannual compliance reports in PDF formatto the EPA viaCEDRI, which can be accessedthrough EPA's CDX (*https://cdx.epa.gov/*).

■ 18. Section 63.8256 is amended by revising paragraphs (a)(2) and (c) introductory text and adding paragraphs (e) and (f) to read as follows:

§ 63.8256 What records must I keep?

(a) * * *

(2) The records specified in paragraphs (a)(2)(i) and (ii) of this section related to deviations.

(i) Record actions taken to minimize emissions in accordance with § 63.8222 and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(ii) Records of the information reported as required in § 63.8254(b)(7) through (9) and (11) through (13).

* * * * *

(c) Records associated with the work practice standards for mercury emissions that must be kept prior to the compliance date in § 63.8186(a)(2).

* * * * *

(e) Records associated with the work practice standards for mercury emissions that must be kept after the compliance date in § 63.8186(a)(2).

(1) The records specified in Table 9 to this subpart related to the work practice standards in Tables 1 through 4 of this subpart.

(2) You must maintain a copy of your current washdown plan and records of when each washdown occurs.

(3) You must maintain records of the mass of virgin mercury added to cells for each reporting period.

(4) You must keep your current cell room monitoring plan and the records specified in paragraphs (e)(4)(i) through (v) of this section.

(i) Records of the monitoring conducted in accordance with § 63.8192(g)(2)(i) to establish your action level, and records demonstrating the development of this action level.

(ii) Records of the cell room mercury concentration monitoring data collected.

(iii) Instances when the action level is exceeded.

(iv) Records specified in § 63.8192(g)(4)(i) for maintenance activities that cause the mercury vapor concentration to exceed the action level.

(v) Records of all inspections and corrective actions taken in response to a non-maintenance related situation in which the mercury vapor concentration exceeds the action level.

(f) You must keep the records specified in paragraphs (f)(1) through (4) of this section associated with the work practice standards for fugitive chlorine emissions specified in § 63.8192(h) after the compliance date in § 63.8186(a)(2).

(1) Identification of all equipment in the mercury cell chlor-alkali production facility affected source containing chlorine gas at a concentration of greater than 5 percent by volume. You may exclude equipment that is under negative pressure.

(2) Records of the information reported as required in § 63.8254(b)(13) and (14).

(3) You must record the information specified in paragraphs (f)(3)(i) through (iv) of this section for the chlorine sensors required by § 63.8192(h)(2).

(i) The location, manufacturer, and model number of each sensor.

(ii) The manufacturer's instructions for operation, maintenance, and calibration of the chlorine sensors.

(iii) Records of all maintenance and calibration of the chlorine sensors.

(iv) You must record all periods when the chlorine sensors are not operating.

(4) You must maintain records of all chlorine concentration measurements.

■ 19. Section 63.8262 is revised to read as follows:

§ 63.8262 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

■ 20. Section 63.8264 is amended by revising paragraph (c) introductory text and adding paragraph (c)(5) to read as follows:

§ 63.8264 Who implements and enforces this subpart?

* * * * *

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

* * * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 21. Section 63.8266 is amended by revising the definition of "Deviation" to read as follows:

§ 63.8266 What definitions apply to this subpart?

* * * * *

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

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

(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 title V operating permit for any affected source required to obtain such a permit; or

(3) Fails to take corrective actions within 48 hours that result in parameter monitoring values being within range.

* * * * *

■ 22. Table 5 to subpart IIIII of part 63 is amended by revising the introductory text to read as follows:

Table 5 to Subpart IIIII of Part 63—Required Elements of Floor-Level Mercury Vapor Measurement and Cell Room Monitoring Plans

Your Floor-Level Mercury Vapor Measurement Plan required by § 63.8192(d) prior to the applicable compliance date specified in § 63.8186(a)(2) and Cell Room Monitoring Plan required by § 63.8192(g) must contain the elements listed in the following table:

* * * * *

■ 23. Table 10 to subpart IIIII of part 63 is revised to read as follows:

Table 10 to Subpart IIIII of Part 63—Applicability of General Provisions to Subpart IIIII

As stated in § 63.8262, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applies to subpart IIIII	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a)–(g), (i), (j), except for (e)(1)(i) and (ii), (e)(3), and (f)(1).	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(e)(1)(i) and (ii), (e)(3), and (f)(1)	SSM Requirements	Yes	Only applies until the date specified in § 63.8186(a)(3).
§ 63.6(h)	Compliance with Opacity and Visible Emission Standards.	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.7(a)–(h), except for (a)(2) and (e)(1)	Performance Testing Requirements	Yes	Subpart IIIII specifies additional requirements related to site-specific test plans and the conduct of performance tests.
§ 63.7(a)(2)	Applicability and Performance Test Dates	No	Subpart IIIII requires the performance test to be performed on the compliance date.
§ 63.7(e)(1)	Performance Test Conditions	No	See § 63.8232(a).
§ 63.8(a)(1), (a)(3); (b); (c)(1)(ii), (2)–(4), (6)–(8); (d)(1)–(2); (e); and (f)(1)–(5).	Monitoring Requirements	Yes	Only applies for CEMS, except Subpart IIIII specifies how and when the performance evaluation results are reported.
§ 63.8(a)(2)	Continuous Monitoring System (CMS) Requirements.	No	Subpart IIIII requires a site-specific monitoring plan in lieu of a promulgated performance specification for a mercury concentration CMS.
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart IIIII does not require flares.
§ 63.8(c)(1)(i) and (iii)	CMS Operation and SSM Plan	Yes	Only applies until the date specified in § 63.8186(a)(3).
§ 63.8(c)(5)	COMS Minimum Procedures	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.8(d)(3)	Written Procedures for CMS	No	See § 63.8242(a)(3)(v).
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart IIIII does not require CEMS.
§ 63.8(g)	Data Reduction	No	Subpart IIIII specifies mercury concentration CMS data reduction requirements.
§ 63.9(a)–(e), (g)–(j)	Notification Requirements	Yes.	
§ 63.9(f)	Notification of VE/Opacity Test	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.9(k)	Electronic reporting procedures	Yes	Only as specified in § 63.9(j).
§ 63.10(a); (b)(1); (b)(2)(vi)–(xii), (xiv); (b)(3); (c)(1)–(14); (d)(1), (4); (e); (f).	Recordkeeping/Reporting	Yes.	
§ 63.10(b)(2)(i)–(v)	Recordkeeping/Reporting Associated with Startup, Shutdown, and Malfunctions.	Yes	Only applies until the date specified in § 63.8186(a)(3).
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative	No	Subpart IIIII does not require CEMS.
§ 63.10(c)(15)	Use of SSM Plan	Yes	Only applies until the date specified in § 63.8186(a)(3).
§ 63.10(d)(2)	Performance Test Results	No	This subpart at 63.8232(g) specifies how and when the performance test results are reported electronically.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	No.	
§ 63.10(e)(2)(i)	CEM Reporting	Yes	Except this subpart specifies how and when the performance evaluation results are reported.
§ 63.11	Flares	No	Subpart IIIII does not require flares.
§ 63.12	Delegation	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information	Yes.	

[FR Doc. 2022–09658 Filed 5–5–22; 8:45 am]

BILLING CODE 6560–50–P

§ 28.25 [Amended]

■ 15. In § 28.25, in paragraph (a), remove ''Office of Administrative Law Judges'' and add in its place ''Office of Hearings and Appeals''.

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 16. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 1 note and 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 17. In part 30, remove ''Office of Administrative Law Judges'' and add in its place ''Office of Hearings and Appeals'' wherever it appears.

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

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

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601–3619.

■ 19. In part 81, remove ''Office of Administrative Law Judges'' and add in its place ''Office of Hearings and Appeals'' wherever it appears.

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

■ 20. The authority citation for part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

PART 103—[Amended]

■ 21. In part 103, remove ''Office of Administrative Law Judges'' and add in its place ''Office of Hearings and Appeals'' wherever it appears.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 22. The authority citation for part 180 continues to read as follows:

Authority: 28 U.S.C. 1 note; 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

■ 23. In part 180:
■ a. Remove ''Director of the Office of Hearings and Appeals'' and add in its place ''Chief Administrative Law Judge'' wherever it appears; and
■ b. Remove ''Office of ALJs'' and add in its place ''Office of Hearings and Appeals'' wherever it appears.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 24. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

§ 570.496 [Amended]

■ 25. In § 570.496, in paragraph (d)(1)(iii), remove ''Office of Administrative Law Judges'' and add in its place ''Office of Hearings and Appeals'' wherever it appears.

Dated: February 8th, 2022.

Marcia L. Fudge,

Secretary.

[FR Doc. 2022–03007 Filed 2–11–22; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 62, and 63

[EPA–HQ–OAR–2002–0047; FRL–6838.1–03–OAR]

RIN 2060–AV01

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: In this action, the U.S. Environmental Protection Agency (EPA) is finalizing technical revisions and clarifications for the national emission standards for hazardous air pollutants (NESHAP) for MSW Landfills established in the March 26, 2020, final rule. This final rule also amends the MSW Landfills NSPS at 40 CFR part 60, subpart XXX, to clarify and align the timing of compliance for certain requirements involving installation of a gas collection and control system (GCCS) under related MSW landfill rules. Additionally, the EPA is revising the definition of Administrator in the MSW Landfills Federal Plan that was promulgated on May 21, 2021 to clarify who has the authority to implement and enforce the applicable requirements. The EPA is also making some minor typographical corrections.

DATES: The final rule is effective February 14, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0047. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The EPA has temporarily suspended its Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. The EPA continues to carefully and continuously monitor information from the Centers for Disease Control (CDC), local area health departments, and our Federal partners so that the EPA can respond rapidly as conditions change regarding COVID–19. For further information on EPA Docket Center services and the current status, please visit the docket online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Andy Sheppard, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4161; fax number: (919) 541–0516; and email address: *sheppard.andy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. The EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
COVID–19 coronavirus disease of 2019
EPA Environmental Protection Agency
GCCS gas collection and control system
HAP hazardous air pollutants
m3 cubic meter
Mg megagram
MSW municipal solid waste
NMOC nonmethane organic compounds
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RTR risk and technology review
SSM startup, shutdown, and malfunction

RIN Regulatory Information Number
UMRA Unfunded Mandate Reform Act

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this final action apply to me?
B. Where can I get a copy of this document and other related information?
C. What is the statutory authority for this action?
D. Judicial Review
II. Background
A. What is the regulatory development background for this final action?
B. What is the purpose of this action?
III. Summary of Changes Since Proposal and Response to Comments
A. Wellhead Monitoring
B. Compliance Timing
C. Technical and Typographical Corrections
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the associated regulated industrial source categories that are the subject of this final rule. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this action is likely to affect. The standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities could be affected by this action because these entities are often the owners or operators of MSW landfills. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030; July 1992), the MSW Landfills source category is any facility that is an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial waste. An MSW landfill may also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes (see 40 CFR 257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

Questions regarding the applicability of this final action to a particular entity should be directed to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

Source category	NAICS code [1]
Industry: Air and water resource and solid waste management	924110
Industry: Refuse systems—solid waste landfills	562212
State, local, and tribal government agencies	562212, 924110

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of this final action at this same website.

C. What is the statutory authority for this action?

The statutory authority for revisions to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7412 and 7401). The statutory authority for revisions to the MSW Landfills New Source Performance Standards (40 CFR part 60, subpart XXX) and the Federal Plan (40 CFR part 62, subpart OOO) is provided by sections 111 and 301 of the CAA (42 U.S.C. 7411 and 7401).

The EPA finds that it has good cause to make these revisions immediately effective upon publication under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). Section 553(d) provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (DC Cir. 1996); see also *United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should, ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' *Gavrilovic,* 551 F.2d at 1105. The EPA has determined that there is good cause under section 553(d) for making this final rule effective immediately because this action clarifies the regulatory provisions that already apply to regulatory sources as well as the compliance deadline for controlled landfills that become subject to the 2016 MSW Landfills NSPS through modification is September 27, 2021. Making this rule effective immediately upon publication will minimize confusion and increase compliance certainty.

D. Judicial Review

Under CAA section 307(b)(1), 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 April 15, 2022. Moreover, under section 307(b)(2) of the CAA, the requirements established by

this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements. Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment, (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the regulatory development background and legal authority for this action?

The NESHAP regulates HAP emissions from MSW landfills that are either major or area sources, and applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and have estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) of non-methane organic compounds (NMOC). The NESHAP also applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and include a bioreactor and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 that were not permanently closed as of January 16, 2003.

The EPA completed the residual risk and technology review (RTR) for the Municipal Solid Waste (MSW) Landfills source category as regulated under the MSW Landfills NESHAP and promulgated amendments to 40 CFR part 63, subpart AAAA on March 26, 2020. (85 FR 17244). The rule finalized the EPA's determination that risks from this source category are acceptable and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. There were no revisions to the NESHAP based on our analyses conducted under CAA section 112(f). However, the final rule clarified regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revised wellhead operational standards and corrective action to improve effectiveness and provide compliance flexibility; incorporated provisions from the MSW Landfills NSPS; and added requirements for electronic reporting of performance test results. The EPA subsequently corrected inadvertent errors in the cross-referencing and formatting of the final rule and made minor clarifications to the operational and reporting requirements. (85 FR 64398, October 13, 2020).

In August 2016, the EPA finalized changes to the NSPS for MSW landfills resulting from the EPA's under Clean Air Act (CAA) section 111. In order to avoid possible confusion regarding which MSW landfills would actually be subject to these changes, the EPA established a new subpart XXX (40 CFR part 60, subpart XXX) rather than merely updating the existing subpart WWW (40 CFR part 60, subpart WWW). One of the key changes in the new subpart XXX was the lowering of the emissions threshold for installing controls from 50 megagrams per year (Mg/yr) to 34 Mg/yr. (81 FR 59332, August 29, 2016).

At the same time, the EPA reviewed the existing emission guideline (EG) (subpart Cc) and determined it was appropriate to revise it consistent with the promulgation of the new NSPS subpart XXX. Rather than merely updating subpart Cc, the EPA determined that the most appropriate way to proceed was to establish a new subpart Cf. (81 FR 59276, August 29, 2016).

The promulgation of the MSW landfills EG (subpart Cf) triggered states' obligation to submit state plans applying the updated EG to existing sources located in their states. The EPA found a number of states failed to submit state plans for the 2016 MSW Landfills EG. (85 FR 14474, March 12, 2020). In May of 2021, the EPA promulgated a Federal plan to implement the 2016 MSW Landfills EG for existing MSW landfills located in jurisdications where the EPA had not approved a state or tribal plan. (86 FR 27756, May 21, 2021).

B. What is the purpose of this action?

On April 13, 2021, the EPA proposed technical revisions and clarifications for the NESHAP for MSW Landfills and the EPA proposed clarifying amendments to the MSW Landfills NSPS. See 86 FR 19176. In this action, the EPA finalizes technical revisions and clarifications for the NESHAP for MSW Landfills established in the March 26, 2020, final rule. These technical revisions correct inadvertent errors in the NESHAP for MSW Landfills. This action clarifies the following: Wellhead monitoring requirements for the purpose of identifying excess air infiltration; delegation of authority to state, local, or tribal agencies for "emission standards;" applicability of the General Provisions to affected MSW landfills; and handling of monitoring data for combustion devices during periods of monitoring system breakdowns, repairs, calibration checks, and adjustments. This action also amends the MSW Landfills NSPS at 40 CFR part 60, subpart XXX, to clarify the timing of compliance for certain requirements of the MSW Landfills NSPS for existing MSW landfills that have been modified but previously triggered the requirement to install a GCCS under related MSW landfill rules. Additionally, the EPA is revising the definition of Administrator in the MSW Landfills Federal Plan that was promulgated on May 21, 2021, to clarify who is the administrator for the Federal plan and the administrator for a state plan. The EPA is also making some minor typographical corrections to NESHAP and the Federal Plan.

III. Summary of Changes Since Proposal and Response to Comments

The EPA received two comment letters on the proposed revisions to the MSW Landfills NESHAP and NSPS (EPA–HQ–OAR–2002–0047–0111, EPA–HQ–OAR–2002–0047–0112). This section summarizes the EPA's response to those comments and indicates where the EPA has made additional changes to the proposed revisions to the MSW Landfills NESHAP and NSPS, in part, in response to those public comments. The changes include clarifications to the wellhead monitoring requirements [including test methods], and clarifications to the compliance times for various landfills, especially those modifying and becoming subject to 40

CFR part 60, subpart XXX. For more information, see the response to comments document, titled, *Summary of Public Comments and EPA's Responses for the Proposed Corrections to National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction,* which is available in the docket for this action.

A. Wellhead Monitoring

Comment: Commenter (0111) suggested that the EPA add language to 40 CFR 63.1981(k) to clarify whether or not a 24-hour high temperature report is required for wells with landfill gas temperatures greater than 170 degrees Fahrenheit but less than an approved higher operating value (HOV).

Response: The EPA is amending 40 CFR 63.1981(j)(2) to clarify that the corrective action and corresponding timelines are not required if the landfill has an approved HOV. We added the following phrase to the end of 40 CFR 63.1981 (j)(2): "unless a higher operating temperature value has been approved by the Administrator for the well under this subpart or under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a Federal plan or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf."

Comment: Commenter (0112) requested that EPA re-evaluate its proposal to require five 1-minute averages to be limited to 7 parts per million (ppm) variance. The commenter (0112) contends that the proposed requirement is unnecessarily prescriptive and says that although this low level of variability may be appropriate for some stationary sources of air emissions, such as controlled manufacturing processes, landfills may experience more variability than this limitation would allow. Commenter (0112) asserted that EPA has neither provided an explanation for why this requirement is necessary, nor shown that it can be achieved by landfills. Moreover, this requirement does not appear to be a necessary clarification or correction but rather an entirely new and unjustified compliance obligation. Therefore, unless and until EPA demonstrates a need for this requirement and that it is achievable by landfills, EPA should not finalize it in this corrections rule.

Response: The EPA believes that a limited variability provision would increase the data quality when collecting samples pursuant to 40 CFR 1961(a)(5)(vi)(D). However, the EPA agrees with the commenter that the CO concentrations can, under certain conditions (*e.g.,* underground fires), exhibit short term CO variability higher than 7 ppm. Therefore, the EPA has removed the 7 ppm variability requirement and may revisit this when more data is available.

Comment: Commenter (0112) requested that the EPA clarify language in 40 CFR 63.1961(a)(5)(vii) directing that enhanced monitoring "must begin 7 days after the first measurement" to provide that monitoring "must begin within 7 days to account for landfill operating hours, including weekends and holidays."

Response: The EPA has revised 40 CFR 63.1961(a)(5)(vii) to clarify that the requirement is to begin enhanced monitoring 7 *calendar* days after the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit). Decomposition of waste and monitoring a landfill are 24-hour per day/365 day per year operation where conditions change constantly. The EPA determined that it is reasonable and necessary to begin enhanced monitoring within 7 calendar days to keep a check on high temperature conditions in the landfill and minimize the potential for a landfill fire.

B. Compliance Timing

In the proposed rule, the EPA requested comment on whether the proposed modifications to the 2016 MSW Landfills NSPS regulations adequately clarify the expected compliance deadlines for controlled landfills that become subject to the 2016 MSW Landfills NSPS through modification and/or whether other approaches are needed to align the timing provisions of the 2016 MSW Landfills NSPS with the timing provisions of the MSW Landfills NESHAP. (86 FR 19176, 19182, April 13, 2021)

Comment: Commenter (0111) requested that the EPA should specify compliance deadlines for three categories of landfills:

(1) Landfills with an NMOC emission rate less than 34 megagrams per year that become subject to subpart XXX through modification;

(2) uncontrolled landfills with an NMOC emission rate between 34 and 50 megagrams per year that become subject to subpart XXX through modification; and

(3) controlled landfills that become subject to subpart XXX through modification.

Response: The EPA recognizes that from July 17, 2014 (the applicability date of the NSPS) to June 21, 2021 (the effective date of the Federal plan at 40 CFR part 62 subpart OOO), landfills that modify could become subject to 40 CFR part 60, subpart XXX after having previously been subject to 40 CFR part 62, subpart GGG; 40 CFR part 60, subpart WWW; or a state plan implementing 40 CFR part 60, subpart Cf or subpart Cc. By virtue of this final action, the EPA is clarifying that landfills that meet the definition of a "controlled landfill" would not receive an additional 30 months to comply when they transition to subpart XXX.

The EPA notes that after June 21, 2021, all three groups of landfills that modify as identified in this comment will have been previously subject only to either a state plan implementing 40 CFR part 62, subpart Cf, or 40 CFR part 62, subpart OOO to 40 CFR part 60, subpart XXX. The EPA is clarifying in this rule that compliance timing for landfills that become subject to subpart XXX after previously being subject to the Federal plan subpart OOO depends on whether the facility is a legacy controlled landfill, a controlled landfill or an uncontrolled landfill, and the results and timing of the landfill's NMOC emission rate report.

Landfills with an NMOC emission rate less than 34 megagrams per year that later become subject to subpart XXX through modification and have not installed controls should follow the requirements in subpart XXX, including the 30-month window to install and operate a GCCS. The landfill will submit their first NMOC report within 90 days of the date of construction or modification. The landfill could submit a revised NMOC report based on Tier 2 within 180 days of that first report, if desired.

For uncontrolled landfills with an NMOC emission rate equal to or greater than 34 but less than 50 megagrams per year that later become subject to subpart XXX through modification, we are clarifying that the 30-month clock for previously uncontrolled landfills will begin at the first report containing NMOC emissions greater than or equal to 34 Mg/yr NMOC that was submitted under any of the following subparts: 40 CFR part 60, subpart XXX or a state plan implementing subpart Cf; or 40 CFR part 62, subpart OOO. We are starting the 30-month clock at the NMOC report submitted under that subpart for these landfills with an NMOC emission rate equal to or greater than 34 but less than 50 megagrams per year because the landfill was not otherwise subject to any requirement to install and operate GCCS until they became subject to these subparts.

For controlled landfills that become subject to subpart XXX through modification, we do not intend to restart the 30-month clock for landfills reporting NMOC emissions greater than or equal to 50 Mg/yr NMOC under 40 CFR part 60, subpart WWW or Cc; or 40 CFR part 62, subpart GGG, and that submitted a design plan before the effective date of these 2021 subpart XXX amendments. These landfills already started the "control" process under the previous subparts and must stay on that previously triggered 30-month timeframe to install a GCCS in a timely manner.

Comment: Commenter (0112) disagreed with the EPA's proposal not to allow 30 months to install and operate a GCCS as the landfill transitions to a new subpart. However, the commenter (0112) recognized that landfills with emissions 50 Mg/yr NMOC or greater will be required to begin complying with the same requirements to install and operate GCCS pursuant to NESHAP AAAA as of September 28, 2021.

Response: For controlled landfills that become subject to subpart XXX through modification, the EPA does not agree that it would be appropriate to restart the 30-month clock for landfills reporting NMOC emissions greater than or equal to 50 Mg/yr NMOC under 40 CFR part 60, subpart WWW or Cc; or 40 CFR part 62, subpart GGG and that submitted a design plan before the effective date of these 2021 subpart XXX amendments. These landfills already started the "control" process under the previous subparts and it is reasonable to require these landfills to stay on that 30-month timeframe to install a GCCS in a timely manner. The commenter has not provided any information that would justify any further delay in the implementation of GCCS.

Comment: Commenter (0112) disagreed with using any subpart WWW reports between 34 and 50 Mg/yr NMOC as the trigger for the 30-month timeframe for installation of GCCS since this would not allow the landfill sufficient time to prepare a design plan and install the GCCS. The commenter (0112) suggested alternative regulatory text.

Response: The EPA recognizes that previous regulatory requirements are based on an emission rate threshold of 50 Mg/yr NMOC and that newer regulatory requirements are based on an emission rate threshold of 34 Mg/yr NMOC. With these technical revisions, we intend to clarify the application of the 30-month clock for previously uncontrolled landfills reporting NMOC emissions greater than or equal to 34 Mg/yr NMOC and less than 50 Mg/yr NMOC under 40 CFR part 60, subpart XXX or Cf; or 40 CFR part 62, subpart OOO. We are starting the 30-month clock at the NMOC report submitted under those subparts for those landfills that exceeded 34 Mg/yr NMOC because the 34–50 Mg/yr NMOC threshold did not apply until they became subject to these subparts.

However, we do not intend to restart the 30-month clock for landfills reporting NMOC emissions greater than or equal to 50 Mg/yr NMOC under 40 CFR part 60, subpart WWW or Cc; or 40 CFR part 62, subpart GGG and that submitted a design plan before the effective date of these 2021 subpart XXX amendments. These landfills already started the "control" process under the previous subparts and it is reasonable to require these landfills to stay on that 30-month timeframe to install a GCCS in a timely manner.

The EPA is revising 40 CFR 60.762(b)(2)(ii)(A) to read as follows:

(A) The first annual report submitted under this subpart or part 62 of this subchapter in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in § 60.767(c)(4); or

This approach points to 40 CFR part 60, subpart XXX or 40 CFR part 62 (the Federal plan subpart OOO or state plans implementing subpart Cf). When these subpart XXX amendments are finalized, all "existing" landfills will be subject to the state and/or Federal plan implementing subpart Cf because the Federal plan became effective on June 21, 2021. Subpart OOO handles the legacy controllers separately and gives a full 30 months for landfills with NMOC emissions greater than 34 Mg/yr and less than 50 Mg/yr.

C. Technical and Typographical Corrections

In this final action, the EPA is revising the definition of Administrator at 40 CFR 62.16730 in the MSW Landfills Federal Plan that was promulgated on May 21, 2021 (86 FR 27756). The revision makes the definition consistent with other Federal plans such as the Federal Plan Requirements for Sewage Sludge Incineration Units (40 CFR part 62, subpart LLL), which distinguishes between the administrator of the Federal plan and the administrator of a state plan. In developing the MSW Landfills Federal Plan, the EPA inadvertently retained the definition of Administrator from the Emission Guidelines (40 CFR part 60, subpart Cf), which was written in the context of states preparing a state plan. As currently written, the definition could be interpreted to allow non-delegated authority to implement and enforce the Federal plan. In the context of the Federal plan, the revised definition of Administrator clarifies that the EPA Administrator or his/her authorized representative have the authority to implement and enforce the Federal plan. To add clarity in the context of developing State plans, the EPA has further revised the definition of Administrator to clearly identify the director of the state air pollution control agency or his/her authorized representative, which will better allow states to incorporate by reference the Federal plan as their state rule applying to landfills in the state.

The EPA is also correcting typographical errors in the MSW Landfills NESHAP that were published in the **Federal Register** on March 26, 2020 (85 FR 17244) and the MSW Landfills Federal Plan that was published in the **Federal Register** on May 21, 2021 (86 FR 27756). In the MSW Landfills NESHAP, the EPA is correcting 40 CFR 63.1981(n) to change September 2, 2021 to September 27, 2021. In the MSW Landfills Federal Plan, the EPA is correcting a cross reference error in 40 CFR 62.16712(b) and (c). Both paragraphs incorrectly refer to 40 CFR 62.16712(c)(3), which does not exist. The correct reference is to 40 CFR 62.16712(d). Finally, the EPA is correcting the omission of the word "is" in 40 CFR 62.16714(a)(4), so that the correct reading is: The landfill is in the closed landfill subcategory and has an NMOC emission rate greater than or equal to 50 megagrams per year.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making these technical and typographical changes without prior proposal and opportunity for comment because, as explained here above, the technical correction to the definition of Administrator and the typographical changes are noncontroversial in nature and do not substantively change the requirements of the MSW Landfills regulations. Thus, notice and opportunity for public comment are unnecessary for these changes. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0505 for the NESHAP and OMB control number 2060–0697 for the NSPS. The revisions include technical corrections to the NESHAP and NSPS and do not pose any changes to the information collection burden for either.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities if the rule has no net burden on the small entities subject to the rule. This action includes only technical corrections to provisions from the March 26, 2020, final RTR rulemaking and clarifying amendments to 2016 MSW Landfills NSPS and does not implement new requirements. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Although state, local, or tribal governments own and operate landfills subject to these final amendments, this action includes only technical corrections to provisions from the March 26, 2020, final RTR rulemaking and clarifying amendments to the 2016 MSW Landfills NSPS and there are no impacts resulting from this regulatory action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action has tribal implications as specified in Executive Order 13175. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments nor preempt tribal law. As explained in the March 26, 2020, final rule, the EPA previously identified one tribe that owns three landfills that are potentially subject to the MSW Landfills NESHAP. However, this action includes only technical corrections to provisions from the March 26, 2020, final RTR rulemaking and clarifying amendments to the subpart XXX NSPS and does not impose any new requirements on tribes.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629; February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action is a technical correction to a previously promulgated regulatory action and does not have any impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

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

40 CFR Part 62

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

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

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR parts 60, 62, and 63 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014

■ 2. Amend § 60.761 by revising the definition of "Controlled landfill" to read as follows:

§ 60.761 Definitions.

* * * * *

Controlled landfill means any landfill at which collection and control systems

are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with either § 60.762(b)(2)(i), 40 CFR part 60, subpart WWW, or a Federal plan or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subparts Cc or Cf, whichever regulation first required submission of a collection and control system design plan for the landfill.

* * * * *

■ 3. Amend § 60.762 by revising paragraphs (b)(2)(i) and (b)(2)(ii)(A) to read as follows:

§ 60.762 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(i) *Calculated NMOC Emission Rate.* Submit an initial or revised collection and control system design plan prepared by a professional engineer to the Administrator as specified in § 60.767(c) or (d); calculate NMOC emissions using the next higher tier in § 60.764; or conduct a surface emission monitoring demonstration using the procedures specified in § 60.764(a)(6). The collection and control system must meet the requirements in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) * * *

(A) The first annual report submitted under this subpart or part 62 of this subchapter in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in § 60.767(c)(4); or

* * * * *

■ 4. Amend § 60.767 by revising paragraph (d) introductory text to read as follows:

§ 60.767 Reporting requirements.

* * * * *

(d) *Revised design plan.* The owner or operator who has already been required to submit a design plan under paragraph (c) of this section, subpart WWW of this part, or a Federal plan or EPA-approved and effective state plan or tribal plan that implements subparts Cc or Cf of this part, must submit a revised design plan to the Administrator for approval as follows:

* * * * *

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 5. The authority citation for part 62 continues to read as follows:

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

Subpart OOO—Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014

■ 6. Amend § 62.16712 by revising paragraph (b) and paragraph (c) introductory text to read as follows:

§ 62.16712 Compliance schedule and increments of progress.

* * * * *

(b) *Compliance date.* For each designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a NMOC emission rate greater than or equal to 34 megagrams per year (50 megagrams per year for closed landfill subcategory), planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the standards in § 62.16714(b) and (c) must be accomplished within 30 months after the date the initial emission rate report (or the annual emission rate report) first shows that the NMOC emission rate equals or exceeds 34 megagrams per year (50 megagrams per year for closed landfill subcategory), except as provided in § 62.16712(d).

(c) *Compliance schedules.* The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a NMOC emission rate greater than or equal to 34 megagrams per year (50 megagrams per year for closed landfill subcategory) must achieve the increments of progress specified in paragraphs (a)(1) through (5) of this section according to the schedule specified in paragraph (c)(1), (2), or (d) of this section.

* * * * *

■ 7. Amend § 62.16714 by revising paragraph (a)(4) to read as follows:

§ 62.16714 Standards for municipal solid waste landfill emissions.

(a) * * *

(4) *Closed subcategory.* The landfill is in the closed landfill subcategory and has an NMOC emission rate greater than or equal to 50 megagrams per year.

* * * * *

■ 8. Amend § 62.16730 by revising the definition of "Administrator" to read as follows:

§ 62.16730 Definitions.

* * * * *

Administrator means:

(1) For municipal solid waste landfills covered by the federal plan, the Administrator of the EPA or his/her authorized representative (*e.g.,* delegated authority);

(2) For municipal solid waste landfills covered by an approved state plan, the director of the state air pollution control agency or his/her authorized representative.

* * * * *

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

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

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

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

■ 10. Amend § 63.1960 by revising paragraph (a)(4)(i) introductory text to read as follows:

§ 63.1960 Compliance provisions.

(a) * * *

(4) * * *

(i) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), the owner or operator must monitor each well monthly for temperature for the purpose of identifying whether excess air infiltration exists. If a well exceeds the operating parameter for temperature as provided in § 63.1958(c)(1), action must be initiated to correct the exceedance within 5 days. Any attempted corrective measure must not cause exceedances of other operational or performance standards.

* * * * *

■ 11. Amend § 63.1961 by revising paragraphs (a)(5)((vi) introductory text and (a)(5)(vi)(A), adding paragraphs (a)(5)(vi)(C) and (D), and revising paragraph (a)(5)(vii) to read as follows:

§ 63.1961 Monitoring of operations.

* * * * *

(a) * * *

(5) * * *

(vi) Monitor and determine carbon monoxide concentrations, as follows:

(A) Collect the sample from the wellhead sampling port in a passivated canister or multi-layer foil gas sampling bag (such as the Cali-5-Bond Bag) and analyze that sample using EPA Method 10 of appendix A–4 to part 60 of this chapter, or an equivalent method with a detection limit of at least 100 ppmv of carbon monoxide in high concentrations of methane; or

* * * * *

(C) When sampling directly from the wellhead, you must sample for 5 minutes plus twice the response time of the analyzer. These values must be recorded. The five 1-minute averages are then averaged to give you the carbon monoxide reading at the wellhead.

(D) When collecting samples in a passivated canister or multi-layer foil sampling bag, you must sample for the period of time needed to assure that enough sample is collected to provide five (5) consecutive, 1-minute samples during the analysis of the canister or bag contents, but no less than 5 minutes plus twice the response time of the analyzer. The five (5) consecutive, 1-minute averages are then averaged together to give you a carbon monoxide value from the wellhead.

(vii) The enhanced monitoring described in this paragraph (a)(5) must begin 7 calendar days after the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit); and

* * * * *

■ 12. Amend § 63.1975 by revising the introductory text to read as follows:

§ 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Before September 28, 2021, averages are calculated in the same way as they are calculated in § 60.758(b)(2)(i) of this subchapter for average combustion temperature and § 60.758(c) for 3-hour average combustion temperature for enclosed combustors, except that the data collected during the events listed in paragraphs (a) through (d) of this section are not to be included in any average computed under this subpart. Beginning no later than September 27, 2021, averages are calculated according to § 63.1983(b)(2)(i) for average combustion temperature and § 63.1983(c)(1)(i) for 3-hour average combustion temperature for enclosed combustors, except that the data collected during the event listed in paragraph (a) of this section are not to be included in any average computed under this subpart.

* * * * *

■ 13. Amend § 63.1981 by revising paragraph (j)(2) and paragraph (n) introductory text to read as follows:

§ 63.1981 What reports must I submit?

* * * * *

(j) * * *

(2) For corrective action that is required according to § 63.1960(a)(3) or (4) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 62.8 degrees Celsius (145 degrees Fahrenheit) or above unless a higher operating temperature value has been approved by the Administrator for the well under this subpart or under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a Federal plan or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf. The Administrator must approve the plan for corrective action and the corresponding timeline.

* * * * *

(n) *Claims of force majeure.* Beginning no later than September 27, 2021, if you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to comply timely with the reporting requirement. To assert a claim of force majeure, you must meet the following requirements:

* * * * *

■ 14. Amend § 63.1985 by revising paragraph (c) to read as follows:

§ 63.1985 Who enforces this subpart?

* * * * *

(c) The authorities that will not be delegated to state, local, or tribal agencies are as follows. Approval of alternatives to the emission standards in §§ 63.1955 through 63.1962. Where this subpart references part 60, subpart WWW of this subchapter, the cited provisions will be delegated according to the delegation provisions of part 60, subpart WWW of this subchapter. For this subpart, the EPA also retains the authority to approve methods for determining the NMOC concentration in § 63.1959(a)(3) and the method for determining the site-specific methane generation rate constant k in § 63.1959(a)(4).

■ 15. Amend table 1 to subpart AAAA of part 63 by:

■ a. Revising the entry for "§ 63.6(f)(1)";

■ b. Removing the entries for "§ 63.10(b)(vi)" and "§ 63.10(b)(vii)–(xiv)" and adding in their places entries for "§ 63.10(b)(2)(vi)" and "§ 63.10(b)(2)(vii)–(xiv)", respectively; and

■ c. Revising the entry for "§ 63.10(d)(3)".

The revisions and additions read as follows:

Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

* * * * *

TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA

Part 63 citation	Description	Applicable to subpart AAAA before September 28, 2021	Applicable to subpart AAAA no later than September 27, 2021	Explanation
*	* * *	*	*	*
§ 63.6(f)(1)	Exemption of nonopacity emission standards during SSM.	No	No.	
*	* * *	*	*	*
§ 63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions	No[1]	Yes.	
§ 63.10(b)(2)(vii)–(xiv)	Other Recordkeeping of compliance measurements.	No[1]	Yes.	
*	* * *	*	*	*
§ 63.10(d)(3)	Reporting of visible emission observations	No[1]	No.	

TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA—Continued

Part 63 citation	Description	Applicable to subpart AAAA before September 28, 2021	Applicable to subpart AAAA no later than September 27, 2021	Explanation
*	*	*	*	*	*	*

[1] Before September 28, 2021, this subpart requires affected facilities to follow part 60, subpart WWW of this subchapter, which incorporates the General Provisions of part 60 of this subchapter.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 02–6; FCC 22–8; FR ID 70414]

Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes steps to address one of the barriers to participation and clarify the eligibility of Tribal libraries for E-Rate program support by updating the definition of "library" in its E-Rate program rules to include Tribal libraries. By doing so, the Commission seeks to resolve a longstanding issue for Tribal libraries in the E-Rate program rules, consistent with Congressional action taken in 2018, and to encourage increased Tribal library access to affordable broadband connectivity through the E-Rate program.

DATES: Effective March 16, 2022.

FOR FURTHER INFORMATION CONTACT: Kate Dumouchel, Wireline Competition Bureau, (202) 418–7400 or by email at *Kate.Dumouchel@fcc.gov*. The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CC Docket No. 02–6; FCC 22–8, adopted January 27, 2022 and released January 28, 2022. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-connecting-tribal-libraries-through-e-rate-program-0.*

I. Introduction

1. The E-Rate program provides support to schools and libraries across the nation to obtain affordable, high-speed broadband services and internal connections to connect today's students and library patrons with next-generation learning opportunities and services. Since the beginning of the program, E-Rate support has helped libraries afford these services and provide free, public internet access to their communities. But for far too long, Tribal libraries have been unable to participate fully in the E-Rate program. This situation has exacerbated enduring inequities, as Tribal libraries often serve as a critical source of internet access in underserved areas across the nation.

2. The Commission takes steps to address one of the barriers to participation and clarify the eligibility of Tribal libraries for E-Rate program support by updating the definition of "library" in its E-Rate program rules to include Tribal libraries. By doing so, the Commission seeks to resolve a longstanding issue for Tribal libraries in the E-Rate program rules, consistent with Congressional action taken in 2018, and to encourage increased Tribal library access to affordable broadband connectivity through the E-Rate program.

II. Discussion

3. To ensure that our nation's Tribal libraries and their library patrons have access to high-speed broadband and to encourage Tribal libraries' participation in the E-Rate program, the Commission now amends its E-Rate program rules to clarify that Tribal libraries are eligible for E-Rate support. Specifically, the Commission adds "Tribal library" to the definition of library in section 54.500 of the Commission's rules and removes the reference to Public Law 104–208, which contains the version of the Library Services and Technology Act (LSTA) enacted in 1996. All stakeholders submitting comments support this rule change, and no commenter opposed it.

4. Interested parties agree that this rule change is the first step in ensuring that Tribal libraries have access to funding to provide affordable internet access to their communities. These changes update the E-Rate program rules and ensure that the E-Rate program can support library services in Tribal communities. The changes align with both Congress' 2018 amendments to the LSTA and the Commission's Emergency Connectivity Fund program rules. Moreover, the changes will simplify administration of the E-Rate and Emergency Connectivity Fund programs for the Universal Service Administrative Company (USAC), which administers both programs and checks applicant eligibility. Consistent with the rules adopted for the Emergency Connectivity Fund program, the E-Rate rules clarify that Tribal libraries, which are by statute eligible for support from State library administrative agencies under the LSTA, are eligible for support from the E-Rate program. Receipt of LSTA funds by Tribal libraries is not required for participation in the E-Rate program.

5. These rule changes should also clarify and simplify E-Rate eligibility for Tribal libraries and, in time, will increase Tribal participation in the program. Comments filed by the American Library Association (ALA) and the Association of Tribal Archives, Libraries and Museums (ATALM) include preliminary results of a 2021 ATALM comprehensive digital inclusion survey, which note that only 12 percent of the Tribal libraries responding reported that they had ever applied, even fewer than the 15 percent of Tribal libraries that had previously reported receiving E-Rate support. This data is especially troubling, given that there is reduced broadband access in Tribal areas and libraries are often the "next best alternative for many Tribal families and households" to obtain internet access. Tribal governments and libraries have had issues interacting with and gaining support from State

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0148; FRL–7527–02–OAR]

RIN 2060–AU67

National Emission Standards for Hazardous Air Pollutants: Refractory Products Manufacturing Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Refractory Products Manufacturing source category regulated under national emission standards for hazardous air pollutants (NESHAP). The Environmental Protection Agency (EPA) found the risks due to emissions of air toxics from this source category to be acceptable and that the standards provide an ample margin of safety to protect public health. As a result, the Agency is making no revisions to the emission limits for this source category based on the residual risk. In our technology review, after reviewing developments in practices, processes, and control technologies, the EPA determined that no revisions to the numeric emission limits is necessary. However, the EPA is revising certain work practice provisions based on the technology review. These final amendments also include new provisions for certain hazardous air pollutants (HAP) and a revision of the alternative fuel provisions. In addition, the Agency is taking final action on the proposed amendments for the source category to address emissions during periods of startup, shutdown, and malfunction (SSM); emissions during periods of scheduled maintenance; electronic reporting of notification of compliance status (NOCS) reports, performance test results, and performance evaluation results; the addition of test methods and guidance materials; updates to several test methods; and other miscellaneous clarifying and technical corrections.

DATES: This final rule is effective on November 19, 2021. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of November 19, 2021.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2020–0148. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Paula Deselich Hirtz, Minerals and Manufacturing Group, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2618; fax number: (919) 541–4991; and email address: *hirtz.paula@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: *Preamble acronyms and abbreviations.* The Agency uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms below. Also, throughout this preamble the terms "we," "us," or "our" mean the EPA.

BLD bag leak detection
CAA Clean Air Act
CRA Congressional Review Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
EJ Environmental Justice
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
FTIR Fourier Transform Infrared
HAP hazardous air pollutants(s)
HQ hazard quotient
IBR incorporation by reference
ICR Information Collection Request
lb/hr pounds per hour
MACT maximum achievable control technology
HCl hydrogen chloride
HF hydrogen fluoride
Hg mercury
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NACWA National Association of Clean Water Agencies
NEI National Emission Inventory
NESHAP national emission standards for hazardous air pollutants
NOCS notification of compliance status
OM&M operation, maintenance, and monitoring
OPL operating parameter limit
PDF portable document format
PM Particulate matter
POM polycyclic organic matter
ppmvd per million by volume, dry basis
RFA Regulatory Flexibility Act
RTO regenerative thermal oxidizer
RTR risk and technology review
SSI Sewage Sludge Incinerator
SSM startup, shutdown, and malfunction
THC total hydrocarbons
tpy tons per year
TOSHI target organ specific hazard index
UMRA Unfunded Mandates Reform Act
µg/dscm micrograms per dry standard cubic meter
µg/Nm^3 micrograms per normal cubic meter
UPL upper prediction limit
VCS voluntary consensus standards
VE visible emissions
XML extensible markup language

Background information. On January 14, 2021, the EPA proposed revisions to the Refractory Manufacturing Products NESHAP based on our RTR (86 FR 3095, January 14, 2021). In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the document titled *Summary of Public Comments and Responses on Proposed Rule: National Emission Standards for HAP from Refractory Products Manufacturing (40 CFR part 63, subpart SSSSS) Residual Risk and Technology Review, Final Amendments,* located in Docket ID No. EPA–HQ–OAR–2020–0148. A "track changes" version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What is the Refractory Products Manufacturing source category and how does the NESHAP regulate HAP emissions from the source category?
C. What changes did we propose for the Refractory Products Manufacturing source category in our January 14, 2021 RTR proposal?
III. What is included in this final rule?
A. What are the final rule amendments based on the risk review for the Refractory Products Manufacturing source category?
B. What are the final rule amendments based on the technology review for the Refractory Products Manufacturing source category?
C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for the Refractory Products Manufacturing source category?
D. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction (SSM)?
E. What other changes have been made to the NESHAP?
F. What are the effective and compliance dates of the standards?
IV. What is the rationale for our final decisions and amendments for the Refractory Products Manufacturing source category?
A. Residual Risk Review for the Refractory Products Manufacturing Source Category
B. Technology Review for the Refractory Products Manufacturing Source Category
C. CAA Sections 112(d)(2) and (3) Amendments for the Refractory Products Manufacturing Source Category
D. SSM Amendments for the Refractory Products Manufacturing Source Category
E. Electronic Reporting Amendments for the Refractory Products Manufacturing Source Category
F. Technical Amendments for the Refractory Products Manufacturing Source Category
V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
A. What are the affected facilities?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
F. What analysis of environmental justice did we conduct?
G. What analysis of children's environmental health did we conduct?
VI. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act and 1 CFR part 51
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Refractory Products Manufacturing, the source category that is the subject of this final action, is regulated under 40 CFR part 63, subpart SSSSS. The North American Industry Classification System codes for the refractory products industry are 327124 (clay) and 327125 (nonclay). We estimate that three major source facilities engaged in refractory products manufacturing will be affected by this final rule. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/refractory-products-manufacturing-national-emissions-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by January 18, 2022. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred

to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 86 FR 3097 (January 14, 2021).

B. What is the Refractory Products Manufacturing source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Refractory Products Manufacturing NESHAP on April 16, 2003 (68 FR 18730). The standards are codified at 40 CFR part 63, subpart SSSSS. The Refractory Products Manufacturing industry consists of facilities that manufacture refractory products, such as refractory bricks, refractory shapes, monolithics, kiln furniture, crucibles, and other materials used for lining furnaces and other high temperature process units. The source category covered by this NESHAP includes three major source facilities.

The NESHAP groups refractory product manufacturing processes into four subcategories: Clay refractories, nonclay refractories, chromium refractories (nonclay) and pitch-impregnated refractories (nonclay). The three major source facilities manufacture clay and/or nonclay refractory products and can be grouped into the clay and nonclay refractories subcategories. Chromium refractory products and pitch-impregnated refractory products are not manufactured by any of the three major source facilities.

The Refractory Products Manufacturing NESHAP specifies emission limits, operating limits, and work practice standards for existing affected thermal process units and for new and reconstructed affected thermal process units that emit organic HAP according to refractory product type. For existing clay refractory product kilns, the NESHAP requires the use of natural gas or equivalent fuel at all times, except during periods of natural gas supply interruption or curtailment, to limit metal HAP, hydrogen fluoride (HF) and hydrogen chloride (HCl) emissions. New clay refractory product kilns are required to meet numeric limits for HF and HCl. For existing and new curing ovens, shape dryers, and kilns that are used to process refractory products that use organic HAP (*i.e.,* nonclay refractory product sources), the NESHAP provides the option of meeting a total hydrocarbon (THC) concentration limit or reducing the THC mass emissions by at least 95 percent. The NESHAP also establishes operating limits for thermal process sources and control devices, which are based on operating parameters established during performance testing. Additional detail on the refractory product manufacturing source category and NESHAP requirements are provided in the proposal preamble (86 FR 3083, January 14, 2021).

C. What changes did we propose for the Refractory Products Manufacturing source category in our January 14, 2021 RTR proposal?

On January 14, 2021, the EPA published a proposed rule in the **Federal Register** for the Refractory Products Manufacturing NESHAP, 40 CFR part 63, subpart SSSSS, that took into consideration the RTR analyses (86 FR 3095). For this source category, we proposed that the risks are acceptable, and that additional emission controls are not necessary to provide an ample margin of safety. For the technology review, we proposed improvements to the existing work practice standard for affected continuous kilns using THC emission control devices. We also proposed the following amendments: Standards for previously unregulated HAP for affected sources in the clay and nonclay refractory subcategories; the requirement that NOCS reports, performance test results, and performance evaluation results be electronically submitted; revisions to the SSM provisions of the rule; new test methods and incorporation by reference (IBR) of alternative test methods; and other minor technical and editorial revisions.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Refractory Products Manufacturing source category and amends the Refractory Products Manufacturing NESHAP based on those determinations. This action also

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

finalizes other changes to the NESHAP, including the proposed changes described above, except we are finalizing a slightly modified version of the proposed work practice standard for affected continuous kilns using THC emission control devices, as explained in section IV.B.2 of this preamble; and we are not finalizing the proposed allowance to use alternative fuels during periods of natural gas supply curtailment or interruption from the natural gas fuel requirement, as explained in section IV.B.3 of this preamble. We are finalizing these requirements as a result of the public comments we received on the proposed rule.

A. What are the final rule amendments based on the risk review for the Refractory Products Manufacturing source category?

This section describes the final amendments to the Refractory Products Manufacturing NESHAP (subpart SSSSS) being promulgated pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks from the Refractory Products Manufacturing source category are acceptable, the standards provide an ample margin of safety to protect public health, and additional standards are not necessary to prevent an adverse environmental effect. The EPA proposed no changes to the subpart based on the risk review conducted pursuant to CAA section 112(f). The EPA received no new data or other information during the comment period that would cause us to change our proposed risk determination. Therefore, we are not requiring additional controls or new requirements under CAA section 112(f)(2) for subpart SSSSS in this action.

B. What are the final rule amendments based on the technology review for the Refractory Products Manufacturing source category?

We determined that there was a development in practice that warranted revision of the MACT standards for this source category. Therefore, to satisfy the requirements of CAA section 112(d)(6), we proposed revisions to the MACT standards to improve the existing work practice standard for affected continuous kilns using emission control devices. The proposed revisions were based on the best practices of one facility and included:

- Limitation of the work practice standard to THC emission control devices only,
- an annual limit on the number of hours for bypass of the control device,
- the requirement to process product containing lower percentages of organic HAP content in the resins, binders and additives (less than the average organic HAP mass fraction),
- an allowance for the processing of five kiln cars per year with greater than average organic HAP mass fraction, and
- reporting of the mass of organic HAP emissions for bypass periods in the semi-annual compliance report.

The EPA received additional data during the comment period that caused us to change these proposed work practice requirements. Therefore, in this action, we are finalizing the following requirements under CAA section 112(d)(6) for subpart SSSSS:

- The proposed limitation of the work practice standard to THC emission control devices only,
- the proposed annual limit on the number of hours for bypass of the control device,
- revised requirement to maintain the organic HAP processing rate below whichever is lower, either (a) the average organic HAP processing rate (*i.e.,* the average organic HAP processing rate (pounds per hour (lb/hr)) based on actual production on a 6-month rolling basis, not to include periods of kiln shut down) or (b) the lowest hourly organic HAP processing rate determined during the most recent performance test,
- removal of the proposed allowance for processing of five kiln cars per year with greater than average organic HAP mass fraction during control device maintenance and bypass,
- revised reporting requirements for the semi-annual compliance report, including:
  - The average organic HAP processing rate based on actual production on a 6-month rolling basis (not to include periods of kiln shut down) or the lowest hourly organic HAP processing rate from the most recent performance test (whichever is lower), for bypass periods,
  - the actual organic HAP processing rate,
  - the amount of product produced and the mass of organic HAP in the product produced,
  - the estimated THC emissions,
  - the number of hours the control device was bypassed during the compliance period, and
  - the cumulative number of hours the control device was bypassed over the last 12-month rolling period.

We are not finalizing the proposed allowance for processing of five kiln cars per year with greater than average organic HAP mass fraction during control device maintenance and bypass. For more information regarding the final improvements to the work practice standard that applies for continuous kilns with THC emissions control devices, see section IV.B of this preamble.

In addition, the EPA received a comment during the comment period that caused us to review the fuel combustion technology used by sources in the source category and consequently revise the existing work practice standard to require the use of natural gas (or equivalent fuel) at all times. After consideration of the comment, under CAA section 112(d)(6), we are removing the allowance to use alternative fuels during periods of natural gas supply curtailment or interruption from the natural gas fuel requirement as explained in section IV.B.3 of this preamble. This finalized amendment applies to existing clay refractory products kilns and new or existing chromium refractory products kilns and reflects a development in our understanding of refractory kiln fuel combustion technology since promulgation of the original standard.

Finally, as part of the technology review, we identified regulatory gaps (previously unregulated processes or pollutants) and are establishing new standards to fill those gaps as described in section III.C of this preamble.

C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for the Refractory Products Manufacturing source category?

We determined that there are previously unregulated HAP for existing sources in the clay and nonclay refractory subcategories that warrant revisions to the MACT standards for this source category. Therefore, pursuant to the requirements of CAA section 112(d)(2) and (3) we proposed revisions to the MACT standards to include the following:

- New emission limits for particulate matter (PM) as a surrogate for non-mercury (non-Hg) metal HAP and mercury (Hg) for existing clay refractory product kilns, and
- the requirement to use natural gas as fuel, or an equivalent fuel, as the kiln fuel for new and existing curing ovens, shape dryers, and kilns that are used to process refractory products that use organic HAP (*i.e.,* nonclay refractory product sources), except during periods of natural gas supply interruption or curtailment.

As noted in section III.B of this preamble, the EPA received a comment during the comment period that caused us to review the fuel combustion technology used for all refractory

products sources in the source category. Based on that review, we are not finalizing the proposed allowance to use alternative fuels during periods of natural gas supply interruption or curtailment from the natural gas fuel requirement for new and existing nonclay sources. Therefore, we are finalizing the new emission limits for PM (as a surrogate for non-Hg metal HAP) and Hg for existing clay refractory product kilns, as proposed, and we are finalizing a revised requirement to use natural gas, or an equivalent fuel, as the fuel for new and existing nonclay sources, as a result of comments, under CAA section 112(d)(2) and (3) for subpart SSSSS in this action.

D. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?

We are finalizing the proposed amendments to the Refractory Products Manufacturing NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), the EPA is establishing standards in these rules that apply at all times. As detailed in section IV.E of the proposal preamble (86 FR 3099, January 14, 2021), Table 11 to subpart SSSSS of part 63 (General Provisions applicability table) is being revised to change several references related to the provisions that apply during periods of SSM. We also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made other harmonizing changes to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. We determined that facilities in this source category can meet the applicable emission standards at all times, including periods of startup and shutdown. Therefore, the EPA determined that no additional standards are needed to address emissions during these periods. The legal rationale and explanation of the changes for SSM periods are set forth in the proposed rule. See 86 FR 3079, 3099–3102. Further, the EPA did not propose and is not promulgating standards for malfunctions in this final action. As discussed in section IV.E of the January 14, 2021, proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. For the Refractory Products Manufacturing source category, it is unlikely that a malfunction would result in a violation of the standards, and no comments or information were submitted during the comment period that support a contrary conclusion. Refer to section IV.E of the January 14, 2021 proposal preamble for further discussion of the EPA's rationale for the decision not to set standards for malfunction events, as well as a discussion of the actions a source could take in the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, given that administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply.

E. What other changes have been made to the NESHAP?

In addition to the changes described above we are finalizing other proposed amendments for the Refractory Products Manufacturing NESHAP related to electronic reporting, test methods and minor technical and editorial revisions, as described below.

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing the proposed requirement that owners and operators of facilities in the Refractory Products Manufacturing source category submit electronic copies of required NOCS reports, performance test results, and performance evaluation results through the EPA's Central Data Exchange (CDX) website using an electronic performance test report tool called the Electronic Reporting Tool (ERT). We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.,* for a possible outage in the CDX or Compliance and Emissions Data Reporting Interface (CEDRI) or for a *force majeure* event in the time just prior to a report's due date, as well as the process to assert such a claim.

We are also finalizing the proposed additional and updated test methods and an EPA guidance document that are incorporated by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following documents described in the amendments to 40 CFR 63.14:

- ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for Table 4 to subpart SSSSS.
- ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for Table 4 to subpart SSSSS.
- ASTM D6784–16, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),'' (Approved March 1, 2016), IBR approved for Table 4 to subpart SSSSS.
- EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, IBR approved for 40 CFR 63.9804(f)(1). This document provides guidance on the use of triboelectric monitors as fabric filter bag leak detectors.

In addition, we are finalizing the following proposed technical and editorial corrections:

- Revise 40 CFR 63.9824 and Table 4 to subpart SSSSS of part 63 to clarify the location in 40 CFR part 60 of applicable EPA test methods; and
- Revise 40 CFR 63.9814 and 63.9816 to include the requirements to record and report information on failures to meet the applicable standard.

Finally, although not addressed in the proposal, we are amending 40 CFR 63.9804(e)(1) to correct a spelling error.

F. What are the effective and compliance dates of the standards?

The revisions to the MACT standards for the Refractory Products Manufacturing source category being promulgated in this action are effective on November 19, 2021. New sources must comply with all of the standards immediately upon the effective date of the standard, November 19, 2021, or upon startup, whichever is later.

The compliance dates for existing affected sources are listed below. Existing affected sources must continue to meet the current requirements of 40 CFR part 63, subpart SSSSS, until the applicable compliance date.

The compliance date for existing affected nonclay sources to comply with the work practice to use natural gas as fuel, or an equivalent fuel, as the kiln fuel at all times, including periods of natural gas supply interruption or curtailment is November 19, 2021. The compliance date for existing affected sources to comply with the electronic reporting requirement for NOCS reports, performance test results, and performance evaluation results is May 19, 2022. The compliance date for existing affected sources with continuous kilns using THC emission control devices to comply with the amended work practice standards (*i.e.,* limit the total number of hours for

bypass of the control device for during scheduled maintenance to 750 hours per year per kiln; maintain the organic HAP processing rate below the average rate based on production or below the lowest hourly rate during the most recent performance test, whichever is lower; update the operation, maintenance, and monitoring (OM&M) plan; include the required information in the semi-annual compliance report) is May 19, 2022. The compliance date for existing affected clay refractory product kilns to comply with the new limits for PM (as a surrogate for non-Hg metal HAP) and Hg is November 20, 2022. The compliance date for existing affected sources to comply with the SSM revisions, in accordance with the SSM court decision, is May 19, 2022.

We determined that an immediate compliance date is practicable for the natural gas requirement and is based on current practices and other information provided by the facilities. We are finalizing the 181-day compliance date for electronic reporting and the scheduled maintenance work practice to require facilities to implement these changes as expeditiously as practicable. For electronic reporting, our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days, and, more typically, 180 days, is generally necessary to successfully accomplish these revisions. For the improved scheduled maintenance work practice, we expect facilities would also need this time to seek approval from the Administrator before taking the control device on the affected kiln out of service for scheduled maintenance and update their operation, maintenance, and monitoring plan to reflect the revised requirements. For the new PM (as a surrogate for non-Hg metal HAP) and Hg requirements, we determined the one-year compliance date would provide existing clay sources with sufficient time to plan and schedule facility resources to meet the notification and compliance demonstration testing requirements associated with the new limits. For the SSM changes, excluding the revised requirements for the SSM described above (40 CFR 63.6(f)(1)), our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 181 days to read and understand the amended rule requirements and make any necessary operational adjustments, adjustments to recordkeeping and reporting systems, and/or updates to OM&M plans to reflect the revised requirements.

During proposal we requested information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. No comments or information were submitted during the comment period that support a contrary conclusion; therefore, we are finalizing these compliance dates as proposed.

IV. What is the rationale for our final decisions and amendments for the Refractory Products Manufacturing source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document, *Summary of Public Comments and Responses on Proposed Rule: National Emission Standards for HAP for Refractory Products Manufacturing (40 CFR part 63, subpart SSSSS), Residual Risk and Technology Review, Final Amendments,* available in the docket.

A. Residual Risk Review for the Refractory Products Manufacturing Source Category

1. What did we propose pursuant to CAA section 112(f) for the Refractory Products Manufacturing source category?

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in section IV.B of the proposed rule preamble (86 FR 3095, January 14, 2021). The results of this review are presented briefly below in Table 1 of this preamble. Additional detail is provided in the residual risk technical support document titled, *Residual Risk Assessment for the Refractory Products Manufacturing Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* which is available in the Refractory Products Manufacturing docket (Docket Item No. EPA–HQ–OAR–2020–0148–0013).

TABLE 1—REFRACTORY PRODUCTS MANUFACTURING SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer target organ specific hazard index (TOSHI) [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	0.7	0.7	0	0	0.0003	0.0003	0.04	0.04	HQREL = 0.09
Whole Facility	0.7		0		0.0004		0.04		

[1] The TOSHI is the sum of the chronic noncancer hazard quotients (HQ) for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

The results of the proposed inhalation risk modeling, as shown in Table 1 of this preamble, indicate that the maximum individual cancer risk based on actual and allowable emissions (lifetime) is 0.7-in-1 million (driven by trace amounts of chromium, arsenic, nickel and cadmium emissions from tunnel kilns), the maximum chronic noncancer TOSHI value based on actual and allowable emissions is 0.04 (driven by HF from tunnel kilns), and the maximum screening acute noncancer HQ value (off-facility site) is 0.09 (driven by HF). At proposal, the total annual cancer incidence (national) from these facilities based on actual and allowable emission levels was estimated

to be 0.0003 excess cancer cases per year or one case every 3,333 years. The maximum individual cancer risk (lifetime) for the whole facility was determined to be 0.7-in-1 million at proposal, driven by chromium, arsenic, nickel and cadmium emissions from tunnel kilns. The total estimated cancer incidence from the whole facility was determined to be 0.0004 excess cancer cases per year, or one excess case in every 2,500 years. No people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources at the three facilities in this source category. The maximum facility-wide TOSHI for the source category was estimated to be 0.04, driven by HF emissions from tunnel kilns.

We also evaluated multipathway human health risk from the five PB–HAP that are emitted by sources within this source category (arsenic, cadmium, POM, Hg (divalent Hg and methyl mercury), and lead). We evaluated the cadmium emissions from these facilities and concluded this HAP did not exceed the Tier 1 multipathway screening value of 1 for cancer or noncancer. We also evaluated the arsenic, methyl mercury, and POM emissions and found these HAP caused an exceedance of the Tier 1 multipathway screening value of 1 for cancer. Therefore, we conducted a Tier 2 screening assessment for these HAP and concluded that emissions of arsenic, POM and methyl mercury from these facilities did not exceed the Tier 2 multipathway screening value of 1 for cancer. A Tier 2 noncancer screening assessment was also conducted for Hg emissions and resulted in a screening value less than 1. Based upon the results of the screening assessments no further screening or site-specific assessments were conducted for this source category.

In evaluating the potential for multipathway effects from emissions of lead, modeled maximum annual-average lead concentrations were compared to the National Ambient Air Quality Standards (NAAQS) for lead (0.15 μg/m^3). Results of this analysis confirmed that the NAAQS for lead would not be exceeded by any facility.

To evaluate the potential for adverse environmental effects, the EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP emitted by sources in the category are arsenic compounds, cadmium compounds, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment and emitted from the category are HCl and HF. In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), arsenic, cadmium, divalent mercury, and POM had no Tier 1 exceedances for any ecological benchmark. Methyl mercury emissions at one facility had a Tier 1 exceedance for the surface soil no-observed-adverse-effect-level (avian ground insectivores) by a maximum SV of 2. A Tier 2 screening assessment was performed for methyl mercury. Methyl mercury had no Tier 2 exceedances for any ecological benchmark. For lead, we did not estimate any exceedances of the secondary lead NAAQS.

Two acid gases are emitted by sources within this source category: HCl HF. We conducted a screening-level evaluation of the potential adverse environmental effects associated with emissions of HCl and HF and found that the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. For HF, the maximum facility screening value (based on the average concentration of all off-site data points over the modeling domain) was well below 1 (0.007) and the maximum area that exceeded the ecological benchmark was only 0.002-percent of the modeled area. Based on the results of the environmental risk screening evaluation, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 1 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Refractory Products Manufacturing source category are acceptable (section IV.C of the proposed rule preamble, 86 FR 3095, January 14, 2021). We then considered whether 40 CFR part 63, subpart SSSSS provides an ample margin of safety to protect public health and prevents, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. At proposal we determined there are no individuals in the exposed population with lifetime cancer risks above 1-in-1 million as a result of actual or allowable emissions from this category. In addition, in our risk analysis we did not identify a potential for adverse chronic noncancer, acute noncancer, or multipathway health effects. Therefore, we proposed the current standards provide an ample margin of safety to protect public health (section IV.C of the proposed rule preamble, 86 FR 3095, January 14, 2021).

2. How did the risk review change for the Refractory Products Manufacturing source category?

We have not changed any aspect of the risk assessment for this source category as a result of public comments received on the January 2021 proposal.

3. What key comments did we receive on the risk review, and what are our responses?

We received comments in support of and against the proposed residual risk review. Having carefully considered these comments, it is our determination that no revisions are warranted under CAA section 112(f)(2) for the Refractory Products Manufacturing source category. Generally, the comments that were not supportive of the risk review determination suggested changes to the underlying risk assessment methodology. For example, one commenter stated that the EPA should account for the increased risks due to exposure to multiple sources of HAP, use more health-protective dose-response values, and consider increased risks in childhood and from prenatal exposure. After review of all the comments received, we determined that no changes to our Science Advisory Board-approved review process were necessary. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses on Proposed Rule: National Emission Standards for HAP for Refractory Products Manufacturing (40 CFR part 63, subpart SSSSS), Residual Risk and Technology Review, Final Amendments,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2020–0148).

4. What is the rationale for our final approach and final decisions for the risk review?

As noted in our proposal, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on the maximum individual risk (MIR) of ''approximately 1-in-10 thousand'' (see 54 FR 38045, September 14, 1989). We weigh all health risk factors in our risk acceptability determination, including the cancer MIR, cancer incidence, the maximum cancer TOSHI, the maximum acute noncancer HQ, the extent of

noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties.

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rule, we have determined that the risks from the Refractory Products Manufacturing source category are acceptable, and that the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not revising the subpart to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).

B. Technology Review for the Refractory Products Manufacturing Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Refractory Products Manufacturing source category?

Based on our technology review, we proposed improvements to the existing underlying work practices as required by CAA section 112(d)(6) during scheduled maintenance of THC control devices. These revisions are necessary to reflect technical developments in pollution control practices since the promulgation of the original standard for this source category and reflect the best practices of one affected facility. Specifically, for affected continuous kilns using THC emission control devices, we proposed to limit the number of hours for bypass of the control device to conduct scheduled maintenance, schedule the manufacture of product with binder applicability of the standard to THC emission control devices, limit the number of hours for percentages at the lower end of the range produced during periods of control device bypass. We also proposed to include the THC emissions for these periods in the semi-annual compliance report. A brief summary of the EPA's findings in conducting the technology review of refractory products manufacturing operations was included in the preamble to the proposed rule (86 FR 3095, January 14, 2021), and a detailed discussion of the EPA's technology review and findings was included in the memorandum, *Technology Review for the Refractory Products Manufacturing NESHAP,* available in the docket for this action (Docket Item No. EPA–HQ–OAR–2020–0148–0008).

2. How did the technology review change for the Refractory Products Manufacturing source category?

For the final rule, we revised aspects of two work practice standards from the proposal, based on public comments. First, we are finalizing slightly different improvements than proposed for the work practice standard that applies when a continuous kiln THC control device is bypassed for scheduled maintenance. In particular, to demonstrate compliance with the requirement in 40 CFR 63.9792(e)(2) to minimize HAP emissions during the period when the kiln is operating and the control device is out of service, the owner or operator will be required to maintain the organic HAP processing rate (lb/hr) below either the average organic HAP processing rate based on the actual production on a 6-month rolling basis (not to include periods of kiln shut down) or the HAP processing rate (lb/hr) that coincides with the lowest hour of the most recent 3-hour performance test, whichever is lower. This requirement replaces the proposed limitation of five kiln cars with products for which the mass fraction of organic HAP in the resins, binders, and additives is greater than the average for the year. Second, we are revising the work practice standard to use natural gas, or equivalent, as the kiln fuel by removing the exception for periods of natural gas curtailment or supply interruption.

3. What key comments did we receive on the technology review, and what are our responses?

We received both supportive and adverse comments on various aspects of our technology review for refractory products manufacturing. The key comments and responses are provided in this section; summaries of comments not discussed in this preamble and the EPA's responses can be found in the comment summary and response document, available in the docket.

Comment: One commenter provided technical comments on the specific provisions that the EPA proposed to limit production during periods when the THC control device is being bypassed for maintenance. The proposed provisions would have required manufacturing mostly product in the tunnel kiln that contains a mass fraction of organic HAP in the resins, binders, and additives that is less than the average organic HAP mass fraction of these constituents for the year (on a 12-month rolling basis), and manufacture of the product with an organic HAP mass fraction greater than the average for the year would be limited to only five kiln cars during such maintenance periods.

The commenter explained that tunnel kilns comprise a preheating zone, firing zone, and cooling zone in sequence with kiln cars passing through the system containing pressed/formed refractory. Each kiln is designed to hold a set number of kiln cars in the preheating zone position and a separate set number of kiln cars in the firing zone position. The type and amount of resins, binders, and additives in the kiln are dictated by each product type's formulation. During drying in the tunnel kilns, organic HAP in resins, binders, and additives is volatilized and either destroyed in the tunnel kiln or exhausted to a THC control device for destruction.

The commenter noted that according to the memorandum *Technology Review for the Refractory Products Manufacturing NESHAP,* available in the docket for this action (Docket Item No. EPA–HQ–OAR–2020–0148–0008), these proposed provisions are based on the facility's specific internal operation procedures for the regenerative thermal oxidizer (RTO) unit that state that tunnel kiln batches exceeding 90 binder counts can only be pushed in a train of "five cars or less." The commenter asserted that the EPA has catered the five-kiln car provision too specifically to the facility's one tunnel kiln due to extremely limited data, as the facility is the only U.S. nonclay refractory producer using organic binder and a THC control device. The commenter further stated that these procedures only address one of the two continuous kilns at the facility. The commenter also stated that since kiln cars can hold a variety of refractory products of varying dimensions and formulation, the mass of organic HAP emissions from the resins, binders, and additives from car to car is variable. The commenter noted that a new nonclay refractory tunnel kiln could potentially be constructed with larger kiln cars, such that each kiln car could be designed to hold a greater mass of nonclay refractory and emit much more organic HAP while still satisfying the proposed provisions during periods of control device maintenance.

The commenter suggested that instead the proposed requirements that apply during THC control device bypass for continuous kilns should be amended to reflect a more universal operating parameter limit (OPL). The OPL is established during performance testing in accordance with 40 CFR 63.9800 and Table 4 to subpart SSSSS. Each

continuous unit is required to establish a 3-hour block operating limit for maximum allowable organic HAP processing rate, which is calculated as the average organic HAP processing rate from performance testing plus 10 percent in accordance with 40 CFR 63.9798(c) and EPA guidance. The commenter suggested that the organic HAP processing rate during THC control device bypass be limited to the average organic HAP processing rate from the most recent performance test demonstration, as determined on an hourly basis (*i.e.,* 1-hour block average). The commenter also provided suggested revisions to the regulatory language to implement this suggestion.

Response: The EPA proposed an improved work practice standard to further minimize emissions during periods of scheduled maintenance and bypass of the thermal oxidizer as a result of the CAA section 112(d)(6) technology review process. In addition to the current work practice to minimize emissions during these periods, we proposed other measures based on the best practices of one facility. These included: (1) Limiting the applicability to THC control devices; (2) an annual limit on the number of hours for bypass of the control device; (3) the requirement to process product containing lower percentages of organic HAP content in the resins, binders and additives (less than the average organic HAP mass fraction); (4) an allowance for the processing of five kiln cars per year with greater than average organic HAP mass fraction; and (5) reporting of the mass of organic HAP emissions for bypass periods in the semi-annual compliance report.

As a result of the comments regarding these proposed measures, we learned we did not have full knowledge of the details of the facility's internal operating procedures during scheduled maintenance and bypass of the thermal oxidizer. As the commenter clarified, tunnel kiln batches exceeding 90 binder counts (a measure of the volume of binder) can only be pushed in a train of "five cars or less" during these periods. The commenter also clarified this procedure applies to only one of the two continuous tunnel kilns. We agree with the commenter that using the "kiln car" limitation is an imprecise way of limiting organic HAP emissions due to the potential variation in kiln car size. However, the EPA found the facility's suggestion to set an operating limit during bypass periods equal to the "average organic HAP processing rate from the most recent performance test, as determined on an hourly basis (1-hour block average)" and rule language edits to be inconsistent with other rule requirements. Specifically, because performance tests are required to be conducted while the source is operating at the maximum organic HAP processing rate as defined in § 63.9824, we found this suggestion to be inconsistent with the rule requirement to minimize emissions during control device bypass and maintenance required by § 63.9792(e)(2).

We are therefore finalizing revisions to the proposed revised work practice standard that reflect additional improvements as a result of these comments and follow-up discussions with the facility to clarify their best practices. Specifically, we are revising the proposed work practice to limit the organic HAP processing rate rather than the organic HAP content during control device bypass and maintenance as proposed. The proposed rule language that required the facility to minimize HAP emissions during the period when the kiln is operating and the control device is out of service by "scheduling of the manufacture of product for which the mass fraction of organic HAP in the resins, binders, and additives is at the lower end of the range produced (*i.e.,* below the typical average mass fraction of organic HAP in the resins, binders, and additives)" is revised to "maintaining the organic HAP processing rate (lb/hr) below the average organic HAP processing rate based on actual production on a 6-month rolling basis (not to include periods of kiln shut down) or below the organic HAP processing rate (lb/hr) that coincides with the lowest hour of the most recent 3-hour performance test, whichever is lower." We are then requiring sources to demonstrate compliance with the requirement to minimize emissions by maintaining the organic HAP processing rate (lb/hr) during control device maintenance and bypass below lower of the two organic HAP processing rates described above. We are also revising the proposed reporting requirements to reflect these changes. In addition, we are removing the allowance for the processing of five kiln cars per year with greater than average organic HAP mass fraction from the work practice. Changing the work practice requirement from the mass fraction of organic HAP in the product to the HAP processing rate while also removing the reference to kiln cars provides a clearer and more consistent metric for demonstrating that HAP emissions have been minimized and provides the facility with options for minimizing emissions during the period when the kiln is operating and the control device is out of service (*e.g.,* loading kiln cars with products with lower HAP contents, reducing the number of kiln cars pushed through the kiln per hour).

In summary, the finalized work practice standard for periods of control device maintenance and bypass includes: (1) The proposed limit of the applicability to THC control devices; (2) the proposed annual limit on the number of hours for bypass of the control device; (3) the revised requirement to maintain the organic HAP processing rate below the average organic HAP processing rate, determined as the lower of either (a) the average organic HAP processing rate (lb/hr) based on actual production on a 6-month rolling basis, not to include periods of kiln shut down) or (b) the organic HAP processing rate determined during the lowest hour of the most recent performance test; and (4) semiannual compliance reporting of the following information: The average organic HAP processing rate based on actual production on a 6-month rolling basis (not to include periods of kiln shut down) or the lowest hour from the most recent performance test (whichever is lower), the actual organic HAP processing rate, the amount of product produced and the mass of organic HAP in the product produced, the estimated THC emissions, the number of hours the control device was bypassed during the compliance period (as proposed), and the cumulative number of hours the control device was bypassed over the last 12-month period (as proposed). The final improvement of the work practice standard as a result of the CAA section 112(d)(6) technology review process does not include the proposed allowance for processing of five kiln cars per year with greater than average organic HAP mass fraction during control device maintenance and bypass.

Meeting minutes from the discussion with the facility and follow-up emails are included in the rulemaking docket (Docket ID No. EPA–HQ–OAR–2020–0148).

Comment: One commenter noted that the EPA proposed to limit the number of hours during which a continuous kiln is operating and the THC control device is bypassed for maintenance to 750 hours per year on a 12-month rolling basis. The commenter noted that the EPA identified this provision as an improvement to the current standard since there is no limit on the total amount of time the provision may be used other than the requirement for the owner or operator to minimize the amount of time for each bypass.

The commenter also noted that per proposed requirements in 40 CFR

63.9792(e) and 63.9812(g), kiln operation during bypass of the THC control device requires advanced approval from the Administrator (86 FR 3079, 3099, January 14, 2021). The commenter noted that the EPA also proposed that affected sources must document the planned maintenance procedures in the OM&M plan, and the proposed requirement in 40 CFR 63.9814(c)(7) would require reporting in the semi-annual compliance report for these periods, including a statement of whether or not the control device maintenance was included in the approved request to bypass the control device while scheduled maintenance is performed. The EPA has proposed to allow 181 days for compliance with the proposed revisions, noting that this time would be used to update the OM&M plans and seek approval from the Administrator before taking the control device on the affected kiln out of service for scheduled maintenance.

The commenter stated that the proposed requirement for Administrator approval is based on its current state-issued title V permit. The commenter noted that the state has delegated authority and is the "Administrator" in regard to implementing and enforcing the NESHAP requirements at 40 CFR part 63. The commenter clarified that the current title V permit requires advance notification via email to the state air quality inspector and to the Regional Air Quality staff that the RTO will be out of service for scheduled maintenance, but the permit does not include approval requirements. In addition, the commenter stated that the EPA did not differentiate between THC control device planned and unplanned maintenance and did not specify the scope of maintenance (*e.g.,* washdowns, bakeouts, media placement) to be documented in the OM&M plan. Because the proposed provisions require approval from the Administrator in advance, the commenter noted that it appears kiln operation during unplanned maintenance events is not addressed.

The commenter requested that the EPA amend 40 CFR 63.9792(e), 63.9812(g), 63.9814(c)(7), Table 3, and Table 9 to specify that kiln operation during periods of control device maintenance requires "Administrator notification" and not "Administrator approval." The commenter suggested that the notification could include a telephone call or email to the Administrator within 24 hours of a bypass event. The commenter asserted that this provision would allow for unplanned/emergency maintenance, which is common for continuous process units, particularly where facilities operate 24 hours a day, 365 days a year. Additionally, requiring notification rather than approval for each bypass allows facilities to avoid complete shutdown of a process unit if the Administrator cannot be reached for approval (*e.g.,* control device requires unplanned maintenance at 3 a.m. on Saturday and Administrator cannot be reached until 9 a.m. Monday). The commenter noted that the EPA's proposed recordkeeping and reporting requirements related to the 750-hour (12-month rolling basis) limit on use of the bypass provisions would still adequately qualify these bypasses with Administrator notification versus approval. The commenter also asserted that requiring notification instead of approval does not restore "malfunction" provisions, as the term is defined under 40 CFR 63.2, as the bypass period is limited to 750 hours per year (12-month rolling basis). Also, per *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016), the Administrator may determine whether the facility took good faith efforts to minimize resulting emissions including preventative and corrective actions and whether excess emissions were caused by poor maintenance or careless operation.

Response: The EPA disagrees with the commenter's characterization of the proposed requirements in 40 CFR 63.9792(e) and 63.9812(g), regarding kiln operation during bypass of the THC control device and advanced approval from the Administrator (86 FR 3099, January 14, 2021). The EPA agrees these citations pertain to kiln operation during bypass of the THC control device and advanced approval from the Administrator, but these provisions are original rule requirements that were not proposed to be amended. The original general requirements for complying with subpart SSSSS are contained in 40 CFR 63.9792, and 40 CFR 63.9792(e) specifically permits the continued operation of a continuous kiln during bypass and scheduled maintenance of the control device for that kiln, provided the owner or operator meets the requirements of the work practice standard and requests and receives approval by the Administrator per 40 CFR 63.9792(e)(1), which requires a separate request each time the owner or operator plans to bypass the control device for scheduled maintenance. Similarly, the original requirements for notifications for subpart SSSSS are contained in 40 CFR 63.9812, and 40 CFR 63.9812(g) specifically states that owner and operators must request approval from the Administrator before bypassing the control device, as specified in 40 CFR 63.9792(e), and that a separate request must be submitted for approval each time.

We also disagree with the statement that the EPA proposed a new requirement that affected sources must document the planned maintenance procedures in the OM&M plan, as this requirement was also required in the original rule at 40 CFR 63.9794(a)(6). The provisions in 40 CFR 63.9794(a)(6) pertain to any maintenance that requires use of the bypass provisions. The provision includes "procedures for the proper operation and routine and long-term maintenance of each process unit and [air pollution control device]," which encompasses the more specific types of maintenance described by the commenter (*e.g.,* washdowns, bakeouts, media placement). Further, subpart SSSSS does not include the terms "planned maintenance" or "unplanned maintenance," nor does it define "scheduled maintenance." However, as noted earlier in this response, a request for Administrator approval must be submitted each time the owner or operator plans to bypass the control device for "scheduled maintenance," and per Table 2 to subpart SSSSS, the owner or operator must receive approval from the Administrator before taking the control device on the affected kiln out of service for scheduled maintenance.

After review of the commenter's request, we are not amending the requirements to request Administrator approval, and we also disagree with the comment that there is a need to differentiate between THC control device "planned and unplanned maintenance" within subpart SSSSS. The EPA did not propose to amend the requirement to request Administrator approval each time an owner or operator plans to bypass the control device, and we conclude that allowing notification rather than approval would not be an improvement to the standard. In particular, if owners and operators were allowed to comply with the work practice standard during periods of maintenance that are only "scheduled" a few hours in advance of the control device bypass, those owners and operators would likely find it very challenging to comply with all the specific requirements that must be met during bypass to demonstrate compliance with the requirement in 40 CFR 63.9792(e)(2) to minimize HAP emissions during the bypass. Therefore, the work practice standard we are finalizing for periods of control device bypass and scheduled maintenance applies to all THC control device bypasses for scheduled maintenance for

which the owner or operator receives approval from the Administrator. Most of the maintenance activities described by the commenter are likely to be considered ''scheduled maintenance'' for which the owner or operator will be able to request advanced approval from the Administrator before the control device is bypassed. These maintenance activities are the activities that should be documented in the OM&M plan. Bypass of the control device without Administrator approval would be considered a deviation from the standard.

Finally, the EPA agrees with the commenter that the state has delegated authority and is the ''Administrator'' with regard to implementing and enforcing the 40 CFR subpart SSSSS requirements. However, the state does not have the authority to set standards less stringent than those promulgated by the Administrator in accordance with CAA section 112(l). Therefore, in order for the current title V permit to satisfy the 40 CFR 63.9792(e) and 63.9812(g) requirements, it must require advance approval by the Administrator and not the less stringent notification requirements.

Comment: One commenter stated that the EPA must remove the alternative fuel allowance provision. The commenter noted that the existing standards contain a provision allowing for ''the use of alternative fuels'' (such as fuel oil, propane, and pulverized coal) during certain circumstances as an exception to the work practice standard that requires use of natural gas as the core emission control requirement. The commenter noted that the EPA has recognized this provision allows for an exception from the standards in ''situations analogous to malfunctions'' and explained in 2003 that its justification for this provision was similar to the SSM exemption. At the time, the EPA stated that, ''Just as an exceedance of emission limits during a malfunction is not considered a violation, as indicated in 40 CFR 63.6(f)(1) and (h)(1), we believe that using other fuels during periods when natural gas is unavailable should also not be considered a violation of the work practice standard for clay and chromium refractory products kilns'' (68 FR 18740, April 16, 2003).

The commenter stated that to the extent that the EPA retains this work practice standard as the sole or an additional control, it must remove the illegal alternative fuel allowance provision. The commenter further stated that including this provision means that the emission standard (*i.e.,* the fuel requirement) is not ''continuous'' and does not apply at all times, which is a violation of CAA sections 302(k) and 112. The commenter asserted that the EPA should recognize this allowance is as unlawful as the SSM exemption that it has recognized the need to remove (*Sierra Club,* 551 F.3d at 1022), and therefore the EPA should remove this specific malfunction exemption as well. Failing to do so would violate CAA section 112(d)(6), by refusing to make a ''necessary'' revision to assure compliance with the CAA, and it would be arbitrary because it would leave in place a harmful exemption that allows the release of more pollution than CAA section 112 allows, based on the illegal justification of a ''malfunction.'' In this instance, the commenter noted, such a ''malfunction'' may simply be an increase in natural gas prices, making this allowance particularly arbitrary because it conflicts with the CAA's public health objective and the floor requirement to assure emission standards based on the ''achieved'' emission reductions, without consideration of cost.

Response: The EPA agrees with the commenter that the existing standards require the use of natural gas or equivalent fuel. It also allows ''the use of alternative fuels'' during ''periods of natural gas curtailment or supply interruption'' as defined in 40 CFR 63.9824. Propane is considered to be a fuel that is equivalent to natural gas, not an alternative fuel, as stated by the commenter.

The current rule requirements related to alternative fuel usage state that procedures for alternative fuel usage must be included in the OM&M plan per 40 CFR 63.9794(a)(10)(i), require notification of alternative fuel usage within 48 hours of the declaration of a period of natural gas curtailment or supply interruption per 40 CFR 63.9812(f), and reporting of termination of alternative fuel usage within 10 working days per 40 CFR 63.9814. The ''period of natural gas curtailment or supply interruption'' is defined in 40 CFR 63.9824 as ''the period of time during which the supply of natural gas to an affected facility is halted for reasons beyond the control of the facility. An increase in the cost or unit price of natural gas does not constitute a period of natural gas curtailment or supply interruption.''

The alternative fuel allowance was added to the rule as a result of comments from the industry on the 2002 proposed rule, in which the EPA proposed the use of natural gas or other such clean fuel to prohibit the use of coal, fuel oil, waste oil, or equivalent fuels and the resulting emissions of HF, HCl or HAP metals from existing clay refractories (67 FR 42122, June 20, 2002). The EPA provided the justification for the allowance referenced by the commenter in the memo titled *Summary of Public Comments and Responses on the Proposed NESHAP for Refractory Products Manufacturing* (Docket ID OAR–2002–0088, Item No. V–C–01, page 12). Industry stakeholders opposed the 2002 proposed work practice that required use of natural gas, stating that many kilns were designed to use fuels other than natural gas and the need to use these alternative fuels arises during natural gas shortages or price increases. They also stated that during natural gas shortages, residential users receive priority over industrial users of natural gas and that prohibiting the use of alternative fuels could adversely impact the viability of some refractory operations. After considering those comments, the EPA finalized the alternative fuel allowance (73 FR 18736, April 16, 2003). The EPA did not consider a price increase to be a justification for alternative fuel use at that time and omitted that reason from the natural gas curtailment definition. Contrary to the commenter's argument, this definition expressly states that an increase in natural gas prices does not constitute a period of natural gas curtailment or supply interruption, so the commenter's claim that such a ''malfunction'' may simply be an increase in natural gas prices is not valid.

We acknowledge much has changed since the original NESHAP was promulgated in 2003. For this final action, the facilities in the source category confirmed they use natural gas and propane during normal operations in accordance with the NESHAP and state requirements. In the event of a natural gas curtailment or supply interruption, they indicated they would not switch to another fuel due to the fuel-specific burner technology in use. They stated they would either continue to use equivalent fuel (propane backup) or shut down and retool their process units to use equivalent fuel (propane) or an alternative fuel (fuel oil) since they have no back-up supply of propane and it would likely also be curtailed due to demand. The EPA document titled *AP–42, Section 1.5 Liquified Petroleum Gas Combustion, updated July 2008,* further supports that response, explaining that burner design technology is specific to fuel type and that retooling may even be required when changing the fuel type from natural gas to propane. Retooling may include replacement of fuel injector

tips and/or vaporizers to provide burners with the proper fuel to air ratio. In addition, as noted previously in this preamble, there are no facilities currently subject to subpart SSSSS that manufacture chromium refractory products. Based on the changes in in kiln and burner design technologies since 2003, and on the determination that propane backup is available (or if retooling is required, retooling can be done for propane instead of other alternative fuels) for all existing sources subject to this standard and can be part of the design of new sources, we are removing the alternative fuel usage allowance. As a result, the use of alternative fuels will not be permitted and will be a deviation from the work practice standard, which will apply during normal operation as well as during periods of natural gas curtailment/supply interruption. The removal of the natural gas alternative fuel allowance and the requirement to use natural gas or equivalent fuels reflects a development in our understanding of refractory kiln fuel combustion technology since promulgation of the original standard.

4. What is the rationale for our final approach for the technology review?

For the reasons explained in the preamble to the proposed rule (86 FR 3095, January 14, 2021), we proposed amendments to improve the work practice standard that applies when a continuous kiln THC control device is bypassed for maintenance to reflect technical developments in pollution control practices since the promulgation of the original standard. We evaluated all of the comments received on these improvements and the EPA's proposed amendments, and for the reasons explained in the comment responses in section IV.B.3 of this preamble, we are finalizing amendments to the proposed work practice standard to further improve the work practices based on the best practices of one affected source in the source category. We are also finalizing amendments to the existing work practice standard that permits the use of alternative fuels when natural gas or equivalent fuel is not available, after review of the fuel combustion technology used by sources in the source category in response to public comments. Further explanation is included in the comment responses in section IV.B.3 of this preamble. The removal of the natural gas alternative fuel allowance and the requirement to use natural gas or equivalent fuels reflects a development in our understanding of refractory kiln fuel combustion technology since promulgation of the original standard.

C. CAA Sections 112(d)(2) and (3) Amendments for the Refractory Products Manufacturing Source Category

1. What amendments did we propose pursuant to 112(d)(2) and (3) for the Refractory Products Manufacturing source category?

In the January 14, 2021 action, we proposed amendments to the Refractory Products Manufacturing NESHAP to address previously unregulated HAP for affected sources in the clay and nonclay refractory subcategories pursuant to 112(d)(2) and (3).

a. Clay Refractory Sources

For new and existing clay refractory kilns, we proposed MACT floor limits for Hg and for PM (as a surrogate for non-Hg metal HAP), in addition to the current NESHAP requirements for clay refractory sources, based on emissions test data for existing clay refractory kilns. The emissions test data for existing clay kilns reviewed for this action confirmed trace (but measurable) amounts of non-Hg metal HAP and Hg emissions. As a result, we proposed MACT floor limits of 3.1 lb/hr for PM and 6.1 micrograms per dry standard cubic meter (µg/dscm), corrected to 18 percent oxygen, for Hg for each new kiln used to produce clay refractory products. We proposed MACT floor limits of 9.5 lb/hr for PM and 18 µg/dscm, corrected to 18 percent oxygen, for Hg for each existing kiln used to produce clay refractory products. Similar to other source categories, we proposed a limit for PM (as a surrogate for non-Hg metal HAP) because the metal HAP are contained in the PM and the control techniques that would be used to control PM will equally control non-Hg metal HAP. To demonstrate compliance with the emission limits, we proposed initial and repeat 5-year performance testing for the regulated pollutants, continuous parameter monitoring, and daily visible emissions (VE) checks. Owners and operators whose clay refractory products kilns are equipped with a fabric filter to reduce PM (as a surrogate for non-Hg metal HAP) have the option of demonstrating compliance using a bag leak detection (BLD) system instead of daily VE checks.

We also evaluated the beyond-the-floor option of requiring all existing sources to meet the proposed new source MACT standards for Hg and PM (as a surrogate for total non-Hg metal HAP). We concluded that the costs of the necessary controls were not reasonable relative to the level of emission reduction achieved for either the Hg or PM beyond-the-floor options. In addition, these controls would create additional solid waste, as there would be a need to dispose of the collected metal-contaminated dust. Therefore, we did not propose beyond-the-floor limits for Hg or PM. A brief discussion regarding the derivation of the Hg and PM limits and the beyond-the-floor option was included in the preamble to the proposed rule (86 FR 3095, January 14, 2021), and a detailed discussion is included in the technical memorandum titled *Development of Proposed Standards and Impacts for the Refractory Products Manufacturing NESHAP,* located in the docket for this action (Docket Item No. EPA–HQ–OAR–2020–0148–0014).

b. Nonclay Refractory Sources

For new and existing curing ovens, shape dryers, and kilns that are used to process refractory products that use organic HAP (*i.e.,* nonclay refractory sources), we proposed a work practice standard to use natural gas as fuel to limit metal HAP emissions (except during periods of natural gas curtailment or supply interruption) as provided in CAA section 112(h) in lieu of a numerical emissions standard, in addition to the current NESHAP THC limits for new and existing nonclay refractory sources. These sources currently employ the use of thermal oxidizers, regenerative thermal oxidizers and catalytic oxidizers to meet the THC limit, however, the NESHAP did not require sources to use natural gas as fuel for sources in this subcategory because the metal HAP emissions were determined to be below measurable quantities due to the use of purified nonclay raw materials. Available HAP data for these sources in the 2017 National Emission Inventory (NEI) were found to be outdated and not reflective of current operating conditions. The 2017 NEI included measurable PM emissions for these existing nonclay refractory sources, and the PM would be expected to have trace amounts of metal HAP; however, we have no emission stack test data to indicate measurable emissions of metal HAP for these existing nonclay refractory sources.[2] Therefore, as discussed in the preamble to the

[2] Thus, while we believe that there are metal HAP emissions, the lack of data showing measurable emissions leads the EPA to conclude that the application of measurement methodology to this class of sources is not practicable due to technological and economic limitations. *See* CAA 112(h)(2)(B).

proposed rule (86 FR 3095, January 14, 2021), we proposed a work practice standard to use natural gas as fuel for new and existing nonclay refractory sources to limit metal HAP emissions in lieu of a numerical emissions standard in accordance with CAA section 112(h).

2. How did the 112(d)(2) and (3) amendments change for the Refractory Products Manufacturing source category?

We are making one change to the proposed CAA section 112(d)(2) and (3) amendments. For each new kiln used to produce clay refractory products, we are finalizing the proposed MACT floor limits of 3.1 lb/hr for PM (as a surrogate for metal HAP) and 6.1 µg/dscm, corrected to 18 percent oxygen, for Hg. For each existing kiln used to produce clay refractory products, we are finalizing the proposed MACT floor limits of 9.5 lb/hr for PM (as a surrogate for metal HAP) and 18 µg/dscm, corrected to 18 percent oxygen, for Hg. We are also finalizing the proposed requirements for initial and repeat 5-year performance testing, continuous parameter monitoring, daily VE checks, and the option of demonstrating compliance using a BLD system instead of daily VE checks for clay refractory products kilns equipped with a fabric filter to reduce PM (as a surrogate for metal HAP). For each new and existing affected source used to produce nonclay refractory products, we are finalizing the work practice standard to use natural gas as fuel to limit metal HAP emissions as provided in CAA section 112(h) in lieu of a numerical emissions standard generally as proposed. However, based on the review of combustion technologies prompted by public comments on the existing work practice standard to use natural gas as fuel (see section IV.B.3 of this preamble), the finalized work practice for new and existing sources used to produce nonclay refractory products requires the use natural gas or an equivalent fuel at all times, without an exception during periods when natural gas is not available.

3. What key comments did we receive on the 112(d)(2) and (3) amendments and what are our responses?

We received one general comment supporting the proposed CAA section 112(d)(2) and (3) amendments for refractory products manufacturing. The comment letter also included recommendations for more stringent standards under CAA section 112(d)(2) and (3) for this source category.

Comment: One commenter supported the EPA's proposed decision to set numeric emission standards for Hg and for PM as a surrogate for non-Hg metal HAP for existing clay refractory sources. The commenter noted that setting limits for all unregulated sources of HAP emissions in this category is required by CAA section 112(d)(6) (see *LEAN* v. *EPA,* 955 F.3d 1088). However, the commenter asserted that the proposed limits are not strong enough to satisfy the CAA section 112(d)(2)–(3) requirements and that the standards must reflect the maximum achievable degree of emission limitation. First, the commenter stated that the limits were set using insufficient data and that it is not clear why the EPA did not use its authority under CAA section 114 to collect additional emission data. Second, the commenter stated that the "upper prediction limit" (UPL) methodology of setting standards is not consistent with the statutory requirement of the floor as the "average emission limitation" achieved by the best-performing sources, which violates CAA section 112(d)(3) and is arbitrary. Therefore, the commenter stated, the proposed standards do not come close to the "maximum achievable" degree of emission reduction.

Response: As courts have regularly upheld, the EPA has wide latitude in determining the extent of data gathering necessary to solve a problem and courts generally defer to the Agency's decision to proceed on the basis of imperfect scientific information, rather than to "invest the resources to conduct the perfect study." *Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (D.C. Cir. 1999)) ("If EPA were required to gather exhaustive data about a problem for which gathering such data is not yet feasible, the agency would be unable to act even if such inaction had potentially significant consequences . . . [A]n agency must make a judgment in the face of a known risk of unknown degree." *Mexichem Specialty Resins, Inc.,* 787 F.3d. 561 (D.C. Cir. 2015)).

Contrary to the commenter's assertion, the EPA had sufficient data available from the two clay refractory products kilns at Whitacre-Greer to calculate MACT floors, so additional data collection was not necessary. In the case of PM, multiple sets of emissions test data were available for each of the two kilns, allowing for a data set for each kiln that was robust enough that the EPA did not need to evaluate the uncertainty associated with a limited dataset for either kiln. Further, as noted in the memorandum *Emissions Data Used to Develop the Refractory Products Manufacturing Risk and Technology Review (RTR) Risk Modeling Input Files* (Docket Item No. EPA–HQ–OAR–2020–0148–0006), St. Gobain has three batch tunnel kilns and two continuous tunnel kilns capable of producing both clay and nonclay refractories, so they would be subject to the proposed standards for PM and Hg when producing clay refractories. However, 40 CFR 63.9824 defines a clay refractory product as "a refractory product that contains at least 10 percent uncalcined clay by weight prior to firing in a kiln" and includes six classifications of clay (ball clay, bentonite, common clay and shale, fire clay, fuller's earth, and kaolin). Based on the 2017 raw material information provided by St. Gobain when the EPA was developing the inputs file for the risk modeling, the quantities of clay fired do not meet the 10 percent threshold for the manufacture of clay refractories and are more consistent with the use of clay as a binder, so these kilns are expected to be subject to the clay refractory kiln standards infrequently. Therefore, it is not clear that using the authority under CAA section 114 for these kilns would have yielded any additional PM or Hg data for clay refractory kilns. In other words, if the EPA had requested emissions testing under CAA section 114 for these five kilns when they manufacture clay refractories, the EPA would have had to wait for the facility to change their product on each kiln, which may not have been feasible.

Regarding the UPL approach, in August 2013, the D.C. Circuit issued its decision in *National Association. of Clean Water Agencies (NACWA)* v. *EPA,* which addressed challenges to the EPA's 2011 Sewage Sludge Incinerator (SSI) rule, issued under section 129 of the CAA. In *NACWA* v. *EPA,* the court remanded the EPA's use of the UPL methodology to the Agency for further explanation of how the methodology reflected the average emissions limitation achieved by the best-performing 12 percent of sources (for existing sources) and the average emissions limitation achieved by the best-performing similar source (for new sources). *NACWA* v. *EPA,* 734 F.3d 1115, 1151. Because the UPL methodology used in the SSI rule was the same as that used in the major source Boiler MACT (40 CFR part 63, subpart DDDDD), the EPA requested a remand of the record in *U.S. Sugar* v. *EPA* in order to address the court's decision in *NACWA* v. *EPA.* The EPA prepared a memorandum explaining the methodology for the UPL. This memorandum, the EPA's *Response to Remand of the Record for Major Source Boilers,* provides a detailed rationale to use the UPL as the basis of setting a

MACT floor for new and existing sources, and the methodology and the explanation in the memorandum were upheld by the D.C. Circuit in *U.S. Sugar* v. *EPA,* 830 F.3d at 639. Following the UPL memorandum, the EPA issued a subsequent memorandum specifically addressing the application of the UPL methodology when setting MACT emission limits with limited datasets, *Approach for Applying the Upper Prediction Limit to Limited Datasets.* In that memorandum, the EPA concluded that there are additional considerations when setting MACT floors for limited datasets. The D.C. Circuit agreed that the EPA sufficiently explained the general application of the UPL approach to small datasets in *Sierra Club* v. *EPA,* 895 F.3d 1, 14 (D.C. Cir. 2018). The MACT floors were set consistent with EPA guidance and with previous court decisions.

4. What is the rationale for our final approach for the 112(d)(2) and (3) amendments?

For the reasons explained in the preamble to the proposed rule (86 FR 3095, January 14, 2021), and in the comment responses in sections IV.B.3 and IV.C.3 of this preamble and the comment summary and response document (available in the docket for this rulemaking), we are finalizing a work practice requirement to use natural gas at all times for new and existing clay refractory product sources, and we are making no changes and are finalizing the proposed 112(d)(2) and (3) amendments for clay refractory kilns in the Refractory Products Manufacturing source category.

D. SSM Amendments for the Refractory Products Manufacturing Source Category

1. What SSM amendments did we propose for the Refractory Products Manufacturing source category?

We proposed amendments to the Refractory Products Manufacturing NESHAP to remove and revise provisions related to SSM that are not consistent with the 2008 court decision that the standards apply at all times. More information concerning the elimination of SSM provisions is provided in the preamble to the proposed rule (86 FR 3095, January 14, 2021).

2. How did the SSM amendments change for the Refractory Products Manufacturing source category?

We are finalizing the SSM provisions as proposed with no changes (86 FR 3095, January 14, 2021).

3. What key comments did we receive on the SSM amendments and what are our responses?

We received one general comment supporting the proposed amendments to the SSM provisions for refractory products manufacturing and three comments requesting that the rule requirements for this source category apply at all times, not just during periods of SSM.

4. What is the rationale for our final approach for the SSM provisions?

For the reasons explained in the proposed rule and after evaluation of the comments on the proposed amendments to the SSM provisions for the Refractory Products Manufacturing NESHAP, we are finalizing the proposed amendments related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the proposed amendments to the SSM provisions is in the preamble to the proposed rule (86 FR 3095, January 14, 2021).

E. Electronic Reporting Amendments for the Refractory Products Manufacturing Source Category

1. What electronic reporting amendments did we propose for the Refractory Products Manufacturing source category?

In the January 14, 2021, notice we proposed amendments to subpart SSSSS to require owners and operators of refractory product manufacturing facilities to submit electronic copies of NOCS reports, performance test results, and performance evaluation results through the EPA's CDX using CEDRI.

The proposed amendments apply to the NOCS required by 40 CFR 63.7(b) and (c), 40 CFR 63.8(f)(4), 40 CFR 63.9(b) through (e) and (h) and 40 CFR 63.9812, and performance test results and performance evaluation results required by 40 CFR 63.9(h), 40 CFR 63.9800, and 40 CFR 63.9814. The proposal would require that all NOCS be submitted as portable document format (PDF) files and uploaded to CEDRI. For performance test and performance evaluation results, the proposal would require test results that use test methods supported by the EPA's ERT listed on the ERT website[1] at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the extensible markup language (XML) schema on the ERT website. Performance test results using test methods that are not supported by the ERT at the time of the test would be required to be submitted as a PDF file using the attachment module of the ERT. In addition, the proposal included two broad circumstances for electronic reporting extensions. A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for NESHAP Rules,* available in the docket for this action (Docket Item No. EPA–HQ–OAR–2020–0148–0003). The proposed rule requirements would replace the current rule requirements to submit the NOCS reports, performance test results, and performance evaluation results to the Administrator at the appropriate address listed in 40 CFR 63.13. The proposed rule requirement would not affect submittals required by state air agencies. The proposed compliance date for existing affected sources to comply with the electronic reporting requirements for NOCS reports, performance test results, and performance evaluation results is 181 days after the final rule is published to begin electronic reporting. New affected sources are required to comply with the electronic reporting requirements for NOCS reports, performance test results, and performance evaluation results on the effective date of the standard or upon startup, whichever is later.

2. How did the electronic reporting provisions change for the Refractory Products Manufacturing source category?

No changes were made to the proposed electronic reporting provisions.

3. What key comments did we receive on the electronic reporting provisions and what are our responses?

We received one comment letter that addressed the proposed electronic reporting provisions for refractory products manufacturing. The commenter generally supported the proposed amendments except for the proposed provisions of 40 CFR 63.9814(k) and (l) that would provide instructions for affected sources unable to submit an electronic report either due to a force majeure event or an outage of CEDRI.

4. What is the rationale for our final approach for the electronic reporting requirements?

For the reasons explained in the preamble to the proposed rule (86 FR 3095, January 14, 2021) and the comment summary and response document (available in the docket for this rulemaking), we are making no

changes and are finalizing the electronic reporting provisions as proposed.

F. Technical Amendments for the Refractory Products Manufacturing Source Category

In the final rule, we are amending 40 CFR 63.9824 and Table 4 to subpart SSSSS of part 63, as proposed, to clarify the location in 40 CFR part 60 of applicable EPA test methods. We are also amending 40 CFR 63.9814 and 63.9816 to include the requirements to record and report information on failures to meet the applicable standard.

In the final rule, as proposed, we are adding and updating test methods that are incorporated by reference. In accordance with requirements of 1 CFR part 51.5, the EPA is incorporating by reference the following voluntary consensus standards (VCS) described in the amendments to 40 CFR 63.14:

- ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, proposed to be IBR approved for Table 4 to subpart SSSSS. This document specifies methods, apparatus and calculations which are used to determine quantitatively, the gaseous constituents of the exhausts including oxygen and carbon dioxide resulting from station combustions sources.
- ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, proposed to be IBR approved for Table 4 to subpart SSSSS.
- ASTM D6784–16, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)," (Approved March 1, 2016), proposed to be IBR approved for Table 4 to subpart SSSSS.
- EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, proposed to be IBR approved for 40 CFR 63.9804(f). This document provides guidance on the use of triboelectric monitors as fabric filter bag leak detectors. The document includes fabric filter and monitoring system descriptions; guidance on monitor selection, installation, setup, adjustment, and operation; and quality assurance procedures.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

Currently, three major sources subject to the Refractory Products Manufacturing NESHAP are operating in the United States. The NESHAP applies to each new, reconstructed, and existing affected source located at a refractory products manufacturing facility that is a major source of HAP emissions, is located at a major source of HAP emissions, or is part of a major source of HAP emissions. A refractory products manufacturing facility is a plant site that manufactures refractory products, such as refractory bricks, refractory shapes, monolithics, kiln furniture, crucibles, and other materials used for lining furnaces and other high temperature process units. Refractory products manufacturing facilities typically process raw material by crushing, grinding, and screening; mixing the processed raw materials with binders and other additives; forming the refractory mix into shapes; and drying and firing the shapes. The NESHAP lists the affected sources for four subcategories across the industry as the shape dryers, curing ovens, and kilns that are used to manufacture refractory products that use organic HAP; shape preheaters, pitch working tanks, defumers, and coking ovens that are used to produce pitch-impregnated refractory products; kilns that are used to manufacture chromium refractory products; and kilns that are used to manufacture clay refractory products. The three major sources currently operating in the U.S. can be grouped into two of the subcategories and use curing ovens and kilns that are used to manufacture nonclay refractory products that use organic HAP and kilns that are used to manufacture clay refractory products.

B. What are the air quality impacts?

At the current level of control, the estimated emissions of HAP from the Refractory Products Manufacturing source category are approximately 40 tpy. The final amendments require that all three major sources in the Refractory Products Manufacturing source category comply with the relevant emission standards at all times, including periods of SSM. The final amendments also limit the number of hours a continuous kiln THC control device can be bypassed during scheduled maintenance and require minimizing emissions of THC during bypass periods. We were unable to quantify the emissions that occur during periods of SSM or the specific emissions reductions that would occur as a result of this action. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard during SSM periods. Requiring the use of natural gas as kiln fuel at all times also ensures that PM (as a surrogate for non-Hg metal HAP) and Hg will not be emitted from combustion of coal, fuel oil, or waste-derived fuels.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. The final amendments would have no effect on the energy needs of the affected facilities in this source category and would, therefore, have no indirect or secondary air emissions impacts.

C. What are the cost impacts?

We estimate that each facility in this source category will experience costs as a result of these final amendments. Estimates for reporting and recordkeeping costs for each facility are associated with the electronic reporting requirements, elimination of the SSM exemption, and revision of the requirements that apply during times of scheduled maintenance of continuous kiln control devices. The costs associated with the electronic reporting requirements are attributed to submittal of NOCS reports, performance test results, and performance evaluation results using CEDRI and include time for becoming familiar with CEDRI. The costs associated with the revised SSM requirements were estimated for re-evaluating previously developed SSM record systems. The costs associated with recordkeeping to document the frequency and duration of scheduled maintenance of control devices for continuous kilns were also estimated. The recordkeeping and reporting costs are presented in section VI.C of this preamble.

We estimate the costs associated with this action are primarily due to the new compliance testing requirements for the clay refractory kilns in this action. Two of the major source refractory manufacturing facilities manufacture clay refractory and are required to conduct periodic compliance testing for PM as a surrogate for non-Hg metal HAP and Hg once every 5 years. One clay refractory manufacturing facility has two continuous kilns and the other has

two continuous kilns and three batch kilns. The costs associated with conducting the combined PM and Hg test for each continuous kiln stack are estimated to be about $23,600. The costs associated with conducting the combined PM and Hg test for each batch kiln stack are estimated to be about $31,800. We also assumed that tests for additional stacks at the same facility would be conducted in the same trip, so the additional cost is less due to reduced travel costs. The total costs for the two facilities to test the seven kilns in a single year would be $115,300. In addition to the testing costs, each facility performing the testing will have an additional $6,900 in reporting costs per facility in the year in which the test occurs.

For kilns that meet the limits without any controls, owners or operators are required to conduct VE monitoring to demonstrate compliance. One of the continuous kilns is controlled with a wet scrubber, but the other six kilns are expected to need to conduct VE monitoring. We estimate that the monitoring will cost $3,740 per year per stack, for a total of $22,400 per year.

For further information on the potential testing and monitoring costs, see the memorandum titled *Development of Proposed Standards and Impacts for the Refractory Products Manufacturing NESHAP,* located in the docket for this action (Docket Item No. EPA–HQ–OAR–2020–0148–0014).

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of the compliance costs outlined in section V.C of this preamble. To assess the maximum potential impact, the largest cost expected to be experienced in any one year is compared to the total sales for the ultimate owner of the affected facilities to estimate the total burden for each owner. For these final amendments, the total cost of testing, monitoring, and recordkeeping and reporting is estimated to be $158,140. The total annual costs associated with the requirements range from 0.00008 to 0.18 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to customers or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected facilities are small entities, as defined by the U.S. Small Business Administration. One of the facilities affected by these amendments is a small entity. However, the annual cost associated with the requirements is 0.18 percent of annual sales revenue for the owner of that facility. Therefore, there are no significant economic impacts on a substantial number of small entities from these amendments.

E. What are the benefits?

As stated above in section V.B. of this preamble, we were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption, although this change has the potential to reduce emissions of volatile organic HAP.

Because these final amendments are not considered economically significant, as defined by Executive Order 12866, we did not monetize the benefits of reducing these emissions. This does not mean that there are no benefits associated with the potential reduction in volatile organic HAP from this rule.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 was signed to advance racial equity and support underserved communities through Federal government actions (86 FR 7009, January 20, 2021). The EPA defines environmental justice (EJ) as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies" (*https://www.epa.gov/environmentaljustice*). In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

Based on an analysis of exposed populations, the EPA determined that the Refractory Products Manufacturing source category does not pose a disproportionately high adverse health impact on minority populations and/or low-income populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) and referenced in Executive Order 13985 (86 FR 7009, January 20, 2021). The EPA remains committed to engaging with communities and stakeholders throughout the development of air pollution regulations.

To examine the potential for any environmental justice issues that might be associated with this source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we also evaluated the distribution of HAP-related cancer and noncancer risks from the Refractory Products Manufacturing source category across different demographic groups within the populations living near facilities.[3]

The results of the demographic analysis for the Refractory Products Manufacturing source category indicates that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1. In addition, no percentages of the populations exposed to emissions from the source category are higher than their respective nationwide average percentages. Thus, the populations living near refractory products manufacturing facilities are similar to the national average in demographic characteristics, and we do not see a disproportionately high exposure to the population groups indicated in the Executive Orders. The methodology and the results of the demographic analysis are presented in more detail in the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Refractory Products Manufacturing Source Category Operations,* September 2020, available in the docket for this action (Docket Item No. EPA–HQ–OAR–2020–0148–0007).

G. What analysis of children's environmental health did we conduct?

This action is not subject to Executive Order 13045 because it is not

[3] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in section IV.A of this preamble and are further documented in the *Residual Risk Assessment for the Refractory Products Manufacturing Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* available in the Refractory Products Manufacturing docket (Docket Item No. EPA–HQ–OAR–2020–0148–0013).

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this action have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2040.08. You can find a copy of the ICR in the Refractory Products Manufacturing Docket (Docket ID No. EPA–HQ–OAR–2020–0148), and it is briefly summarized here.

As part of the RTR for the Refractory Products Manufacturing NESHAP, the EPA is not revising the existing emission limit requirements but is adding new emission limit requirements for existing clay refractory sources and is adding new work practices for existing nonclay refractory sources. The EPA is also revising the SSM provisions of the rule and is adding the use of electronic data reporting for future performance test result and performance evaluation result submittals, and NOCS reports. This information is being collected to assure compliance with 40 CFR part 63, subpart SSSSS.

Respondents/affected entities: Facilities manufacturing refractory products.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart SSSSS).

Estimated number of respondents: In the 3 years after the amendments are final, approximately three respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses is 15 per year.

Total estimated burden: The average annual burden to the three refractory products manufacturing facilities over the 3 years after the amendments are final is estimated to be 230 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 202 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the refractory products manufacturing facilities is $27,100 in labor costs in the first 3 years after the amendments are final. The average annual capital and operation and maintenance (O&M) cost is $69,900. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $9,990.

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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The annualized costs associated with the requirements in this action for the affected small entities is described in section V.C. above.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in any of the industries that would be affected by this action. In addition, the EPA conducted a proximity analysis for this source category and found that no refractory products manufacturing facilities are located within 50 miles of tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in section IV.A of this preamble and are further documented in the Refractory Products Manufacturing Docket.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act and 1 CFR Part 51

This action involves technical standards. The EPA amended the Refractory Products Manufacturing NESHAP in this action with two methods that can be used as alternatives to the EPA methods in the current NESHAP: ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" and ASTM D6348–12e1, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy". The EPA also amended the Refractory Products Manufacturing NESHAP in this action with two new methods: EPA Method 29 (portion for Hg only) and alternative method ASTM D6784–16, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)". The EPA also added new guidance to the NESHAP: EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997. The methods and guidance will be incorporated by reference as described below.

The EPA is incorporating by reference the VCS ANSI/ASME PTC 19.10–1981,

"Flue and Exhaust Gas Analyses." This method determines quantitatively the gaseous constituents of exhausts resulting from stationary combustion sources. The manual procedures (but not instrumental procedures) of VCS ANSI/ASME PTC 19.10–1981—Part 10 may be used as an alternative to EPA Method 3B for measuring the oxygen or carbon dioxide content of the exhaust gas. The gases covered in ANSI/ASME PTC 19.10–1981 are oxygen, carbon dioxide, carbon monoxide, nitrogen, sulfur dioxide, sulfur trioxide, nitric oxide, nitrogen dioxide, hydrogen sulfide, and hydrocarbons, however the use in this rule is only applicable to oxygen and carbon dioxide and is an acceptable alternative to the manual portion only and not the instrumental portion.

The EPA is incorporating by reference the VCS ASTM D6348–12e1, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy" as an acceptable alternative to EPA Method 320. ASTM D6348–03(2010) was determined to be equivalent to EPA Method 320 with caveats. ASTM D6348–12e1 is a revised version of ASTM D6348–03(2010) and includes a new section on accepting the results from the direct measurement of a certified spike gas cylinder, but lacks the caveats placed on the D6348–03(2010) version. The VCS ASTM D6348–12e1 "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy" is an extractive FTIR field test method used to quantify gas phase concentrations of multiple analytes from stationary source effluent and is an acceptable alternative to EPA Method 320 at this time with caveats requiring inclusion of selected annexes to the standard as mandatory. When using ASTM D6348–12e1, the following conditions must be met:

(1) The test plan preparation and implementation in the Annexes to ASTM D6348–03, sections A1 through A8 are mandatory; and

(2) In ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5).

In order for the test data to be acceptable for a compound, %R must be 70% ≥ R ≤ 130%. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation: Reported Results = ((Measured Concentration in Stack))/(%R) × 100.

The EPA is also incorporating by reference the VCS ASTM D6784–16, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)" as an acceptable alternative to EPA Method 29 (portion for Hg only) as a method for measuring elemental, oxidized, particle-bound, and total Hg concentrations ranging from approximately 0.5–100 micrograms per normal cubic meter (μg/Nm^3). This test method describes equipment and procedures for obtaining samples from effluent ducts and stacks, equipment and procedures for laboratory analysis, and procedures for calculating results. VCS ASTM D6784–16 allows for additional flexibility in the sampling and analytical procedures for the earlier version of the same standard VCS ASTM D6784–02 (Reapproved 2008).

The EPA is also incorporating by reference EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, IBR for 40 CFR 63.9804(f). This document provides guidance on the use of triboelectric monitors as fabric filter bag leak detectors and includes fabric filter and monitoring system descriptions; guidance on monitor selection, installation, setup, adjustment, and operation; and quality assurance procedures.

Guidance document EPA–454/R–98–015 and ASTM D6784–16 are available electronically through *https://www.regulations.gov/* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information). The ANSI/ASME document (ANSI/ASME PTC 19.10–1981) is available from the American Society of Mechanical Engineers (ASME) at *http://www.asme.org;* by mail at Three Park Avenue, New York, NY 10016–5990; or by telephone at (800) 843–2763. The ASTM methods are available from ASTM International at *https://www.astm.org;* by mail at 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or by telephone at (610) 832–9585.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Refractory Products Manufacturing Source Category Operations,* September 2020, available in the Refractory Products Manufacturing Docket for this action (Docket Item No. EPA–HQ–OAR–2020–0148–0007).

The EPA provided opportunities to engage with the EPA on this action. The Agency offered a public hearing and reached out to communities in other ways, including meetings to exchange information with stakeholders about this action. We did not receive a request for a public hearing, and we did not receive feedback regarding EJ during the meetings.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 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 A—General Provisions

■ 2. Section 63.14 is amended by:

■ a. Revising paragraphs (e)(1) and (h)(86);

■ b. Redesignating paragraphs (h)(104) through (118) as paragraphs (h)(105) through (119);

■ c. Adding new paragraph (h)(104); and

■ d. Revising paragraph (n)(4).

The revisions and additions read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(e) * * *

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.997(e), 63.1282(d) and (g), and 63.1625(b), table 5 to subpart EEEE, §§ 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), and 63.5160(d), table 4 to subpart UUUU, table 3 to subpart YYYY, §§ 63.7822(b), 63.7824(e), 63.7825(b), 63.8000(d), 63.9307(c), 63.9323(a), 63.9621(b) and (c), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, and table 4 to subpart AAAAA, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, table 4 to subpart KKKKK, table 4 to subpart SSSSS, tables 4 and 5 of subpart UUUUUU, table 1 to subpart ZZZZZ, and table 4 to subpart JJJJJJ.

* * * * *

(h) * * *

(86) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for §§ 63.997(e), 63.1571(a), and 63.2354(b), table 5 to subpart EEEE, table 4 to subpart UUUU, §§ 63.7142(a) and (b) and 63.8000(d), and table 4 to subpart SSSSS.

* * * * *

(104) ASTM D6784–16, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), Approved March 1, 2016, IBR approved for table 4 to subpart SSSSS.

* * * * *

(n) * * *

(4) EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000D5T6.PDF,* IBR approved for §§ 63.548(e), 63.864(e), 63.7525(j), 63.8450(e), 63.8600(e), 63.9632(a), 63.9804(f), and 63.11224(f).

* * * * *

Subpart SSSSS—National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

■ 3. Section 63.9786 is amended by revising paragraphs (a), (b), and (d)(2) to read as follows:

§ 63.9786 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 the initial startup of your affected source is before April 16, 2003, then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than April 16, 2003, except as otherwise specified in §§ 63.9792, 63.9812(c) and (e), and 63.9814(b)(6) and Tables 1 through 11 to this subpart.

(2) If the initial startup of your affected source is after April 16, 2003, then you must comply with the emission limitations for new and reconstructed sources in this subpart upon initial startup of your affected source, except as otherwise specified in §§ 63.9792, 63.9812(c) and (e), and 63.9814(b)(6) and Tables 1 through 11 to this subpart.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than April 17, 2006, except as otherwise specified in §§ 63.9792, 63.9812(c) and (e), and 63.9814(b)(6) and Tables 1 through 11 to this subpart.

* * * * *

(d) * * *

(2) All other parts of the existing facility must be in compliance with this subpart by 3 years after the date the area source becomes a major source, except as otherwise specified in §§ 63.9792, 63.9812(c) and (e), and 63.9814(b)(6) and Tables 1 through 11 to this subpart.

* * * * *

■ 4. Section 63.9792 is amended by revising paragraph (a) introductory text, paragraphs (b) and (c), paragraph (e) introductory text, and paragraphs (e)(2) and (3) to read as follows:

§ 63.9792 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits and work practice standards) in this subpart at all times, except during periods specified in paragraphs (a)(1) and (2) of this section before May 19, 2022. You must be in compliance with the emission limitations (including operating limits and work practice standards) in this subpart at all times, on or after May 19, 2022.

* * * * *

(b) Except as specified in paragraph (e) of this section, before May 19, 2022, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.9786 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been established, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment. On and after May 19, 2022, at all times, you 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. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(c) Before May 19, 2022, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). On or after May 19, 2022, you are not required to develop a written SSMP according to the provisions in § 63.6(e)(3).

* * * * *

(e) If you own or operate an affected continuous kiln used to manufacture refractory products that use organic HAP and you must perform scheduled maintenance on the THC control device for that kiln, you may bypass the kiln THC control device and continue operating the kiln subject to the alternative standard established in this paragraph upon approval by the Administrator, provided you satisfy the conditions listed in paragraphs (e)(1) through (3) of this section.

* * * * *

(2) Before May 19, 2022, you must minimize HAP emissions during the period when the kiln is operating, and the control device is out of service. On

and after May 19, 2022, you must minimize HAP emissions during the period when the kiln is operating and the control device is out of service by complying with the applicable standard in Table 3 to this subpart.

(3) You must minimize the time period during which the kiln is operating and the control device is out of service. On and after May 19, 2022, the total time during which the kiln is operating and the control device is out of service for each year on a 12-month rolling basis must not exceed 750 hours.

* * * * *

■ 5. Section 63.9794 is amended by revising paragraphs (a)(7), (8), (12), and (13) and paragraph (b)(2) to read as follows:

§ 63.9794 What do I need to know about operation, maintenance, and monitoring plans?

(a) * * *

(7) Before May 19, 2022, procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.9804. On or after May 19, 2022, procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8(c)(3), (4)(ii), (7), and (8), and 63.9804.

(8) Before May 19, 2022, ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d). On or after May 19, 2022, ongoing data quality assurance procedures consistent with the requirements in § 63.8(d)(1) and (2). You must keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan in § 63.8(d)(2) is revised, you must keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

* * * * *

(12) Before Novermber 19, 2021, if you operate a kiln that is subject to the limits on the type of fuel used, as specified in items 3 and 4 of Table 3 to subpart SSSSS, procedures for using alternative fuels. On and after Novermber 19, 2021, you may not use a fuel other than natural gas or equivalent to fire the affected kiln.

(13) If you operate an affected continuous kiln used to manufacture refractory products that use organic HAP and you plan to take the kiln THC control device out of service for scheduled maintenance, as specified in § 63.9792(e), the procedures specified in paragraphs (a)(13)(i) and (ii) of this section.

(i) Procedures for minimizing HAP emissions from the kiln during periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service. On or after May 19, 2022, document the average organic HAP processing rate for that kiln (*i.e.,* the average organic HAP processing rate based on (a) the actual production on a 6-month rolling basis (not to include periods of kiln shut down) or (b) the HAP processing rate (lb/hr) that coincides with the lowest hour of the most recent 3-hour performance test, whichever is lower), the mass fraction of organic HAP in the resins, binders, and additives for each product manufactured in the kiln and procedures for ensuring that the actual organic HAP processing rate on an hourly basis does not exceed the average organic HAP processing rate.

(ii) Procedures for minimizing any period of scheduled maintenance on the kiln control device when the kiln is operating and the control device is out of service. On or after May 19, 2022, procedures for ensuring that the total time during which the kiln is operating and the control device is out of service does not exceed 750 hours for each year on a 12-month rolling basis.

(b) * * *

(2) After completing the performance tests to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the summary of the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h) and the complete test report according to § 63.9814(h).

* * * * *

■ 6. Section 63.9800 is amended by revising paragraphs (c) and (d) and paragraph (g) introductory text and adding paragraph (g)(4) to read as follows:

§ 63.9800 How do I conduct performance tests and establish operating limits?

* * * * *

(c) Before May 19, 2022, each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart. On or after May 19, 2022, each performance test must be conducted under the specific conditions in Table 4 to this subpart.

(d) Before May 19, 2022, you may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1). On or after May 19, 2022, you may not conduct performance tests during periods of malfunction. You also may not conduct performance tests during periods of startup or shutdown. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. You must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) through (4) of this section to determine compliance with the emission limitations.

* * * * *

(4) To determine compliance with the Hg emission concentration limit listed in Table 1 to this subpart, you must calculate your emission concentration corrected to 18 percent oxygen for each test run using Equation 4 of this section:

$$C_{Hg\text{-}C} = \frac{2.9 \times C_{Hg}}{(20.9 - C_{O_2})} \qquad \text{(Eq. 4)}$$

Where:

$C_{Hg\text{-}C}$ = Hg concentration, corrected to 18 percent oxygen, micrograms per dry standard cubic meters (µg/dscm)

C_{Hg} = Hg concentration (uncorrected), µg/dscm

C_{O2} = oxygen concentration, percent.

* * * * *

■ 7. Section 63.9804 is amended by revising paragraphs (a)(13), (e)(1), and (f)(1) to read as follows:

§ 63.9804 What are my monitoring system installation, operation, and maintenance requirements?

(a) * * *

(13) At all times, you must maintain your CPMS in accordance with § 63.9792(b), including, but not limited to, keeping the necessary parts readily available for routine repairs of the CPMS.

* * * * *

(e) * * *

(1) Use a pH CPMS with a minimum accuracy of ±0.2 pH units.

* * * * *

(f) * * *

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997) (incorporated by reference, see § 63.14). Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

* * * * *

■ 8. Section 63.9806 is amended by revising paragraph (d) to read as follows:

§ 63.9806 How do I demonstrate initial compliance with the emission limits, operating limits, and work practice standards?

* * * * *

(d) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9812(e). After Novermber 19, 2021 for affected sources that commence construction or reconstruction after January 14, 2021, and on and after May 19, 2022 for all other affected sources, you must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9812(e) and 63.9814(j).

■ 9. Section 63.9808 is amended by revising paragraph (b) to read as follows:

§ 63.9808 How do I monitor and collect data to demonstrate continuous compliance?

* * * * *

(b) At all times, you must maintain your monitoring systems in accordance with § 63.9792(b), including, but not limited to, keeping the necessary parts readily available for routine repairs of the monitoring equipment.

* * * * *

■ 10. Section 63.9810 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 63.9810 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

* * * * *

(e) Before May 19, 2022, you must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of SSM. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9814. On or after May 19, 2022, you must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9814.

(1) [Reserved]

(2) Before May 19, 2022, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1) and your OM&M plan. 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). On or after May 19, 2022, consistent with §§ 63.9792(b) and 63.9800(d), deviations are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.9792(b) and your OM&M plan. The Administrator will determine whether deviations are violations, according to the provisions in § 63.9792(b).

(f) You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for visible emissions (VE) from clay refractory products kilns that are uncontrolled or equipped with DLA, dry lime injection fabric filter (DIFF), dry lime scrubber/fabric filter (DLS/FF) or other dry control device as described in paragraph (f)(1) or (2) of this section.

(1) *VE testing.* Monitoring VE at each kiln stack according to the requirements in paragraphs (f)(1)(i) through (v) of this section.

(i) Perform daily VE observations of each kiln stack according to the procedures of EPA Method 22 of 40 CFR part 60, appendix A–7. You must conduct the EPA Method 22 test while the affected source is operating under normal conditions. The duration of each EPA Method 22 test must be at least 15 minutes.

(ii) If VE are observed during any daily test conducted using EPA Method 22 of 40 CFR part 60, appendix A–7, you must promptly conduct an opacity test, according to the procedures of EPA Method 9 of 40 CFR part 60, appendix A–4. If opacity greater than 10 percent is observed, you must initiate and complete corrective actions according to your OM&M plan.

(iii) You may decrease the frequency of EPA Method 22 testing from daily to weekly for a kiln stack if one of the conditions in paragraph (f)(1)(iii)(A) or (B) of this section is met.

(A) No VE are observed in 30 consecutive daily EPA Method 22 tests for any kiln stack; or

(B) No opacity greater than 10 percent is observed during any of the EPA Method 9 tests for any kiln stack.

(iv) If VE are observed during any weekly test and opacity greater than 10 percent is observed in the subsequent EPA Method 9 test, you must promptly initiate and complete corrective actions according to your OM&M plan, resume testing of that kiln stack following EPA Method 22 of 40 CFR part 60, appendix A–7, on a daily basis, as described in paragraph (f)(1)(i) of this section, and maintain that schedule until one of the conditions in paragraph (f)(1)(iii)(A) or (B) of this section is met, at which time you may again decrease the frequency of EPA Method 22 testing to a weekly basis.

(v) If greater than 10 percent opacity is observed during any test conducted using EPA Method 9 of 40 CFR part 60, appendix A–4, you must report these deviations by following the requirements in § 63.9814.

(2) *Alternative to VE testing.* In lieu of meeting the requirements under paragraph (f)(1) of this section, you may conduct a PM test at least once every year following the initial performance test, according to the procedures of EPA Method 5 of 40 CFR part 60, appendix A–3, and the provisions of § 63.9800(e) and (f).

■ 11. Section 63.9812 is amended by revising paragraphs (b) and (c), paragraph (e) introductory text, paragraph (e)(1), paragraph (f) introductory text, and paragraph (g) to read as follows:

§ 63.9812 What notifications must I submit and when?

* * * * *

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after April 16, 2003, or no later than 120 days after the source becomes subject to this subpart, whichever is later.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart. Initial Notifications required to be submitted after November 19, 2021 for affected sources that commence construction or reconstruction after January 14, 2021, and on and after May 19, 2022 for all other affected sources submitting initial notifications required in § 63.9(b) must be submitted following the procedure specified in § 63.9814(h) through (l).

* * * * *

(e) If you are required to conduct a performance test, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section. After November 19, 2021 for affected sources that commence construction or reconstruction after January 14, 2021, and on and after May 19, 2022 for all other affected sources, submit all subsequent Notifications of Compliance Status following the procedure specified in § 63.9814(h) through (l).

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the summary of the performance test results, before the close of business on the 60th calendar day following the completion of the performance test.

* * * * *

(f) Before November 19, 2021, if you operate a clay refractory products kiln or a chromium refractory products kiln that is subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you intend to use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824. The notification must include the information specified in paragraphs (f)(1) through (5) of this section. On and after November 19, 2021, you may not use a fuel other than natural gas or equivalent to fire the affected kiln.

* * * * *

(g) If you own or operate an affected continuous kiln used to manufacture refractory products that use organic HAP and must perform scheduled maintenance on the THC control device for that kiln, you must request approval from the Administrator before bypassing the control device, as specified in § 63.9792(e). You must submit a separate request for approval each time you plan to bypass the kiln control device.

■ 12. Section 63.9814 is amended by:

■ a. Revising paragraph (c) introductory text and paragraph (c)(4);

■ b. Adding paragraph (c)(7);

■ c. Revising paragraphs (d) and (e) and paragraph (g) introductory text; and

■ d. Adding paragraphs (h) through (l).

The revisions and additions read as follows:

§ 63.9814 What reports must I submit and when?

* * * * *

(c) The compliance report must contain the information in paragraphs (c)(1) through (7) of this section.

* * * * *

(4) Before May 19, 2022, if you had a startup, shutdown, or malfunction during the reporting period, and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i). On or after May 19, 2022, if you had a deviation from any emission limitations (emission limit, operating limit, or work practice standard) during the reporting period that apply to you, and you took actions consistent with your OM&M plan, the compliance report must include the information specified in (d) and (e) of this section.

* * * * *

(7) For each period when an affected continuous kiln used to manufacture refractory products that use organic HAP was operating while the THC control device was out of service, the compliance report must include a description of the control device maintenance performed, including the information specified in paragraphs (c)(7)(i) through (vi) of this section.

(i) The date and time when the control device was shut down and restarted.

(ii) Identification of the kiln that was operating and the number of hours that the kiln operated while the control device was out of service.

(iii) A statement of whether or not the control device maintenance was included in your approved request to bypass the control device while scheduled maintenance is performed, developed as specified in § 63.9792(e).

(iv) Before May 19, 2022, a statement of whether emissions were minimized while the control device was out of service in accordance with your OM&M plan. After May 19, 2022, a statement of whether emissions were minimized while the control device was out of service in accordance with your OM&M plan and the information specified in paragraphs (c)(7)(iv)(A) through (C) of this section.

(A) The average organic HAP processing rate based on actual production on a 6-month rolling basis (not to include periods of kiln shut down) or the lowest hourly organic HAP processing rate from the most recent performance test on that kiln, whichever is lower.

(B) The actual hourly organic HAP processing rate for the kiln while the control device was out of service.

(C) The amount of product manufactured and the mass of organic HAP in the product manufactured in the kiln while the control device was out of service.

(v) After May 19, 2022, an estimate of the THC emissions from the continuous kiln stack while the control device was out of service.

(vi) After May 19, 2022, the total number of hours that the kiln has operated while the control device was out of service during the last year on a 12-month rolling basis.

(d) Before May 19, 2022, for each deviation from an emission limitation (emission limit, operating limit, or work practice standard) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and (d)(1) and (2) of this section. This includes periods of SSM. On or after May 19, 2022, for each deviation from an emission limitation (emission limit, operating limit, or work practice standard) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and (d)(1) through (3) of this section.

(1) The compliance report must include the total operating time of each affected source during the reporting period.

(2) The compliance report must include information on the number,

duration in hours, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(3) The compliance report must include the date and time of each deviation, a list of the affected sources or equipment, and an estimate of each regulated pollutant emitted over the emission limit and a description of the method used to estimate the emissions.

(e) Before May 19, 2022, for each deviation from an emission limitation (emission limit, operating limit, or work practice standard) occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, the compliance report must include the information in paragraphs (c)(1) through (4) and (e)(1) through (13) of this section. This includes periods of SSM. On or after May 19, 2022, for each deviation from an emission limitation (emission limit, operating limit, or work practice standard) occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, the compliance report must include the information in paragraphs (c)(1) through (4) and (e)(1) through (13) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) Before May 19, 2022, the date and time that each startup, shutdown, or malfunction started and stopped. On or after May 19, 2022, the date and time that each startup, shutdown, or malfunction started and stopped is not required.

(3) The date, time, and duration in hours that each CPMS was inoperative.

(4) The date, time and duration in hours that each CPMS was out of control, including the information in § 63.8(c)(8), as required by your OM&M plan.

(5) Before May 19, 2022, the date and time that each deviation from an emission limitation (emission limit, operating limit, or work practice standard) started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction. On or after May 19, 2022, for each deviation from an emission limitation (emission limit, operating limit, or work practice standard), the date and time that each deviation started and stopped, the duration in hours, a list of the affected sources or equipment, an estimate of each regulated pollutant emitted over the emission limit, and a description of the method used to estimate the emissions.

(6) A description of corrective action taken in response to a deviation.

(7) The total number of deviations during the reporting period, a summary of the total duration in hours of the deviations during the reporting period, and the total duration as a percentage of the total source operating time during that reporting period.

(8) Before May 19, 2022, a breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On or after May 19, 2022, a breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration in hours of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percentage of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CPMS.

(12) The date of the latest CPMS initial validation or accuracy audit.

(13) A description of any changes in CPMS, processes, or controls since the last reporting period.

* * * * *

(g) Before November 19, 2021, if you operate a clay refractory products kiln or a chromium refractory products kiln that is subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel. The report must include the information in paragraphs (g)(1) through (6) of this section. On and after November 19, 2021, you may not use a fuel other than natural gas or equivalent to fire the affected kiln.

* * * * *

(h) Beginning on May 19, 2022, within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI).* Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (h)(1) or (2) of this section, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (h)(1) and (2) of this section. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(i) Beginning on May 19, 2022, within 60 days after the date of completing each continuous emissions monitoring system (CEMS) performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (i)(1) through (3) of this section.

(1) *Performance evaluations of CEMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Performance evaluations of CEMS measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* The results of the performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *CBI.* Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (i)(1) or (2) of this section, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (h)(1) and (2) of this section. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(j) Beginning May 19, 2022, you must submit all subsequent Notification of Compliance Status reports in PDF format to the EPA via CEDRI, which can be accessed through EPA's CDX (*https://cdx.epa.gov/*).The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim, submit a complete report, including information claimed to be CBI, to the EPA. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Refractory Lead MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (j). All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(k) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (k)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(l) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of *force majeure* for failure to timely comply with that reporting requirement. To assert a claim of *force majeure,* you must meet the requirements outlined in paragraphs (l)(1) through (5) of this section.

(1) You may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the *force majeure* event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the *force majeure* event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of *force majeure* and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the *force majeure* event occurs.

■ 13. Section 63.9816 is amended by revising paragraph (a)(2) and paragraphs (c)(5), (8), and (10) to read as follows:

§ 63.9816 What records must I keep?

(a) * * *

(2) Before May 19, 2022, the records in § 63.6(e)(3)(iii) through (v) related SSM.

* * * * *

(c) * * *

(5) For each deviation of an operating limit parameter value, record the information in paragraphs (c)(5)(i) through (iv) of this section.

(i) The date, time, and duration in hours of the deviation.

(ii) On or after May 19, 2022, a list of the affected sources or equipment.

(iii) On or after May 19, 2022, an estimate of the quantity in pounds of each regulated pollutant over any emission limit and a description of the method used to estimate emissions.

(iv) Actions taken to minimize emissions in accordance with § 63.9792(b), a brief explanation of the cause of the deviation, and the corrective action taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(8) Records of maintenance activities and inspections performed on control devices, including all records associated with the scheduled maintenance of the THC control devices on continuous kilns used to manufacture refractory products that use organic HAP, as specified in § 63.9792(e).

* * * * *

(10) Current copies of the OM&M plan, including any revisions and records documenting conformance with those revisions.

■ 14. Section 63.9820 is revised to read as follows:

§ 63.9820 What parts of the General Provisions apply to me?

Table 11 to this subpart shows which parts of the General Provisions specified in §§ 63.1 through 63.16 apply to you.

■ 15. Section 63.9822 is amended by revising paragraph (c) introductory text and adding paragraph (c)(5) to read as follows:

§ 63.9822 Who implements and enforces this subpart?

* * * * *

(c) The authorities that cannot be delegated to state, local, or tribal agencies are as specified in paragraphs (c)(1) through (5) of this section.

* * * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 16. Section 63.9824 is amended by revising the definition of ''Particulate matter (PM)'' to read as follows:

§ 63.9824 What definitions apply to this subpart?

* * * * *

Particulate matter (PM) means, for the purposes of this subpart, emissions of particulate matter that serve as a measure of total particulate emissions as measured by EPA Method 5 of 40 CFR part 60, appendix A–3.

* * * * *

■ 17. Table 1 to Subpart SSSSS is revised to read as follows:

Table 1 to Subpart SSSSS of Part 63—Emission Limits

As stated in § 63.9788, you must comply with the emission limits for affected sources in the following table:

For . . .	You must meet the following emission limits . . .
1. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 2 through 9 of this table.
2. Continuous process units that are controlled with a thermal or catalytic oxidizer.	a. The 3-hour block average THC concentration must not exceed 20 parts per million by volume, dry basis (ppmvd), corrected to 18 percent oxygen, at the outlet of the control device; or b. The 3-hour block average THC mass emissions rate must be reduced by at least 95 percent.
3. Continuous process units that are equipped with a control device other than a thermal or catalytic oxidizer.	a. The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 3-hour block average THC mass emissions rate must be reduced by at least 95 percent.
4. Continuous process units that use process changes to reduce organic HAP emissions.	The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
5. Continuous kilns that are not equipped with a control device.	The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
6. Batch process units that are controlled with a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak emissions period must be reduced by at least 95 percent.
7. Batch process units that are equipped with a control device other than a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak emissions period must be reduced by at least 95 percent.

For . . .	You must meet the following emission limits . . .
8. Batch process units that use process changes to reduce organic HAP emissions.	The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
9. Batch process kilns that are not equipped with a control device.	The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
10. Each new continuous kiln that is used to produce clay refractory products.	a. The 3-hour block average HF emissions must not exceed 0.019 kilograms per megagram (kg/Mg) (0.038 pounds per ton (lb/ton)) of uncalcined clay processed, OR the 3-hour block average HF mass emissions rate must be reduced by at least 90 percent; and b. The 3-hour block average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, OR the 3-hour block average HCl mass emissions rate must be reduced by at least 30 percent; and c. The 3-hour block average PM emissions must not exceed 1.4 kg/Mg (3.1 lb/hr); and d. The 3-hour block average Hg concentration must not exceed 6.1 micrograms per dry standard cubic meter (µg/dscm), corrected to 18 percent oxygen, at the outlet of the control device or the process gas stream.
11. Each new batch process kiln that is used to produce clay refractory products.	a. The 2-run block average HF mass emissions rate for the 3-hour peak emissions period must be reduced by at least 90 percent; and b. The 2-run block average HCl mass emissions rate for the 3-hour peak emissions period must be reduced by at least 30 percent; and c. The 2-run block average PM emissions for the 3-hour peak emissions period must not exceed 1.4 kg/Mg (3.1 lb/hr); and d. The 2-run block average Hg concentration for the 3-hour peak emissions period must not exceed 6.1 µg/dscm, corrected to 18 percent oxygen, at the outlet of the control device or the process gas stream.
12. Each existing continuous kiln that is used to produce clay refractory products on and after November 20, 2022.	a. The 3-hour block average PM emissions must not exceed 4.3 kg/Mg (9.5 lb/hr); and b. The 3-hour block average Hg concentration must not exceed 18 µg/dscm, corrected to 18 percent oxygen, at the outlet of the control device or the process gas stream.
13. Each existing batch kiln that is used to produce clay refractory products on and after November 20, 2022.	a. The 2-run block average PM emissions for the 3-hour peak emissions period must not exceed 4.3 kg/Mg (9.5 lb/hr); and b. The 2-run block average Hg concentration for the 3-hour peak emissions period must not exceed 18 µg/dscm, corrected to 18 percent oxygen, at the outlet of the control device or the process gas stream.

■ 18. Table 2 to Subpart SSSSS is revised to read as follows:

Table 2 to Subpart SSSSS of Part 63—Operating Limits

As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table:

For . . .	You must . . .
1. Each affected source listed in Table 1 to this subpart.	a. Operate all affected sources according to the requirements to this subpart on and after the date on which the initial performance test is conducted or required to be conducted, whichever date is earlier; and b. Capture emissions and vent them through a closed system; and c. Operate each control device that is required to comply with this subpart on each affected source during all periods that the source is operating, except where specified in § 63.9792(e), item 2 of this table, item 5 of Table 3 to this subpart, item 13 of Table 4 to this subpart, and item 6 of Table 9 to this subpart for THC control devices on continuous kilns used to manufacture refractory products that use organic HAP; and d. Record all operating parameters specified in Table 8 to this subpart for the affected source; and e. Prepare and implement a written OM&M plan as specified in § 63.9792(d).
2. Each affected continuous kiln used to manufacture refractory products that use organic HAP that is equipped with an emission control device for THC.	a. Receive approval from the Administrator before taking the control device on the affected kiln out of service for scheduled maintenance, as specified in § 63.9792(e); and b. Before May 19, 2022, minimize HAP emissions from the affected kiln during all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service; on and after May 19, 2022, you must minimize HAP emissions during the period when the kiln is operating and the control device is out of service by complying with the applicable standard in Table 3 to this subpart; and c. Minimize the duration of all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service. On and after May 19, 2022, the total time during which the kiln is operating and the control device is out of service for the each year on a 12-month rolling basis must not exceed 750 hours.

For . . .	You must . . .
3. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	Satisfy the applicable operating limits specified in items 4 through 9 of this table.
4. Each affected continuous process unit.	Maintain the 3-hour block average organic HAP processing rate (pounds per hour) at or below the maximum organic HAP processing rate established during the most recent performance test.
5. Continuous process units that are equipped with a thermal oxidizer.	Maintain the 3-hour block average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature for the oxidizer established during the most recent performance test.
6. Continuous process units that are equipped with a catalytic oxidizer.	a. Maintain the 3-hour block average operating temperature at the inlet of the catalyst bed of the oxidizer at or above the minimum allowable operating temperature for the oxidizer established during the most recent performance test; and b. Check the activity level of the catalyst at least every 12 months.
7. Each affected batch process unit	For each batch cycle, maintain the organic HAP processing rate (pounds per batch) at or below the maximum organic HAP processing rate established during the most recent performance test.
8. Batch process units that are equipped with a thermal oxidizer.	a. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintain the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and b. For each subsequent hour of the batch cycle, maintain the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart.
9. Batch process units that are equipped with a catalytic oxidizer.	a. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintain the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and b. For each subsequent hour of the batch cycle, maintain the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and c. Check the activity level of the catalyst at least every 12 months.
10. Each new kiln that is used to process clay refractory products.	Satisfy the applicable operating limits specified in items 11 through 13 of this table.
11. Each affected kiln that is equipped with a DLA.	a. Maintain the 3-hour block average pressure drop across the DLA at or above the minimum levels established during the most recent performance test; and b. Maintain free-flowing limestone in the feed hopper, silo, and DLA at all times; and c. Maintain the limestone feeder at or above the level established during the most recent performance test; and d. Use the same grade of limestone from the same source as was used during the most recent performance test and maintain records of the source and type of limestone used; and e. Maintain no VE from the stack.
12. Each affected kiln that is equipped with a DIFF or DLS/FF.	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; and b. Verify at least once each 8-hour shift that lime is free-flowing by means of a visual check, checking the output of a load cell, carrier gas/lime flow indicator, or carrier gas pressure drop measurement system; and c. Record the lime feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test.
13. Each affected kiln that is equipped with a wet scrubber.	a. Maintain the 3-hour block average pressure drop across the scrubber, liquid pH, and liquid flow rate at or above the minimum levels established during the most recent performance test; and b. If chemicals are added to the scrubber liquid, maintain the 3-hour block average chemical feed rate at or above the minimum chemical feed rate established during the most recent performance test.
14. Each new and existing kiln used to process clay refractory products that is equipped with an activated carbon injection system.	Maintain the average carbon flow rate for each 3-hour block period at or above the average carbon flow rate established during the Hg performance test in which compliance was demonstrated.

For . . .	You must . . .
15. Each new and existing kiln that is used to process clay refractory products with no add-on control and each existing kiln that is equipped with a DLA.	Maintain no VE from the stack.
16. Each existing kiln used to process clay refractory products that is equipped with a FF.	Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan OR maintain no VE from the stack.
17. Each existing kiln used to process clay refractory products that is equipped with a wet scrubber.	Maintain the 3-hour block average pressure drop across the scrubber and liquid flow rate at or above the minimum levels established during the most recent performance test.

■ 19. Table 3 to Subpart SSSSS is revised to read as follows:

Table 3 to Subpart SSSSS of Part 63—Work Practice Standards

As stated in § 63.9788, you must comply with the work practice standards for affected sources in the following table:

For . . .	You must . . .	According to one of the following requirements . . .
1. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. At least every 10 preheating cycles, clean the residual pitch from the surfaces of the basket or container by abrasive blasting prior to placing the basket or container in the affected shape preheater; or ii. At least every 10 preheating cycles, subject the basket or container to a thermal process cycle that meets or exceeds the operating temperature and cycle time of the affected preheater, AND is conducted in a process unit that is exhausted to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven; or iii. Capture emissions from the affected shape preheater and vent them to the control device that is used to control emissions from an affected defumer or coking oven, or to a comparable thermal or catalytic oxidizer.
2. Each new or existing pitch working tank	Control POM emissions.	Capture emissions from the affected pitch working tank and vent them to the control device that is used to control emissions from an affected defumer or coking oven, OR to a comparable thermal or catalytic oxidizer.
3. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions.	Before May 19, 2022, use natural gas, or equivalent, as the kiln fuel, except during periods of natural gas curtailment or supply interruption, as defined in § 63.9824. On and after May 19, 2022, use natural gas, or equivalent, as the kiln fuel at all times.
4. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions.	Before May 19, 2022, use natural gas, or equivalent, as the kiln fuel, except during periods of natural gas curtailment or supply interruption, as defined in § 63.9824. On and after May 19, 2022, use natural gas, or equivalent, as the kiln fuel at all times.
5. Each affected continuous kiln used to manufacture refractory products that use organic HAP that is equipped with an emission control device for THC with Administrator approval to take the control device out of service for scheduled maintenance, as specified in § 63.9792(e).	Minimize HAP emissions.	i. Before May 19, 2022, minimize HAP emissions from the affected kiln during all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service consistent with your OM&M plan and minimize the time period during which the kiln is operating and the control device is out of service; or ii. On and after May 19, 2022, minimize HAP emissions during the period when the kiln is operating and the control device is out of service by maintaining the organic HAP processing rate (lb/hr) below the average organic HAP processing rate based on actual production on a 6-month rolling basis (not to include periods of kiln shut down) or below the organic HAP processing rate (lb/hr) that coincides with the lowest hour of the most recent 3-hour performance test, whichever is lower); and minimize the time period during which the kiln is operating and the control device is out of service, not to exceed 750 hours for the year (on a 12-month rolling basis).
6. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP, on and after Novermber 19, 2021.	Minimize fuel-based HAP emissions.	Use natural gas, or equivalent, as the kiln fuel, at all times.

■ 20. Table 4 to Subpart SSSSS is revised to read as follows:

Table 4 to Subpart SSSSS to Part 63—Requirements for Performance Tests

As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each affected source listed in Table 1 to this subpart.	a. Conduct performance tests.	i. The requirements of the general provisions in subpart A of this part and the requirements to this subpart.	(1) Record the date of the test; and (2) Identify the emission source that is tested; and (3) Collect and record the corresponding operating parameter and emission test data listed in this table for each run of the performance test; and (4) Repeat the performance test at least every 5 years; and (5) Repeat the performance test before changing the parameter value for any operating limit specified in your OM&M plan; and (6) If complying with the THC concentration or THC percentage reduction limits specified in items 2 through 9 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 2.a.2. and 2.a.3. of this table; and (7) If complying with the emission limits for new clay refractory products kilns specified in items 10 and 11 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 14.a.i.4. and 17.a.i.4. of this table.
	b. Select the locations of sampling ports and the number of traverse points.	i. Method 1 or 1A of 40 CFR part 60, appendix A–1.	(1) To demonstrate compliance with the percentage reduction limits specified in items 2.b., 3.b., 6.b., 7.b., 10, and 11 of Table 1 to this subpart, locate sampling sites at the inlet of the control device and at either the outlet of the control device or at the stack prior to any releases to the atmosphere; and (2) To demonstrate compliance with any other emission limit specified in Table 1 to this subpart, locate all sampling sites at the outlet of the control device or at the stack prior to any releases to the atmosphere.
	c. Determine gas velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A–1 and A–2.	Measure gas velocities and volumetric flow rates at 1-hour intervals throughout each test run.
	d. Conduct gas molecular weight analysis.	i. Method 3, 3A, or 3B of 40 CFR part 60, appendix A–2; or. ii. ASME PTC 19.10–1981—Part 10 [a]	As specified in the applicable test method. You may use the manual procedures (but not instrumental procedures) of ASME PTC 19.10–1981—Part 10 [a] as an alternative to EPA Method 3B.
	e. Measure gas moisture content.	Method 4 of 40 CFR part 60, appendix A–3.	As specified in the applicable test method.

For . . .	You must . . .	Using . . .	According to the following requirements . . .
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	a. Conduct performance tests.	.....	(1) Conduct the performance test while the source is operating at the maximum organic HAP processing rate, as defined in § 63.9824, reasonably expected to occur; and (2) Repeat the performance test before starting production of any product for which the organic HAP processing rate is likely to exceed the maximum organic HAP processing rate established during the most recent performance test by more than 10 percent, as specified in § 63.9798(c); and (3) Repeat the performance test on any affected uncontrolled kiln following process changes (*e.g.,* shorter curing oven cycle time) that could increase organic HAP emissions from the affected kiln, as specified in § 63.9798(d).
	b. Satisfy the applicable requirements listed in items 3 through 13 of this table.		
3. Each affected continuous process unit.	a. Perform a minimum of 3 test runs.	The appropriate test methods specified in items 1, 4, and 5 of this table.	Each test run must be at least 1 hour in duration.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR material safety data sheets (MSDS), OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product; and the process feed rate; and
		ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and.	(2) Calculate and record the organic HAP processing rate (pounds per hour) for each test run; and
		iii. Process feed rate data (tons per hour).	(3) Calculate and record the maximum organic HAP processing rate as the average of the organic HAP processing rates for the three test runs.
	c. Record the operating temperature of the affected source.	Process data	During each test run and at least once per hour, record the operating temperature in the highest temperature zone of the affected source.
4. Each continuous process unit that is subject to the THC emission limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A–7.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A–2.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63.9800(g)(1); and ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).
	d. Determine the 3-hour block average THC emission concentration, corrected to 18 percent oxygen.	The hourly average concentration of THC, corrected to 18 percent oxygen, for each test run.	Calculate the 3-hour block average THC emission concentration, corrected to 18 percent oxygen, as the average of the hourly average THC emission concentrations, corrected to 18 percent oxygen.
5. Each continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A–7.	(1) Each minute, measure and record the concentrations of THC at the inlet and outlet of the control device; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the inlet and outlet of the control device.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour block average THC percentage reduction.	i. The hourly THC mass emissions rates at the inlet and outlet of the control device.	(1) Calculate the hourly THC percentage reduction for each hour of the performance test using Equation 2 of § 63.9800(g)(1); and (2) Calculate the 3-hour block average THC percentage reduction.
6. Each continuous process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum allowable thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion chamber temperature; and (2) Provide at least one measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average thermal oxidizer combustion chamber temperature for each hour of the performance test; and (4) Calculate the minimum allowable combustion chamber temperature as the average of the combustion chamber temperatures for the three test runs, minus 14 °C (25 °F).
7. Each continuous process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the performance test; and (4) Calculate the minimum allowable catalyst bed inlet temperature as the average of the catalyst bed inlet temperatures for the three test runs, minus 14 °C (25 °F).
8. Each affected batch process unit.	a. Perform a minimum of two test runs.	i. The appropriate test methods specified in items 1, 9, and 10 of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and (2) Each test run must begin with the start of a batch cycle, except as specified in item 8.a.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in items 8.a.i.4. and 8.a.i.5. of this table; and (4) If you develop an emissions profile, as described in § 63.9802(a), AND for sources equipped with a thermal or catalytic oxidizer, you do not reduce the oxidizer operating temperature, as specified in item 13 of this table, you can limit each test run to the 3-hour peak THC emissions period; and

For . . .	You must . . .	Using . . .	According to the following requirements . . .
			(5) If you do not develop an emissions profile, a test run can be stopped, and the results of that run considered complete, if you measure emissions continuously until at least 3 hours after the affected process unit has reached maximum temperature, AND the hourly average THC mass emissions rate has not increased during the 3-hour period since maximum process temperature was reached, and the hourly average concentrations of THC at the inlet of the control device have not exceeded 20 ppmvd, corrected to 18 percent oxygen, during the 3-hour period since maximum process temperature was reached or the hourly average THC percentage reduction has been at least 95 percent during the 3-hour period since maximum process temperature was reached, AND, for sources equipped with a thermal or catalytic oxidizer, at least 1 hour has passed since any reduction in the operating temperature of the oxidizer, as specified in item 13 of this table.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR MSDS, OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product, and the batch weight prior to processing; and
		ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and.	(2) Calculate and record the organic HAP processing rate (pounds per batch) for each test run; and (3) Calculate and record the maximum organic HAP processing rate as the average of the organic HAP processing rates for the two test runs.
		iii. Batch weight (tons)	
	c. Record the batch cycle time.	Process data	Record the total elapsed time from the start to the completion of the batch cycle.
	d. Record the operating temperature of the affected source.	Process data	Record the operating temperature of the affected source at least once every hour from the start to the completion of the batch cycle.
9. Each batch process unit that is subject to the THC emission limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A–7.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A–2.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63.9800(g)(1); and ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).
	d. Determine the 3-hour peak THC emissions period for each test run.	The hourly average THC concentrations, corrected to 18 percent oxygen.	Select the period of 3 consecutive hours over which the sum of the hourly average THC concentrations, corrected to 18 percent oxygen, is greater than the sum of the hourly average THC emission concentrations, corrected to 18 percent oxygen, for any other period of 3 consecutive hours during the test run.
	e. Determine the average THC concentration, corrected to 18 percent oxygen, for each test run.	The hourly average THC emission concentrations, corrected to 18 percent oxygen, for the 3-hour peak THC emissions period.	Calculate the average of the hourly average THC concentrations, corrected to 18 percent oxygen, for the 3 hours of the peak emissions period for each test run.

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	f. Determine the 2-run block average THC concentration, corrected to 18 percent oxygen, for the emission test.	The average THC concentration, corrected to 18 percent oxygen, for each test run.	Calculate the average of the average THC concentrations, corrected to 18 percent oxygen, for each run.
10. Each batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A–7.	(1) Each minute, measure and record the concentrations of THC at the control device inlet and outlet; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the control device inlet and outlet.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	(1) Calculate the hourly mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour peak THC emissions period for each test run.	The hourly THC mass emissions rates at the control device inlet.	Select the period of 3 consecutive hours over which the sum of the hourly THC mass emissions rates at the control device inlet is greater than the sum of the hourly THC mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	d. Determine the average THC percentage reduction for each test run.	i. Equation 2 of § 63.9800(g)(2); and ii. The hourly THC mass emissions rates at the control device inlet and outlet for the 3-hour peak THC emissions period.	Calculate the average THC percentage reduction for each test run using Equation 2 of § 63.9800(g)(2).
	e. Determine the 2-run block average THC percentage reduction for the emission test.	The average THC percentage reduction for each test run.	Calculate the average of the average THC percentage reductions for each test run.
11. Each batch process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion chamber temperature; and (2) Provide at least one temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average combustion chamber temperature for each hour of the 3-hour peak emissions period, as defined in item 9.d. or 10.c. of this table, whichever applies; and (4) Calculate the minimum allowable thermal oxidizer combustion chamber operating temperature as the average of the hourly combustion chamber temperatures for the 3-hour peak emissions period, minus 14 °C (25 °F).
12. Each batch process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the 3-hour peak emissions period, as defined in item 9.d. or 10.c. of this table, whichever applies; and (4) Calculate the minimum allowable catalytic oxidizer catalyst bed inlet temperature as the average of the hourly catalyst bed inlet temperatures for the 3-hour peak emissions period, minus 14 °C (25 °F).

For . . .	You must . . .	Using . . .	According to the following requirements . . .
13. Each batch process unit that is equipped with a thermal or catalytic oxidizer.	a. During each test run, maintain the applicable operating temperature of the oxidizer until emission levels allow the oxidizer to be shut off or the operating temperature of the oxidizer to be reduced.	.....	(1) The oxidizer can be shut off or the oxidizer operating temperature can be reduced if you do not use an emission profile to limit testing to the 3-hour peak emissions period, as specified in item 8.a.i.4. of this table; and (2) At least 3 hours have passed since the affected process unit reached maximum temperature; and (3) The applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was met during each of the previous three 1-hour periods; and (4) The hourly average THC mass emissions rate did not increase during the 3-hour period since maximum process temperature was reached; and (5) The applicable emission limit specified in item 6.a. and 6.b. of Table 1 to this subpart was met during each of the four 15-minute periods immediately following the oxidizer temperature reduction; and (6) If the applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was not met during any of the four 15-minute periods immediately following the oxidizer temperature reduction, you must return the oxidizer to its normal operating temperature as soon as possible and maintain that temperature for at least 1 hour; and (7) Continue the test run until the applicable emission limit specified in items 6.a. and 6.b. of Table 1 to this subpart is met for at least four consecutive 15-minute periods that immediately follow the temperature reduction; and (8) Calculate the hourly average oxidizer operating temperature for each hour of the performance test since the affected process unit reached maximum temperature.
14. Each new continuous kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCl.	i. Method 26A of 40 CFR part 60, appendix A–8; or. ii. Method 26 of 40 CFR part 60, appendix A–8; or. iii. Method 320 of 40 CFR part 63, appendix A	(1) Conduct the test while the kiln is operating at the maximum production level; and (2) You may use EPA Method 26 of 40 CFR part 60, appendix A–8, only if no acid PM (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use EPA Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of EPA Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source. ASTM D6348–12e1 [a] may be used as an alternative to EPA Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte and is equal or greater than 70 percent and less than or equal to 130 percent; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.
	b. Perform a minimum of 3 test runs.	The appropriate test methods specified in items 1 and 14.a. of this table.	Each test run must be at least 1 hour in duration.
15. Each new continuous kiln that is subject to the production-based HF and HCl emission limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Record the uncalcined clay processing rate.	i. Production data; and ii. Product formulation data that specify the mass fraction of uncalcined clay in the products that are processed during the performance test.	(1) Record the production rate (tons per hour of fired product); and (2) Calculate and record the average rate at which uncalcined clay is processed (tons per hour) for each test run; and (3) Calculate and record the 3-run average uncalcined clay processing rate as the average of the average uncalcined clay processing rates for each test run.
	b. Determine the HF mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A–8; or. ii. Method 26 of 40 CFR part 60, appendix A–8; or. iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HF mass emissions rate for each test. ASTM D6348–12e1 [a] may be used as an alternative to EPA Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte and is equal or greater than 70 percent and less than or equal to 130 percent.

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Determine the 3-hour block average production-based HF emissions rate.	i. The HF mass emissions rate for each test run; and. ii. The average uncalcined clay processing rate	(1) Calculate the hourly production-based HF emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HF emissions rate as the average of the hourly production-based HF emissions rates for each test run.
	d. Determine the HCl mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A–8; or. ii. Method 26 of 40 CFR part 60, appendix A–8; or. iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HCl mass emissions rate for each test run. ASTM D6348–12e1 [a] may be used as an alternative to EPA Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte and is equal or greater than 70 percent and less than or equal to 130 percent.
	e. Determine the 3-hour block average production-based HCl emissions rate.	i. The HCl mass emissions rate for each test run; and. ii. The average uncalcined clay processing rate	(1) Calculate the hourly production-based HCl emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HCl emissions rate as the average of the production-based HCl emissions rates for each test run.
16. Each new continuous kiln that is subject to the HF and HCl percentage reduction limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Measure the HF mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A–8; or. ii. Method 26 of 40 CFR part 60, appendix A–8; or. iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HF mass emissions rates at the control device inlet and outlet for each test run. ASTM D6348–12e1 [a] may be used as an alternative to EPA Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte and is equal or greater than 70 percent and less than or equal to 130 percent.
	b. Determine the 3-hour block average HF percentage reduction.	i. The HF mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HF percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HF percentage reduction as the average of the HF percentage reductions for each test run.
	c. Measure the HCl mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A–8; or. ii. Method 26 of 40 CFR part 60, appendix A–8; or. iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HCl mass emissions rates at the control device inlet and outlet for each test run. ASTM D6348–12e1 [a] may be used as an alternative to EPA Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte and is equal or greater than 70 percent and less than or equal to 130 percent.
	d. Determine the 3-hour block average HCl percentage reduction..	i. The HCl mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HCl percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HCl percentage reduction as the average of HCl percentage reductions for each test run.
17. Each new batch process kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCl at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A–8; or. ii. Method 26 of 40 CFR part 60, appendix A–8; or. iii. Method 320 of 40 CFR part 63, appendix A	(1) Conduct the test while the kiln is operating at the maximum production level; and (2) You may use EPA Method 26 of 40 CFR part 60, appendix A, only if no acid PM (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use EPA Method 320 of 40 CFR part 63, you must follow the analyte spiking procedures of Section 13 of EPA Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source ASTM D6348–12e1 [a] may be used as an alternative to EPA Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte and is equal or greater than 70 percent and less than or equal to 130 percent.; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.
	b. Perform a minimum of 2 test runs.	i. The appropriate test methods specified in items 1 and 17.a. of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and (2) Each test run must consist of a series of 1-hour runs at the inlet and outlet of the control device, beginning with the start of a batch cycle, except as specified in item 17.b.i.4. of this table; and

For . . .	You must . . .	Using . . .	According to the following requirements . . .
			(3) Each test run must continue until the end of the batch cycle, except as specified in item 17.b.i.4. of this table; and (4) If you develop an emissions profile, as described in § 63.9802(b), you can limit each test run to the 3-hour peak HF emissions period.
	c. Determine the hourly HF and HCl mass emissions rates at the inlet and outlet of the control device.	i. The appropriate test methods specified in items 1 and 17.a. of this table.	Determine the hourly mass HF and HCl emissions rates at the inlet and outlet of the control device for each hour of each test run.
	d. Determine the 3-hour peak HF emissions period.	The hourly HF mass emissions rates at the inlet of the control device.	Select the period of 3 consecutive hours over which the sum of the hourly HF mass emissions rates at the control device inlet is greater than the sum of the hourly HF mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	e. Determine the 2-run block average HF percentage reduction for the emissions test.	i. The hourly average HF emissions rates at the inlet and outlet of the control device.	(1) Calculate the HF percentage reduction for each hour of the 3-hour peak HF emissions period using Equation 2 of § 63.9800(g)(2); and (2) Calculate the average HF percentage reduction for each test run as the average of the hourly HF percentage reductions for the 3-hour peak HF emissions period for that run; and (3) Calculate the 2-run block average HF percentage reduction for the emission test as the average of the average HF percentage reductions for the two test runs.
	f. Determine the 2-run block average HCl percentage reduction for the emission test.	i. The hourly average HCl emissions rates at the inlet and outlet of the control device.	(1) Calculate the HCl percentage reduction for each hour of the 3-hour peak HF emissions period using Equation 2 § 63.9800(g)(2); and (2) Calculate the average HCl percentage reduction for each test run as the average of the hourly HCl percentage reductions for the 3-hour peak HF emissions period for that run; and (3) Calculate the 2-run block average HCl percentage reduction for the emission test as the average of the average HCl percentage reductions for the two test runs.
18. Each new kiln that is used to process clay refractory products and is equipped with a DLA.	a. Establish the operating limit for the minimum pressure drop across the DLA.	Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the DLA; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the DLA for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the DLA for the two or three test runs, whichever applies.
	b. Establish the operating limit for the limestone feeder setting.	Data from the limestone feeder during the performance test.	(1) Ensure that limestone in the feed hopper, silo, and DLA is free-flowing at all times during the performance test; and (2) Establish the limestone feeder setting 1 week prior to the performance test; and (3) Record and maintain the feeder setting for the 1-week period that precedes the performance test and during the performance test.
19. Each new kiln that is used to process clay refractory products and is equipped with a DIFF or DLS/FF.	a. Document conformance with specifications and requirements of the bag leak detection system.	Data from the installation and calibration of the bag leak detection system.	Submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems as part of the Notification of Compliance Status.
	b. Establish the operating limit for the lime feeder setting.	i. Data from the lime feeder during the performance test.	(1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times during the performance test; and (2) Record the feeder setting for the three test runs; and (3) If the feed rate setting varies during the three test runs, calculate and record the average feed rate for the two or three test runs, whichever applies.

For . . .	You must . . .	Using . . .	According to the following requirements . . .
20. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Establish the operating limit for the minimum scrubber pressure drop.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the scrubber; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the scrubber for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the scrubber for the two or three test runs, whichever applies.
	b. Establish the operating limit for the minimum scrubber liquid pH.	i. Data from the pH measurement device during the performance test.	(1) At least every 15 minutes, measure scrubber liquid pH; and (2) Provide at least one pH measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pH values for each hour of the performance test; and (4) Calculate and record the minimum liquid pH as the average of the hourly average pH measurements for the two or three test runs, whichever applies.
	c. Establish the operating limit for the minimum scrubber liquid flow rate.	i. Data from the flow rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber liquid flow rate; and (2) Provide at least one flow rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average liquid flow rate for each hour of the performance test; and (4) Calculate and record the minimum liquid flow rate as the average of the hourly average liquid flow rates for the two or three test runs, whichever applies.
	d. If chemicals are added to the scrubber liquid, establish the operating limit for the minimum scrubber chemical feed rate.	i. Data from the chemical feed rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber chemical feed rate; and (2) Provide at least one chemical feed rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average chemical feed rate for each hour of the performance test; and (4) Calculate and record the minimum chemical feed rate as the average of the hourly average chemical feed rates for the two or three test runs, whichever applies.
21. Each new and existing kiln that is used to process clay refractory products that is subject to the PM limits specified in items 10.c. 11.c, 12.a, and 13.a of Table 1 to this subpart.	Measure PM emissions.	Method 5 of 40 CFR part 60, appendix A–3.	
22. Each new and existing kiln that is used to process clay refractory products that is subject to the Hg limits specified in items 10.d. 11.d, 12.b, and 13.b of Table 1 to this subpart.	Measure Hg emissions.	Method 29 of 40 CFR part 60, appendix A–8.	ASTM D6784–16[a] may be used as an alternative to EPA Method 29 (portion for Hg only).
23. Each new and existing kiln that is used to process clay refractory products and is equipped with an activated carbon injection system.	Establish the operating limit for the average carbon flow rate.	Data from the carbon flow rate measurement conducted during the Hg performance test.	You must measure the carbon flow rate during each test run, determine and record the block average carbon flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded carbon flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific activated carbon flow rate operating limit.

For . . .	You must . . .	Using . . .	According to the following requirements . . .
24. Each existing kiln that is used to process clay refractory products and is equipped with a FF and a bag leak detection system.	Document conformance with specifications and requirements of the bag leak detection system.	Data from the installation and calibration of the bag leak detection system.	Submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems as part of the Notification of Compliance Status.
25. Each existing kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Establish the operating limit for the minimum scrubber pressure drop.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the scrubber; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the scrubber for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the scrubber for the two or three test runs, whichever applies.
	b. Establish the operating limit for the minimum scrubber liquid flow rate.	i. Data from the flow rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber liquid flow rate; and (2) Provide at least one flow rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average liquid flow rate for each hour of the performance test; and (4) Calculate and record the minimum liquid flow rate as the average of the hourly average liquid flow rates for the two or three test runs, whichever applies.

[a] Incorporated by reference, see § 63.14.

■ 21. Table 5 to Subpart SSSSS is revised to read as follows:

Table 5 to Subpart SSSSS of Part 63—Initial Compliance With Emission Limits

As stated in § 63.9806, you must show initial compliance with the emission limits for affected sources according to the following table:

For . . .	For the following emission limit . . .	You have demonstrated compliance if . . .
1. Each affected source listed in Table 1 to this subpart.	a. Each applicable emission limit listed in Table 1 to this subpart.	i. Emissions measured using the test methods specified in Table 4 to this subpart satisfy the applicable emission limits specified in Table 1 to this subpart; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the performance test period; and iii. You report the results of the performance test in the Notification of Compliance Status, as specified by § 63.9812(e)(1) and (2).
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 through 8 of this table.	You have satisfied the applicable requirements specified in items 3 through 8 of this table.
3. Each affected continuous process unit that is subject to the THC emission concentration limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 3-hour block average THC emission concentration measured during the performance test using EPA Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.

For . . .	For the following emission limit . . .	You have demonstrated compliance if . . .
4. Each affected continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 3-hour block average THC percentage reduction measured during the performance test using EPA Method 25A is equal to or greater than 95 percent.
5. Each affected batch process unit that is subject to the THC emission concentration limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 2-run block average THC emission concentration for the 3-hour peak emissions period measured during the performance test using EPA Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
6. Each affected batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 2-run block average THC percentage reduction for the 3-hour peak emissions period measured during the performance test using EPA Method 25A is equal to or exceeds 95 percent.
7. Each affected continuous or batch process unit that is equipped with a control device other than a thermal or catalytic oxidizer and is subject to the emission limit listed in item 3 or 7 of Table 1 to this subpart.	a. The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; or b. The average THC percentage reduction must equal or exceed 95 percent.	i. You have installed a THC CEMS at the outlet of the control device or in the stack of the affected source; and ii. You have satisfied the requirements of PS–8 of 40 CFR part 60, appendix B.
8. Each affected continuous or batch process unit that uses process changes to reduce organic HAP emissions and is subject to the emission limit listed in item 4 or 8 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	i. You have installed a THC CEMS at the outlet of the control device or in the stack of the affected source; and ii. You have satisfied the requirements of PS–8 of 40 CFR part 60, appendix B.
9. Each new continuous kiln that is used to process clay refractory products.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent.	i. The 3-hour block average production-based HF emissions rate measured during the performance test using one of the methods specified in item 14.a.i. of Table 4 to this subpart is equal to or less than 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; or The 3-hour block average HF emissions reduction measured during the performance test is equal to or greater than 90 percent.
	b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. The 3-hour block average production-based HCl emissions rate measured during the performance test using one of the methods specified in item 14.a.i. of Table 4 to this subpart is equal to or less than 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; or ii. The 3-hour block average HCl emissions reduction measured during the performance test is equal to or greater than 30 percent.
	c. The average PM emissions must not exceed 1.4 kg/Mg (3.1 lb/hr).	i. The 3-hour block average PM emissions measured during the performance test using one of the methods specified in item 21 of Table 4 to this subpart is equal to or less than 1.4 kg/Mg (3.1 lb/hr).
	d. The average Hg emissions must not exceed 6.1 µg/dscm at 18 percent oxygen.	i. The 3-hour block average Hg emissions measured during the performance test using one of the methods specified in item 22 of Table 4 to this subpart is equal to or less than 6.1 µg/dscm at 18 percent oxygen.
10. Each new batch process kiln that is used to process clay refractory products.	a. The average uncontrolled HF emissions must be reduced by at least 90 percent.	The 2-run block average HF emission reduction measured during the performance test is equal to or greater than 90 percent.
	b. The average uncontrolled HCl emissions must be reduced by at least 30 percent.	The 2-run block average HCl emissions reduction measured during the performance test is equal to or greater than 30 percent.
	c. The average PM emissions must not exceed 1.4 kg/Mg (3.1 lb/hr).	i. The 2-run block average PM emissions measured during the performance test using one of the methods specified in item 21 of Table 4 to this subpart is equal to or less than 1.4 kg/Mg (3.1 lb/hr).
	d. The average Hg emissions must not exceed 6.1 µg/dscm at 18 percent oxygen.	i. The 2-run block average Hg emissions measured during the performance test using one of the methods specified in item 22 of Table 4 to this subpart is equal to or less than 6.1 µg/dscm at 18 percent oxygen.
11. Each existing continuous kiln that is used to produce clay refractory products on and after November 20, 2022.	a. The average PM emissions must not exceed 4.3 kg/Mg (9.5 lb/hr).	i. The 3-hour block average PM emissions measured during the performance test using one of the methods specified in item 21 of Table 4 to this subpart is equal to or less than 4.3 kg/Mg (9.5 lb/hr).

For . . .	For the following emission limit . . .	You have demonstrated compliance if . . .
	b. The average Hg emissions must not exceed 18 µg/dscm at 18 percent oxygen.	i. The 3-hour block average Hg emissions measured during the performance test using one of the methods specified in item 22 of Table 4 to this subpart is equal to or less than 18 µg/dscm at 18 percent oxygen.
12. Each existing batch kiln that is used to produce clay refractory products on and after November 20, 2022.	a. The average PM emissions must not exceed 4.3 kg/Mg (9.5 lb/hr).	i. The 2-run block average PM emissions measured during the performance test using one of the methods specified in item 21 of Table 4 to this subpart is equal to or less than 4.3 kg/Mg (9.5 lb/hr).
	b. The average Hg emissions must not exceed 18 µg/dscm at 18 percent oxygen.	i. The 2-run block average Hg emissions measured during the performance test using one of the methods specified in item 22 of Table 4 to this subpart is equal to or less than 18 µg/dscm at 18 percent oxygen.

■ 22. Table 6 to Subpart SSSSS is revised to read as follows:

Table 6 to Subpart SSSSS of Part 63—Initial Compliance With Work Practice Standards

As stated in § 63.9806, you must show initial compliance with the work practice standards for affected sources according to the following table:

For each . . .	For the following standard . . .	You have demonstrated initial compliance if . . .
1. Each affected source listed in Table 3 to this subpart.	a. Each applicable work practice standard listed in Table 3 to this subpart.	i. You have selected a method for performing each of the applicable work practice standards listed in Table 3 to this subpart; and ii. You have included in your Initial Notification a description of the method selected for complying with each applicable work practice standard, as required by § 63.9(b); and iii. You submit a signed statement with the Notification of Compliance Status that you have implemented the applicable work practice standard listed in Table 3 to this subpart; and iv. You have described in your OM&M plan the method for complying with each applicable work practice standard specified in Table 3 to this subpart.
2. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. You have implemented at least one of the work practice standards listed in item 1 of Table 3 to this subpart; and ii. You have established a system for recording the date and cleaning method for each time you clean an affected basket or container.
3. Each affected new or existing pitch working tank.	Control POM emissions	You have captured and vented emissions from the affected pitch working tank to the device that is used to control emissions from an affected defumer or coking oven, or to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven.
4. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions.	You use natural gas, or equivalent, as the kiln fuel.
5. Each existing clay refractory products kiln.	Minimize fuel-based HAP emissions.	You use natural gas, or equivalent, as the kiln fuel.
6. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP, on and after November 19, 2021.	Minimize fuel-based HAP emissions.	You use natural gas, or equivalent, as the kiln fuel.

■ 23. Table 7 to Subpart SSSSS is revised to read as follows:

Table 7 to Subpart SSSSS of Part 63—Continuous Compliance With Emission Limits

As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 1 to this subpart.	a. Each applicable emission limit listed in Table 1 to this subpart.	i. Collecting and recording the monitoring and process data listed in Table 2 (operating limits) to this subpart; and ii. Reducing the monitoring and process data associated with the operating limits specified in Table 2 to this subpart; and iii. Recording the results of any control device inspections; and

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
		iv. Reporting, in accordance with §63.9814(e), any deviation from the applicable operating limits specified in Table 2 to this subpart.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 through 7 of this table.	Satisfying the applicable requirements specified in items 3 through 7 of this table.
3. Each affected process unit that is equipped with a thermal or catalytic oxidizer.	a. The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	i. Collecting the applicable data measured by the control device temperature monitoring system, as specified in items 5, 6, 8, and 9 of Table 8 to this subpart; and ii. Reducing the applicable data measured by the control device temperature monitoring system, as specified in items 5, 6, 8, and 9 of Table 8 to this subpart; and iii. Maintaining the average control device operating temperature for the applicable averaging period specified in items 5, 6, 8, and 9 of Table 2 to this subpart at or above the minimum allowable operating temperature established during the most recent performance test.
4. Each affected process unit that is equipped with a control device other than a thermal or catalytic oxidizer.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC performance reduction must equal or exceed 95 percent.	Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F.
5. Each affected process unit that uses process changes to meet the applicable emission limit.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F.
6. Each affected continuous process unit.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	Recording the organic HAP processing rate (pounds per hour) and the operating temperature of the affected source, as specified in items 3.b. and 3.c. of Table 4 to this subpart.
7. Each affected batch process unit	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	Recording the organic HAP processing rate (pounds per batch); and process cycle time for each batch cycle; and hourly average operating temperature of the affected source, as specified in items 8.b. through 8.d. of Table 4 to this subpart.
8. Each new kiln that is used to process clay refractory products.	As specified in items 9 through 11 of this table.	Satisfying the applicable requirements specified in items 9 through 11 of this table.
9. Each new affected kiln that is equipped with a DLA.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed, OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, or the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. Maintaining the pressure drop across the DLA at or above the minimum levels established during the most recent performance test; and ii. Verifying that the limestone hopper contains an adequate amount of free-flowing limestone by performing a daily visual check of the limestone in the feed hopper; and iii. Recording the limestone feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test; and iv. Using the same grade of limestone as was used during the most recent performance test and maintaining records of the source and grade of limestone.

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
	c. The average PM emissions must not exceed 1.4 kg/Mg (3.1 lb/hr); and d. The average Hg emissions must not exceed 6.1 µg/dscm, corrected to 18 percent oxygen.	i. Performing VE observations of the stack at the frequency specified in § 63.9810(f) using EPA Method 22 of 40 CFR part 60, appendix A–7; maintaining no VE from the stack.
10. Each new affected kiln that is equipped with a DIFF or DLS/FF.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent; and c. The average PM emissions must not exceed 1.4 kg/Mg (3.1 lb/hr); and d. The average Hg emissions must not exceed 6.1 µg/dscm, corrected to 18 percent oxygen.	i. Verifying at least once each 8-hour shift that lime is free-flowing by means of a visual check, checking the output of a load cell, carrier gas/lime flow indicator, or carrier gas pressure drop measurement system; and ii. Recording feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test; and iii. Initiating corrective action within 1 hour of a bag leak detection system alarm AND completing corrective actions in accordance with the OM&M plan, AND operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period.
11. Each new affected kiln that is equipped with a wet scrubber.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent; and c. The average PM emissions must not exceed 1.4 kg/Mg (3.1 lb/hr); and d. The average Hg emissions must not exceed 6.1 µg/dscm, corrected to 18 percent oxygen.	i. Maintaining the pressure drop across the scrubber, liquid pH, and liquid flow rate at or above the minimum levels established during the most recent performance test; and ii. If chemicals are added to the scrubber liquid, maintaining the average chemical feed rate at or above the minimum chemical feed rate established during the most recent performance test.
12. Each new affected kiln that is equipped with an activated carbon injection system.	The average Hg emissions must not exceed 6.1 µg/dscm, corrected to 18 percent oxygen.	Collecting the carbon flow rate data according to § 63.9804(a); reducing the carbon flow rate data to 3-hour block averages according to § 63.9804(a); maintaining the average carbon flow rate for each 3-hour block period at or above the average carbon flow rate established during the Hg performance test in which compliance was demonstrated.
13. Each existing affected kiln that is equipped with a DLA or no add-on control.	a. The average PM emissions must not exceed 4.3 kg/Mg (9.5 lb/hr); and. b. The average Hg emissions must not exceed 18 µg/dscm, corrected to 18 percent oxygen.	i. Performing VE observations of the stack at the frequency specified in § 63.9810(f) using EPA Method 22 of 40 CFR part 60, appendix A–7; maintaining no VE from the stack.
14. Each existing affected kiln that is equipped with a DIFF or DLS/FF.	a. The average PM emissions must not exceed 4.3 kg/Mg (9.5 lb/hr).	i. If you use a bag leak detection system, as prescribed in § 63.9804(f), initiating corrective action within 1 hour of a bag leak detection system alarm AND completing corrective actions in accordance with the OM&M plan, AND operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period; OR ii. Performing VE observations of the stack at the frequency specified in § 63.9810(f) using EPA Method 22 of 40 CFR part 60, appendix A–7; maintaining no VE from the stack.

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
15. Each existing affected kiln that is equipped with a wet scrubber.	a. The average PM emissions must not exceed 4.3 kg/Mg (9.5 lb/hr); and b. The average Hg emissions must not exceed 18 µg/dscm, corrected to 18 percent oxygen.	i. Maintaining the pressure drop across the scrubber and liquid flow rate at or above the minimum levels established during the most recent performance test.
16. Each existing affected kiln that is equipped with an activated carbon injection system.	The average Hg emissions must not exceed 18 µg/dscm, corrected to 18 percent oxygen.	Collecting the carbon flow rate data according to § 63.9804(a); reducing the carbon flow rate data to 3-hour block averages according to § 63.9804(a); maintaining the average carbon flow rate for each 3-hour block period at or above the average carbon flow rate established during the Hg performance test in which compliance was demonstrated.

■ 24. Table 8 to Subpart SSSSS is revised to read as follows:

Table 8 to Subpart SSSSS of Part 63—Continuous Compliance With Operating Limits

As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 2 to this subpart.	a. Each applicable operating limit listed in Table 2 to this subpart.	i. Maintaining all applicable process and control device operating parameters within the limits established during the most recent performance test; and ii. Conducting annually an inspection of all duct work, vents, and capture devices to verify that no leaks exist and that the capture device is operating such that all emissions are properly vented to the control device in accordance with the OM&M plan.
2. Each affected continuous kiln used to manufacture refractory products that use organic HAP that is equipped with a THC control device.	a. The operating limits specified in items 2.a. through 2.c. of Table 2 to this subpart.	i. Operating the control device on the affected kiln during all times except during periods of approved scheduled maintenance, as specified in § 63.9792(e); and ii. Before May 19, 2022, minimizing HAP emissions from the affected kiln during all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service; on and after May 19, 2022, minimizing HAP emissions during the period when the kiln is operating and the control device is out of service by complying with the applicable standard in Table 3 to this subpart; and iii. Minimizing the duration of all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service; on and after May 19, 2022, the total time during which the kiln is operating and the control device is out of service for the each year on a 12-month rolling basis must not exceed 750 hours.
3. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 4 through 9 of this table.	Satisfying the applicable requirements specified in items 4 through 9 of this table.
4. Each affected continuous process unit.	Maintain process operating parameters within the limits established during the most recent performance test.	i. Recording the organic HAP processing rate (pounds per hour); and ii. Recording the operating temperature of the affected source at least hourly; and iii. Maintaining the 3-hour block average organic HAP processing rate at or below the maximum organic HAP processing rate established during the most recent performance test.

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
5. Continuous process units that are equipped with a thermal oxidizer.	Maintain the 3-hour block average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature; and iii. Maintaining the 3-hour block average thermal oxidizer combustion chamber temperature at or above the minimum allowable operating temperature established during the most recent performance test; and iv. Reporting, in accordance with §63.9814(e), any 3-hour block average operating temperature measurements below the minimum allowable thermal oxidizer combustion chamber operating temperature established during the most recent performance test.
6. Continuous process units that are equipped with a catalytic oxidizer.	a. Maintain the 3-hour block average temperature at the inlet of the catalyst bed at or above the minimum allowable catalyst bed inlet temperature established during the most recent performance test.	i. Measuring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes; and ii. Calculating the hourly average temperature at the inlet of the catalyst bed; and iii. Maintaining the 3-hour block average temperature at the inlet of the catalyst bed at or above the minimum allowable catalyst bed inlet temperature established during the most recent performance test; and iv. Reporting, in accordance with §63.9814(e), any 3-hour block average catalyst bed inlet temperature measurements below the minimum allowable catalyst bed inlet temperature established during the most recent performance; and v. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.
7. Each affected batch process unit	Maintain process operating parameters within the limits established during the most recent performance test.	i. Recording the organic HAP processing rate (pounds per batch); and ii. Recording the hourly average operating temperature of the affected source; and iii. Recording the process cycle time for each batch cycle; and iv. Maintaining the organic HAP processing rate at or below the maximum organic HAP processing rate established during the most recent performance test.
8. Batch process units that are equipped with a thermal oxidizer.	Maintain the hourly average temperature in the thermal oxidizer combustion chamber at or above the hourly average temperature established for the corresponding 1-hour period of the cycle during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature; and iii. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintaining the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and iv. For each subsequent hour of the batch cycle, maintaining the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and v. Reporting, in accordance with §63.9814(e), any temperature measurements below the minimum allowable thermal oxidizer combustion chamber temperature measured during the most recent performance test.

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
9. Batch process units that are equipped with a catalytic oxidizer.	Maintain the hourly average temperature at the inlet of the catalyst bed at or above the corresponding hourly average temperature established for the corresponding 1-hour period of the cycle during the most recent performance test.	i. Measuring and recording temperatures at the inlet of the catalyst bed at least every 15 minutes; and ii. Calculating the hourly average temperature at the inlet of the catalyst bed; and iii. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintaining the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable bed inlet temperature established for the corresponding period during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and iv. For each subsequent hour of the batch cycle, maintaining the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable bed inlet temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and v. Reporting, in accordance with §63.9814(e), any catalyst bed inlet temperature measurements below the minimum allowable bed inlet temperature measured during the most recent performance test; and vi. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.
10. Each new kiln that is used to process clay refractory products.	As specified in items 11 through 13 of this table.	Satisfying the applicable requirements specified in items 11 through 13 of this table.
11. Each new kiln that is equipped a DLA.	a. Maintain the average pressure drop across the DLA for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	i. Collecting the DLA pressure drop data, as specified in item 18.a. of Table 4 to this subpart; and ii. Reducing the DLA pressure drop data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average pressure drop across the DLA at or above the minimum pressure drop established during the most recent performance test.
	b. Maintain free-flowing limestone in the feed hopper, silo, and DLA.	Verifying that the limestone hopper has an adequate amount of free-flowing limestone by performing a daily visual check of the limestone hopper.
	c. Maintain the limestone feeder setting at or above the level established during the most recent performance test.	Recording the limestone feeder setting at least daily to verify that the feeder setting is being maintained at or above the level established during the most recent performance test.
	d. Use the same grade of limestone from the same source as was used during the most recent performance test.	Using the same grade of limestone as was used during the most recent performance test and maintaining records of the source and grade of limestone.
	e. Maintain no VE from the stack ..	i. Performing VE observations of the stack at the frequency specified in §63.9810(f) using EPA Method 22 of 40 CFR part 60, appendix A–7; and ii. Maintaining no VE from the stack.
12. Each new kiln that is equipped with a DIFF or DLS/FF.	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; AND operate and maintain the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period.	i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with the OM&M plan; and ≤ii. Operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm shall be counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	b. Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; AND maintain feeder setting at or above the level established during the most recent performance test for continuous injection systems.	i. Verifying at least once each 8-hour shift that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions; and ii. Recording the feeder setting once each day of operation to verify that the feeder setting is being maintained at or above the level established during the most recent performance test.
13. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Maintain the average pressure drop across the scrubber for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	i. Collecting the scrubber pressure drop data, as specified in item 20.a. of Table 4 to this subpart; and ii. Reducing the scrubber pressure drop data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber pressure drop at or above the minimum pressure drop established during the most recent performance test.
	b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the minimum scrubber liquid pH established during the most recent performance test.	i. Collecting the scrubber liquid pH data, as specified in item 20.b. of Table 4 to this subpart; and ii. Reducing the scrubber liquid pH data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber liquid pH at or above the minimum scrubber liquid pH established during the most recent performance test.
	c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the minimum scrubber liquid flow rate established during the most recent performance test.	i. Collecting the scrubber liquid flow rate data, as specified in item 20.c. of Table 4 to this subpart; and ii. Reducing the scrubber liquid flow rate data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber liquid flow rate at or above the minimum scrubber liquid flow rate established during the most recent performance test.
	d. If chemicals are added to the scrubber liquid, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the minimum scrubber chemical feed rate established during the most recent performance test.	i. Collecting the scrubber chemical feed rate data, as specified in item 20.d. of Table 4 to this subpart; and ii. Reducing the scrubber chemical feed rate data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber chemical feed rate at or above the minimum scrubber chemical feed rate established during the most recent performance test.
14. Each new and existing affected kiln that is equipped with an activated carbon injection system.	a. Maintain the average carbon flow rate for each 3-hour block period at or above the average carbon flow rate established during the Hg performance test in which compliance was demonstrated.	i. Collecting the carbon flow rate data, as specified in item 23 of Table 4 to this subpart; and ii. Reducing the carbon flow rate data to 3-hour block averages; and iii. Maintaining the average carbon flow rate for each 3-hour block period at or above the average carbon flow rate established during the Hg performance test in which compliance was demonstrated.
15. Each existing affected kiln that is equipped with a DLA or no add-on control.	a. Maintain no VE from the stack ..	i. Performing VE observations of the stack at the frequency specified in § 63.9810(f) using EPA Method 22 of 40 CFR part 60, appendix A–7; and ii. Maintaining no VE from the stack.
16. Each existing affected kiln that is equipped with a FF.	a. Maintain no VE from the stack; OR.	i. Performing VE observations of the stack at the frequency specified in § 63.9810(f) using EPA Method 22 of 40 CFR part 60, appendix A–7; and ii. Maintaining no VE from the stack.

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	b. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; AND operate and maintain the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period.	i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with the OM&M plan; and ii. Operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm shall be counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.
17. Each existing affected kiln that is equipped with a wet scrubber.	a. Maintain the average pressure drop across the scrubber for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	i. Collecting the scrubber pressure drop data, as specified in item 25.a of Table 4 to this subpart; and ii. Reducing the scrubber pressure drop data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber pressure drop at or above the minimum pressure drop established during the most recent performance test.
	b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the minimum scrubber liquid flow rate established during the most recent performance test.	i. Collecting the scrubber liquid flow rate data, as specified in item 25.b. of Table 4 to this subpart; and ii. Reducing the scrubber liquid flow rate data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber liquid flow rate at or above the minimum scrubber liquid flow rate established during the most recent performance test.

■ 25. Table 9 to Subpart SSSSS is revised to read as follows:

Table 9 to Subpart SSSSS of Part 63—Continuous Compliance With Work Practice Standards

As stated in § 63.9810, you must show continuous compliance with the work practice standards for affected sources according to the following table:

For . . .	For the following work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 3 to this subpart.	Each applicable work practice requirement listed in Table 3 to this subpart.	i. Performing each applicable work practice standard listed in Table 3 to this subpart; and ii. Maintaining records that document the method and frequency for complying with each applicable work practice standard listed in Table 3 to this subpart, as required by §§ 63.10(b) and 63.9816(c)(2).
2. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	Control POM emissions from any affected shape preheater.	i. Controlling emissions from the volatilization of residual pitch by implementing one of the work practice standards listed in item 1 of Table 3 to this subpart; and ii. Recording the date and cleaning method each time you clean an affected basket or container.
3. Each new or existing pitch working tank.	Control POM emissions	Capturing and venting emissions from the affected pitch working tank to the control device that is used to control emissions from an affected defumer or coking oven, or to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven.
4. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions.	i. Before November 19, 2021, using natural gas, or equivalent, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; on and after November 19, 2021, using natural gas, or equivalent, as the kiln fuel at all times; and ii. Before November 19, 2021, if you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824; and iii. Before November 19, 2021, submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.9814(g).

For . . .	For the following work practice standard . . .	You must demonstrate continuous compliance by . . .
5. Each existing clay refractory products kiln.	Minimize fuel-based HAP emissions.	i. Before November 19, 2021, using natural gas, or equivalent, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; on and after November 19, 2021, using natural gas, or equivalent, as the kiln fuel at all times; and ii. Before November 19, 2021, if you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824; and iii. Before November 19, 2021, submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.9814(g).
6. Each affected continuous kiln used to manufacture refractory products that use organic HAP that is equipped with an emission control device for THC.	Minimize organic HAP emissions ..	i. Operating the control device at all times unless you receive Administrator approval to take the control device out of service for scheduled maintenance, as specified in § 63.9792(e); and ii. Minimizing HAP emissions during the period when the kiln is operating and the control device is out of service as specified in item 5 of Table 3 to this subpart; and iii. On and after November 19, 2021, recording the actual hourly organic HAP processing rate for the kiln while the control device was out of service and the amount of product manufactured in the kiln while the control device was out of service; and iv. Recording the duration of each period when the kiln is operating and the control device is out of service and, on and after November 19, 2021, the total amount of time per year on a 12-month rolling basis that the kiln has operated and the control device has been out of service.
7. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP, on and after November 19, 2021.	Minimize fuel-based HAP emissions.	Using natural gas, or equivalent, as the kiln fuel at all times.

■ 26. Table 10 to Subpart SSSSS is revised to read as follows:

Table 10 to Subpart SSSSS of Part 63—Requirements for Reports

As stated in § 63.9814, you must comply with the requirements for reports in the following table:

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	The information in § 63.9814(c) through (f).	Semiannually according to the requirements in § 63.9814(a) through (f).
2. Before May 19, 2022, immediate SSM report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP, on and after May 19, 2022, immediate SSM report is not required.	a. Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii).	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.
3. Before May 19, 2022, report of alternative fuel use.	The information in § 63.9814(g) and items 4 and 5 of Table 9 to this subpart.	If you are subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you use an alternative fuel in the affected kiln, by letter within 10 working days after terminating the use of the alternative fuel.
4. Performance test report	The information in § 63.7(g)	According to the requirements of § 63.9814(h).
5. CMS performance evaluation, as required for CEMS.	The information in § 63.7(g)	According to the requirements of § 63.9814(i).

■ 27. Table 11 to Subpart SSSSS is revised to read as follows:

Table 11 to Subpart SSSSS of Part 63—Applicability of General Provisions to Subpart SSSSS

As stated in § 63.9820, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.1	Applicability		Yes.
§ 63.2	Definitions		Yes.
§ 63.3	Units and Abbreviations		Yes.
§ 63.4	Prohibited Activities	Compliance date; circumvention, severability	Yes.
§ 63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification		Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met; see § 63.9792(b) for general duty requirement..	Yes before May 19, 2022. No on and after May 19, 2022.
§ 63.6(e)(3)	SSMP requirements		Yes before May 19, 2022. No on and after May 19, 2022.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)(1)–(9)	Opacity/Visible Emission (VE) Standards.		Not applicable.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling.	Must notify Administrator 5 days before scheduled date and provide rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan.	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities		Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	See § 63.9800.	No, § 63.9800 specifies requirements.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes; Yes, except where specified in § 63.9800 for batch process sources; Yes.
§ 63.7(f)	Alternative Test Method		Yes.
§ 63.7(g)	Performance Test Data Analysis.		Yes, except this subpart specifies how and when the performance test and performance evaluation results are reported.

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.7(h)	Waiver of Test		Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.		Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares		Not applicable.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§ 63.8(c)(1)	Continuous Monitoring System Operation and Maintenance.	Maintenance consistent with good air pollution control practices.	Yes before May 19, 2022. No on and after May 19, 2022.
§ 63.8(c)(2)–(3)	Monitoring System Installation.	Must install to get representative emission and parameter measurements.	Yes.
§ 63.8(c)(4)	CMS Requirements		No, § 63.9808 specifies requirements.
§ 63.8(c)(5)	COMS Minimum Procedures.		Not applicable.
§ 63.8(c)(6)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(A)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(B)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(C)	CMS Requirements		Not applicable.
§ 63.8(c)(7)(ii)	CMS Requirements	Corrective action required when CMS is out of control	Yes.
§ 63.8(c)(8)	CMS Requirements		Yes.
§ 63.8(d)(1) and (2)	CMS Quality Control		Yes.
§ 63.8(d)(3)	Written procedures for CMS.		No, § 63.9794(a)(8) specifies requirements.
§ 63.8(e)	CMS Performance Evaluation.		Applies only to sources required to install and operate a THC CEMS, except this subpart specifies how and when the performance evaluation results are reported.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.		Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.		Yes.
§ 63.8(g)	Data Reduction		Applies only to sources required to install and operate a THC CEMS.
§ 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)	Notification of Special Compliance Requirements for New Source.		Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.		Not applicable.
§ 63.9(g)	Additional Notifications When Using CMS.		Applies only to sources required to install and operate a THC CEMS.
§ 63.9(h)	Notification of Compliance Status.		Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.		Yes.
§ 63.9(j)	Change in Previous Information.		Yes.
§ 63.9(k)	Notifications	Electronic reporting procedures	Yes, only as specified in § 63.9(j).
§ 63.10(a)	Recordkeeping/Reporting		Yes.
§ 63.10(b)(1)	General Recordkeeping Requirements.		Yes.

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and Failures to Meet Standards.	See § 63.9816	Yes before May 19, 2022. No on and after May 19, 2022.
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.		Yes.
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions during SSM.		Yes before May 19, 2022. No on and after May 19, 2022.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	See § 63.9816(c)(5)	Yes before May 19, 2022. No on and after May 19, 2022.
§ 63.10(b)(2)(vii)–(xi)	Records	Measurements to demonstrate compliance with emission limitations; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Not applicable.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1), (c)(5)–(6)	Additional Records for CMS.		Yes.
§ 63.10(c)(2)–(4)	Records	Additional Records for CMS	Not applicable.
§ 63.10(c)(7)–(8)	Records of excess emissions and parameter monitoring exceedances for CMS.	§ 63.9816 specifies requirements.	No.
§ 63.10(c)(9)	Records	Additional Records for CMS	Not applicable.
§ 63.10(c)(10)–(14)	Additional Records for CMS.		Yes.
§ 63.10(c)(15)	Records Regarding the SSMP.		Yes before May 19, 2022. No on and after May 19, 2022.
§ 63.10(d)(1)	General Reporting Requirements.	Requirements for reporting	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	No. This subpart specifies how and when the performance test results are reported.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.		Not applicable.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission See § 63.9814 (d) and (e) for malfunction reporting requirements..	Yes before May 19, 2022. No on and after May 19, 2022.
§ 63.10(e)(1)–(2)	Additional CMS Reports		Applies only to sources required to install and operate a THC CEMS, except this subpart specifies how and when the performance evaluation results are reported.
§ 63.10(e)(3)	Reports		No, § 63.9814 specifies requirements.
§ 63.10(e)(4)	Reporting COMS data		Not applicable.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.		Yes.
§ 63.11	Flares		Not applicable.
§ 63.12	Delegation		Yes.
§ 63.13	Addresses		Yes.
§ 63.14	Incorporation by Reference		Yes.
§ 63.15	Availability of Information and Confidentiality.		Yes.
§ 63.16	Performance Track Provisions.		Yes.

[FR Doc. 2021–24100 Filed 11–18–21; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0505, EPA–HQ–OAR–2020–0532; FRL–7523–03–OAR]

RIN 2060–AU66

National Emission Standards for Hazardous Air Pollutants: Carbon Black Production and Cyanide Chemicals Manufacturing Residual Risk and Technology Reviews, and Carbon Black Production Area Source Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology reviews (RTR) conducted for the Carbon Black Production and Cyanide Chemicals Manufacturing major source categories, and the technology review conducted for Carbon Black Production area sources, regulated under National Emission Standards for Hazardous Air Pollutants (NESHAP). In addition, we are taking final action to add new emissions standards for the Carbon Black Production and Cyanide Chemicals Manufacturing major source categories to address hazardous air pollutant (HAP) emissions not previously covered by these NESHAP. The EPA is also finalizing amendments for both source categories that address the startup, shutdown, and malfunction (SSM) provisions of the existing standards, and require electronic reporting of certain notifications, performance test results, and semiannual reports.

DATES: These final rules are effective on November 19, 2021. The incorporation by reference (IBR) of certain publications listed in the final rule is approved by the Director of the Federal Register as of November 19, 2021.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for the Carbon Black Production source category under Docket ID No. EPA–HQ–OAR–2020–0505, and a docket for the Cyanide Chemicals Manufacturing source category under Docket ID EPA–HQ–OAR–2020–0532. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. Hand Deliveries and couriers may be received by scheduled appointment only. For further information and updates on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about the Carbon Black Production source category final action, contact Korbin Smith, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2416; fax number: (919) 541–4991; and email address: *smith.korbin@epa.gov.* For questions about the Cyanide Chemicals Manufacturing source category final action, contact Nathan Topham, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0483; fax number: (919) 541–4991; and email address: *topham.nathan@epa.gov.*

For specific information regarding the risk modeling methodology for both Carbon Black Production and Cyanide Chemicals Manufacturing, contact James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *hirtz.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CCD combustion control device
CCMPU cyanide chemicals manufacturing process unit
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CO carbon monoxide
CRA Congressional Review Act
EAV equivalent annual value
EPA U.S. Environmental Protection Agency
GMACT Generic Maximum Achievable Control Technology
HAP hazardous air pollutant(s)
HCN hydrogen cyanide
HON Hazardous Organic NESHAP
HQ hazard quotient
ICBA International Carbon Black Association
ICR Information Collection Request
LEL lower explosive limit
MACT maximum achievable control technology
MUF main unit filter
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
NESHAP national emission standards for hazardous air pollutants
NOCS Notification of Compliance Status
NSPS New Source Performance Standards
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PEL permissible exposure limit
ppm parts per million
ppmv parts per million by volume
ppmw parts per million by weight
PRA Paperwork Reduction Act
PV present value
REL reference exposure level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SSM startup, shutdown, and malfunction
SSP startup and shutdown plan
STEL short term exposure limit
TOSHI target organ-specific hazard index
tpy tons per year

Background information. On January 14, 2021, the EPA proposed revisions to the Carbon Black Production NESHAP based on our RTR, and proposed no revisions to the Carbon Black Production area source rule based on our technology review. On January 15, 2021, the EPA proposed revisions to the Cyanide Chemicals Manufacturing NESHAP based on our RTR. In this action, we are finalizing decisions for, and revisions of, the NESHAP for these source categories. We summarize some of the more significant comments we timely received regarding the proposed rules and provide our responses in this preamble. A summary of all other public comments on these proposals and the EPA's responses to those comments are available in the *Summary of Comments and EPA's Responses on the National Emission Standards for Hazardous Air*

* * * * *

[FR Doc. 2022–04938 Filed 3–8–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0688; FRL–5909.1–02–OAR]

RIN 2060–AV03

National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Combustion Turbines. This final action removes the stay of the effectiveness of the standards for new lean premix and diffusion flame gas-fired turbines that was promulgated in 2004.

DATES: The final rule is effective on March 9, 2022.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0688. All documents in the docket are listed in on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *https://www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Melanie King, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2469; and email address: *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background and Final Amendments
III. Public Comments and Responses
IV. Impacts of the Final Rule
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action include industries using stationary combustion turbines, such as: Electric power generation, transmission, or distribution; Pipeline transportation of natural gas; and Crude petroleum and natural gas extraction (North American Industry Classification System Codes 2211, 486210, 211120, 211130). This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the rule. If you have any questions regarding the applicability of any aspect of this action, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/stationary-combustion-turbines-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by May 9, 2022. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. That section of the CAA also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background and Final Amendments

The Stationary Combustion Turbine NESHAP, found at 40 CFR part 63, subpart YYYY, was originally promulgated in 2004 (69 FR 10512; March 5, 2004). The following eight subcategories of stationary combustion turbines were defined in the rulemaking: (1) Emergency stationary combustion turbines, (2) stationary combustion turbines which burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis or where gasified municipal solid waste is used to generate 10 percent or more of the gross heat input to the stationary combustion turbine on an annual basis, (3) stationary combustion turbines of less than 1 megawatt rated peak power output, (4) stationary lean premix combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than an aggregate total of 1,000 hours annually (also referred to herein as ''lean premix gas-fired turbines''), (5) stationary lean premix combustion turbines when firing oil at sites where all turbines fire oil more than an aggregate total of 1,000 hours annually (also referred to herein as ''lean premix oil-fired turbines''), (6) stationary diffusion flame combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than an aggregate total of 1,000 hours annually (also referred to herein as ''diffusion flame gas-fired turbines''), (7) stationary diffusion flame combustion turbines when firing oil at sites where all turbines fire oil more than an aggregate total of 1,000 hours annually (also referred to herein as ''diffusion flame oil-fired turbines''), and (8) stationary combustion turbines operated on the North Slope of Alaska (defined as the area north of the Arctic Circle (latitude 66.5° North)). The NESHAP requires new or reconstructed stationary combustion turbines in the lean premix gas-fired, lean premix oil-fired, diffusion flame gas-fired, and diffusion flame oil-fired subcategories to meet a formaldehyde limit of 91 parts per billion by volume, dry basis (ppbvd) at 15 percent oxygen (O_2). Compliance is demonstrated through initial and annual performance testing and continuous monitoring of operating parameters.

During the original Stationary Combustion Turbine NESHAP rulemaking, the EPA received a petition from the Gas Turbine Association in August 2002 to create and delist two subcategories of stationary combustion turbines under CAA section 112(c)(9). The subcategories that were called for in the petition were lean premix combustion turbines firing natural gas with limited oil backup and a low-risk combustion turbine subcategory where facilities would make site-specific demonstrations regarding risk levels. Additional information supporting the petition was provided in February 2003. On April 7, 2004, the EPA proposed to delist lean premix gas-fired turbines as well as three additional subcategories of turbines that were determined to meet the criteria for delisting in CAA section 112(c)(9)(B): Diffusion flame gas-fired, emergency, and turbines located on the North Slope of Alaska (69 FR 18327; April 7, 2004). At the same time, the EPA proposed to stay the effectiveness of the NESHAP for new lean premix gas-fired and diffusion flame gas-fired turbines to ''avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted.'' (69 FR 18338; April 7, 2004) The standards for new oil-fired turbines were not stayed and have been in effect. On August 18, 2004, the EPA finalized the stay of the effectiveness of the NESHAP for new lean premix gas-fired and diffusion flame gas-fired turbines, pending the outcome of the proposed delisting (69 FR 51184; August 18, 2004). The EPA stated that it would lift the stay if the subcategories were not ultimately delisted, and that turbines constructed or reconstructed after January 14, 2003, would then be subject to the final standards. The EPA also explained that those turbines would be given the same time to demonstrate compliance as they would have if there had been no stay.

The proposal to delist the four subcategories was never finalized in light of the 2007 decision in *NRDC* v. *EPA,* 489 F.3d 1364 (D.C. Cir. 2007), which addressed limits on the EPA's ability to delist subcategories.[1] In the 2019 proposed residual risk and technology review (RTR) for the Stationary Combustion Turbine NESHAP, the residual risk analysis did not support a conclusion that the entire Stationary Combustion Turbines source category met the criteria for delisting in CAA section 112(c)(9)(B). The results of the inhalation risk assessment for the proposed RTR suggested that the maximum individual cancer risk for the source category was above 1-in-1 million. Consequently, the EPA proposed to remove the stay of the standards for new lean premix and diffusion flame gas-fired turbines (84 FR 15046; April 12, 2019).

When the RTR was finalized on March 9, 2020, (85 FR 13525), the EPA did not finalize the removal of the stay to allow for additional time to review the public comments on the proposed removal of the stay, as well as to provide time to review information in a new petition that was submitted in August 2019 to delist the entire Stationary Combustion Turbines source category. In 2004, the EPA had determined that a stay was appropriate while the Agency solicited comment on a proposed subcategory delisting to avoid unwarranted expenditures on installation of emission controls which would not have been required if the subcategories were delisted. In the 2020 final RTR, the Agency determined that it would be reasonable to delay taking final action on the proposal to lift the stay for the same reasons in light of the new petition. However, the EPA has concluded that the new petition to delist the source category does not warrant any further delay in lifting the stay in light of the current status of the EPA's evaluation of the delisting petition. The EPA has not yet completed its evaluation of the petition or determined whether the petition is complete. If the EPA determines that the petition is complete, the Agency will then, on the basis of the Agency's analysis and the Administrator's discretion, either propose to grant the petition and request further public input or take final action to deny the petition. If a proposal to grant the petition is issued, a subsequent rulemaking would be required to finalize the delisting. Consequently, final action on the source category delisting is not likely to be made in the near term. Therefore, the EPA does not believe it is appropriate to continue to retain the stay. In addition, the Agency has evaluated its authority for the stay in light of recent caselaw concerning stays issued under the authority of the CAA and the Administrative Procedure Act (APA), and has been unable to identify any authority for the stay in either statute. In light of the issues concerning the legality of the 2004 stay and the uncertainty concerning the timing and outcome of the EPA's final decision on

[1] The court held in *NRDC* v. *EPA* that the EPA had no authority to create and delist a ''low-risk subcategory'' under CAA section 112(c)(9)(B)(i). 489 F.3d at 1372. According to the court, only subcategories with no carcinogenic HAP emissions and satisfying CAA section 112(c)(9)(B)(ii) could be removed from the CAA section 112(c)(1) list of categories and subcategories (*e.g.,* deletion of the non-mercury cell chlorine production subcategory, 68 FR 70947, December 19, 2003). Otherwise, subcategories with any carcinogenic HAP emissions could only be removed as part of a complete removal of the entire source category under CAA section 112(c)(9)(B)(i), noting that the criteria in CAA section 112(c)(9)(B)(ii) would also need to be satisfied if applicable.

the delisting petition, the EPA is taking final action now to remove the stay of the standards for new lean premix and diffusion flame gas-fired turbines.

III. Public Comments and Responses

This section presents a summary of the public comments received on the proposal to lift the stay of the standards for new lean premix and diffusion flame gas-fired turbines. The EPA received 21 public comments on the proposal to the lift the stay. All comments are contained in the docket for this action. The summary of comments on other elements of the 2019 proposal and the EPA's responses can be found in the docket at Document ID No. EPA–HQ–OAR–2017–0688–0139.

Comment: Some commenters supported the EPA's proposal to lift the stay for lean premix and diffusion flame gas-fired turbines, agreeing with the EPA's rationale for proposing to lift the stay and questioning the EPA's authority to continue the stay.

Response: The EPA acknowledges the comments supporting the removal of the stay. The EPA is removing the stay in this final action and thus no response is required for these comments.

Comment: Several commenters stated that the EPA is under no obligation to lift the stay as part of the RTR rulemaking. One commenter stated that, based on the EPA's original rationale for the stay as well as practical and technological considerations, the EPA should not take any action that would make emission limitations effective upon the date of a final rule addressing other affected units and the RTR provisions of the proposal. Commenters further cited the findings of the EPA's and the delisting petitioners' risk analyses to support addressing the stay in a separate rulemaking. Commenters noted that there is no court-ordered deadline to lift the stay, and they further noted there is no statutory provision mandating that every issue related to a source category be resolved at the same time as an RTR rulemaking. Commenters stated that it is within the EPA's discretion to address environmental agendas piece by piece in separate rulemakings, particularly if the pieces can be implemented independently from one another. The commenters stated that lifting the stay is not necessary for the EPA to finalize the proposed revisions resulting from the RTR and the SSM exemption removal. The commenters noted that the EPA has previously severed portions of proposed rulemakings that require further deliberation and analysis into separate final actions; one commenter cited the state implementation plans (SIP) for Delaware and New Mexico as examples.

Response: The EPA did not finalize the proposal to lift the stay or take action to make the stayed standards effective when the final RTR was promulgated on March 9, 2020 (85 FR 13524). The EPA indicated in the **Federal Register** document for the final RTR that the Agency was not finalizing the proposed removal of the stay to allow for additional time to review the public comments on the proposed removal of the stay, and to review a new petition to delist the Stationary Combustion Turbines source category. Thus, comments urging the EPA not to remove the stay in conjunction with the RTR are moot.

Comment: One commenter stated that, based on a review of the documents in the public record associated with this proposal, it appears that the EPA may have intended to solely address the results of the RTR and not to propose to alter the status of the existing stay, but it is not clear. Commenters noted that the EPA proposed to amend 40 CFR 63.6095(d) by deleting the language about the stay for natural gas-fired turbines, and the preamble stated that the EPA was proposing to remove the stay of the effectiveness of the standards for new lean premix and diffusion flame gas-fired turbines. However, the commenter asserted that the supporting statement indicated that the EPA assumed that the proposed lifting of the stay will be finalized by Year 2 and did not include Year 1 notification, testing, monitoring, recordkeeping, and reporting costs for units that would be impacted by the lifting of the stay. In addition, the commenter noted that proposed 40 CFR 63.6110 referenced "the date the stay . . . is removed from this subpart" rather than the date that the proposed rule is finalized. The commenter suggested that the EPA should clarify its intent regarding the status of the stay and stated that the stay should remain in effect and be addressed, if necessary, through separate rulemaking action.

Response: The preamble to the proposed rule clearly indicated that the EPA was proposing to remove the stay. The proposed amendments to the regulatory text also clearly removed the stay provision from the rule. The proposed amendments to 40 CFR 60.4110 were written in the manner noted by commenter in the event that the removal of the stay was finalized on a different timeline than the other proposed amendments. The supporting statement for the original 2004 rule accounted for the notification, testing, monitoring, recordkeeping, and reporting costs and thus such costs were not counted again in the 2019 proposed rule.

Comment: Other commenters raised cost and risk issues in arguing that the EPA should not finalize the proposal to lift the stay for lean premix and diffusion flame gas-fired turbines. One commenter asserted that the EPA has discretion to continue the stay to address broader statutory purposes. One commenter suggested that, in light of the fact that the EPA has proposed not to increase the stringency of the rule for the entire source category, the EPA may consider acting to avoid the imposition of standards with which it may be technically or practically impossible to comply either immediately or within 180 days.

Two commenters stated that lifting the stay would cause significant control installation, testing, and compliance costs for hundreds of estimated affected turbines. One commenter asserted that these costs are unwarranted based on the conclusions the EPA reached as part of its residual risk review, and another commenter agreed that the low risk results suggest that lifting the stay is not necessary. Similarly, a commenter stated that the annual performance testing requirement would impose large testing costs on a subcategory that was initially considered by the EPA to warrant potential delisting and that the costs would be passed on to their customers. A commenter also suggested that the EPA should assess whether these standards are necessary, given the fact that the RTR determined that stationary combustion turbines are not adversely impacting public health or the environment.

Similarly, one commenter stated that the stay was granted on the basis of the EPA's worst-case exposure scenario, so owners/operators of these turbines could reasonably assume that new or reconstructed lean premix gas-fired turbines were highly unlikely to present a health risk even if their formaldehyde emissions were above 91 ppbvd. The commenter noted that no new information has been introduced in the 15 years since the stay was issued to undercut this health-risk assessment. The commenter acknowledged that lifting the stay is necessary because the EPA cannot delist subcategories, but that does not invalidate the health-risk assessment on which the decision to grant the stay was based. The stay has been in place for 15 years, 12 of those since the court decision invalidating delisting of subcategories. The commenter suggested that in light of the low risk and the fact that the EPA is not proposing more stringent emission

limits as a result of the technology review, the EPA should consider setting different standards that do not require immediate compliance.

One commenter also expressed concern about the cost associated with lifting the stay. According to the commenter, the EPA underestimated the cost to comply with the rule for the first year after the final rule. The commenter cited a vendor quote of greater than $2 million to design and install oxidation catalyst control technology for a single simple cycle turbine and depending on the number of turbines that would need to install controls, the cost could be several hundreds of millions, if not billions, of dollars. According to the commenter, the cost could have a real effect on rates paid by electric consumers, given that simple cycle turbines are generally dispatched only at peak hours or to relieve a constraint and thus are often called on during out of order dispatch conditions. The commenter stated that adding the oxidation catalyst costs to the turbine's overall costs mix will likely increase the price at which these units bid into the market, and under economic dispatch, these higher prices could set the market price in peak or constraint conditions and potentially impact grid reliability.

Response: With respect to comments regarding the costs that would be incurred to comply with the stayed standards and the commenters' assertion that such costs are not justified because emissions from the sources are low risk, the EPA did not propose to change or solicit comment on the emission standards or testing requirements, or the costs of the original 2004 rule; therefore, comments on those aspects of the rule are outside the scope of the proposal. Further, the EPA notes that the standards that were stayed were established pursuant to CAA section 112(d)(2) and (3). Standards set under these provisions of CAA section 112 must reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the maximum achievable control technology (MACT). CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT "floor." The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The standards that are stayed are MACT floor standards and the EPA cannot establish a standard that is less stringent than the MACT floor based on cost or risk. Further, as is explained in more detail below, even assuming for the sake of argument that commenters are correct that the EPA has discretion to continue the stay or has no legal obligation to remove the stay, the EPA's view is that it is appropriate to lift the stay at this time despite a pending petition to delist the entire source category and in light of issues concerning EPA authority for issuance of the stay in 2004.

Comment: Numerous commenters stated that the EPA should postpone lifting the stay for new lean premix and diffusion flame gas-fired turbines until a decision is made on the forthcoming petition to delist the entire source category under CAA section 112(c)(9). Commenters stated that the petitioners are submitting new information that suggests the maximum lifetime individual cancer risk for this source category is less than 1-in-1 million and that the HQ is less than 1. Commenters contend that these results show that the risk from this source category meets the thresholds for delisting. A commenter noted that it appears that the EPA intended to propose a separate rule to remove the stay at a later date and stated that leaving the existing stay in place pending an evaluation of the new study and a response to any associated delisting petition is reasonable and appropriate.

One commenter noted that the EPA's rationale for the stay was that it would be "inappropriate and contrary to statutory intent" to require sources to incur costs for installation and testing of controls until a decision was made on whether the sources should be delisted (69 FR 51185; August 18, 2004). At the time the EPA adopted the stay, the commenter noted that the EPA likely believed it would take final action on the initial delisting petition within a short time, suggesting that the EPA's concern was based on wasteful costs being imposed on a relatively small number of turbines. The commenter asserted that the rationale for the original stay applies now as well, given the new petition, and because the stay has been in place for 15 years, the costs associated with lifting it would be significantly higher than the costs that were avoided by the issuance of the stay. Similarly, two commenters stated that it would be inappropriate to lift the stay now and require sources to take steps and incur significant costs to comply with standards that may only apply for a short period of time and may be eliminated once the petition is evaluated.

Response: As explained in the proposed and final RTR rule, in 2004, the EPA put into place a stay of the effectiveness of the NESHAP for new lean premix gas-fired and diffusion flame gas-fired turbines, pending the outcome of a 2004 proposed delisting. The EPA stated that it would lift the stay if the subcategories were not ultimately delisted, and turbines constructed or reconstructed after January 14, 2003, would then be subject to the final standards. As explained above, the proposal to delist the four subcategories was never finalized in light of the 2007 decision in *NRDC* v. *EPA* which addressed limits on the EPA's ability to delist subcategories.

Commenters contend that the EPA should postpone lifting the stay for new lean premix and diffusion flame gas-fired turbines until a decision is made on the petition to delist the entire source category. The petition to delist that commenters refer to was submitted to the Agency on August 28, 2019, with supplemental information provided as recently as March 2021. As discussed previously in section II of this preamble, final action on the source category delisting is not likely to be made in the near term. Although the EPA determined that a stay was appropriate in 2004 to avoid unwarranted expenditures on installation of emission controls which would not be required if the subcategories were delisted, and in the 2020 final RTR, the Agency determined that it would be reasonable to delay taking final action on the proposal to lift the stay for the same reasons in light of the new petition to delist the turbine category, the EPA has since re-evaluated its authority for the stay in light of recent caselaw concerning CAA and APA stays and has been unable to identify any authority for the stay in either the CAA or APA. Further, the commenters did not identify any such authority. In light of the issues concerning the legality of the 2004 stay and the uncertainty concerning the timing and outcome of the EPA's final decision on the delisting petition explained above, the EPA is taking final action now to lift the stay. In making this determination, the EPA recognizes the potential costs to industry that may be associated with the installation of controls but has determined that the concerns associated with allowing that stay to remain in place outweigh these considerations. The EPA does not believe that it would be appropriate to continue to allow the estimated approximately 250 new gas-fired stationary combustion turbines that have been installed at major sources of HAP since 2003 to operate without emission standards that are required

under the CAA. Moreover, risk and cost considerations are not relevant to the issue of the EPA's authority for the stay. Further, the EPA notes that owners and operators of the turbines have been on notice that the stay might be removed from the rule since at least April 2019 when the Agency proposed to remove the stay. In addition, as explained above, the 2004 final stay document explained that the EPA would lift the stay if the subcategories were not ultimately delisted, and that turbines constructed or reconstructed after January 14, 2003, would then be subject to the final standards. The 2007 court decision in *NRDC* made clear that the EPA could not move forward with the 2004 delisting proposal and that decision put turbine owners and operators on notice that the stay was at risk.

Comment: Several commenters stated that when the EPA established the 91 parts per billion by volume, dry basis (ppbvd) formaldehyde emission limit in 2004, it acknowledged that the standard was based on limited data and might require revision. The commenters stated that the stay of the standards should remain in place until the EPA completes that review and determines whether the standard should be revised.

Two commenters noted that at the time the emission limit was established, the EPA stated in the preamble to the final rule that "[i]f actual emission data demonstrate that we are incorrect, and that sources which properly install and operate an oxidation catalyst cannot consistently achieve compliance, we will revise the standard accordingly" (69 FR 10512; March 5, 2004). One commenter stated that at that time, California Air Resources Board (CARB) Method 430 [2] could only detect formaldehyde down to 200–300 ppbvd; but, even today, only the most recent technologies can measure formaldehyde below 100 ppbvd (and the commenter cited an EPRI document describing the accuracy of those technologies as "uncertain"). The commenter stated that sources will need to perform baseline testing to determine whether they can comply with a 91 ppbvd emission limit, and without that test data, the commenter asserted that the EPA does not have the data to determine whether the standard is achievable. The commenter stated that the EPA should delay lifting the stay to allow sufficient time for companies that already have installed oxidation catalysts to complete their testing with the more accurate methodologies now available. If compliance with the limit is an issue, the commenter suggested that the EPA should revisit the standard, as anticipated in the 2004 rule. Similarly, a commenter requested that the EPA revisit its determination of the standard to ensure 91 ppbvd is achievable in light of the operating records that may now be available.

Two commenters provided more specific suggestions for changing the format of the standard. One commenter suggested that the EPA include the subcategory of new lean premix and diffusion flame gas fired turbines in the list of "subcategories with limited requirements" under 40 CFR 63.6090(b). The commenter stated that because risks from this subcategory were low enough to consider delisting, imposing any limits on this subcategory is unnecessary and would result in wasteful and unwarranted expenditure, and these units should only be subject to initial notification. If the EPA determines that a standard is necessary, the other commenter suggested that the EPA consider either an equipment standard or a work practice standard, pursuant to CAA section 112(h). The commenters stated that limitations in the formaldehyde measurement methods may mean that measurement is not practicable due to technological limitations, so the EPA should consider setting a standard under CAA section 112(h)(2)(B). The commenter's suggested equipment standard would require compliance to be demonstrated by documenting equipment performance, similar to the requirements to verify catalyst performance with periodic portable analyzer tests of CO in the Reciprocating Internal Combustion Engines (RICE) NESHAP (40 CFR part 63, subpart ZZZZ). The commenters suggested that an appropriate work practice standard might include demonstrating compliance for low emitting natural gas-fired units by completing periodic burner tune-ups, analogous to the approach specified for natural gas-fired units in 40 CFR part 63, subpart DDDDD (Boiler NESHAP).

Response: The EPA did not propose to change or solicit comment on the emission standards and therefore comments on those aspects of the rule are outside the scope of the proposal. The EPA notes, however, that it did not finalize the April 12, 2019 proposal to lift the stay when it promulgated the final RTR on March 9, 2020, and so the delay that commenters requested has occurred and sources have had nearly 3 years to conduct and provide to the EPA any baseline testing to determine if there are compliance issues. Further, the formaldehyde emissions data obtained during the original Stationary Combustion Turbine NESHAP rulemaking—as well as during the recent RTR rulemaking—demonstrate that stationary combustion turbines are able to meet the 91 ppbvd formaldehyde emission standard. Moreover, these data demonstrate that the available test methods are able to accurately measure formaldehyde at levels below 91 ppbvd. See for example the data summarized in the memo "Review of the Acute Multiplier Used to Derive Hourly Emission Rates for the Stationary Combustion Turbines Risk Analysis" (Document ID No. EPA–HQ–OAR–2017–0688–0070). The commenters did not provide any information to show that the limit of 91 ppbvd was unachievable.

With respect to the suggestion that the EPA impose only initial notification requirements on new lean premix and diffusion flame gas fired turbines because risks from these subcategories are low, as noted above, it would not be appropriate to eliminate MACT floor emision limits based on risk.

Regarding the comments that the EPA should consider a work practice or equipment standard under CAA section 112(h), commenters did not provide any information to suggest that the criteria for establishment of a work practice standard apply (*e.g.,* that the pollutant cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations). In fact, as noted above, emissions data show that emissions at or below the standard can be measured. Therefore, there does not appear to be a justification for a work practice or equipment standard.

Comment: Many commenters stated that if the EPA does finalize lifting the stay, 180 days is not long enough for owners and operators to conduct all the activities that will be needed for their turbines to come into compliance with the standards. For various reasons, most of the commenters suggested that 3 years, consistent with the period of time allowed in the CAA for existing sources to comply with NESHAP, would be appropriate. One commenter noted that this compliance date should apply for turbines that commenced construction or reconstruction after January 14, 2003, but before April 12, 2019 (the proposal date of the amendment to lift the stay). Commenters also stated that the EPA

[2] CARB Method 430 is a test method used to measure emissions of formaldehyde and acetaldehyde from stationary sources. *https://www.arb.ca.gov/testmeth/vol3/m_430.pdf.*

should make clear that facilities would have the option to petition for another year to meet the standards if installation of controls is required, per the CAA. Other compliance deadlines that were suggested included from 18 months up to 25 months after the effective date of the removal of the stay.

Commenters stated that the EPA has provided for extensions of compliance deadlines in prior rulemakings. Commenters stated that, as an example, the EPA promulgated an interim final rule in 2014 to extend all Cross-State Air Pollution Rule (CSAPR) compliance deadlines by 3 years to "provide parties with sufficient time to prepare for implementation, and avoid unnecessary regulatory burden" (79 FR 71666; December 3, 2014) after the judicial stay of the CSAPR was lifted by the D.C. Circuit. A commenter provided the additional example of the EPA's final rule requiring multiple states and the District of Columbia to submit SIPs to address the regional transport of ground-level ozone (commonly known as the "NO_X SIP Call") in 1998, for which it extended the proposed compliance deadline by 8 months, recognizing the utility sector's concern that there were not enough trained workers, engineering services, or materials and equipment to install the NO_X control technology by the initially proposed deadline (63 FR 57356; October 27, 1998).

One commenter stated that when the stay was originally issued, the EPA recognized that many facilities would need to install controls (*e.g.,* oxidation catalyst) to meet the emission limit. In issuing the final stay, commenters noted that the EPA indicated that if the subcategories were not delisted, the stay would be lifted, and all sources in the stayed subcategories would then be subject to the final standards. Commenters further referenced the EPA's statement that "[t]he sources will then be given the same time to make the requisite demonstration of compliance they would have had if there had been no stay" (69 FR 51185; August 18, 2004). A commenter stated that some companies expressed concern about the timing at that time, but due to the expectation that turbines would be delisted, facilities were not then harmed by the statement and therefore would have likely been unable to litigate the issue.

One commenter further noted that it is unlikely that any party could file a petition for review of the existing stay now, given that the EPA promulgated the stay in 2004 and is not under any court order to lift the stay at this time. Commenters asserted that the 2004 language regarding the timing of compliance after the potential lifting of the stay is reasonably interpreted to provide for adequate time to install the controls, especially given that the EPA indicated that one of the main reasons for staying the rule was to avoid capital expenditures that ultimately would not be required if the delisting was completed. Thus, the commenters asserted that sources legitimately relied on these statements and reasonably expected that the EPA would not lift the stay in a manner that would deprive them of the needed time to install controls that the EPA intended to be deferred by issuing the stay. As a result, commenters stated that during the time the stay has been in place, many turbines have been constructed without oxidation catalysts. A commenter noted that by the EPA's own estimates, the number of such turbines is almost 200. The commenters asserted that these units have been effectively operating as "existing" units under the CAA.

According to the commenters, now that the EPA has proposed to lift the stay, owners and operators are beginning to develop performance test plans to determine the existing formaldehyde concentration from the turbine exhaust stack during different operating conditions. Commenters stated that sufficient time would be needed for owners and operators to find available testing contractors to perform baseline performance testing for all the affected units. One commenter estimated that this step would take 6 months, and another commenter estimated 1 to 3 months. Several commenters stated that there is limited availability of testing contractors that can perform the necessary Fourier-transform infrared (FTIR) spectroscopy testing; one commenter stated that it appears fewer than five vendors in the country can provide testing with detection levels below 91 ppbvd. Therefore, some commenters stated that performance testing could take up to 1 year, and other commenters stated it would likely take longer than the 180 days provided in the proposal. In addition, one commenter noted that the General Provisions of 40 CFR part 63 require a 60-day notice to the EPA before a performance test that must be taken into account when scheduling the testing. One commenter noted that performance testing could be conducted using an alternative method, but owners and operators could not use the results as the test to demonstrate initial compliance without the EPA's approval prior to the test.

Several commenters also stated that even if compliance can be achieved without an oxidation catalyst, the owner or operator must either determine the appropriate operating parameter(s) for compliance monitoring and petition the Administrator for approval of site-specific operating limitations or petition the Administrator for approval of no additional operation limitations. The commenters asserted that developing the information to support a petition, submitting the petition, receiving approval for the petition, and scheduling and conducting the initial performance test cannot be accomplished within 180 days. Two commenters stated that this petition process has been used rarely, if ever, so the EPA's ability and resources to respond to these petitions is largely untested. A commenter further stated that, even if petitions are submitted for a relatively small portion of the affected sources, the number of applications that the EPA is likely to receive could overwhelm the Agency's ability to provide timely responses (*i.e.,* within 60 days). A commenter stated that the EPA has not committed to a definitive review/comment/approval process timeframe from which an affected source could estimate the necessary amount of time to complete compliance demonstration requirements. Another commenter agreed and specifically requested that the EPA support delegated agencies in undertaking timely review of test plans and report reviews. A commenter also stated that some sources that do not need an oxidation catalyst still may need to make process adjustments and even conduct extensive maintenance activities, such as replacing combustor components, which can only be performed during scheduled outages.

Many commenters noted that for turbines that cannot meet the formaldehyde standard without oxidation catalysts, capital projects will be needed. According to the commenters, significant capital projects at complex plants, especially retrofit projects, usually entail a multi-year effort and often face spatial limitation challenges. Commenters stated that 3 years to design and install controls is typical. Commenters estimated installing oxidation catalyst would take a minimum of 2 years, but one commenter clarified that estimate assumes no delays. A commenter stated that preliminary engineering assessments suggest that even where adequate load capacity is available at a co-generation unit, 3 to 4 years is still aggressive for engineering, procurement, and installation. Another commenter agreed, noting that the company has a

significant number of affected units that will likely need substantial infrastructure improvements and specific concerns related to turbines that are used to drive compressors integral to the refrigeration process to liquefy natural gas, so it is difficult to determine whether 3 years for compliance would be enough. Commenters stated that in addition to a facility's individual concerns, the more turbines that need oxidation catalysts, the more time providers of emissions controls, parameter monitoring, and related support services will need to meet the demands. Commenters also noted that additional design and installation time could be needed for simple cycle units; construction of a new structure would be required to hold the catalyst and a long outage would be needed for installation due to high exhaust temperatures.

Commenters noted that necessary capital projects would include the following activities (in addition to initial performance testing) and estimated the amount of time to complete selected activities:

- Engineer and design a system to add an oxidation catalyst to reduce CO emissions to meet the formaldehyde standard. One commenter estimated that this step would take 1 year. Another commenter estimated that design would take 6 months and engineering would be 12 months. A commenter estimated that 2 to 5 months would be needed just to evaluate whether structural changes are needed to the turbine ductwork to install the catalyst. Two commenters stated that at least 1 year is needed to plan and install oxidation catalysts.
- Develop a procurement specification for vendors to add an oxidation catalyst, review bids, and select the vendor. One commenter estimated that these activities would take 3 to 7 months and other commenters estimated 6 months.
- Procure the CO oxidation catalyst and any additional associated equipment. A commenter estimated that this step would take 6 months, provided there is enough CO oxidation catalyst available based on demand. Another commenter estimated that 2 to 7 months would be necessary but noted that more than 2 months will likely be needed if there are competing orders. One commenter stated that engineering, procurement, flow modeling, installation, and any necessary modifications to existing equipment (*e.g.,* ductwork modifications) and software would require at least 9 months and more likely 1 year to complete.
- Shut down the combustion turbine, install the oxidation catalyst controls, and then start up the system with new oxidation catalyst. Some commenters estimated that this step would take 6 months and another commenter estimated 1 to 5 months.
- Implement all procedures and systems for parameter monitoring, recordkeeping, and reporting; conduct performance testing for initial compliance; and account for any additional time for contingencies for the previous steps. One commenter estimated that this step would take 6 months. Another commenter estimated that performance testing would take 1 month. One commenter estimated 3 months to start up and test the new equipment. A commenter stated that the amount of time needed to schedule and conduct performance testing would be similar to the time needed for initial testing.
- Ensure that necessary changes are made to the air permit. One commenter stated that for new construction or retrofits, permit amendments would be required prior to construction activities and the permit approval time would be longer than 180 days. One commenter stated that it may take 6 months or more to modify a major source permit. Another commenter noted that for simpler permit amendments, such as changing catalyst specifications, if the application is submitted at the time the catalyst design is determined and approval is granted within 45 days, this step could be concurrent with other activities and would not necessarily add time to the schedule. A commenter also noted that it is possible that addition of a catalyst for formaldehyde control could increase criteria pollutants and require permit action under New Source Review.

Commenters also noted that public power utilities are entities of state and local government and often must work through their governing boards and or city councils to gain funding and approval for capital projects. One commenter stated that this approval process may require obtaining financing or issuing debt/bonds to pay for the projects and coordinating with contractors, labor unions, and crane operators, along with any permits required. The timeframe to secure financing would be in addition to contracting, engineering, equipment installation and testing schedules. The commenter noted that this process would likely take about 6 to 8 months for an oxidation catalyst project. Similarly, a commenter stated that military installations with affected turbines would need to secure appropriations and enter into the contracting process to meet the requirements. A commenter noted that facility budgets are set annually and are integrated into a company's long-range planning. The commenter noted that retrofit projects of this magnitude and affecting multiple facilities would require adjustments and approvals at many levels that may take many months. Another commenter agreed that the significant capital expense for a catalyst would require time to plan and receive approvals.

Two commenters cited particular concerns regarding combustion turbines that are designed for both power and steam generation (combined heat and power (CHP) or co- generation units), noting that they are often highly integrated with other operations. Control device design, construction, and operation must carefully consider site power needs, coordination with the power grid external to the site, and site steam balances. Two other commenters agreed and stated that industrial facilities that have installed stationary combustion turbines cannot meet the site's full steam and electrical load using boilers and purchased electricity. A facility's main transformers and switch gear may not have the capability of running the entire facility at peak load with the site's turbines offline, even if temporary steam boilers could be rented, so facilities typically schedule their turbine outages to coincide with facility outages, when steam and electrical load drop. A commenter noted that the other alternative is to begin load shaving, which carries with it the potential for process unit upsets and unplanned shutdowns. Commenters stated that for facilities that rely on stationary gas turbines to provide steam and electricity for multiple pieces of equipment, extensive utility load studies would be needed to determine the probability of running near the edge of compliance and to plan any turbine shutdown that does not coincide with a major facility turnaround (*e.g.,* whether some equipment can be run without a turbine online). A commenter also stated that for the Electrical Reliability Council of Texas region there is sensitivity regarding even minor generator maintenance during higher electrical demand months.

To address these concerns, one commenter noted that turbine downtime to install controls would need to be performed during the next scheduled facility outage, which typically occurs at a 2-year (or longer) frequency. A commenter suggested that the EPA provide a compliance deadline of the first scheduled turnaround following 3

years after promulgation for CHP sources. Since facility turnarounds can involve a wide range of extensive site maintenance activities (*e.g.,* planned equipment replacement, cleaning, and inspection, among others), the commenter stated that it would be reasonable to coordinate this turnaround time with the downtime necessary to install and implement the design and modification changes, which would minimize the amount of facility time spent offline, ensure steadier production rates across the site, and maximize overall efficiency. Another commenter agreed that additional compliance time may be required to integrate unit down times into facility steam and electrical grid demand timing constraints. A commenter stated that maintenance planning schedules are developed multiple years in advance in order to efficiently coordinate downtime for maintenance and new project construction, and changes to these schedules cannot be implemented until engineering is complete and control equipment availability is known.

Commenters also cited particular concerns with retrofitting turbines that have existing SCRs with oxidation catalysts to meet the standard. One commenter noted that some turbine manufacturers have indicated that further testing will be required before they know whether a retrofitted SCR would be sufficient to attain compliance with the formaldehyde standard. A commenter expressed concern that installation of an oxidation catalyst could negatively impact SCR performance. The commenter noted that the installation would cause changes in temperature and pressure flow and could necessitate increased ammonia usage, all of which could stress the SCR and degrade performance over time. A commenter stated that one member company expects to need to remove and re-engineer their SCR to accommodate oxidation catalysts. The commenter stated that this will require design and engineering time, permitting time, procurement time, construction of the controls, removal of the current SCRs, fabrication of combined system, and reinstallation, and the installation timing will need to be integrated with facility turnaround plans. Commenters stated that turbines with existing SCRs may need to use dual-function or dual-purpose catalysts, which are not ''off-the-shelf'' catalysts. A commenter stated that there is no significant increase in manufacturing time for dual-purpose catalysts, but there are currently only two suppliers of dual- purpose catalysts, so owners and operators may need to account for additional time due to high demand.

Without sufficient time to comply, one commenter stated that many facilities could be out of compliance before controls can be installed. In addition, the commenter noted that if the units are shut down to avoid non-compliance, alternative sources of power would be tapped to fill in any void. The commenter stated that the impact would likely be less efficient facility operation (*i.e.,* increased greenhouse gas and other emissions), reduced reliability of area power grids, and a net increase in emissions compared to running efficient turbine systems. Alternatively, the commenter stated that companies will likely need to either seek compliance schedules or consent agreements or use other legal mechanisms in order to keep operating.

Response: In the original 2004 rulemaking establishing the stay, the EPA clearly indicated that the stay was only being established due to the proposed delisting of certain subcategories of stationary combustion turbines, and that the stay would be lifted if the subcategories were not ultimately delisted. (69 FR 51185; August 18, 2004). As discussed previously, the proposal to delist the four subcategories was never finalized in light of the 2007 decision in *NRDC* v. *EPA,* 489 F.3d 1364 (D.C. Cir. 2007), which addressed limits on the EPA's ability to delist subcategories. Therefore, the EPA is taking action to remove the stay that was put in place while the proposed delisting of subcategories was evaluated. Turbine owners and operators have known since the 2007 decision that the basis for the stay was in question.

Moreover, the EPA indicated in the 2004 rulemaking establishing the stay that ''if the subcategories are not ultimately delisted, the stay will be lifted, and all sources in the subcategories constructed or reconstructed after January 14, 2003 will then be subject to the final standards.'' The EPA also said that sources would be given the same time to demonstrate initial compliance with the emission standards if the stay was lifted as they would have had if there had been no stay. (69 FR 18341; April 7, 2004). As stated in 40 CFR 63.6110(a), owners and operators have 180 calendar days for the initial compliance demonstration. The EPA also indicated in the 2019 proposal to remove the stay that owners and operators of turbines that were subject to the stay of the standards for new gas-fired turbines would be required to comply with all applicable regulatory requirements immediately upon a final action to remove the stay and would have 180 days from the date the stay is removed for the initial compliance demonstration (84 FR 15068; April 12, 2019). Therefore, owners and operators have had notice of the requirements that would apply immediately if and when the stay was lifted and there was no basis for commenter to interpret the EPA's statements concerning initial compliance demonstration as suggesting otherwise.

Regarding the comments that the EPA has provided for extensions of compliance deadlines in CSAPR and the NO_X SIP Call, the EPA notes that in the EPA rules cited by the commenter, the EPA merely codified legally enforceable modifications to deadlines that were imposed by a court. There is no such court action that modifies the compliance deadlines that will be triggered when the stay is lifted. The commenters did not identify any authorities which would allow the EPA to extend or suspend the compliance deadlines for new sources (any source that was constructed or reconstructed after the 2003 NESHAP proposal) established under the CAA and the Part 63 regulations once the stay is lifted.

Comment: One commenter stated that if the EPA finalizes lifting the stay without providing additional time to comply with the rule, the EPA should provide for an administrative noncompliance procedure for owners/operators of turbines affected by the 2004 stay of the rule. The commenter noted that the EPA provided an administrative noncompliance process for certain electric steam generating utility units that were unable to comply timely with the Mercury and Air Toxics Standards (MATS) and asserted that the EPA should provide a similar procedure for stationary combustion turbines that are newly subject to subpart YYYY's numeric emission limitations. The commenter stated that although many more turbines might be affected than boilers that required additional time to meet the MATS, far lower emissions would be likely.

The commenter's suggested procedure would allow owners and operators of turbines that cannot comply immediately with subpart YYYY to provide notice to the Agency of their noncompliance without penalty. The commenter then suggested that thereafter, those affected operators would be given the opportunity to enter into a compliance schedule with enforceable milestones to meet the standard. The commenter stated that affected units should be required to notify their respective state and EPA regional authorities within a short

period of time (*e.g.,* 14 days after promulgation by providing the affected plant's name and address, the name of the responsible officer, and the date of installation of the affected turbine(s). The commenter also suggested that upon receipt of a complete notification, the unit should be eligible for a noncompliance period for a period of no longer than 3 years, provided that the owner/operator subsequently submits a compliance plan with specific milestones for achieving compliance including the emission testing of units newly subject to the numeric emission limits, and, for those units that cannot meet those emission limits, the design, purchase, and installation of pollution controls and parametric monitoring devices.

The commenter also stated that it is likely that the EPA would need a separate rulemaking to add an administrative noncompliance procedure to subpart YYYY. However, the commenter noted that the EPA's Office of Enforcement and Compliance Assurance could administer an administrative order on consent outside of the rulemaking process, similar to the procedure used by the Agency in the MATS. The commenter recommended that the procedure be implemented separately from this rulemaking, in part because each administrative order on consent would be based on a case-by-case review of facts and the EPA's exercise of the Agency's enforcement discretion.

Response: The EPA stated in the memo setting forth the MATS Enforcement Response Policy [3] that the EPA generally does not speak publicly to the intended scope of its enforcement efforts but was doing so in the case of the MATS rule to provide confidence with respect to electric reliability. The commenters did not provide any information to show that such reliability considerations are also a factor for stationary combustion turbine facilities that will be impacted by the removal of the stay. The EPA also notes that only five Administrative Orders were issued in connection with the MATS Policy. The EPA does not agree that it is necessary to establish a special administrative noncompliance procedure for this action. For a source that fails to comply with the applicable requirements of subpart YYYY once the stay is lifted, the EPA will determine an appropriate response, if any, based on, among other things, the good faith efforts of the source to comply.

IV. Impacts of the Final Rule

The environmental, energy, environmental justice, and economic impacts of the Stationary Combustion Turbine NESHAP were addressed in the original 2004 final rule. See 69 FR 10533–10534 (March 5, 2004). No additional impacts are expected as a result of this final rule.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0541. This action does not impose an information collection burden because the EPA is not making any changes to the information collection requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. 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, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The March 5, 2004, Stationary Combustion Turbine NESHAP final rule was certified as not having a significant economic impact on a substantial number of small entities. This final rule does not impose any additional burden on affected sources beyond the burden already addressed in the original 2004 rule.[4] The EPA has, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. None of the stationary combustion turbines that have been identified as being affected by this action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

[3] The Environmental Protection Agency's Enforcement Response Policy for Use of Clean Air Act Section 113(a) Administrative Orders In Relation To Electric Reliability And The Mercury and Air Toxics Standard. *https://www.epa.gov/sites/production/files/documents/mats-erp.pdf.*

[4] Economic Impact Analysis of the Final Stationary Combustion Turbines NESHAP: Final Report. EPA–452/R–03–014. August 2003. Document ID No. EPA–HQ–OAR–2002–0060–0636.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629; February 16, 1994). The EPA performed a demographic analysis of the Stationary Combustion Turbine source category for the RTR, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. The documentation for the analysis can be found in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Stationary Combustion Turbines Source Category Operations* (Document ID No. EPA–HQ–OAR–2017–0688–0071). In the analysis, the EPA evaluated the distribution of HAP-related cancer and noncancer risks from Stationary Combustion Turbine source category emissions across different demographic groups within the populations living near facilities. The results of that analysis indicated that there is not a disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples. This action will further reduce the risks from the source category emissions.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 63 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 YYYY—National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

■ 2. Section 63.6095 is amended by adding paragraphs (a)(3) and (a)(4) and removing paragraph (d) to read as follows:

§ 63.6095 When do I have to comply with this subpart?

(a) * * *

(3) If you start up a new or reconstructed stationary combustion turbine which is a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart on or before March 9, 2022, you must comply with the emissions limitations and operating limitations in this subpart no later than March 9, 2022.

(4) If you start up a new or reconstructed stationary combustion turbine which is a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart after March 9, 2022, you must comply with the emissions limitations and operating limitations in this subpart upon startup of your affected source.

* * * * *

[FR Doc. 2022–04848 Filed 3–8–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 391

[Docket No. FMCSA–2018–0224]

RIN 2126–AC15

Record of Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations to eliminate the requirement that drivers operating commercial motor vehicles (CMVs) in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. This requirement is largely duplicative of a separate rule that requires each motor carrier to make an annual inquiry to obtain the motor vehicle record (MVR) for each driver it employs from every State in which the driver holds or has held a CMV operator's license or permit in the past year. To ensure motor carriers are aware of traffic convictions for a driver who is licensed by a foreign authority rather than by a State, the Agency amends the rule to provide that motor carriers must make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit.

DATES: This final rule is effective May 9, 2022.

Comments on the information collections in this final rule must be submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) by April 8, 2022.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than April 8, 2022.

ADDRESSES: Comments and recommendations for the proposed information collections should be sent within 30 days of publication of this final rule to *https://www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Office of Driver and Carrier Operations, MCPSD, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–4325; *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. Availability of Rulemaking Documents
II. Executive Summary
  A. Purpose and Summary of the Final Rule
  B. Costs and Benefits
III. Abbreviations
IV. Legal Basis for the Rulemaking
V. Discussion of Proposed Rule
VI. Discussion of Comments and Responses
  A. Comment Overview
  B. Safety Concerns Relating to the Elimination of § 391.27
  C. Availability, Timeliness, and Accuracy of Driving Histories
  D. Reporting of All Traffic Citations and Violations
  E. Traffic Conviction Notification Requirement for Non-CDL Drivers
  F. Obtaining MVRs From Foreign Driver's Licensing Authorities
  G. Impact on Driver Qualification Files
  H. Changes to § 391.23(b)
  I. Employer Notification Services (ENS)
  J. Reporting of Traffic Violations Generally
  K. Outside the Scope of the Rulemaking
VII. Guidance
  A. Section 391.23 Investigation and Inquiries
  B. Section 391.25 Annual Inquiry and Review of Driving Record
  C. Section 391.27 Record of Violations
VIII. Changes From the NPRM
IX. International Impacts

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0314, EPA–HQ–OAR–2017–0684, EPA–HQ–OAR–2016–0447, EPA–HQ–OAR–2013–0290; FRL–8472–01–OAR]

RIN 2060–AT49, 2060–AT51, 2060–AT12, and 2060–AT25

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, Surface Coating of Metal Cans, Boat Manufacturing, and Clay Ceramics Manufacturing; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: In this action, the U.S. Environmental Protection Agency (EPA) is making technical corrections to four regulations under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. Specifically, the rules to be amended by this action include the following: The NESHAP for Surface Coating of Automobiles and Light-Duty Trucks, promulgated on July 8, 2020; the NESHAP for Surface Coating of Metal Cans, promulgated on February 25, 2020; the NESHAP for Boat Manufacturing, promulgated on March 20, 2020; and the NESHAP for Clay Ceramics Manufacturing, promulgated on November 1, 2019. Following signature of each of these final rules, the EPA discovered inadvertent minor errors and is correcting these errors in this action.

DATES: This final rule is effective on November 19, 2021. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of November 19, 2021. The incorporation by reference of certain other publications listed in the rule was approved by the Director of the Federal Register as of June 25, 2004 and July 8, 2020.

ADDRESSES: The EPA has established a docket for each rule included in this action under the following: Docket ID No. EPA–HQ–OAR–2019–0314 (NESHAP for Surface Coating of Automobiles and Light-Duty Trucks), Docket ID No. EPA–HQ–OAR–2017–0684 (NESHAP for Surface Coating of Metal Cans), Docket ID No. EPA–HQ–OAR–2016–0447 (NESHAP for Boat Manufacturing), and Docket ID No. EPA–HQ–OAR–2013–0290 (NESHAP for Clay Ceramic Manufacturing). All documents in each docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov/.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Brian Storey, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1103; fax number: (919) 541–4991; and email address: *storey.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of This Action

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that for this action, there is good cause for making these technical corrections final without a prior proposal and the opportunity for comment because the Agency is correcting minor errors that do not substantially change the Agency action taken in each of the four final rules discussed. These technical corrections will ensure that the regulatory text agrees with the description of the rule that the EPA provided in the final rule preamble for each of the four rules discussed in this action. Thus, notice and comment public procedures are unnecessary. The Agency finds that this constitutes a good cause under 5 U.S.C. 553(b)(3)(B). See also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 307(d)(1), indicating that the good cause provisions in subsection 553(b) of the APA continue to apply to this type of rulemaking under section 307(d) of the CAA. Refer to sections I.A through I.D of this preamble for a more detailed discussion of the goof cause rationale for each rule.

A. Summary of Technical Corrections to the NESHAP for Surface Coating of Automobiles and Light-Duty Trucks and Incorporation by Reference

In the July 8, 2020, final rule (85 FR 41100) the EPA included reference to the document, *Protocol for Determining the Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat,* published December 1988 (EPA–450/3–88–018). This document was found to be out-of-date. In this action, the EPA is amending the rule to refer to the document, *Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat,* published September 2008 (EPA–453/R–08–002). This protocol determines the daily VOC emission rate (pounds of VOC per gallon of coating solids deposited) for a complete auto and light duty truck topcoat operation. The EPA has made, and will continue to make, the EPA document generally available electronically through *https://www.regulations.gov/* and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information). A copy of the red line version of the corrected rule language is available in Docket ID No. EPA–HQ–OAR–2019–0314. The intent of the rule remains unchanged by correcting the reference. The protocols provided by the revised September 2008 document (EPA–453/R–08–002) are consistent with the protocols of the December 1988 document (EPA–450/3–88–018); therefore, the EPA finds good cause to make the correction in this direct final action.

B. Summary of Technical Corrections to the NESHAP for Surface Coating of Metal Cans

The publication of the February 25, 2020, final rule (85 FR 10828) inadvertently deleted Equation 1 of the rule from the text of the Code of Federal Regulations. This equation was not intended to be deleted. In this action, the EPA is restoring the deleted equation and the associated definitions to § 63.3541(h). A red line version of the corrected rule language is available in Docket ID No. EPA–HQ–OAR–2017–0684. Equation 1 is used to calculate organic HAP emission reductions from controlled coating operations not using

liquid-liquid material balances. Equation 1 was not part of the 2020 final rule amendments and was already in the rule prior to the amendments. Section 63.3541(h) of the rule references Equation 1, and without the equation, the reference is incomplete; therefore, the EPA finds good cause to make the correction in this direct final action.

C. Summary of Technical Corrections to the NESHAP for Boat Manufacturing

Table 8 of the March 20, 2020, final rule (85 FR 15960) included specific references to the general provisions of 40 CFR part 63, subpart A. After promulgation, the EPA found that Table 8 indicates that 40 CFR 63.6(f) applies to the rule, but, in fact, section 63.6(f)(1) includes start-up, shutdown, and malfunction (SSM) language that has been vacated by the D.C. Circuit and the EPA stated in the preamble the Agency intended to remove from the Boat Manufacturing NESHAP (85 FR at 15963 and 15967–68). In this action, the EPA is revising Table 8 to indicate § 63.6(f)(1) does not apply. A red line version of the corrected rule language is available in Docket ID No. EPA–HQ–OAR–2016–0447. The correction to the reference in Table 8 only corrects the reference to subpart A and does not change the requirement to comply with emission limits of the rule at all times, as addressed in the proposed and final rule preamble. These corrections will ensure that the regulatory text agrees with the description of the rule that was provided in the final rule preamble; therefore, the EPA finds good cause to make the correction in this direct final action.

D. Summary of Technical Corrections to the NESHAP for Clay Ceramic Manufacturing

Following signature of the November 1, 2019, final rule (84 FR 58601), the EPA discovered inadvertent errors in Table 2 of the rule. In several instances, the rows of the table were misaligned when published. Table 2 of the rule provides operating limits for regulated emission sources and their various control technology configurations and includes three columns. As a result of the error in publication, several of the control technologies identified in the rightmost column (column 3) were misaligned with the sources identified in the leftmost column (column 1), so that they no longer were appropriate or relevant. In this action, the EPA is correcting the table to ensure the control technology information is relevant to the appropriate source. In addition, the EPA's Electronic Reporting Tool (ERT) URL included a typographical error rendering the weblink, as written in the rule text, inoperable. This action corrects the URL of the weblink to ensure accessibility of the tool. A red line version of the corrected rule language is available in Docket ID No. EPA–HQ–OAR–2013–0290. The corrections to Table 8 and to the URL do not affect the standards of the rule, and only ensure the information provided is accurate and relevant; therefore, the EPA finds good cause to make the correction in this direct final action.

II. Summary of Cost, Environmental, and Economic Impacts

This action will have no cost, environmental, energy, or economic impacts beyond those impacts presented in the July 8, 2020, NESHAP for Surface Coating of Automobiles and Light-Duty Trucks final rule (85 FR 41100), the February 25, 2020, NESHAP for Surface Coating of Metal Cans final rule (85 FR 10828), the March 20, 2020, NESHAP for Boat Manufacturing final rule (85 FR 15960), and the October 26, 2015 NESHAP for Clay Ceramics Manufacturing final rule (84 FR 58601). The technical corrections are cost neutral.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Joseph Goffman,

Office of Air and Radiation, Acting Assistant Administrator.

For the reasons set out in the preamble, 40 CFR part 63 is corrected 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 A—General Provisions

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

§ 63.14 Incorporations by reference.

* * * * *

(n) * * *

(1) EPA–453/R–08–002, Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat, published September 2008, IBR approved for §§ 63.3130(c), 63.3161(d) and (g), 63.3165(e), and appendix A to subpart IIII.

* * * * *

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

■ 3. Section 63.3130 is amended by revising paragraphs (c)(4) and (5) to read as follows:

§ 63.3130 What records must I keep?

* * * * *

(c) * * *

(4) A record of the calculation of the organic HAP emission rate for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) for each month if subject to the emission limit of § 63.3090(a) or § 63.3091(a). This record must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14), are used, you must keep records of all data input to this protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

(5) A record of the calculation of the organic HAP emission rate for primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) for each month if subject to the emission limit of § 63.3090(b) or § 63.3091(b), and a record of the weight fraction of each organic HAP in each material added to the electrodeposition primer system if subject to the limitations of § 63.3092(a). This record

must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14), are used, you must keep records of all data input to this protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

* * * * *

■ 4. Section 63.3161 is amended by revising paragraphs (d) and (g) to read as follows:

§ 63.3161 How do I demonstrate initial compliance?

* * * * *

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (o) of this section to demonstrate compliance with the applicable emission limit in § 63.3090(a) or § 63.3091(a). You may also use the guidelines presented in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14) in making this demonstration.

* * * * *

(g) *Determine the transfer efficiency for each coating.* You must determine the transfer efficiency for each primer-surfacer and topcoat coating, and for all coatings, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using ASTM Method D5066–91 (Reapproved 2017), "Standard Test Method for Determination of the Transfer Efficiency UnderProduction Conditions for Spray Application of Automotive Paints-Weight Basis" (incorporated by reference, *see* § 63.14), or the guidelines presented in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14). You may conduct transfer efficiency testing on representative coatings and for representative spray booths as described in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14). You may assume 100 percent transfer efficiency for electrodeposition primer coatings, glass bonding primers, and glass bonding adhesives. For final repair coatings, you may assume 40 percent transfer efficiency for air atomized spray and 55 percent transfer efficiency for electrostatic spray and high volume, low pressure spray. For blackout, chip resistant edge primer, interior color, inline repair, lower body anti-chip coatings, or underbody anti-chip coatings, you may assume 40 percent transfer efficiency for air atomized spray, 55 percent transfer efficiency for electrostatic spray and high volume-low pressure spray, and 80 percent transfer efficiency for airless spray.

* * * * *

■ 5. Section 63.3165 is amended by:
■ a. Revising paragraph (e) introductory text, and
■ b. In Equation 6 of paragraph (e)(2), Equation 7 of paragraph (e)(3), and Equation 8 of paragraph (e)(4) remove the text 'Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations, EPA–450/3–88–018", and add, in its place, the text "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat, EPA–453/R–08–002".

The revision reads as follows:

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

* * * * *

(e) *Panel testing to determine the capture efficiency of flash-off or bake oven emissions.* You may conduct panel testing to determine the capture efficiency of flash-off or bake oven emissions using ASTM Method D5087–02, "Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)" (incorporated by reference, *see* § 63.14), ASTM Method D6266–00a (2017), "Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)" (incorporated by reference, *see* § 63.14), or the guidelines presented in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14). You may conduct panel testing on representative coatings as described in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14).

* * * * *

■ 6. Amend Appendix A to subpart IIII of part 63 by:
■ a. Revising paragraphs 2.1 and 2.2 of section 2.0, and
■ b. In section 4.0:
■ i. Revising paragraph 4.1; and
■ ii. In section 4.2 Equation A–4, remove the text "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations, EPA–450/3–88–018", and add, in its place, the text "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat,EPA–453/R–08–002".

The revisions read as follows:

Appendix A to Subpart IIII of Part 63—Determination of Capture Efficiency of Automobile and Light-Duty Truck Spray Booth Emissions From Solvent-Borne Coatings Using Panel Testing

* * * * *

2.1 You may conduct panel testing to determine the capture efficiency of spray booth emissions. You must follow the instructions and calculations in this appendix A, and use the panel testing procedures in ASTM Method D5087–02, "Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solvent-borne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)" (incorporated by reference, *see* § 63.14), or the guidelines presented in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14). You must weigh panels at the points described in section 2.5 of this appendix A and perform calculations as described in sections 3 and 4 of this appendix A. You may conduct panel tests on the production paint line in your facility or in a laboratory simulation of the production paint line in your facility.

2.2 You may conduct panel testing on representative coatings as described in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat" EPA–453/R–08–002 (incorporated by reference, *see* § 63.14). If you panel test representative coatings, then you may calculate either a unique percent

capture efficiency value for each coating grouped with that representative coating, or a composite percent capture efficiency value for the group of coatings. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency value for that coating.

* * * * *

4.1 If you panel test representative coatings, then you may convert the panel test result for each representative coating from section 3.3 of this appendix A either to a unique percent capture efficiency value for each coating grouped with that representative coating by using coating specific values for the mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A, or to a composite percent capture efficiency value for the group of coatings by using the average values for the group of coatings for mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency value by using coating specific values for the mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A. The mass fraction of VOC in the coating and the mass fraction of solids in the coating must be determined by Method 24 (appendix A–7 to 40 CFR part 60) or by following the guidelines for combining analytical VOC content and formulation solvent content presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat'' EPA–453/R–08–002 (incorporated by reference, *see* § 63.14).

* * * * *

Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

■ 7. Section 63.3541 is amended by revising paragraph (h) to read as follows:

§ 63.3541 How do I demonstrate initial compliance?

* * * * *

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.3542(c) or (d) occurs in the controlled coating operation, you must assume zero efficiency for the emission capture system and add-on control device, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device, and the use of these data has been approved by the Administrator. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_c = (A_c + B_c - H_{unc})\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_c = Mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

A_c = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 1A of this section.

B_c = Total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 1B of this section.

H_{unc} = Total mass of organic HAP in the coatings and thinners used during all deviations specified in § 63.3542(c) and (d) that occurred during the month in the controlled coating operation, kg, as calculated in Equation 1C of this section.

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3543 and 63.3544 to measure and record capture efficiency.

DRE = Organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3543 and 63.3545 to measure and record the organic HAP destruction or removal efficiency.

* * * * *

Subpart VVVV—National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

■ 8. Table 8 to subpart VVVV of part 63 is revised to read as follows:

Table 8 to Subpart VVVV of Part 63—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	No	Only sources with add-on controls must complete startup, shutdown, and malfunction plans.
§ 63.6(f)(1)		No.	
§ 63.6(f)(2)–(3)	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 CMS	Yes	Applies to sources that use a CMS on the control device stack.
§ 63.8(c)(1)(i) and (iii)	CMS Operation and Maintenance	No	References to startup, shutdown, malfunction are not applicable.
§ 63.8(c)(1)–(4)	CMS Operation and Maintenance	Yes	Except those provisions in § 63.8(c)(1)(i) and (iii) as noted above.
§ 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)	CMS Calibration Checks and Out-of-Control Periods.	Yes.	
§ 63.8(d)	Quality Control Program	Yes	Except those provisions of § 63.8(d)(3) regarding a startup, shutdown, malfunction plan as noted below.
§ 63.8(d)(3)	Quality Control Program	No	No requirement for a startup, shutdown, malfunction plan.
§ 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.

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.9(f)	Notification of Visible Emissions/Opacity Test	No	Subpart VVVV does not have opacity or visible emission standards.
§ 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), (iii), (vi)–(xiv).	General Recordkeeping Requirements	Yes.	
§ 63.10(b)(2)(ii), (iv), (v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods.	No.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes	§ 63.5686 specifies applicability determinations for non-major sources.
§ 63.10(c)(1)–(14)	Additional Recordkeeping for Sources with CMS.	Yes	Applies only to sources with add-on controls.
§ 63.10(c)(15)	Additional Recordkeeping for Sources with CMS.	No	No requirement for a startup, shutdown, malfunction plan.
§ 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	No	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.	

Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

■ 9. Section 63.8635 is amended by revising (g)(1) to read as follows:

§ 63.8635 What reports must I submit and when?

* * * * *

(g) * * *

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*).) Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (g)(1).

* * * * *

■ 10. Table 2 to subpart KKKKK of part 63 is revised to read as follows:

Table 2 to Subpart KKKKK of Part 63—Operating Limits

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

For each . . .	You must . . .	Or you must . . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF..	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; and b. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting (on a per ton of throughput basis) at or above the level established during the performance test for continuous injection systems in which compliance was demonstrated.	i. Maintain no VE from the DIFF or DLS/FF stack; or ii. Maintain your kiln operating temperature within the range of acceptable temperatures (*i.e.*, temperature profile) established for each kiln and product.
2. Tunnel or roller kiln equipped with a WS. ...	a. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test in which compliance was demonstrated; and b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests in which compliance was demonstrated.	
3. Tunnel or roller kiln equipped with an ACI system..	Maintain the 3-hour block average carbon flow rate at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests in which compliance was demonstrated.	
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Maintain the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated	
5. Tunnel or roller kiln with no add-on control	a. Maintain no VE from the stack; and b. Maintain the kiln process rate at or below the kiln process rate determined according to § 63.8595(g)(1) if your total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart; and c. Maintain the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	i. Maintain your kiln operating temperature within the range of acceptable temperatures (*i.e.*, temperature profile) established for each kiln and product.
6. Glaze spray operation equipped with a FF	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	i. Maintain no VE from the FF stack.
7. Glaze spray operation equipped with a WS.	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test in which compliance was demonstrated; and b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test in which compliance was demonstrated.	
8. Glaze spray operation equipped with a water curtain..	a. Conduct daily inspections to verify the presence of water flow to the wet control system; and b. Conduct annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment.	
9. Glaze spray operation equipped with baffles.	Conduct an annual visual inspection of the baffles to confirm the baffles are in place.	
10. Spray dryer	Maintain the average operating temperature for each 4-hour block period at or above the average temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
11. Floor tile press dryer	Maintain the average operating temperature for each 4-hour block period at or below the average temperature established during the dioxin/furan performance test in which compliance was demonstrated.	

[FR Doc. 2021–24099 Filed 11–18–21; 8:45 am]

BILLING CODE 6560–50–P

§ 165.T08–0411 Safety Zone; Lower Mississippi River, Mile Marker 807, Barfield Bend, TN.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River at Mile Marker (MM) 805 through 810 in the vicinity of Barfield Bend, TN.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 901–521–4822. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Effective period.* This section is effective from May 13, 2022 until June 15, 2022.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: May 12, 2022.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2022–10995 Filed 5–20–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0148; FRL–7527–02–OAR, EPA–HQ–OAR–2020–0505; FRL–7523–03–OAR, EPA–HQ–OAR–2020–0532; FRL–7523–03–OAR, FRL–9751–01–OAR]

RIN 2060–AU67, 2060–AU66

National Emission Standards for Hazardous Air Pollutants: General Provisions; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: In this action, the U.S. Environmental Protection Agency (EPA) is making technical corrections to the general provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP). Specifically, on November 19, 2021, EPA finalized changes to the NESHAPs for Refractory Products Manufacturing, Carbon Black Production (major sources), Cyanide Chemicals Manufacturing, and Carbon Black Production Area Sources and, also amended the general provisions. Following signature, the EPA discovered inadvertent minor errors in the ordering of the standards and methods that were being incorporated by reference in these rules. The Office of the Federal Register (OFR) was unable to complete the amendatory instructions, resulting in regulatory text intended for the general provisions to be omitted.

DATES: This technical correction is effective on May 23, 2022. The incorporation by reference (IBR) of certain publications listed in the rule was approved by the Director of the Federal Register as of November 19, 2021.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Muntasir Ali, Sector Policies and Programs Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; and email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of This Action

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures 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 for this action, there is good cause for making these technical corrections final without a prior proposal and the opportunity for comment because the Agency is correcting minor errors that do not substantially change the Agency's action taken in each of the three final rules discussed. These technical corrections will ensure that the regulatory text agrees with the description of the rule that the EPA provided in the final rule preamble for each of the three rules discussed in this action. Thus, notice and comment public procedures are unnecessary. The Agency finds that this constitutes a good cause under 5 U.S.C. 553(b)(3)(B). See also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 307(d)(1), indicating that the good cause provisions in subsection 553(b) of the APA continue to apply to this type of rulemaking under section 307(d) of the CAA.

On the November 19, 2021, the EPA finalized amendments to multiple NESHAPs. The first rule finalized the Refractory Products Manufacturing Residual Risk and Technology Review (86 FR 66045). The second rule finalized the Carbon Black Production (major sources) and Cyanide Chemical Manufacturing Residual Risk and Technology Reviews and the Carbon Black Production Area Source Technology Review (86 FR 66096). Both actions incorporated by reference three different test methods: ASTM D4282–15, Standard Test Method for Determination of Free Cyanide in Water and Wastewater by Microdiffusion, approved July 15, 2015; ASTM D6784–16; Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), approved March 1, 2016; and ASTM D7237–18, Standard Test Method for Free Cyanide and Aquatic Free Cyanide with Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection, approved December 1, 2018. This was the first time these test methods were incorporated by reference under the Code of Federal Regulations (CFR). Because the methods were incorporated by reference for the first time and the final rules published on the same date, there was an error in alphanumerically ordering the test methods in 40 CFR 63.14. The ordering and instructions of the standards in the centralized IBR section were incorrect. Thus, the redesignations and additions of the standards were unable to be published in the CFR. Therefore, the EPA finds good cause to make the correction in this direct final action.

II. Summary of Cost, Environmental, and Economic Impacts

This action will have no cost, environmental, energy, or economic impacts beyond those impacts presented in the NESHAPs for Refractory Products Manufacturing Residual Risk and Technology Review (86 FR 66045), Carbon Black Production (major sources) and Cyanide Chemicals Manufacturing Residual Risk and Technology Reviews and Carbon Black Production Area Source Technology Review (86 FR 66096) published on November 19, 2021. These technical corrections are cost neutral.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Incorporation by reference.

Joseph Goffman,

Acting Assistant Administrator, Office of Air and Radiation.

For the reasons set out in the preamble, 40 CFR part 63 is corrected 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 A—General Provisions

■ 2. Section 63.14 is amended by:

■ a. Redesignating paragraphs (h)(105) through (116) as (h)(108) through (119);

■ b. Redesignating paragraphs (h)(103) and (104) as (h)(105) and (106), respectively;

■ c. Redesignating paragraphs (h)(63) through (102) as (h)(64) through (103); and

■ d. Adding new paragraphs (h)(63), (104), and (107).

§ 63.14 Incorporations by reference.

* * * * *

(h) * * *

(63) ASTM D4282–15, Standard Test Method for Determination of Free Cyanide in Water and Wastewater by Microdiffusion, Approved July 15, 2015, IBR approved for § 63.1103(g).

* * * * *

(104) ASTM D6784–16, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), Approved March 1, 2016, IBR approved for table 4 to subpart SSSSS.

* * * * *

(107) ASTM D7237–18, Standard Test Method for Free Cyanide and Aquatic Free Cyanide with Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection, Approved December 1, 2018, IBR approved for § 63.1103(g).

* * * * *

[FR Doc. 2022–10842 Filed 5–20–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0728; FRL–9622–01–OCSPP]

Fluopicolide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluopicolide in or on multiple commodities which are identified and discussed later in this document. Valent U.S.A. LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 23, 2022. Objections and requests for hearings must be received on or before July 22, 2022 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0728, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0728 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 22, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0728, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/