ORAL ARGUMENT NOT YET SCHEDULED

Case No. 18-1085 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

California Communities Against Toxics, et al.

Petitioners,

v.

United States Environmental Protection Agency, et al.

Respondents.

On Petition for Review of Final Action of the
United States Environmental Protection Agency

Opening Proof Brief for Petitioner State of California, by and through the California Air Resources Board and Xavier Becerra, Attorney General

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1)(A), Petitioner the State of California, by and through the California Air Resources Board and Xavier Becerra, Attorney General, submit this certificate as to parties, rulings, and related cases.

A. Parties

Petitioners

The following parties appear in these consolidated cases as petitioners: In case number 18-1085, filed March 26, 2018, California Communities Against Toxics, Environmental Defense Fund, Environmental Integrity Project, Louisiana Bucket Brigade, Natural Resources Defense Council, Ohio Citizen Action, and Sierra Club. In case number 18-1095, filed April 9, 2018, Downwinders at Risk, Hoosier Environmental Council, and Texas Environmental Justice Advocacy Services. In case number 18-1096, filed April 9, 2018, the State of California, by and through the California Air Resources Board and Xavier Becerra, Attorney General.

Respondents:

The respondents in all the above-captioned cases are the United States Environmental Protection Agency ("EPA") and Andrew Wheeler, in his official capacity as Acting Administrator of the EPA.

Intervenors:

The following parties have intervened for respondents in all of the above-captioned cases: Air Permitting Forum, Auto Industry Forum, National Environmental Development Association's Clean Air Project, and Utility Air Regulatory Group.

B. Amici in This Case

None at present.

C. Rulings Under Review

Petitioners seeks review of the final action taken by EPA in the memorandum from William L. Wehrum, dated January 25, 2018, published in the Federal Register at 83 Fed. Reg. 5543 (Feb. 8, 2018) and titled "Issuance of Guidance Memorandum, 'Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.'"

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D. Related Cases

None at present.

/s/ Kavita P. Lesser
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OTHER AUTHORITIES

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

Board	California Air Resources Board
Environmental Petitioners	California Communities Against Toxics, Environmental Defense Fund, Environmental Integrity Project, Louisiana Bucket Brigade, Natural Resources Defense Council, Ohio Citizen Action, Sierra Club, Downwinders at Risk, Hoosier Environmental Council, and Texas Environmental Justice Advocacy Services
EPA	Environmental Protection Agency
HAPs	Hazardous Air Pollutants
JA	Joint Appendix
MACT	Maximum Achievable Control Technology
OIAI	Once In, Always In Policy
Section 112	42 U.S.C. § 7412
Seitz Memo	Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, "Potential to Emit for MACT Standards – Guidance on Timing Issues" (May 16, 1995).
Wehrum Memo	Memorandum from William L. Wehrum, Assistant Administrator for Air and Radiation, Environmental Protection Agency, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act" (January 25, 2018).

JURISDICTIONAL STATEMENT

Petitioner the State of California, by and through the California Air Resources Board and Xavier Becerra, Attorney General ("California"), seeks judicial review of the final action taken by the United States Environmental Protection Agency ("EPA") in a memorandum issued by William L. Wehrum, EPA's Assistant Administrator for Air and Radiation titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." ("the Wehrum Memo"). The Court has exclusive jurisdiction to review final actions taken by EPA under the Clean Air Act. 42 U.S.C. § 7607(b)(1). EPA notified the public of its issuance of the Wehrum Memo on February 8, 2018. 83 Fed. Reg. 5543 (Feb. 8, 2018), JA___. California's petition for review was thus timely filed on April 9, 2018, "within sixty days from the date notice . . . appear[ed] in the Federal Register." 42 U.S.C. § 7607(b)(1).

ISSUES PRESENTED

California requests that the Court determine whether EPA acted unlawfully in:

1. Issuing the Wehrum Memo without complying with the notice and comment rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. § 553(b)-(d);

2. Allowing major sources of hazardous air pollutants to be reclassified as area sources to avoid congressionally mandated requirements applicable to major sources in violation of section 112 of the Clean Air Act, 42 U.S.C. § 7412 ("Section 112"); and

3. Failing to provide any substantial justification for issuing the Wehrum Memo, which lacks factual support and contradicts EPA's previous policy.

STATUTES AND REGULATIONS

The relevant statutory and regulatory provisions are contained in the Addendum at the end of this brief.

STATEMENT OF THE CASE

I. THE FEDERAL FRAMEWORK FOR REGULATING HAZARDOUS AIR POLLUTANTS UNDER THE CLEAN AIR ACT

Section 112 regulates the emissions of "hazardous air pollutants" ("HAPs"), defined to include "pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects." *See* 42 U.S.C. § 7412(b)(2). In 1990, Congress amended Section 112 to list more than one hundred specific hazardous air pollutants that EPA would be required to regulate. *New Jersey v. EPA*, 517 F.3d 574, 578 (D.C. Cir. 2008). Section

112 also requires EPA to promulgate and periodically revise, as appropriate, national emission standards for sources of hazardous air pollutants. 42 U.S.C § 7412(d).

The level of control required depends on whether a source is a "major source" or an "area source." Major sources are those that emit, or have "the potential to emit," 10 tons per year or more of any single hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants. 42 U.S.C. § 7412(a). Section 112 requires EPA to establish standards for major sources that result in the "maximum degree of reductions in emissions" that EPA determines is "achievable," which is no less than the level achieved in practice by the lowest-polluting facilities in a particular source category. *See* 42 U.S.C. § 7412(d)(2). These standards for major sources are referred to as "maximum achievable control technology" or "MACT" standards. *See U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 594 (D.C. Cir. 2016). In addition to meeting MACT standards, major sources of hazardous air pollutants must obtain operating permits known as Title V permits, which combine all federally enforceable requirements applicable to a facility with respect to all air emissions (i.e., both hazardous air pollutants and non-hazardous air pollutants). 42 U.S.C. §§ 7661a(a), 7661c(a). Title V permits also usually require additional monitoring, reporting, and

recordkeeping requirements in order to ensure compliance. *See* 40 C.F.R. §§ 64.1–64.10.

An area sources is "any stationary source of hazardous air pollutants that is not a major source." 42 U.S.C. § 7412(a)(2). Area sources face far fewer requirements and are often not subject to any hazardous air pollutant standards at all. *See* Declaration of Brian Clerico, California Air Resources Board ("Clerico Decl.") ¶ 12. When EPA sets standards for area sources, it generally requires less stringent reductions than those required by MACT. 42 U.S.C. § 7412(d)(5); *see also* Clerico Decl. ¶ 12. Further, most area sources are not required to obtain Title V permits. Clerico Decl. ¶¶13-14.

II. CALIFORNIA'S FRAMEWORK FOR REGULATING STATE AIR TOXICS AND FEDERAL HAZARDOUS AIR POLLUTANTS

California has its own air toxics program that relies on the rigor of the federal program. The California Air Resources Board ("the Board") is charged with regulating air toxics in the state. The Board, with participation from other state agencies, determines which pollutants are air toxics (*see* Cal. Health & Safety Code §§ 39660–39661) and has currently listed 21 such substances (Cal. Code Regs., tit. 17, § 93000). In addition, all the federal hazardous air pollutants in Section 112 are designated as state air toxics. *Id.* § 93001.

The Board determines appropriate regulatory measures for controlling emissions of air toxics based on a threshold exposure level, if any, or emissions must be reduced to the lowest level achievable, which is generally more stringent than the federal MACT level. Cal. Health & Safety Code § 39666; Clerico Decl. ¶ 17. Unlike the federal MACT standards, California's air toxic control measures generally apply to any source, regardless of emissions level. Clerico Decl. ¶ 17. But, the Board has not adopted California air toxics control measures for over 100 source categories and instead relies upon federal standards. Clerico Decl. ¶ 28. The Board also has a statutory obligation to promulgate state air toxics control measures if it determines that the federal standards are inadequate. Cal. Health & Safety Code § 39658(b)(2). Therefore, the distinction between major and area sources is important to California, as federal standards are currently a significant control of air toxics in the state. Clerico Decl. ¶ 8.

III. EPA'S "SYNTHETIC MINOR SOURCE" PROGRAM AND THE SEITZ MEMO

EPA has also created, by regulation, a "synthetic minor source program" for hazardous air pollutants that allows some major sources to be classified as area sources if the source agrees to enforceable limits on its potential to emit that keep emissions below the major source threshold.

Given the "importance of potential to emit to determining the applicability of [MACT] standards and other requirements," EPA had intended to propose a "separate rulemaking [that] would specify deadlines by which major sources of HAP would be required to establish the . . . enforceability of limitations on their potential to emit in order to avoid compliance…." 59 Fed. Reg. 12,408, 12,413-14 (March 16, 1994), JA ___. Instead, EPA adopted a transition policy.

On May 16, 1995, EPA issued a memorandum titled "Potential to Emit for MACT Standards—Guidance on Timing Issues" ("Seitz Memo"). JA___. Under the Seitz Memo, sometimes referred to as the "once in, always in policy," if a facility is a major source of hazardous air pollutants as of the effective compliance date of an applicable MACT standard, it must comply permanently with that standard, even if the facility subsequently decreases its potential emissions below the 10 tons per year/25 tons per year threshold. Seitz Memo at 5, 9, JA___. In addition, any facility deemed a major source of hazardous air pollutants under Title V is perpetually subject to Title V permitting. Seitz Memo at 9, JA___.

As EPA said at the time, the Seitz Memo "follows most naturally from the language and structure of the statute" and prevents sources from backsliding:

> In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could 'backslide' from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year). Thus the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved.

Seitz Memo at 9, JA____. The Seitz Memo "ensures that MACT emissions reductions are permanent and that the health and environmental protection provided by MACT standards is not undermined." *Id*. The legal obligations EPA imposed through the Seitz Memo remained in effect until EPA repealed the memo earlier this year.

IV. EPA'S 2007 RULEMAKING TO REPEAL THE SEITZ MEMO

In 2007, EPA proposed a rulemaking to withdraw and effectively reverse the Seitz Memo by amending its regulations to allow major sources to reclassify as area sources by obtaining enforceable limits at any time. 72 Fed. Reg. 69 (Jan. 3, 2007), JA____. The proposed rule also noted that some sources that switch to area sources would no longer be subject to Title V permitting requirements. 72 Fed. Reg. at 76 n.11, JA____.

EPA acknowledged the potential impact of the proposed rulemaking on emissions of hazardous air pollutants. 72 Fed. Reg. at 73-74, JA____. EPA's

Regional Administrators, along with a chorus of state pollution-control agencies, voiced concerns that the proposed rule would significantly increase emissions. *See e.g.,* EPA-HQ-OAR-2004-0094-0151, NRDC Comments, Att. 2, "Regional Comments on Draft OIAI Policy Revisions at 3-4 (Dec. 13, 2005) (summarizing opinion of EPA Regions that result "would be detrimental to the environment and undermine the intent of the MACT program," due to increased HAP emissions), JA_____; EPA-HQ-OAR-2004-0094-0128, Comments of Minnesota Pollution Control Agency at 2 ("We believe actual emissions of HAPs will rise under this proposal."), JA____; EPA-HQ-OAR-2004-0094-0144, Comments of Pennsylvania Department of Environmental Protection at 2-3 (describing how "EPA's proposed rule allows certain sources to increase harmful emissions of HAPs."), JA_____.[1] EPA took comments through May 2007, but did not take any subsequent action to change or revoke the Seitz Memo.

[1] *Accord* EPA-HQ-OAR-2004-0094-0074, Comments of Wisconsin Department of Natural Resources at 2 ("It is very likely that emissions will increase as a result of the proposed policy change exactly as stated in the 1995 Seitz Memorandum."), JA____; EPA-HQ-OAR-2004-0094-0142, Comments of Oregon Dep't of Envtl. Qual. at 2 ("[T]he major source threshold will become the de facto MACT threshold"), JA___; EPA-HQ-OAR-2004-0094-0130, Comments of Illinois Envtl. Prot. Agency at 1 ("The repeal of the [Seitz Memo] will lead to 'backsliding ….'"), JA____.

V. THE WEHRUM MEMO REPEALS THE SEITZ MEMO

Without providing any notice or opportunity for comment, in January 2018, EPA issued the Wehrum Memo expressly withdrawing and superseding the Seitz Memo. JA____. The Wehrum Memo implements a new rule by allowing a major source to become a "synthetic minor source" at any time:

> [A] major source which takes an enforceable limit on its [potential to emit] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its [potential to emit].

Wehrum Memo at 4, JA___. EPA claims that the Seitz Memo is "contrary to the plain language" of the Clean Air Act because "Congress placed no temporal limitations on the determination of whether a source emits or has the [potential to emit] HAP in sufficient quantity to qualify as a major source." Wehrum Memo at 3, JA____.

EPA "anticipates" publishing a Federal Register notice "to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum." *Id*. at 2, JA____. EPA directs regional offices to send the memorandum to "states within their jurisdiction." *Id*. at 4, JA___. As of the date of this brief, EPA has not followed the Wehrum Memo with any proposed rulemaking.

VI. THIS PROCEEDING

On March 26, 2018, California Communities Against Toxics, Environmental Defense Fund, Environmental Integrity Project, Louisiana Bucket Brigade, Natural Resources Defense Council, Ohio Citizen Action, and Sierra Club filed a petition for review challenging the Wehrum Memo. On April 9, 2018, Downwinders at Risk, Hoosier Environmental Council, and Texas Environmental Justice Advocacy Services filed a petition for review. Petitioners in those matters are collectively referred to herein as "Environmental Petitioners." On April 9, 2018, California filed a petition for review challenging the 2018 Wehrum Memo. The Court consolidated the matters on April 12, and 19, 2018.

STANDARD OF REVIEW

Under both the Administrative Procedure Act and the Clean Air Act, a reviewing court shall hold unlawful and set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (C) & (D); 42 U.S.C. § 7607(d)(9)(A), (C) & (D).

SUMMARY OF ARGUMENT

The Court has jurisdiction over this matter because the Wehrum Memo is a final reviewable agency action under the Clean Air Act. 42 U.S.C. § 7607(b)(1). The Wehrum Memo states, in no uncertain terms, EPA's legal position on whether a major source of hazardous pollutants can be reclassified as an area source. EPA's action has binding legal effects on regulated entities and state permitting authorities by creating new rights for major sources and relieving major sources from permitting requirements and compliance with major source emission standards.

Given that it imposes legally binding obligations, the Wehrum Memo is also a legislative rule that required notice and comment under the Administrative Procedure Act, 5 U.S.C. § 553(b)-(d). The Wehrum Memo does more than clarify or explain a regulatory term – it effected a substantive change in existing law or policy.

In addition, the Wehrum Memo must be set aside because it is inconsistent with the statutory structure of Section 112. By allowing major sources to reclassify as area sources at any time, EPA has rendered the statutory terms of Section 112 legally meaningless. Section 112 requires the "maximum degree of reduction" including the "prohibition" of hazardous air

pollutants. But under the Wehrum Memo, sources now have the legal right to emit up to the major source threshold.

Finally, even if the Court were to determine that the Wehrum Memo is exempt from notice and comment and EPA had the statutory authority, the Wehrum Memo is arbitrary and capricious because it lacks factual support and entirely ignores the concerns that gave rise to the Seitz Memo. EPA fails to explain why it is no longer concerned that major sources may take less stringent standards if allowed, thereby resulting in an increase in emissions of hazardous air pollutants. Indeed, the Wehrum Memo makes no effort at all to assess what impacts it will have upon emissions.

For these reasons, the Court should vacate the Wehrum Memo in its entirety.

STANDING

To establish Article III standing, a plaintiff must demonstrate: (1) injury-in-fact, which means "an actual or imminent" and "concrete and particularized" harm to a "legally protected interest;" (2) causation of the injury, which means that the injury is "fairly traceable" to the challenged action of the defendant, and (3) redressability, which means that it is "likely," not speculative, and that a favorable decision by a court will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

"States are not normal litigants" and are entitled to "special solicitude" for purposes of standing. *Mass. v. EPA*, 549 U.S. 497, 520 (2007); *accord Air Alliance Houston, et al. v. EPA, et al.*, No. 17-1155, 2018 WL 4000490, at *6 (D.C. Cir. Aug. 17, 2018) ("'[T]here is no difficulty in recognizing [a state's] standing to protect proprietary interests or sovereign interests.'") (quoting 13B Wright & Miller, Fed. Prac. & Proc. § 3531.11.1, Government Standing – States (3d. ed.)).

I. INJURY TO CALIFORNIA'S QUASI-SOVEREIGN INTEREST

As a result of the Wehrum Memo, California's ability to rely on the federal framework to protect California from hazardous air pollutants is in stark question. As stated, California has not promulgated any state air toxics control measures for over 100 source categories and instead relies upon federal MACT standards. Clerico Decl. ¶ 28.

Now, under the Wehrum Memo, California facilities previously subject to federal MACT standards are no longer bound by those standards if they reclassify as an area source by taking an enforceable limit on emissions. Accordingly, based on current estimates, the Wehrum Memo may cause hazardous air pollutant emissions in California to more than double. Clerico Decl. ¶¶ 23, 26. Moreover, many sources of hazardous air pollutants are located near schools or in disadvantaged communities. Clerico Decl. ¶ 23.

These communities already suffer from disproportionate health impacts from air toxics. *Id*. Certain air toxics, such as mercury or dioxin, are exceptionally toxic even in low amounts. *Id*. Thus, even small increases in emissions may have significant negative health consequences for California residents. *Id*. For these reasons, the Wehrum Memo will result in concrete harm to California's quasi-sovereign interest in the health and safety of those residents who live near and work at affected facilities. *See Mass. v. EPA*, *supra*, 549 U.S. at 518-21. California has standing to assert these interests.

II. INJURY TO CALIFORNIA'S PROPRIETARY INTEREST

In addition, the Wehrum Memo will result in concrete harm to California's proprietary interests by, among other things, forcing it to expend state resources to address the increase in emissions of hazardous air pollutants within its borders. Many area sources do not have any applicable federal standard, so if these major sources become area sources, they would no longer be subject to any standard whatsoever, including the associated monitoring and reporting requirements. Clerico Decl. ¶¶ 24-27.

In order to avoid the health impacts of the Wehrum Memo, California – specifically the Board – must commit significant staff time and resources to evaluate whether stricter or additional state regulations or permit requirements are required to ensure that emissions of hazardous air

pollutants do not increase in the state. *Id*. at ¶ 28. This is a considerable burden on the Board, requiring extensive time and resources. Indeed, the Board estimated it would have to expend up to $308,000,000 to fill the regulatory gap created by the Wehrum Memo. *Id*. The Board's resources are already limited and it would either have to divert resources from other programs (detracting from those programs' public health benefits and goals) or secure more funding from the Legislature. *Id*. Thus, the Wehrum Memo creates additional public health risks in California that the Board cannot readily meet with current resources. *Id*. Such significant monetary expenditures are precisely the type of "pocketbook" injury that is incurred by the state itself to establish standing. *See Air Alliance Houston, supra,* 2018 WL 4000490, at *6 (D.C. Cir. Aug. 17, 2018).

California's expenditure of resources may also increase because major sources that reclassify as area sources may cease critical compliance monitoring, reporting, and public review processes required by the Title V permitting program. Clerico Decl. ¶¶ 24-27. Thus, California may lose access to facility information and oversight because of the Wehrum Memo. *Id*. These impacts on state resources alone provides sufficient basis to establish standing. *See Air Alliance Houston, supra*, 2018 WL 4000490, at

*6 (D.C. Cir. Aug. 17, 2018); *see also Texas v. United States*, 809 F.3d 134, 155 (5th Cir. 2015).

III. INJURY TO CALIFORNIA'S PROCEDURAL INTEREST

Finally, the Wehrum Memo has injured California by depriving the state of "a procedural right to protect [its] concrete interests." *Mass. v. EPA, supra,* 549 U.S. at 517. "When a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant." *Id*. at 518.

By failing to provide notice of proposed rulemaking and an opportunity for comment, EPA deprived California of its procedural right under the Administrative Procedure Act, 5 U.S.C. § 553(b)-(d), to submit comments on the Wehrum Memo before it became effective. Further, as stated, the Wehrum Memo will cause concrete financial and environmental harm to California. Because California is alleging deprivation of a procedural protection, it need not demonstrate redressability and immediacy here. *See Mass. v. EPA*, *supra,* 549 U.S. at 517-18. Thus, California has established Article III standing.

ARGUMENT

I. THE WEHRUM MEMO IS A REVIEWABLE FINAL AGENCY ACTION

The Court has jurisdiction to hear this challenge, notwithstanding EPA's expected protestations,[2] because the Wehrum Memo is a "final action" reviewable under the Clean Air Act section 307(b)(1), 42 U.S.C. § 7607(b)(1).

An action is final if it marks the "consummation of the agency's decisionmaking process" and is one "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (quotation marks and citations omitted). To determine finality, a court will look at whether the agency's position is "sufficiently final to demand compliance with its announced position." *Ciba-Geigy Corp. v. EPA*, 801 F.2d 430, 436 (D.C. Cir. 1986). "Once the agency publicly articulates an unequivocal position . . . and expects regulated entities to alter their primary conduct to conform to that position, the agency has voluntarily relinquished the benefit of postponed judicial review." *Id*.

[2] *See* EPA Doc. No. 1730526 ("This filing should not be construed as waiving the Agency's right to argue that the challenged memorandum is not final agency action….").

Here, "[i]n litigation over guidance documents, the finality inquiry is often framed as the question of whether the challenged agency action is best understood as a non-binding action, like a policy statement or interpretive rule, or a binding legislative rule." *Ass'n of Flight Attendants-CWA, AFL-CIO v. Huerta*, 785 F.3d 710, 716 (D.C. Cir. 2015). "The most important factor in differentiating between binding and nonbinding actions is 'the actual legal effect (or lack thereof) of the agency action in question.'" *Id*. at 717 *(*quoting *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 252 (D.C. Cir. 2014)). The Court has recognized that an agency's pronouncements can, as a practical matter, have a binding effect:

> If the agency acts as if a document issued at headquarters is controlling in the field, if it treats the document in the same manner as it treats a legislative rule . . . if it leads private parties or State permitting authorities to believe it will declare permits invalid unless they comply with the terms of the document, then the agency's document is for all practical purposes 'binding.'

Appalachian Power Co. v. EPA, 208 F.3d 1015, 1021 (D.C. Cir. 2000).

The Wehrum Memo easily passes the finality test. It marks the "consummation" of EPA's decisionmaking process by revoking the Seitz Memo and asserting, in no uncertain terms, that the Seitz Memo was inconsistent with the plain meaning of Section 112. The Wehrum Memo

also contains no equivocal or tentative language regarding EPA's legal position. Rather, it states, quite clearly, that "a source that was previously classified as major, and which so limits its [potential to emit], *will* no longer be subject either to the major source MACT or other major source requirements…." Wehrum Memo at 1 (emphasis added), JA___.

The Wehrum Memo also has an actual legal effect on regulated entities and state permitting authorities. The Wehrum Memo "creates new rights" for major sources seeking to reclassify as an area source that were not previously available under the Seitz Memo. *See, e.g.*, 71 Fed. Reg. 70,383, 70,387 (Dec. 14, 2006) (determining that a facility "is not eligible for minor source status" because of the "once in, always in policy."), JA ____; Letter from Steven Riva, EPA to Raymond Yarmac, Sci-Tech, Inc. (June 19, 2000) ("based on the 'once in, always in policy', EPA has determined that Varflex is not eligible for a variance from complying with the MACT and it needs to keep its title V permit active."), JA ___; Letter from Michael Kenyon, EPA to David Horowitz, Tighe & Bond (June 21, 2000) (requiring compliance with MACT and Title V permitting because of the once in, always in policy), JA____.

Thus, the Wehrum Memo revises legal obligations by allowing a major source to reclassify as an area source, relieving major sources from

compliance with MACT standards and Title V permitting requirements. The Wehrum Memo also directs EPA Regional Offices to "send this memorandum to states within their jurisdiction," (Wehrum Memo at 4, JA____) and hence, state permitting authorities are not "free to ignore it" (*Nat'l Mining Ass'n*, *supra*, 758 F.3d at 252). Indeed, the Wehrum Memo has caused legal consequences for California, which relies on the federal MACT standards for HAP emission reductions. Clerico Decl. ¶¶ 17-20. As stated, California must expend resources to evaluate whether stricter or additional state regulations or permit requirements are required to ensure that emissions of hazardous air pollutants do not increase. Clerico Decl. ¶¶ 24-32. The Wehrum Memo will have "direct and appreciable legal consequences." *Bennett*, 520 U.S. at 178.

The finality of the Wehrum Memo is not undone by the possibility that EPA will "publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum." Wehrum Memo at 2, JA____. Nothing in EPA's intent to conduct a future rulemaking purports to change its legal position. That EPA's action begets another rulemaking process also does not make the Wehrum Memo any less final. "To be final, an action need not be the last administrative action contemplated by the statutory scheme." *Role*

Models Am. v. White, 317 F.3d 327, 331 (D.C. Cir. 2003) (quotation marks and brackets omitted).

And even if EPA may possibly change its position in a future rulemaking, "[t]he fact that a law may be altered in the future has nothing to do with whether it is subject to judicial review at the moment." *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1022 (D.C. Cir. 2000) (holding EPA guidance final even it was "subject to change"). Moreover, the issues raised here are "purely legal" and the question before the Court is fit for judicial review. *See Cement Kiln Recycling Coal v. EPA*, 493 F.3d 207, 215 (D.C. Cir. 2007) ([A] purely legal claim in the context of a facial challenge is presumptively reviewable.").

II. EPA VIOLATED THE ADMINISTRATIVE PROCEDURE ACT BY FAILING TO SEEK NOTICE AND COMMENT ON THE WEHRUM MEMO

The Administrative Procedure Act requires agencies to provide "notice of its proposed rulemaking adequate to afford interested parties a reasonable opportunity to participate in the rulemaking process." *Florida Power & Light Co. v. U.S.*, 846 F.2d 765, 771 (D.C. Cir. 1988). Accordingly, before an agency promulgates a legislative rule – i.e., a rule carrying the force and effect of law – it must give notice to the public by publishing its proposed rule in the Federal Register, invite any interested persons to submit

comments, and publish its final rule in the Federal Register. 5 U.S.C. § 553(b)-(d). This notice-and-comment procedure is premised upon notions of basic "fairness and informed administrative decisionmaking." *Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979). Interpretive rules or policy statements, on the other hand, do not require notice-and-comment procedures. *See Nat. Res. Def. Council v. EPA*, 643 F.3d 311, 321 (D.C. Cir. 2011) *citing* 5 U.S.C. § 553.

A. The Wehrum Memo is a Legislative Rule Subject to Notice and Comment Procedures

The tests for whether a rule is final and whether it is legislative are closely related. "[W]here an agency action is clearly final, the question whether [it] 'is a legislative rule that required notice and comment[ ] is easy.'" *Sierra Club v. EPA*, 699 F.3d 530, 535 (D.C. Cir. 2012) (quoting *Nat. Res. Def. Council*, *supra*, 643 F.3d at 320). Agency actions that establish "legally binding requirements for a private party to obtain a permit or license" are legislative rules. *Ass'n of Flight Attendants-CWA, AFL-CIO v. Huerta*, 785 F.3d 710, 716-717 (D.C. Cir. 2015). Legislative rules modify or add "to a legal norm based on the agency's own authority flowing from a congressional delegation to engage in supplementary lawmaking." *Id*. By contrast, an interpretive rule does not have "the force and effect of law."

Perez v. Mortg. Bankers Ass'n, 135 S. Ct. 1199, 1204 (2015). Rather than imposing a new requirement, an interpretive rule simply explains an existing one. *See Mountain States Health All. v. Burwell*, 128 F. Supp. 3d 195, 205 (D.D.C. 2015).

Given that the Wehrum Memo is clearly final, the question of whether it is a legislative rule that required notice and comment "is easy." EPA asserts that the Clean Air Act does not specifically address the question of when a major source can switch to area source status by taking an enforceable limit on its potential to emit. Wehrum Memo at 3, JA___. Thus, the Wehrum Memo "'d[id] more than simply clarify or explain a regulatory term, or confirm a regulatory requirement, or maintain a consistent agency policy.'" *Mendoza v. Perez*, 754 F.3d 1002, 1021 (D.C. Cir. 2014) (quoting *Nat'l Family Planning & Reprod. Health Ass'n, Inc*. v. *Sullivan*, 979 F.2d 227, 237 (D.C. Cir. 1992)). It "supplement[ed]" the Clean Air Act – which according to EPA says nothing about when a major source can reclassify as an area source – and "effect[ed] a substantive change in existing law or policy." *Id*. Accordingly, the Wehrum Memo has "the force and effect of law," *Perez*, *supra*, 135 S. Ct. at 1204, and constitutes a legislative rule.

B. EPA's Failure to Provide Notice and Comment for the Seitz Memo Does Not Render the Wehrum Memo an Interpretive Rule

Given the legally binding requirements imposed by the Wehrum Memo, EPA cannot claim that it is merely an interpretive rule and therefore exempt from the notice and comment procedures of the Administrative Procedure Act. Nor can EPA claim that EPA's failure to provide notice and comment before issuing the Seitz Memo excuses EPA's failure to do so now.

When EPA originally promulgated the implementing regulations for Section 112, it intended to propose a separate rulemaking to "specify deadlines by which major sources" would be required to establish enforceable limits on their potential to emit to avoid compliance with MACT standards. 59 Fed. Reg. 12,408, 12,413-14 (March 16, 1994), JA___. But rather than conduct a separate rulemaking, EPA issued the Seitz Memo. Indeed, as stated, EPA regularly cited the Seitz Memo in communications with states and regulated entities regarding the applicability of MACT standards and Title V permit requirements, indicating that EPA believed the policy to be binding. *See, e.g.*, 71 Fed. Reg. 70,383, 70,387 (Dec. 14, 2006), JA ____; Letter from Steven Riva, EPA to Raymond Yarmac, Sci-Tech, Inc. (June 19, 2000), JA ___; Letter

from Michael Kenyon, EPA to David Horowitz, Tighe & Bond (June 21, 2000) , JA____. Thus, what EPA may have intended as a transition policy effectively became a substantive rule without an opportunity for notice and comment by the public.

Indeed, by EPA's current characterization of the Seitz Memo, it was an attempt by EPA to modify the plain statutory requirements of Section 112 by invoking EPA's own authority. Wehrum Memo at 3, JA_____. Therefore, by EPA's own account, the Seitz Memo it not an interpretive rule but rather a legislative rule. Accordingly, as a legislative rule revising a prior legislative rule, EPA should have complied with the notice and comment rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. §§ 553(b)-(d).[3]

III. EPA HAS NO AUTHORITY TO ALLOW MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS TO RECLASSIFY AS AREA SOURCES AT ANY TIME

The Wehrum Memo is also unlawful because it is inconsistent with the statutory text, structure, and Congressional intent of Section 112. California

[3] Thus, the Supreme Court decision of *Perez v. Mortgage Bankers Ass'n* permitting agencies to amend interpretative rules without notice and comment, does not apply here. 135 S. Ct. 1199, 1206 (2015).

adopts Environmental Petitioners' argument on this issue and emphasizes the following:

By allowing major sources of hazardous air pollutants to become area sources, major sources now have the legal right, under Section 112, to increase emissions to the major source threshold of 10/25 tons per year. Thus, EPA relies on an argument that renders the statutory terms of Section 112 legally meaningless. Section 112(d)(2) states that EPA:

> [S]hall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (*including a prohibition on such emissions, where achievable*) that the Administrator . . . determines is achievable . . . through application of measures, processes, methods, systems or techniques including, but not limited to, measures which (A) reduce the volume of, *or eliminate emissions* of, such pollutants through process changes, substitution of materials or other modification,…."

42 U.S.C. § 7412(d)(2) (emphasis added). Under the Wehrum Memo, EPA could never require a "prohibition" of hazardous air pollutants because sources have a legal right to emit up to the major source threshold. The Wehrum Memo thus runs counter to Section 112's "maximum degree of reduction" and "prohibition" commands and effectively erases Section 112(d)(2)'s "prohibition" language from the statute.

Likewise, the Wehrum Memo is inconsistent with Section 112's requirement that MACT standards require emission reductions to the maximum level achievable, and no less than the level achieved in practice by the lowest-emitting sources. *See* 42 U.S.C. §§ 7412(d)(2) & (3). Specifically, the Wehrum Memo allows major sources to limit their emission reductions to the major source threshold rather than the "emission control that is achieved in practice by the best controlled similar source" (for new sources) and the average emission limitations achieved by the best performing sources (for existing sources). *Id*. The Wehrum Memo in effect creates a MACT ceiling of 9.9 tons per year/24.9 tons per year, undermining the "MACT floor" that "ensures that all HAPs sources 'at least clean up their emission to the level that their best performing peers have shown can be achieved.'" *U.S. Sugar Corp. v. EPA,* 830 F.3d 579, 594 (D.C. Cir. 2016) (quoting *Sierra Club v. EPA*, 353 F.3d 976, 980 (D.C. Cir. 2004).

Finally, the Wehrum Memo advances an interpretation of Section 112 that runs counter to the intent of Congress. As detailed in the Environmental Petitioners' brief, in 1990, Congress reconstructed Section 112 to centralize the federal role in regulating hazardous air pollutants through an aggressive, technology-forcing regime. Now, by creating a loophole for major sources of hazardous air pollutants to escape that regime, EPA has handed an

unfunded mandate to the states – like California – to patch the regulatory gap filled by the Wehrum Memo.

Accordingly, the Court should vacate the Wehrum Memo because it creates a self-defeating statutory approach that runs afoul of basic canons of statutory construction and is contrary to the Congressional intent of Section 112.

IV. THE WEHRUM MEMO IS ARBITRARY AND CAPRICIOUS BECAUSE IT LACKS FACTUAL SUPPORT AND IGNORES THE CONCERNS UNDERLYING THE SEITZ MEMO

Even if the Wehrum Memo is exempt from notice and comment rulemaking, it must be set aside because it is arbitrary and capricious. When an agency changes its policy on an issue:

> [T]he [Administrative Procedure Act] requires an agency to provide more substantial justification when 'its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters.

Perez, 135 S. Ct. at 1209 (quoting *F.C.C. v. Fox Television Stations*, 556 U.S. 502, 515 (2009)).

Here, EPA fails to explain why it is no longer concerned that major sources of hazardous air pollutants may "backslide" without the policy. Seitz Memo at 9, JA___. Nor does EPA explain how it intends to ensure

that emissions reductions from major sources are permanent, "and that the health and environmental protection provided by MACT standards is not undermined." *Id*., JA___. Section 112's primary purpose is to achieve "the maximum degree of reduction" in emissions of hazardous air pollutants. 42 U.S.C. § 7412(d)(2). Yet the Wehrum Memo makes no effort to assess what effect it will have upon emissions of hazardous air pollutants. Indeed, the Wehrum Memo does not address at all the potential of a net increase in hazardous emissions.

By ignoring the issue entirely, EPA fails to reconcile the underlying rationale supporting the Seitz Memo. When EPA sought to withdraw the Seitz Memo in 2007, EPA's Regional Administrators voiced "significant concerns about the increases in emissions of hazardous air pollutants that will likely occur from the revisions to the [the Seitz Memo]." EPA-HQ-OAR-2004-0094-0151, NRDC Comments, Att. 1, "Regional Comments on Draft OIAI Policy Revisions at 2 (Mar. 10, 2006), JA____; *accord* EPA-HQ-OAR-2004-0094-0151, NRDC Comments, Att. 2, "Regional Comments on Draft OIAI Policy Revisions at 3 (Dec. 13, 2005) ("the reductions that were intended to be achieved through the MACT standard would be offset by synthetic minor limits that allow sources to emit HAPs at levels higher than those allowed by the MACT standard."), JA___. The EPA regional

offices further stated, "many sources would take limits less stringent than MACT requirements, if allowed." EPA-HQ-OAR-2004-0094-0151, NRDC Comments, Att. 2, JA___.

This concern was echoed by State pollution-control agencies, observing that withdrawing the Seitz Memo would produce a significant increase in emissions of hazardous air pollutants. EPA-HQ-OAR-2004-0094-0128, JA____; EPA-HQ-OAR-2004-0094-0144, JA_____; EPA-HQ-OAR-2004-0094-0074, JA____; EPA-HQ-OAR-2004-0094-0142, JA___; EPA-HQ-OAR-2004-0094-0130, JA____. Indeed, EPA's responsive analysis suggested that it might produce an increase in emissions for certain source categories. *See* EPA-HQ-OAR-2004-0094-0151, NRDC Comments, Att. 9, Letter from William Wehrum, EPA to Hon. John Dingell, U.S. House of Representatives (March 30, 2007) at 15-18 (describing analysis of one industrial source category that may increase emissions), JA___.

Yet EPA has now made the same change without even inquiring into the impact of the Wehrum Memo, or providing any explanation to contradict the assessment of the EPA regional offices and state permitting authorities. Instead, EPA relies on conclusory statements that the Seitz Memo "creates a disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce

HAP emissions." Wehrum Memo at 4, JA___. But EPA fails to furnish the basic, necessary factual data or projections to determine how many sources may be incentivized to implement further technological controls or, more importantly, how many sources may avoid MACT obligations to increase emissions of hazardous air pollutants. Further, EPA has not explained how providing incentives to reduce potential to emit will achieve the same maximum achievable reductions as the MACT standard, and provide the same protection for public health and the environment.

For these reasons, the Wehrum Memo is arbitrary and capricious because it lacks factual support, ignores the concerns underlying the Seitz Memo, and fails to address EPA's previous rationale for rejecting an interpretation of Section 112 that allows major sources to be reclassified as area sources at any time.

CONCLUSION

In sum, the Wehrum Memo, which creates a loophole for major sources of hazardous air pollutants to escape stringent, technology-forcing federal emission standards, is unlawful for three reasons. First, the Wehrum Memo is a legislative rule that required notice and comment. The Wehrum Memo does more than clarify or explain a regulatory term – according to EPA, it supplements Section 112 by determining when a major source can reclassify

as an area source. The Wehrum Memo thus effected a substantive change in existing law or policy. Second, the Wehrum Memo is inconsistent with the statutory structure of Section 112 and runs afoul of its Congressional mandate to require emission reductions from major sources to the maximum achievable level. Finally, the Wehrum Memo is arbitrary and capricious because it lacks factual support and entirely ignores the concerns underlying the Seitz Memo that prevented major sources from reclassifying as areas sources at any time.

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For all of the foregoing reasons, California respectfully requests the Court to vacate the Wehrum Memo in its entirety.

Dated: October 1, 2018

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the Opening Proof Brief, dated October 1, 2018, complies with the type-volume limitations of Rule 32 of the Federal Rules of Appellate Procedure, this Court's Circuit Rules, and this Court's briefing order issued on August 17, 2018, which limited the briefs for Petitioners to a total of 16,500 words in no more than two briefs. I certify that this brief contains 6,620 words, as counted by the Microsoft Word software used to produce this brief, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Circuit Rule 32(a)(1), and that when combined with the word count of the Environmental Petitioners' brief, the total does not exceed 16,500 words.

/s/ Kavita P. Lesser
KAVITA P. LESSER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opening Proof Brief was filed on October 1, 2018, using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ Kavita P. Lesser
KAVITA P. LESSER

Case No. 18-1085 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

California Communities Against Toxics, et al.

Petitioners,

v.

United States Environmental Protection Agency, et al.

Respondents.

On Petition for Review of Final Action of the
United States Environmental Protection Agency

Declaration of Brian Clerico in Support of Petitioner State of California's Standing

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DECLARATION OF BRIAN CLERICO

I, Brian Clerico, state and declare as follows:

Experience

1. I have been an Air Pollution Specialist in the Industrial Strategies Division of the California Air Resources Board ("CARB") since April 2017. I have broad experience with air pollution control at stationary sources.

2. My current duties include reviewing and commenting on draft New Source Review ("NSR") and Title V air permits issued by California local air districts to ensure compliance and consistency with federal, State, and local air pollution laws and regulations. I also review and comment on Best Available Control Technology ("BACT") determinations, emission reduction credit banking actions, and rulemakings by local air districts. I also work with the districts to ensure proposed revisions to their NSR rules do not violate the Protect California Air Act of 2003, which prohibits changes to local NSR rules that would exempt a source or reduce its obligations from NSR requirements relative to what those requirements were on December 30, 2002.

3. Before joining CARB, I worked for 16 years at the San Joaquin Valley Air Pollution Control District ("SJVAPCD"), where I was an Air Quality Specialist for one year (2001) and an Air Quality Engineer for 15 years (2002 - 2017). As an Air Quality Engineer, I processed permit applications. I applied local, State, and federal air pollution rules and regulations in reviewing projects seeking a permit to construct, including NSR, New Source Performance Standards, National Emissions Standards for Hazardous Air Pollutants ("NESHAPs"), and California Air Toxic Control Measures. I also processed Title V applications for major sources of air pollution.

4. As an Air Quality Specialist, I prepared risk assessments under the SJVAPCD risk management policy. I identified toxic air contaminants from

permitted sources, selected appropriate emission factors or derived them from source test data, calculated emission rates, and used dispersion modeling programs with acute, chronic, and cancer exposure threshold values to determine the potential increased risk to the most impacted receptor(s). I worked with permit applicants and district engineers to identify potential mitigations to significant risks by process modifications or by pollution controls through determination of BACT for air toxics ("T-BACT"). I also reviewed air toxics plans and reports submitted by permitted facilities subject to reporting requirements under California Assembly Bill 2588 (toxic "Hot Spots").

5. From 2006 – 2011, I worked five semesters as an adjunct instructor of chemistry at State Center Community College District in Fresno and Clovis, California. I taught both lecture and laboratory for their Chemistry 1A and 1B series for science, pre-med, and engineering majors.

6. Prior to working in the field of air pollution, I was a laboratory technician for three years for Los Angeles County Sanitation Districts working in an analytical laboratory performing wet chemical and instrumental testing of water and wastewater samples. I also performed similar work on California and federal Resource Conservation and Recovery Act hazardous wastes for Laidlaw Environmental at a hazardous waste landfill in Buttonwillow, California for one year.

7. I have a Bachelor of Science degree in chemistry from the University of California at Irvine, a Master of Science degree in chemistry from California State University at Fresno, and a Master of Business Administration degree from the University of California at Irvine.

8. Unless otherwise noted, my statements are based on my professional regulatory experience at CARB and SJVAPCD, as well as my review of publicly available records.

Toxics and Air Permitting in California

9. I have reviewed the recent memorandum from William Wehrum, Assistant Administrator of the United States Environmental Protection Agency ("U.S. EPA"), titled "Issuance of Guidance Memorandum 'Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act'" ("Wehrum Memo"). The Wehrum Memo has significant implications for California regulators, including resource costs required to ensure that the public is sufficiently protected from toxic air pollution, as well as impacts on the efficacy and implementation of California's air pollution programs. This declaration focuses primarily on implications for permitting and for the toxic air pollution program. I begin with some background on these programs.

Federal Law

10. Air toxic pollutants, which are identified as toxic air contaminants ("TACs") by California and as hazardous air pollutants ("HAPs") by U.S. EPA, are pollutants that may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. Studies have shown that emissions of these air toxics may increase the risks of developing cancer and non-cancer effects such as premature mortality, heart and lung disease, asthma, increased respiratory symptoms, and reproductive and developmental impacts. Children are especially susceptible to the health effects from air toxics. Recent advances in science have shown that early-life exposures to air toxics contribute to an increased lifetime risk of developing cancer, or other adverse health effects, compared to exposures that occur in adulthood.

11. The federal Clean Air Act ("CAA") creates a framework for regulating HAPs. The applicability of this framework largely depends on whether an emitting source is a major source or an area source. A major source is a stationary source that emits or has the potential to emit 10 or more tons per year of

any one HAP or 25 or more tons per year of any combination of HAPs. 42 U.S.C. § 7412(a)(1). An area source is a stationary source that is not a major source. 42 U.S.C. § 7412(a)(2).

12. Major sources are subject to the maximum achievable control technology, or MACT, required by the NESHAPs. MACT often controls HAP emissions to well below the major source threshold. While some area sources are also subject to MACT standards or NESHAPs, area sources are generally subject to less stringent requirements, if any federal requirements at all.[1] Under the federal program, it therefore matters what type of source (major vs. area) a source is, as that will usually determine what level of control to which the source is subject.

13. Federal controls, such as those implemented by a NESHAP, are reflected in federal operating permits. Specifically, the 1990 CAA Amendments created the Title V operating permit program with the purpose to strengthen enforcement of the CAA by:

- Including all air pollution requirements that are applicable to a source in a single document;
- Enhanced reporting, monitoring, and recordkeeping;
- EPA oversight and veto authority over permit issuance;
- Greater opportunity for federal and citizen enforcement; and
- Enhanced public participation during the permit issuance process.

Sources subject to Title V permitting must also provide a written compliance certification by a responsible official affirming their source is meeting the

[1] See https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9 (listing the more than 140 sources categories subject to hazardous air pollutant standards, approximately 30 of which are for or otherwise applicable to area sources).

requirements of their permit. In addition, Title V frequently requires additional conditions related to monitoring, reporting, and recordkeeping to ensure federal enforceability of emission limits and optimal functioning of air pollution control devices. All Title V permits require a semi-annual report of required monitoring and an annual compliance certification. Finally, renewing Title V permits requires a formal application by the operator, including a compliance certification and a compliance plan. In contrast, renewing a non-Title V permit at the air district level can be done automatically upon payment of the annual permit fees, depending on the district.

14. The following types of sources are required to obtain Title V permits:

- Major sources of criteria pollutants;
- Major sources of HAPs;
- Certain area sources of HAPs that are subject to a NESHAP;
- Sources subject to Title IV, the Acid Rain Program; and
- Solid waste incineration units.

California's Toxics and Permitting Programs

15. Title V programs are administered by the local air districts in California. Sources required to obtain a Title V permit are subject to additional layers of scrutiny – both federal and public – compared to non-Title V sources. This additional scrutiny is ensured by the notice and comment period mandated under Title V. Thus, prior to issuing, modifying, or renewing the Title V permit, the district submits the permit to U.S. EPA for review and publishes a draft copy of the permit for public review. Any interested party can comment on a draft permit during the comment period. U.S. EPA's decisions to grant or deny a citizen petition are subject to judicial review in federal court.

16. The Title V permit itself does not impose any new control requirements, operational limits, or emission limits on sources; those are required through other emissions standards, such as NSR, NESHAPs, or other state or local prohibitory rules. However, the Title V permit frequently requires additional monitoring, reporting, and recordkeeping that are tailored to the source to ensure the control, operational, and emissions limits are enforceable. These are critical tools for enforcement and accountability.

17. California also has its own air toxics program that relies substantially on the rigor of the federal toxics program. CARB, with participation from the Office of Environmental Health Hazard Assessment and formal review by the Scientific Review Panel, determines which pollutants are TACs and lists them as such by regulation. Cal. Health & Saf. Code §§ 39660–39661. CARB also determines the measures for controlling TAC emissions based on a threshold exposure level, if any; if there is no threshold level, then emissions must be reduced to the lowest level achievable through the best available control technology. *Id.* § 39666. California air toxic control measures or "ATCMs" can take the form of emission limitations, control technologies, operational and/or maintenance conditions, closed system engineering, and other means. *Id.* § 39656. The local air districts must then adopt the ATCMs applicable to their jurisdictions, though they could adopt different measures as long as those measures are equally as or more stringent than those adopted by CARB. *Id.* § 39666. CARB has listed 21 substances as TACs under state law. 17 Cal. Code Regs. § 93000. CARB has also designated all of the federal HAPs in section 112 of the CAA as TACs. 17 Cal. Code Regs. § 93001.

18. California's ATCMs generally apply to any non-vehicular source emitting the TACs regardless of volume or mass. There is generally no volume or

mass threshold for the ATCMs, unlike the federal standards, and thus for the ATCMs the distinction between major and area source does not matter for control.

19. The State Legislature directed CARB to use the NESHAPs instead of using its limited resources to promulgate new toxics standards altogether. Cal. Heath & Saf. Code § 39658(b)(1). However, if CARB finds a NESHAP does not provide sufficient toxics protection for Californians, CARB must promulgate additional state control measures. *Id.* § 39658(b)(2).

20. CARB has established 25 ATCMs for approximately half of the California-listed TACs; for the remaining air toxics (the remaining half of California's TACs and most of the federal HAPs), CARB has used the federal standards. *See* 17 Cal. Code Regs. §§ 93101–93120. Therefore, although California's TAC program does not differentiate between major and area sources, the distinction is still important for air toxics control in California, as the federal standards are largely built around that distinction, and the federal standards are the primary control for about half of the TACs and most of the federal HAPs in California.

Implications of the Wehrum Memo for California

21. Previously, under U.S. EPA's "once in, always in" policy, if a source was a major source for HAPs as of the effective compliance date, that source was permanently considered a major source. This meant the source would always be subject to the applicable federal MACT standard and Title V requirements, even if the source later limited its emissions through pollution controls, process modifications, or enforceable reductions of its potential to emit. Now, under the Wehrum Memo, a major source can agree to an enforceable limit on its potential to emit so that its emissions are below the major source threshold, thus becoming an area source and likely no longer subject to a NESHAP. The result is that CARB and the air districts will no longer be able to rely on the federal Title V and

NESHAP major source programs to protect Californians from toxic air contaminants.

22. I have reviewed the attached chart (see Attachment A), which lists all the federal and California source categories. Those highlighted in light red are those for which CARB does not have its own ATCM and therefore implements the federal standard (to the extent there are corresponding facilities within California and to the extent California permitting authorities have delegation from U.S. EPA).

23. Under the Wehrum Memo, California facilities subject to MACT standards are no longer bound by those standards and can increase their emissions of air toxics by becoming area sources, unless state or air district rules are able to prevent these increases (at an ongoing resource cost for regulatory and compliance activities to California). I am informed and believe that there are at least 42 facilities in California subject to a NESHAP with emissions currently below the major source threshold.[2] These sources can now petition the local district permitting authority to remove the NESHAP requirements from its permit and drop out of the Title V program (if this source were not otherwise subject to Title V permitting). In the worst-case scenario, HAP emissions in California could more than double, increasing by as much as 935 tons per year.[3] Many of these MACT

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[2] Union of Concerned Scientists, *EPA Decision Increases Hazardous Air Pollution Risk*, https://www.ucsusa.org/science-and-democracy/epa-decision-increases-hazardous-air-pollution-risk#.W6AD2rpFyUm.

[3] The worst-case scenarios are discussed because U.S. EPA did not provide any impacts or emissions analyses along with the Wehrum Memo, and it remains unclear exactly how each of the air districts' other rules and regulations will interplay. It is possible that air districts with particularly stringent NSR and air toxics rules would not functionally allow a source to relax its control requirements, as the district's NSR rules may impose stricter control requirements than the NESHAP through BACT or T-BACT. BACT or T-BACT will continue to apply regardless of whether the NESHAP does. However, for districts with less stringent

(continued…)

facilities are located near schools and/or are located in disadvantaged communities. These communities already suffer from disproportionate health impacts from air toxics. Increasing emissions in these communities will have even more significant negative health consequences. If communities are further exposed to air toxics, additional costs would be incurred from health care and missed work and school days. Moreover, certain air toxics, such as mercury or dioxins, are exceptionally toxic even in low amounts; small increases may have disproportionately high harms on the surrounding communities.

24. Many area sources do not have any applicable NESHAP, so if these major sources become area sources, they would no longer be subject to any federal HAP standard whatsoever, including the associated monitoring and reporting requirements. While some NESHAPs still have reporting requirements for area sources, it is important to note that many area-source NESHAPs remain undelegated to air districts, meaning the area-source NESHAP requirements are not directly enforceable by the local permitting authority and may not even appear on the permit. This creates new regulatory burdens for CARB and the air districts if California entities are to maintain clear enforcement and compliance authority.

25. California's expenditure of resources may also increase because sources leaving the major source program under Title V are likely to cease critical compliance monitoring activities. For example, major sources with control devices subject to a NESHAP promulgated or proposed prior to November 15, 1990, are

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(…continued)
permitting programs, or for "grandfathered" sources, NSR may not be available as a backstop. Additionally, for sources that pre-date promulgation of the relevant NESHAP, NSR may consist of controls that are less stringent than the NESHAP. For these older sources, removal of the NESHAP requirements is more likely to lead to an increase in HAP emissions. Thus, the maximum, upper bound on increases or costs are currently the clearest illustrated impacts.

also subject to Compliance Assurance Monitoring (CAM), 40 C.F.R. part 64. CAM requires operators to monitor add-on air pollution control devices for emissions units that: (1) have a pre-control potential to emit greater than or equal to the major source threshold for the controlled pollutant; (2) are subject to an emissions standard or limit; and (3) that depend on the control device to meet the emission standard or limit. Without CAM, it is possible that an emissions source could operate out of compliance undetected for an extensive period until the next emissions source test is performed. Only Title V sources are subject to CAM and a facility that reclassifies from major to area source status would no longer be subject to CAM.

26. At least 25 of the 42 facilities in California are major sources whose source categories do not have an existing NESHAP for area sources. Under the Wehrum Memo, California will lose some degree of control over HAP emissions from those sources, including reporting and monitoring, unless air districts or CARB are able to address these gaps by reallocating regulatory and enforcement resources. These facilities include petroleum refineries; cement, plastics, and chemical manufacturers; and aluminum refining and production. The HAP emissions for these facilities range from as little as 0.001 tons per year to 4.007 tons per year; if these sources became area sources, their emissions could increase to just under 25 tons per year, about a 600% to 2,500,000% increase in HAP emissions. For instance, there is an industrial gas manufacturing facility in Los Angeles County whose HAP emissions (as of 2014) were 0.446 tons per year. Under the Wehrum Memo, this facility may increase its emissions up to 24.554 tons per year (about a 5,500% increase).

27. The air districts, CARB, and the public would also lose access to facility information and oversight as the source no longer is subject to Title V monitoring, reporting, and public review processes. Moreover, CARB and the air

districts will be forced to expend resources to determine whether the remaining controls are sufficient, as state law requires CARB to promulgate ATCMs when it finds that federal measures are inadequate. Thus, in addition to the potential increase in emissions, both CARB and the air districts must make resource allocation decisions in rulemakings or permit proceedings to prevent backsliding and to ensure adequate monitoring.

28. In order to avoid the potential health impacts of increases in air toxics emissions, CARB must, at a minimum, evaluate remaining source emissions and controls and undertake its own rulemaking procedures to adopt its own ATCMs, which generally do not distinguish between major and area sources, in place of the MACT standards. CARB recently analyzed and estimated how much it would cost to adopt the entire federal HAP program in response to a proposed state bill, SB 49, which would have directed CARB to ensure that no backsliding occurs as a result of any change to the CAA or any of its regulations. Using the fiscal conducted for SB 49 to reflect only the MACT standards (see Attachment B), CARB would have to expend at most $2,500,000 per regulation to review, develop, adopt, and implement the new rules. There are about 140 federal MACT standards; California's current ACTMs overlap with nine, and there are seven currently known source categories of which no corresponding sources exist in California. Thus, the estimated maximum total CARB would have to expend would be around $308,000,000, if CARB had to adopt all outstanding MACT standards. The Board's resources are already stretched thinly; to cover this, the Board would either have to divert resources from other programs (detracting from those programs' public health benefits and goals) or secure more funding from the Legislature. Either way, the Wehrum Memo creates additional public health risks in California that the Board cannot readily meet with current resources.

29. The California Legislature has also tasked CARB, through AB 617 (C. Garcia, Statutes of 2017), to further reduce exposure to toxics and criteria air pollutants in disadvantaged communities experiencing high cumulative burdens. AB 617 requires an accelerated retrofit of pollution controls, increased penalties, and more transparency in air quality and emissions data. CARB establishes a list of communities with high cumulative exposure burdens and each year will choose several communities in which to develop emissions reduction programs and/or community air monitoring systems, as deemed appropriate. The air districts in which the chosen communities for community emission reduction programs are located must then evaluate all relevant polluting sources, including major and area/minor sources, and must conduct source apportionment to determine the portion of total emissions attributable to the sources impacting the chosen communities' air quality. Based on the apportionment, the district will then set emissions targets, reduction measures, an implementation schedule, and enforcement measures. The air districts must accomplish this within one year. CARB reviews the districts' plans and either approves or denies them.

30. CARB has recently selected the first round of communities for AB 617 reduction programs. The districts are now in the process of establishing schedules and reduction programs for submittal to CARB in fall 2019.

31. The Wehrum Memo may disrupt the AB 617 process. The analysis done by CARB and the local air districts in developing a list of communities and plans to address pollution standards assumes that major sources of HAPs are permanently subject to federal MACT standards. Now, CARB and the local air districts must reallocate or expend more time and resources to adjust source apportionment, reduction strategies like BACT, and potential emissions reduction targets. The Wehrum Memo may also delay further emissions reductions in disadvantaged communities as additional time and resources are diverted to

address the lack of permanently enforceable MACT standards to prevent any backsliding from current conditions.

32. Finally, U.S. EPA failed to provide notice and comment for the Wehrum Memo and failed to provide any impacts analysis regarding the potential emissions increases caused by the Wehrum Memo. Had U.S. EPA provided notice, California would have commented and raised these issues for U.S. EPA to consider before the legal obligations of the Wehrum Memo took effect. Instead, California has already spent, and will continue to spend, a significant amount of time assessing the impacts of the Wehrum Memo, and the necessary courses of action as a result of those impacts.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 1, 2018.

Brian Clerico
Air Pollution Specialist
California Air Resources Board

ATTACHMENT A

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Acrylic/Modacrylic Fiber (area sources)	40 CFR 63 Subpart LLLLLL (6L)	Aerators and Sterilizers (commercial and non-commercial) (ethylene oxide)	17 CCR §§ 93108-93108.5
Aerospace	40 CFR 63 Subpart GG	Asbestos (construction, grading, quarrying, surface mining, and surfacing applications)	17 CCR §§ 93105-93106
Asbestos	40 CFR 61 Subpart M	Automotive Maintenance and Repair (chlorinated TACs)	17 CCR § 93111
Asphalt Processing and Asphalt Roofing Manufacturing	40 CFR 63 Subpart LLLLL	Auxiliary Diesel Engines on Ocean-Going Vessels	17 CCR §§ 93118, 93118.3 (§ 93118 can only be enforced with authorization from USEPA)
Asphalt Processing and Asphalt Roofing Manufacturing (area sources)	40 CFR 63 Subpart AAAAAAA (7A)	Chromate-Treated Cooling Towers	17 CCR § 93103

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Auto and Light Duty Truck Surface Coating	40 CFR 63 Subpart IIII	Chromium Plating and Chromic Acid Anodizing Facilities	17 CCR § 93102
Auto Body Refinishing (area sources) - see Paint Stripping and Miscellaneous Surface Coating Operations		Commercial Harbor Craft (PM, SOx, NOx)	17 CCR § 93118.5
Benzene Transfer Operations	40 CFR 61 Subpart BB	Composite Wood Products (formaldehyde)	17 CCR § 93120
Benzene Waste Operations	40 CFR 61 Subpart FF	Dry Cleaning (perchloroethylene)	17 CCR. § 93109
Beryllium	40 CFR 61 Subpart C	Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels (PM, NOx, SOx)	17 CCR § 93118.2
Beryllium Rocket Motor Firing	40 CFR 61 Subpart D	Medical Waste Incinerators (dioxins)	17 CCR § 93104

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Boat Manufacturing	40 CFR 63 Subpart VVVV	Motor Vehicle Coating (hexavalent chromium and cadmium)	17 CCR § 93112
Boilers (see Industrial-Commercial-Institutional Boilers)		Non-Ferrous Metal Melting (lead, copper, zinc, cadmium, arsenic, aluminum)	17 CCR § 93107
Brick and Structural Clay Products Manufacturing (see also Clay Ceramics)	40 CFR 63 Subpart JJJJJ	Nonvehicular Diesel Fuel (PM)	17 CCR § 93114
Carbon Black Production (area sources)	40 CFR 63 Subpart MMMMMM (6M)	Onboard Incineration on Oceangoing Ships	17 CCR. § 93119
Cellulose Products Manufacturing	40 CFR 63 Subpart UUUU	Outdoor Residual Waste Burning	17 CCR § 93113
Chemical Manufacturing Industry (area sources): CMAS	40 CFR 63 Subpart VVVVVV (6V)	Retail Service Stations (benzene)	17 CCR § 93101
Chemical Preparations Industry (area sources)	40 CFR 63 Subpart	Stationary Compression Ignition Engines	17 CCR §§ 93115-93115.15

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
	BBBBBBB (7B)		
Chromium Electroplating	40 CFR 63 Subpart N	Thermal Spraying (hexavalent chromium and nickel)	17 CCR § 93101.5
Chromium Compounds (area sources)	40 CFR 63 Subpart NNNNNN (6N)		
Clay Ceramics Manufacturing (see also Brick and Clay Products)	40 CFR 63 Subpart KKKKK		
Clay Ceramics Manufacturing (area sources)	40 CFR 63 Subpart RRRRRR (6R)		
Coke Ovens: Charging, Top Side, and Door Leaks	40 CFR 63 Subpart L		
Coke Ovens: Pushing, Quenching, and Battery Stacks	40 CFR 63 Subpart CCCCC		
Coke Oven By-product Recovery Plants	40 CFR 61 Subpart L		
Combustion Sources at Kraft, Soda, and Sulfite Pulp & Paper Mills (Pulp and Paper MACT II)	40 CFR 63 Subpart MM		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
(see also Pulp and Paper noncombust MACT)			
Commercial Sterilizers (see Ethylene Oxide Emission Standards for Sterilization Facilities)			
Degreasing Organic Cleaners (see Halogenated Solvent Cleaners)			
Dry Cleaning	40 CFR 63 Subpart M		
Electric Arc Furnace Steelmaking Facilities (area sources)	40 CFR 63 Subpart YYYYY		
Engine Test Cells/Stands (see also Beryllium Rocket Motor Firing)	40 CFR 63 Subpart PPPPP		
Ethylene Oxide Emission Standards for Sterilization Facilities (see also Hospital Ethylene Oxide Sterilizers)	40 CFR 63 Subpart O		
Fabric Printing, Coating and Dyeing	40 CFR 63 Subpart OOOO		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Ferroalloys Production (major sources)	40 CFR 63 Subpart XXX		
Ferroalloys Production (area sources)	40 CFR 63 Subpart YYYYYY (6Y)		
Flexible Polyurethane Foam Fabrication Operation	40 CFR 63 Subpart MMMMM		
Flexible Polyurethane Foam Production and Fabrication (area sources)	40 CFR 63 Subpart OOOOOO (6-O)		
Flexible Polyurethane Foam Production	40 CFR 63 Subpart III		
Friction Products Manufacturing	40 CFR 63 Subpart QQQQQ		
Gasoline Dispensing Facilities (area sources)	40 CFR 63 Subpart CCCCCC (6C)		
Gasoline Distribution (Stage 1)	40 CFR 63 Subpart R		
Gasoline Distribution Bulk Terminals, Bulk Plants,	40 CFR 63 Subpart BBBBBB (6B)		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
and Pipeline Facilities (area sources)			
Generic MACT I - Acetal Resins	40 CFR 63 Subpart YY		
Generic MACT I - Hydrogen Floride	40 CFR 63 Subpart YY		
Generic MACT I - Polycarbonates Production	40 CFR 63 Subpart YY		
Generic MACT I - Acrylic/Modacrylic Fibers	40 CFR 63 Subpart YY		
Generic MACT II - Spandex Production	40 CFR 63 Subpart YY		
Generic MACT II - Carbon Black Production	40 CFR 63 Subpart YY		
Generic MACT II - Ethylene Processes	40 CFR 63 Subpart YY		
Glass Manufacturing (area sources)	40 CFR 63 Subpart SSSSSS (6S)		
Glass Manufacturing - Inorganic Arsenic	40 CFR 61 Subpart N		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Gold Mine Ore Processing and Production (area sources)	40 CFR 63 Subpart EEEEEEE (7E)		
Halogenated Solvent Cleaning	40 CFR 63 Subpart T		
Hazardous Organic NESHAP (Synthetic Organic Chemical Manufacturing Industry)	40 CFR 63 Subpart F, G, H, I		
Hazardous Waste Combustors	40 CFR 63 Subpart EEE		
Hospital Ethylene Oxide Sterilizers (area sources) (see also Ethylene Oxide Sterilizers)	40 CFR 63 Subpart WWWWW		
Hydrochloric Acid Production	40 CFR 63 Subpart NNNNN		
Industrial, Commercial and Institutional Boilers and Process Heaters (major sources)	40 CFR 63 Subpart DDDDD		
Industrial, Commercial and Institutional Boilers (area sources) (see also Boiler	40 CFR 63 Subpart JJJJJJ (6J)		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Compliance at Area Sources)			
Industrial Process Cooling Towers	40 CFR 63 Subpart Q		
Inorganic Arsenic Emissions from Primary Copper Smelters	40 CFR 61 Subpart O		
Inorganic Arsenic from Arsenic trioxide and Metallic Arsenic Production	40 CFR 61 Subpart P		
Integrated Iron and Steel	40 CFR 63 Subpart FFFFF		
Iron and Steel Foundries (major sources)	40 CFR 63 Subpart EEEEE		
Iron and Steel Foundries (area sources)	40 CFR 63 Subpart ZZZZZ		
Large Appliances Surface Coating	40 CFR 63 Subpart NNNN		
Lead Acid Battery Manufacturing (area sources)	40 CFR 63 Subpart PPPPPP (6P)		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Leather Finishing Operations	40 CFR 63 Subpart TTTT		
Lime Manufacturing	40 CFR 63 Subpart AAAAA		
Magnetic Tape Surface Coating	40 CFR 63 Subpart EE		
Manufacturing Nutritional Yeast (formerly Bakers Yeast)	40 CFR 63 Subpart CCCC		
Marine Vessel Loading Operations	40 CFR 63 Subpart Y		
Mercury Cell Chlor-Alkali Plants	40 CFR 63 Subpart IIIII		
Mercury Production	40 CFR 61 Subpart E		
Metal Can Surface Coating	40 CFR 63 Subpart KKKK		
Metal Coil Surface Coating	40 CFR 63 Subpart SSSS		
Metal Fabrication and Finishing Source Nine Categories (area sources)	40 CFR 63 Subpart XXXXXX (6X)		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Metal Furniture Surface Coating	40 CFR 63 Subpart RRRR		
Mineral Wool Production	40 CFR 63 Subpart DDD		
Miscellaneous Coating Manufacturing	40 CFR 63 Subpart HHHHH		
Miscellaneous Metal Parts and Products Surface Coating	40 CFR 63 Subpart MMMM		
Misc. Organic Chemical Production and Processes (MON)	40 CFR 63 Subpart FFFF		
Municipal Solid Waste Landfills	40 CFR 63 Subpart AAAA		
Natural Gas Transmission and Storage	40 CFR 63 Subpart HHH		
Nonferrous Foundries: Aluminum, Copper, and Other (area sources)	40 CFR 63 Subpart ZZZZZZ (6Z)		
Off-Site Waste Recovery Operations	40 CFR 63 Subpart DD		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Oil and Natural Gas Production includes Area Sources	40 CFR 63 Subpart HH		
Oil-Water Separators and Organic-Water Separators	40 CFR 63 Subpart VV		
Organic Liquids Distribution (non-gasoline)	40 CFR 63 Subpart EEEE		
Paints and Allied Products Manufacturing (area sources)	40 CFR 63 Subpart CCCCCCC (7C)		
Paint Stripping and Miscellaneous Surface Coating Operations (area sources) (see also Collision Repair Campaign)	40 CFR 63 Subpart HHHHHH (6H)		
Paper and Other Web Surface Coating	40 CFR 63 Subpart JJJJ		
Pesticide Active Ingredient Production	40 CFR 63 Subpart MMM		
Petroleum Refineries	40 CFR 63 Subpart CC		
Petroleum Refineries	40 CFR 63 Subpart UUU		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Pharmaceuticals Production	40 CFR 63 Subpart GGG		
Phosphoric Acid	40 CFR 63 Subpart AA		
Phosphate Fertilizers	40 CFR 63 Subpart BB		
Plastic Parts Surface Coating	40 CFR 63 Subpart PPPP		
Plating and Polishing Operations (area sources)	40 CFR 63 Subpart WWWWWW (6W)		
Plywood and Composite Wood Products (formerly Plywood and Particle Board Manufacturing)	40 CFR 63 Subpart DDDD		
Polyether Polyols Production	40 CFR 63 Subpart PPP		
Polymers & Resins I	40 CFR 63 Subpart U		
Polymers & Resins II	40 CFR 63 Subpart W		
Polymers & Resins III	40 CFR 63 Subpart OOO		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Polymers & Resins IV	40 CFR 63 Subpart JJJ		
Polyvinyl Chloride and Copolymers Production	40 CFR 63 Subpart HHHHHHH (7H)		
Polyvinyl Chloride and Copolymers Production (area sources)	40 CFR 63 Subpart DDDDDD (6D)		
Portland Cement Manufacturing	40 CFR 63 Subpart LLL		
Prepared Feeds Manufacturing (area sources)	40 CFR 63 Subpart DDDDDDD (7D)		
Primary Aluminum	40 CFR 63 Subpart LL		
Primary Copper Smelting	40 CFR 63 Subpart QQQ		
Primary Copper Smelting (area sources)	40 CFR 63 Subpart EEEEEE (6E)		
Primary Lead Processing	40 CFR 63 Subpart TTT		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Primary Magnesium Refining	40 CFR 63 Subpart TTTTT		
Primary Nonferrous Metals-Zinc, Cadmium, and Beryllium (area sources)	40 CFR 63 Subpart GGGGGG (6G)		
Printing and Publishing Surface Coating	40 CFR 63 Subpart KK		
Publicly Owned Treatment Works (POTW)	40 CFR 63 Subpart VVV		
Pulp and Paper (non-combust) MACT (see also Combustion Sources at Kraft, Soda, and Sulfite Pulp & Paper Mills -Pulp and Paper MACT II)	40 CFR 63 Subpart S		
Reciprocating Internal Combustion Engines (RICE) includes area sources	40 CFR 63 Subpart ZZZZ		
Refractory Products Manufacturing	40 CFR 63 Subpart SSSSS		
Reinforced Plastic Composites Production	40 CFR 63 Subpart WWWW		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Rubber Tire Manufacturing	40 CFR 63 Subpart XXXX		
Secondary Aluminum	40 CFR 63 Subpart RRR		
Secondary Copper Smelting (area sources)	40 CFR 63 Subpart FFFFFF (6F)		
Secondary Lead Smelters	40 CFR 63 Subpart X		
Secondary Nonferrous Metals Processing (Brass, Bronze, Magnesium and Zinc) (area sources)	40 CFR 63 Subpart TTTTTT (6T)		
Semiconductor Manufacturing	40 CFR 63 Subpart BBBBB		
Shipbuilding and Ship Repair Surface Coating	40 CFR 63 Subpart II		
Site Remediation	40 CFR 63 Subpart GGGGG		
Solvent Extraction for Vegetable Oil Production	40 CFR 63 Subpart GGGG		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Stationary Combustion Turbines	40 CFR 63 Subpart YYYY		
Steel Pickling - HCL Process	40 CFR 63 Subpart CCC		
Taconite Iron Ore Processing	40 CFR 63 Subpart RRRRR		
Utility NESHAP	40 CFR 63 Subpart UUUUU		
Vinyl Chloride	40 CFR 61 Subpart F		
Wet Formed Fiberglass Mat Production	40 CFR 63 Subpart HHHH		
Wood Building Products Surface Coating (formerly Flat Wood Paneling Products)	40 CFR 63 Subpart QQQQ		
Wood Furniture Surface Coating	40 CFR 63 Subpart JJ		
Wood Preserving (area sources)	40 CFR 63 Subpart QQQQQQ (6Q)		

NESHAP (MACT) Standard Source Categories	Code of Federal Regulations	California ATCM Source Categories	California Code of Regulations
Wool Fiberglass Manufacturing	40 CFR 63 Subpart NNN		
Wool Fiberglass Manufacturing (area sources)	40 CFR 63 Subpart NN		

ATTACHMENT B

Fiscal for Provision 120041(b) – SB 49 (De León and Stern)
California Environmental, Public Health, and Workers Defense Act of 2017
As Amended July 18, 2017

These resource estimates apply to Section 120041(b) only.

Major Provisions	**FY 2017-2018**	**FY 2018-2019**	**FY 2019- 2020 & on-going**	**Fund**
Task 1 Evaluation: Evaluate up to 20 regulations per year from 140 NESHAP/MACT standards, 10 TSCA Rules, 20 mobile source regulations, 70 area source NESHAPs, and 95 NSPS. The State Air Resources Board will evaluate federal laws or regulations that have been repealed, revised, or amended to be less stringent than the baseline federal standards to determine subsequent actions. (In addition to rule development staff, we have considered contributing resources and included those in our estimates. These include consideration of attorney, inventory, economic, enforcement, and CEQA input/collaboration.)	20 Positions (1 ARS 2, 3 ARS1, 3 SAPS, 6 APS, 6.5 ARE, 0.5 Att III) Plus $500,000 in contract monies for data acquisition, surveys, and inventory assessments **($3,612,000) plus additional 20% overhead costs (ASD/OIS/Chair/EO); and $500,000 contract monies**	20 Positions (1 ARS 2, 3 ARS1, 3 SAPS, 6 APS, 6.5 ARE, 0.5 Att III) Plus $500,000 in contract monies for data acquisition, surveys, and inventory assessments **($3,592,000) plus additional 20% overhead costs (ASD/OIS/Chair/EO); and $500,000 contract monies**	20 Positions (1 ARS 2, 3 ARS1, 3 SAPS, 6 APS, 6.5 ARE, 0.5 Att III) Plus $500,000 in contract monies for data acquisition, surveys, and inventory assessments **($3,592,000) plus additional 20% overhead costs (ASD/OIS/Chair/EO); and $500,000 contract monies**	APCF
Task 2 Rule Development: Develop rules under the Section 100 process for regulations that have been determined to be less stringent than baseline federal standards. (In addition to rule development staff, we have considered contributing	((**Per REG**)) 8 Positions (0.25 ARS 2, 1 ARS1, 1 SAPS, 2.5 APS, 3 ARE, 0.25 Att III) Plus $500,000 in contract monies for source testing	((**Per REG**)) 8 Positions (0.25 ARS 2, 1 ARS1, 1 SAPS, 2.5 APS, 3 ARE, 0.25 Att III) Plus $500,000 in contract monies for source testing	((**Per REG**)) 8 Positions (0.25 ARS 2, 1 ARS1, 1 SAPS, 2.5 APS, 3 ARE, 0.25 Att III) Plus $500,000 in contract monies for source testing	

resources and included those in our estimates. These include consideration of attorney, inventory, economic, laboratory, enforcement, and CEQA input/collaboration. Contracts cost estimates from MLD are also included.)	$1,000,000 for analysis equipment (MLD) **($1,430,500) plus additional 20% overhead costs (ASD/OIS/Chair/EO); $500,000 contract, and $1,000,000 in equipment monies**	**($1,422,500) plus additional 20% overhead costs (ASD/OIS/Chair/EO); and $500,000 contract monies**	**($1,422,500) plus additional 20% overhead costs (ASD/OIS/Chair/EO); and $500,000 contract monies**	
Task 3 Implementation: Implement the rules developed under Task 2. (In addition to rule implementation staff, we have considered contributing resources and included those in our estimates. These include consideration of enforcement staff.)			3.2 Positions (0.2 ARS1, 1 APS, 2 ARE) **($552,200) plus additional 20% overhead costs (ASD/OIS/Chair/EO);**	
Total	**SEE ABOVE for positions and costs by task**	**SEE ABOVE for positions and costs by task**	**SEE ABOVE for positions and costs by task**	**APCF**

Classifications for Estimating Costs:
AGPA = Associate Governmental Program Analyst
AISA = Associate Information Systems Analyst
APS = Air Pollution Specialist
ARE = Air Resources Engineer
ARS I = Air Resources Supervisor I
ARS II = Air Resources Supervisor II
Att III = Attorney III
SAPS = Staff Air Pollution Specialist
SSS II (Tech) = Systems Software Specialist II (Technical)

[$3,592,000 + ($3,592,000 x .2) + $500,000] + [($1,422,500 + ($1,422,500 x .2) + $500,000) x 20 regulations/year] + [$552,200 + ($552,200 x .2)] =

[$4,810,400 per year] + [$44,140,000 per year] + [$662,640 per year] = $49,613,040 per year

$49,613,040 per year / 20 regulations per year = $2,480,652 per regulation

$49,613,040 per year x (124 total regulations/20 regulations per year) = $307,600,848 total

Case No. 18-1085 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

California Communities Against Toxics, et al.

Petitioners,

v.

United States Environmental Protection Agency, et al.

Respondents.

On Petition for Review of Final Action of the United States Environmental Protection Agency

Addendum to Petitioner State of California's Opening Brief

ADDENDUM TABLE OF CONTENTS

STATUTORY PROVISIONS

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

(Added Pub. L. 94–409, § 3(a), Sept. 13, 1976, 90 Stat. 1241; amended Pub. L. 104–66, title III, § 3002, Dec. 21, 1995, 109 Stat. 734.)

REFERENCES IN TEXT

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99–570.

180 days after the date of enactment of this section, referred to in subsec. (g), means 180 days after the date of enactment of Pub. L. 94–409, which was approved Sept. 13, 1976.

AMENDMENTS

1995—Subsec. (j). Pub. L. 104–66 amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).''

EFFECTIVE DATE

Section 6 of Pub. L. 94–409 provided that:

''(a) Except as provided in subsection (b) of this section, the provisions of this Act [see Short Title note set out below] shall take effect 180 days after the date of its enactment [Sept. 13, 1976].

''(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment [Sept. 13, 1976].''

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94–409 provided: ''That this Act [enacting this section, amending sections 551, 552, 556, and 557 of this title, section 10 of Pub. L. 92–463, set out in the Appendix to this title, and section 410 of Title 39, and enacting provisions set out as notes under this section] may be cited as the 'Government in the Sunshine Act'.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the report required by subsec. (j) of this section is listed on page 151), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104–52, set out as a note preceding section 591 of this title.

DECLARATION OF POLICY AND STATEMENT OF PURPOSE

Section 2 of Pub. L. 94–409 provided that: ''It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act [see Short Title note set out above] to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.''

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1003.	June 11, 1946, ch. 324, § 4, 60 Stat. 238.

In subsection (a)(1), the words ' 'or naval' ' are omitted as included in ' 'military' '.

In subsection (b), the word ' 'when' ' is substituted for ' 'in any situation in which' '.

In subsection (c), the words ' 'for oral presentation' ' are substituted for ' 'to present the same orally in any manner' '. The words ' 'sections 556 and 557 of this title apply instead of this subsection' ' are substituted for ' 'the requirements of sections 1006 and 1007 of this title shall apply in place of the provisions of this subsection' '.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 553 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2245 of Title 7, Agriculture.

EXECUTIVE ORDER NO. 12044

Ex. Ord. No. 12044, Mar. 23, 1978, 43 F.R. 12661, as amended by Ex. Ord. No. 12221, June 27, 1980, 45 F.R. 44249, which related to the improvement of Federal regulations, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a [1] administrative law judge appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

(Pub. L. 89 – 554, Sept. 6, 1966, 80 Stat. 384; Pub. L. 95 – 251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1004.	June 11, 1946, ch. 324, § 5, 60 Stat. 239.

In subsection (a)(2), the word ' 'employee' ' is substituted for ' 'officer or employee of the United States' ' in view of the definition of ' 'employee' ' in section 2105.

In subsection (a)(4), the word ' 'naval' ' is omitted as included in ' 'military' '.

In subsection (a)(5), the word ' 'or' ' is substituted for ' 'and' ' since the exception is applicable if any one of the factors are involved.

In subsection (a)(6), the word ' 'worker' ' is substituted for ' 'employee' ', since the latter is defined in section 2105 as meaning Federal employees.

In subsection (b), the word ' 'When' ' is substituted for ' 'In instances in which' '.

In subsection (c)(2), the comma after the word ' 'hearing' ' is omitted to correct an editorial error.

In subsection (d), the words ' 'The employee' ' and ' 'such an employee' ' are substituted in the first two sentences for ' 'The same officers' ' and ' 'such officers' ' in view of the definition of ' 'employee' ' in section 2105.

[1] So in original.

denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: ***Provided,*** That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89 – 554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94 – 574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(a).	June 11, 1946, ch. 324, §10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94 – 574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89 – 554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94 – 574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, §10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94 – 574 provided that if no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89 – 554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89 – 554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89 – 554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85 – 791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: ' 'This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].' '

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) the later of the date occurring 60 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a

1978—Subsecs. (d)(1)(A)(ii), (g)(4)(B). Pub. L. 95–623, § 13(a)(2), substituted "under this section" for "under subsection (b) of this section".

Subsec. (h)(5). Pub. L. 95–623, § 13(a)(1), added par. (5).

Subsec. (j). Pub. L. 95–623, § 13(a)(3), substituted in pars. (1)(A) and (2)(A) "standards under this section" and "under this section" for "standards under subsection (b) of this section" and "under subsection (b) of this section", respectively.

1977—Subsec. (a)(1). Pub. L. 95–95, § 109(c)(1)(A), added subpars. (A), (B), and (C), substituted "For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect" for "a standard for emissions of air pollutants which reflects", "and the percentage reduction achievable" for "achievable", and "technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environment impact and energy requirements)" for "system of emission reduction which (taking into account the cost of achieving such reduction)" in existing provisions, and inserted provision that, for the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

Subsec. (a)(7). Pub. L. 95–95, § 109(c)(1)(B), added par. (7) defining "technological system of continuous emission reduction".

Pub. L. 95–95, § 109(f), added par. (7) directing that under certain circumstances a conversion to coal not be deemed a modification for purposes of pars. (2) and (4).

Subsec. (a)(7), (8). Pub. L. 95–190, § 14(a)(7), redesignated second par. (7) as (8).

Subsec. (b)(1)(A). Pub. L. 95–95, § 401(b), substituted "such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger" for "such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of".

Subsec. (b)(1)(B). Pub. L. 95–95, § 109(c)(2), substituted "shall, at least every four years, review and, if appropriate," for "may, from time to time,".

Subsec. (b)(5), (6). Pub. L. 95–95, § 109(c)(3), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95–95, § 109(d)(1), struck out "(except with respect to new sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (d)(1). Pub. L. 95–95, § 109(b)(1), substituted "standards of performance" for "emission standards" and inserted provisions directing that regulations of the Administrator permit the State, in applying a standard of performance to any particular source under a submitted plan, to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.

Subsec. (d)(2). Pub. L. 95–95, § 109(b)(2), provided that, in promulgating a standard of performance under a plan, the Administrator take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

Subsecs. (f) to (i). Pub. L. 95–95, § 109(a), added subsecs. (f) to (i).

Subsecs. (j), (k). Pub. L. 95–190, § 14(a)(8), (9), redesignated subsec. (k) as (j) and, as so redesignated, substituted "(B)" for "(8)" as designation for second subpar. in par. (2). Former subsec. (j), added by Pub. L. 95–95, § 109(e), which related to compliance with applica- ble standards of performance, was struck out.

Pub. L. 95–95, § 109(e), added subsec. (k).

1971—Subsec. (b)(1)(B). Pub. L. 92–157 substituted in first sentence "publish proposed" for "propose".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

REGULATIONS

Section 403(b), (c) of Pub. L. 101–549 provided that:

"(b) REVISED REGULATIONS.—Not later than three years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator shall promulgate revised regulations for standards of performance for new fossil fuel fired electric utility units commencing construction after the date on which such regulations are proposed that, at a minimum, require any source subject to such revised standards to emit sulfur dioxide at a rate not greater than would have resulted from compliance by such source with the applicable standards of performance under this section [amending sections 7411 and 7479 of this title] prior to such revision.

"(c) APPLICABILITY.—The provisions of subsections (a) [amending this section] and (b) apply only so long as the provisions of section 403(e) of the Clean Air Act [42 U.S.C. 7651b(e)] remain in effect."

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official in Environmental Protection Agency related to compliance with new source performance standards under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7412. Hazardous air pollutants

(a) Definitions

For purposes of this section, except subsection (r) of this section—

(1) Major source

The term ''major source'' means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source

The term ''area source'' means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term ''area source'' shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II of this chapter.

(3) Stationary source

The term ''stationary source'' shall have the same meaning as such term has under section 7411(a) of this title.

(4) New source

The term ''new source'' means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification

The term ''modification'' means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(6) Hazardous air pollutant

The term ''hazardous air pollutant'' means any air pollutant listed pursuant to subsection (b) of this section.

(7) Adverse environmental effect

The term ''adverse environmental effect'' means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(8) Electric utility steam generating unit

The term ''electric utility steam generating unit'' means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(9) Owner or operator

The term ''owner or operator'' means any person who owns, leases, operates, controls, or supervises a stationary source.

(10) Existing source

The term ''existing source'' means any stationary source other than a new source.

(11) Carcinogenic effect

Unless revised, the term ''carcinogenic effect'' shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment.[1] Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

(b) List of pollutants

(1) Initial list

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol

[1] See References in Text note below.

CAS number	Chemical name
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3′-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (l-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4′-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds [1]
0	Glycol ethers [2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers [3]
0	Nickel Compounds
0	Polycylic Organic Matter [4]
0	Radionuclides (including radon) [5]
0	Selenium Compounds

NOTE: For all listings above which contain the word ''compounds'' and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

[1] X′CN where X = H′ or any other group where a formal dissociation may occur. For example KCN or $Ca(CN)_2$.

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R - (OCH2CH2)_n - OR'$ where

n = 1, 2, or 3

R = alkyl or aryl groups

R′ = R, H, or groups which, when removed, yield glycol ethers with the structure: $R - (OCH2CH)_n - OH$. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

[5] A type of atom which spontaneously undergoes radioactive decay.

(2) Revision of the list

The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) of this section as a result of emissions to the air. No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) of this title or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions to modify the list

(A) Beginning at any time after 6 months after November 15, 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects [2] of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(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.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) of this section applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) of this section for which a deletion petition has been filed within 12 months of November 15, 1990.

(4) Further information

If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

(5) Test methods

The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

(6) Prevention of significant deterioration

The provisions of part C of this subchapter (prevention of significant deterioration) shall not apply to pollutants listed under this section.

(7) Lead

The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) List of source categories

(1) In general

Not later than 12 months after November 15, 1990, the Administrator shall publish, and

[2] So in original. Probably should be "effects".

shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b) of this section. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 7411 of this title and part C of this subchapter. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

(2) Requirement for emissions standards

For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d) of this section, according to the schedule in this subsection and subsection (e) of this section.

(3) Area sources

The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

(4) Previously regulated categories

The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before November 15, 1990.

(5) Additional categories

In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) of this section for the category or subcategory shall be promulgated within 10 years after November 15, 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

(6) Specific pollutants

With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section. Such standards shall be promulgated not later than 10 years after November 15, 1990. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

(7) Research facilities

The Administrator shall establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities. For purposes of this section, ''research or laboratory facility'' means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

(8) Boat manufacturing

When establishing emissions standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such listing would be inconsistent with the goals and requirements of this chapter.

(9) Deletions from the list

(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from the list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3) of this section.

(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources

in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

(d) Emission standards

(1) In general

The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section in accordance with the schedules provided in subsections (c) and (e) of this section. The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) of this section as the result of the authority provided by this sentence.

(2) Standards and methods

Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which—

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h) of this section, or

(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

(3) New and existing sources

The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than—

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 7501 of this title) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

(4) Health threshold

With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

(5) Alternative standard for area sources

With respect only to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

(6) Review and revision

The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

(7) Other requirements preserved

No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D of this subchapter, or

other authority of this chapter or a standard issued under State authority.

(8) Coke ovens

(A) Not later than December 31, 1992, the Administrator shall promulgate regulations establishing emission standards under paragraphs (2) and (3) of this subsection for coke oven batteries. In establishing such standards, the Administrator shall evaluate—

(i) the use of sodium silicate (or equivalent) luting compounds to prevent door leaks, and other operating practices and technologies for their effectiveness in reducing coke oven emissions, and their suitability for use on new and existing coke oven batteries, taking into account costs and reasonable commercial door warranties; and

(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke.

Such regulations shall require at a minimum that coke oven batteries will not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing oven doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries shall be December 31, 1995.

(B) The Administrator shall promulgate work practice regulations under this subsection for coke oven batteries requiring, as appropriate—

(i) the use of sodium silicate (or equivalent) luting compounds, if the Administrator determines that use of sodium silicate is an effective means of emissions control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment; and

(ii) door and jam cleaning practices.

Notwithstanding subsection (i) of this section, the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after November 15, 1990.

(C) For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) of this section in accordance with subsection (i)(8) of this section, the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries seeking an extension shall be not later than the date 3 years after November 15, 1990.

(9) Sources licensed by the Nuclear Regulatory Commission

No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.] for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 7411 of this title or this section.

(10) Effective date

Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

(e) Schedule for standards and review

(1) In general

The Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) of this section as expeditiously as practicable, assuring that—

(A) emission standards for not less than 40 categories and subcategories (not counting coke oven batteries) shall be promulgated not later than 2 years after November 15, 1990;

(B) emission standards for coke oven batteries shall be promulgated not later than December 31, 1992;

(C) emission standards for 25 per centum of the listed categories and subcategories shall be promulgated not later than 4 years after November 15, 1990;

(D) emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than 7 years after November 15, 1990; and

(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after November 15, 1990.

(2) Priorities

In determining priorities for promulgating standards under subsection (d) of this section, the Administrator shall consider—

(A) the known or anticipated adverse effects of such pollutants on public health and the environment;

(B) the quantity and location of emissions or reasonably anticipated emissions of hazardous air pollutants that each category or subcategory will emit; and

(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

(3) Published schedule

Not later than 24 months after November 15, 1990, and after opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of emission standards for each category and subcategory of sources listed pursuant to subsection (c)(1) and (3) of this section which shall be consistent with the requirements of paragraphs (1) and (2). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 7604 of this title.

(4) Judicial review

Notwithstanding section 7607 of this title, no action of the Administrator adding a pollutant to the list under subsection (b) of this section or listing a source category or subcategory under subsection (c) of this section shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 7607 of this title when the Administrator issues emission standards for such pollutant or category.

(5) Publicly owned treatment works

The Administrator shall promulgate standards pursuant to subsection (d) of this section applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.]) not later than 5 years after November 15, 1990.

(f) Standard to protect health and environment

(1) Report

Not later than 6 years after November 15, 1990, the Administrator shall investigate and report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on—

(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d) of this section;

(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

(D) recommendations as to legislation regarding such remaining risk.

(2) Emission standards

(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) of this section and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator' s interpretation of this section, as in effect before November 15, 1990, and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) of this section for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) of this section are required to be promulgated within 2 years after November 15, 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) of this section to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

(3) Effective date

Any emission standard established pursuant to this subsection shall become effective upon promulgation.

(4) Prohibition

No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(A) such standard shall not apply until 90 days after its effective date, and

(B) the Administrator may grant a waiver permitting such source a period of up to 2 years after the effective date of a standard to comply with the standard if the Administrator finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(5) Area sources

The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) of this section and for which an emission standard is promulgated pursuant to subsection (d)(5) of this section.

(6) Unique chemical substances

In establishing standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish such standards with respect to the health and environmental effects of the substances actually emitted by sources and direct transformation byproducts of such emissions in the categories and subcategories.

(g) Modifications

(1) Offsets

(A) A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B). The owner or operator of such source shall submit a showing to the Administrator (or the State) that such increase has been offset under the preceding sentence.

(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after November 15, 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) of this section sufficient to facilitate the offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

(2) Construction, reconstruction and modifications

(A) After the effective date of a permit program under subchapter V of this chapter in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.

(B) After the effective date of a permit program under subchapter V of this chapter in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

(3) Procedures for modifications

The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

(h) Work practice standards and other requirements

(1) In general

For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in the Administrator' s judgment is consistent with the provisions of subsection (d) or (f) of this section. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) Definition

For the purpose of this subsection, the phrase ' 'not feasible to prescribe or enforce an emission standard' ' means any situation in which the Administrator determines that—

(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(3) Alternative standard

If after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limita-

tion will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Numerical standard required

Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it is feasible to promulgate and enforce a standard in such terms.

(i) Schedule for compliance

(1) Preconstruction and operating requirements

After the effective date of any emission standard, limitation, or regulation under subsection (d), (f) or (h) of this section, no person may construct any new major source or reconstruct any existing major source subject to such emission standard, regulation or limitation unless the Administrator (or a State with a permit program approved under subchapter V of this chapter) determines that such source, if properly constructed, reconstructed and operated, will comply with the standard, regulation or limitation.

(2) Special rule

Notwithstanding the requirements of paragraph (1), a new source which commences construction or reconstruction after a standard, limitation or regulation applicable to such source is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date 3 years after the date of promulgation if—

(A) the promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and

(B) the source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

(3) Compliance schedule for existing sources

(A) After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

(B) The Administrator (or a State with a program approved under subchapter V of this chapter) may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) of this section if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b) of this section.

(4) Presidential exemption

The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(5) Early reduction

(A) The Administrator (or a State acting pursuant to a permit program approved under subchapter V of this chapter) shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) of this section for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) of this section is first proposed. Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension authorized by the previous sentence.

(B) An existing source which achieves the reduction referred to in subparagraph (A) after the proposal of an applicable standard but before January 1, 1994, may qualify under subparagraph (A), if the source makes an enforceable commitment to achieve such reduction before the proposal of the standard. Such commitment shall be enforceable to the same extent as a regulation under this section.

(C) The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that, there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 provided that the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflects verifiable data based on information for such source, received by the Administrator prior to November 15, 1990, pursuant to an information request issued under section 7414 of this title.

(D) For each source granted an alternative emission limitation under this paragraph

there shall be established by a permit issued pursuant to subchapter V of this chapter an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under this paragraph. An alternative emission limitation under this paragraph shall not be available with respect to standards or requirements promulgated pursuant to subsection (f) of this section and the Administrator shall, for the purpose of determining whether a standard under subsection (f) of this section is necessary, review emissions from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the category or subcategory are reviewed.

(E) With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph.

(6) Other reductions

Notwithstanding the requirements of this section, no existing source that has installed—

(A) best available control technology (as defined in section 7479(3) of this title), or

(B) technology required to meet a lowest achievable emission rate (as defined in section 7501 of this title),

prior to the promulgation of a standard under this section applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with such standard under this section until the date 5 years after the date on which such installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such rules and guidance as are necessary to implement this paragraph.

(7) Extension for new sources

A source for which construction or reconstruction is commenced after the date an emission standard applicable to such source is proposed pursuant to subsection (d) of this section but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) of this section shall not be required to comply with the emission standard under subsection (f) of this section until the date 10 years after the date construction or reconstruction is commenced.

(8) Coke ovens

(A) Any coke oven battery that complies with the emission limitations established under subsection (d)(8)(C) of this section, subparagraph (B), and subparagraph (C), and complies with the provisions of subparagraph (E), shall not be required to achieve emission limitations promulgated under subsection (f) of this section until January 1, 2020.

(B)(i) Not later than December 31, 1992, the Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. Notwithstanding paragraph (3) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 1998. Such emission limitations shall reflect the lowest achievable emission rate as defined in section 7501 of this title for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than—

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent). The rulemaking in which such emission limitations are promulgated shall also establish an appropriate measurement methodology for determining compliance with such emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emissions standard would not be practicable or enforceable. Such measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall assure that the final test methods are consistent with the performance of such best technology and practices.

(ii) If the Administrator fails to promulgate such emission limitations under this subparagraph prior to the effective date of such emission limitations, the emission limitations applicable to coke oven batteries under this subparagraph shall be—

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

or the total mass emissions equivalent (if the total mass emissions equivalent is determined to be practicable and enforceable), with no exclusion for emissions during the period after the closing of self-sealing oven doors.

(C) Not later than January 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations to reflect the lowest achievable emission rate as defined in section 7501 of this title at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under subparagraph (B). Notwithstanding paragraph (2) of this subsection, the compliance date for such emission

limitations for existing coke oven batteries shall be January 1, 2010.

(D) At any time prior to January 1, 1998, the owner or operator of any coke oven battery may elect to comply with emission limitations promulgated under subsection (f) of this section by the date such emission limitations would otherwise apply to such coke oven battery, in lieu of the emission limitations and the compliance dates provided under subparagraphs (B) and (C) of this paragraph. Any such owner or operator shall be legally bound to comply with such emission limitations promulgated under subsection (f) of this section with respect to such coke oven battery as of January 1, 2003. If no such emission limitations have been promulgated for such coke oven battery, the Administrator shall promulgate such emission limitations in accordance with subsection (f) of this section for such coke oven battery.

(E) Coke oven batteries qualifying for an extension under subparagraph (A) shall make available not later than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator to determine the appropriate level of any emission standard established by the Administrator pursuant to subsection (f) of this section.

(F) Notwithstanding the provisions of this section, reconstruction of any source of coke oven emissions qualifying for an extension under this paragraph shall not subject such source to emission limitations under subsection (f) of this section more stringent than those established under subparagraphs (B) and (C) until January 1, 2020. For the purposes of this subparagraph, the term ''reconstruction'' includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

(j) Equivalent emission limitation by permit

(1) Effective date

The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to subchapter V of this chapter in such State, but not prior to the date 42 months after November 15, 1990.

(2) Failure to promulgate a standard

In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3) of this section, and beginning 18 months after such date (but not prior to the effective date of a permit program under subchapter V of this chapter), the owner or operator of any major source in such category or subcategory shall submit a permit application under paragraph (3) and such owner or operator shall also comply with paragraphs (5) and (6).

(3) Applications

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this subsection, any failure to have a permit shall not be a violation of paragraph (2), unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application. The Administrator shall not later than 18 months after November 15, 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a timely manner the completeness of applications.

(4) Review and approval

Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of section 7661d of this title. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Administrator (or the State).

(5) Emission limitation

The permit shall be issued pursuant to subchapter V of this chapter and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d) of this section. In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of subsection (i)(5) of this section. For purposes of the preceding sentence, the reduction required by subsection (i)(5)(A) of this section shall be achieved by the date on which the relevant standard should have been promulgated under subsection (d) of this section. No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i) of this section.

(6) Applicability of subsequent standards

If the Administrator promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (5), provided that the source shall have the compliance period provided under subsection (i) of this section. If the Administrator promulgates a standard under subsection (d) of this section that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Admin-

istrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

(k) Area source program

(1) Findings and purpose

The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced. It is the purpose of this subsection to achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources including a reduction of not less than 75 per centum in the incidence of cancer attributable to emissions from such sources.

(2) Research program

The Administrator shall, after consultation with State and local air pollution control officials, conduct a program of research with respect to sources of hazardous air pollutants in urban areas and shall include within such program—

(A) ambient monitoring for a broad range of hazardous air pollutants (including, but not limited to, volatile organic compounds, metals, pesticides and products of incomplete combustion) in a representative number of urban locations;

(B) analysis to characterize the sources of such pollution with a focus on area sources and the contribution that such sources make to public health risks from hazardous air pollutants; and

(C) consideration of atmospheric transformation and other factors which can elevate public health risks from such pollutants.

Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. The Administrator shall report the preliminary results of such research not later than 3 years after November 15, 1990.

(3) National strategy

(A) Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, not later than 5 years after November 15, 1990, and after notice and opportunity for public comment, prepare and transmit to the Congress a comprehensive strategy to control emissions of hazardous air pollutants from area sources in urban areas.

(B) The strategy shall—

(i) identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas and that are or will be listed pursuant to subsection (b) of this section, and

(ii) identify the source categories or subcategories emitting such pollutants that are or will be listed pursuant to subsection (c) of this section. When identifying categories and subcategories of sources under this subparagraph, the Administrator shall assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection (d) of this section.

(C) The strategy shall include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator under the authority of this or other laws (including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.] and the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]) or by the States. The strategy shall achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 per centum, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

(D) The strategy may also identify research needs in monitoring, analytical methodology, modeling or pollution control techniques and recommendations for changes in law that would further the goals and objectives of this subsection.

(E) Nothing in this subsection shall be interpreted to preclude or delay implementation of actions with respect to area sources of hazardous air pollutants under consideration pursuant to this or any other law and that may be promulgated before the strategy is prepared.

(F) The Administrator shall implement the strategy as expeditiously as practicable assuring that all sources are in compliance with all requirements not later than 9 years after November 15, 1990.

(G) As part of such strategy the Administrator shall provide for ambient monitoring and emissions modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

(4) Areawide activities

In addition to the national urban air toxics strategy authorized by paragraph (3), the Administrator shall also encourage and support areawide strategies developed by State or local air pollution control agencies that are

intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not less than 10 per centum to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to those States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices which may be applicable to various categories or subcategories of area sources.

(5) Report

The Administrator shall report to the Congress at intervals not later than 8 and 12 years after November 15, 1990, on actions taken under this subsection and other parts of this chapter to reduce the risk to public health posed by the release of hazardous air pollutants from area sources. The reports shall also identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

(l) State programs

(1) In general

Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r) of this section. A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator' s authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this chapter.

(2) Guidance

Not later than 12 months after November 15, 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) of this section in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b) of this section.

(3) Technical assistance

The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 7403 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

(4) Grants

Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k) of this section.

(5) Approval or disapproval

Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

(A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this chapter.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to the provisions of this subsection.

(6) Withdrawal

Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with

the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

(7) Authority to enforce

Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

(8) Local program

The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

(9) Permit authority

Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under subchapter V of this chapter.

(m) Atmospheric deposition to Great Lakes and coastal waters

(1) Deposition assessment

The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a program to identify and assess the extent of atmospheric deposition of hazardous air pollutants (and in the discretion of the Administrator, other air pollutants) to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters. As part of such program, the Administrator shall—

(A) monitor the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters, including monitoring of the Great Lakes through the monitoring network established pursuant to paragraph (2) of this subsection and designing and deploying an atmospheric monitoring network for coastal waters pursuant to paragraph (4);

(B) investigate the sources and deposition rates of atmospheric deposition of air pollutants (and their atmospheric transformation precursors);

(C) conduct research to develop and improve monitoring methods and to determine the relative contribution of atmospheric pollutants to total pollution loadings to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters;

(D) evaluate any adverse effects to public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of such deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and drinking water standards established pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.]; and

(E) sample for such pollutants in biota, fish, and wildlife of the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters and characterize the sources of such pollutants.

(2) Great Lakes monitoring network

The Administrator shall oversee, in accordance with Annex 15 of the Great Lakes Water Quality Agreement, the establishment and operation of a Great Lakes atmospheric deposition network to monitor atmospheric deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) to the Great Lakes.

(A) As part of the network provided for in this paragraph, and not later than December 31, 1991, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hazardous air pollutants in both dry and wet conditions.

(B) The Administrator shall use the data provided by the network to identify and track the movement of hazardous air pollutants through the Great Lakes, to determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants, and to support development of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement.

(C) The Administrator shall assure that the data collected by the Great Lakes atmospheric deposition monitoring network is in a format compatible with databases sponsored by the International Joint Commission, Canada, and the several States of the Great Lakes region.

(3) Monitoring for the Chesapeake Bay and Lake Champlain

The Administrator shall establish at the Chesapeake Bay and Lake Champlain atmospheric deposition stations to monitor deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) within the Chesapeake Bay and Lake Champlain watersheds. The Administrator shall determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champlain, investigate the sources of air pollutants deposited in the watersheds, evaluate the health and environmental effects of such pollutant loadings, and shall sample such pollutants in biota, fish and wildlife within the watersheds, as necessary to characterize such effects.

(4) Monitoring for coastal waters

The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal waters and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants

to pollutant loadings. For purposes of this subsection, ''coastal waters'' shall mean estuaries selected pursuant to section 320(a)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1330(a)(2)(A)] or listed pursuant to section 320(a)(2)(B) of such Act [33 U.S.C. 1330(a)(2)(B)] or estuarine research reserves designated pursuant to section 1461 of title 16.

(5) Report

Within 3 years of November 15, 1990, and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall submit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of—

(A) the contribution of atmospheric deposition to pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(B) the environmental and public health effects of any pollution which is attributable to atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(C) the source or sources of any pollution to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters which is attributable to atmospheric deposition;

(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances of drinking water standards pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.] or water quality standards pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] or, with respect to the Great Lakes, exceedances of the specific objectives of the Great Lakes Water Quality Agreement; and

(E) a description of any revisions of the requirements, standards, and limitations pursuant to this chapter and other applicable Federal laws as are necessary to assure protection of human health and the environment.

(6) Additional regulation

As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after November 15, 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 7627(a) of this title.

(n) Other provisions

(1) Electric utility steam generating units

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of this chapter. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

(B) The Administrator shall conduct, and transmit to the Congress not later than 4 years after November 15, 1990, a study of mercury emissions from electric utility steam generating units, municipal waste combustion units, and other sources, including area sources. Such study shall consider the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies.

(C) The National Institute of Environmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after November 15, 1990, a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to occur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

(2) Coke oven production technology study

(A) The Secretary of the Department of Energy and the Administrator shall jointly undertake a 6-year study to assess coke oven production emission control technologies and to assist in the development and commercialization of technically practicable and economically viable control technologies which have the potential to significantly reduce emissions of hazardous air pollutants from coke oven production facilities. In identifying control technologies, the Secretary and the Administrator shall consider the range of existing coke oven operations and battery design and the availability of sources of materials for such coke ovens as well as alternatives to existing coke oven production design.

(B) The Secretary and the Administrator are authorized to enter into agreements with persons who propose to develop, install and operate coke production emission control technologies which have the potential for signifi-

cant emissions reductions of hazardous air pollutants provided that Federal funds shall not exceed 50 per centum of the cost of any project assisted pursuant to this paragraph.

(C) On completion of the study, the Secretary shall submit to Congress a report on the results of the study and shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d) of this section.

(D) There are authorized to be appropriated $5,000,000 for each of the fiscal years 1992 through 1997 to carry out the program authorized by this paragraph.

(3) Publicly owned treatment works

The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions. The Administrator may prescribe uniform sampling, modeling and risk assessment methods for use in implementing this subsection.

(4) Oil and gas wells; pipeline facilities

(A) Notwithstanding the provisions of subsection (a) of this section, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

(B) The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source category under subsection (c) of this section, except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

(5) Hydrogen sulfide

The Administrator is directed to assess the hazards to public health and the environment resulting from the emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. To the extent practicable, the assessment shall build upon and not duplicate work conducted for an assessment pursuant to section 8002(m) of the Solid Waste Disposal Act [42 U.S.C. 6982(m)] and shall reflect consultation with the States. The assessment shall include a review of existing State and industry control standards, techniques and enforcement. The Administrator shall report to the Congress within 24 months after November 15, 1990, with the findings of such assessment, together with any recommendations, and shall, as appropriate, develop and implement a control strategy for emissions of hydrogen sulfide to protect human health and the environment, based on the findings of such assessment, using authorities under this chapter including sections [3] 7411 of this title and this section.

(6) Hydrofluoric acid

Not later than 2 years after November 15, 1990, the Administrator shall, for those regions of the country which do not have comprehensive health and safety regulations with respect to hydrofluoric acid, complete a study of the potential hazards of hydrofluoric acid and the uses of hydrofluoric acid in industrial and commercial applications to public health and the environment considering a range of events including worst-case accidental releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate.

(7) RCRA facilities

In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

(o) National Academy of Sciences study

(1) Request of the Academy

Within 3 months of November 15, 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of—

(A) risk assessment methodology used by the Environmental Protection Agency to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

(B) improvements in such methodology.

(2) Elements to be studied

In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following—

(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

[3] So in original. Probably should be ''section''.

(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals as well as other exposed individuals).

(3) Other health effects of concern

To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including, but not limited to, inheritable genetic mutations, birth defects, and reproductive dysfunctions.

(4) Report

A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after November 15, 1990.

(5) Assistance

The Administrator shall assist the Academy in gathering any information the Academy deems necessary to carry out this subsection. The Administrator may use any authority under this chapter to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by such person as necessary to carry out this subsection.

(6) Authorization

Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out this subsection.

(7) Guidelines for carcinogenic risk assessment

The Administrator shall consider, but need not adopt, the recommendations contained in the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f) of this section, and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 7607 of this title.

(p) Mickey Leland National Urban Air Toxics Research Center

(1) Establishment

The Administrator shall oversee the establishment of a National Urban Air Toxics Research Center, to be located at a university, a hospital, or other facility capable of undertaking and maintaining similar research capabilities in the areas of epidemiology, oncology, toxicology, pulmonary medicine, pathology, and biostatistics. The center shall be known as the Mickey Leland National Urban Air Toxics Research Center. The geographic site of the National Urban Air Toxics Research Center should be further directed to Harris County, Texas, in order to take full advantage of the well developed scientific community presence on-site at the Texas Medical Center as well as the extensive data previously compiled for the comprehensive monitoring system currently in place.

(2) Board of Directors

The National Urban Air Toxics Research Center shall be governed by a Board of Directors to be comprised of 9 members, the appointment of which shall be allocated pro rata among the Speaker of the House, the Majority Leader of the Senate and the President. The members of the Board of Directors shall be selected based on their respective academic and professional backgrounds and expertise in matters relating to public health, environmental pollution and industrial hygiene. The duties of the Board of Directors shall be to determine policy and research guidelines, submit views from center sponsors and the public and issue periodic reports of center findings and activities.

(3) Scientific Advisory Panel

The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.

(4) Funding

The center shall be established and funded with both Federal and private source funds.

(q) Savings provision

(1) Standards previously promulgated

Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990] shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) of this section within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition

for review of any such standard under section 7607 of this title is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special rule

Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other categories

Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical facilities

Notwithstanding paragraph (1), no standard promulgated under this section prior to November 15, 1990, with respect to medical research or treatment facilities shall take effect for two years following November 15, 1990, unless the Administrator makes a determination pursuant to a rulemaking under subsection (d)(9) of this section. If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of this section shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in subsection (d)(9) of this section.

(r) Prevention of accidental releases

(1) Purpose and general duty

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 7604 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions

(A) The term ''accidental release'' means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) The term ''regulated substance'' means a substance listed under paragraph (3).

(C) The term ''stationary source'' means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(D) The term ''retail facility'' means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

(3) List of substances

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know [4] Act of 1986 [42 U.S.C. 11001 et seq.], with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death,

[4] So in original. Probably should be ''Right-To-Know''.

injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b) of this section.

(4) Factors to be considered

In listing substances under paragraph (3), the Administrator—

(A) shall consider—

(i) the severity of any acute adverse health effects associated with accidental releases of the substance;

(ii) the likelihood of accidental releases of the substance; and

(iii) the potential magnitude of human exposure to accidental releases of the substance; and

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.

(5) Threshold quantity

At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

(6) Chemical Safety Board

(A) There is hereby established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board.

(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

(C) The Board shall—

(i) investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.] to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

(iii) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

(D) The Board may utilize the expertise and experience of other agencies.

(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health

Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

(H) Not later than 18 months after November 15, 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B) [5] in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation; [6]

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator [7] shall indicate whether the Secretary will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation; [6]

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

(K) Within 2 years after November 15, 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.]. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

(i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by

[5] So in original. Probably should be paragraph ''(7)(B)''.
[6] So in original. The word ''or'' probably should appear.
[7] So in original. The word ''Administrator'' probably should be ''Secretary''.

order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and

(ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act [29 U.S.C. 651 et seq.].

(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this chapter, including the subpoena power provided in section 7607(a)(1) of this title.

(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 6101 of title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 7413 and 7414 of this title. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, 7603, 7604 and 7607 of this title and any other enforcement provisions of this chapter, as a request made by the Administrator under section 7414 of this title and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

(Q) Consistent with subsection [8] (G) and section 7414(c) of this title any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person' s competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this chapter or when relevant under any proceeding under this chapter. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress.

(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this chapter, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5 to officers or employees of the Board.

(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

[8] So in original. Probably should be ' 'subparagraph' ' .

(7) Accident prevention

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

(B)(i) Within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 7414(c) of this title. The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable pur-

poses by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and 7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d) of this section.

(F) Notwithstanding the provisions of subchapter V of this chapter or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such subchapter solely because such source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(H) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—

(i) DEFINITIONS.—In this subparagraph:

(I) COVERED PERSON.—The term ''covered person'' means—

(aa) an officer or employee of the United States;

(bb) an officer or employee of an agent or contractor of the Federal Government;

(cc) an officer or employee of a State or local government;

(dd) an officer or employee of an agent or contractor of a State or local government;

(ee) an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases;

(ff) an officer or employee or an agent or contractor of an entity described in item (ee); and

(gg) a qualified researcher under clause (vii).

(II) OFFICIAL USE.—The term ''official use'' means an action of a Federal, State, or local government agency or an entity referred to in subclause (I)(ee) intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(III) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—The term ''off-site consequence analysis information'' means those portions of a risk management plan, excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator from those portions.

(IV) RISK MANAGEMENT PLAN.—The term ''risk management plan'' means a risk management plan submitted to the Administrator by an owner or operator of a stationary source under subparagraph (B)(iii).

(ii) REGULATIONS.—Not later than 1 year after August 5, 1999, the President shall—

(I) assess—

(aa) the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet; and

(bb) the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(II) based on the assessment under subclause (I), promulgate regulations governing the distribution of off-site consequence analysis information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare, and—

(aa) allows access by any member of the public to paper copies of off-site consequence analysis information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction;

(bb) allows other public access to off-site consequence analysis information as appropriate;

(cc) allows access for official use by a covered person described in any of items (cc) through (ff) of clause (i)(I) (referred to in this subclause as a ''State or local covered person'') to off-site consequence analysis information relating to stationary sources located in the person's State;

(dd) allows a State or local covered person to provide, for official use, off-site consequence analysis information relating to stationary sources located in the person's State to a State or local covered person in a contiguous State; and

(ee) allows a State or local covered person to obtain for official use, by request to the Administrator, off-site consequence analysis information that is not available to the person under item (cc).

(iii) AVAILABILITY UNDER FREEDOM OF INFORMATION ACT.—

(I) FIRST YEAR.—Off-site consequence analysis information, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 during the 1-year period beginning on August 5, 1999.

(II) AFTER FIRST YEAR.—If the regulations under clause (ii) are promulgated on or before the end of the period described in subclause (I), off-site consequence analysis information covered by the regulations, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 after the end of that period.

(III) APPLICABILITY.—Subclauses (I) and (II) apply to off-site consequence analysis information submitted to the Administrator before, on, or after August 5, 1999.

(iv) AVAILABILITY OF INFORMATION DURING TRANSITION PERIOD.—The Administrator shall make off-site consequence analysis information available to covered persons for official use in a manner that meets the requirements of items (cc) through (ee) of clause (ii)(II), and to the public in a form that does not make available any information concerning the identity or location of stationary sources, during the period—

(I) beginning on August 5, 1999; and

(II) ending on the earlier of the date of promulgation of the regulations under clause (ii) or the date that is 1 year after August 5, 1999.

(v) PROHIBITION ON UNAUTHORIZED DISCLOSURE OF INFORMATION BY COVERED PERSONS.—

(I) IN GENERAL.—Beginning on August 5, 1999, a covered person shall not disclose to the public off-site consequence analysis information in any form, or any statewide or national ranking of identified stationary sources derived from such information, except as authorized by this subparagraph (including the regulations promulgated under clause (ii)). After the end of the 1-year period beginning on August 5, 1999, if regulations have not been promulgated under clause (ii), the preceding sentence shall not apply.

(II) CRIMINAL PENALTIES.—Notwithstanding section 7413 of this title, a covered person that willfully violates a restriction or prohibition established by this subparagraph (including the regulations promulgated under clause (ii)) shall, upon conviction, be fined for an infraction under section 3571 of title 18 (but shall not be subject to imprisonment) for each unauthorized disclosure of off-site consequence analysis information, except that subsection (d) of such section 3571 shall not apply to a case in which the offense results in pecuniary loss unless the defendant knew that such loss would occur. The disclosure of off-site consequence analysis information for each specific stationary source shall be considered a separate offense. The total of all penalties that may be imposed on a single person or organization under this item shall not exceed $1,000,000 for violations committed during any 1 calendar year.

(III) APPLICABILITY.—If the owner or operator of a stationary source makes off-site consequence analysis information relating to that stationary source available to the public without restriction—

(aa) subclauses (I) and (II) shall not apply with respect to the information; and

(bb) the owner or operator shall notify the Administrator of the public availability of the information.

(IV) LIST.—The Administrator shall maintain and make publicly available a list of all stationary sources that have provided notification under subclause (III)(bb).

(vi) NOTICE.—The Administrator shall provide notice of the definition of official use as provided in clause (i)(III) [9] and examples of actions that would and would not meet that definition, and notice of the restrictions on further dissemination and the penalties established by this chapter to each covered person who receives off-site consequence analysis information under clause (iv) and each covered person who receives off-site consequence analysis information for an official use under the regulations promulgated under clause (ii).

(vii) QUALIFIED RESEARCHERS.—

(I) IN GENERAL.—Not later than 180 days after August 5, 1999, the Administrator, in consultation with the Attorney General, shall develop and implement a system for providing off-site consequence analysis information, including facility identification, to any qualified researcher, including a qualified researcher from industry or any public interest group.

(II) LIMITATION ON DISSEMINATION.—The system shall not allow the researcher to disseminate, or make available on the Internet, the off-site consequence analysis information, or any portion of the off-site consequence analysis information, received under this clause.

(viii) READ-ONLY INFORMATION TECHNOLOGY SYSTEM.—In consultation with the Attorney General and the heads of other appropriate Federal agencies, the Administrator shall establish an information technology system that provides for the availability to the public of off-site consequence analysis information by means of a central data base under the control of the Federal Government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

(ix) VOLUNTARY INDUSTRY ACCIDENT PREVENTION STANDARDS.—The Environmental Protection Agency, the Department of Justice, and other appropriate agencies may provide technical assistance to owners and operators of stationary sources and participate in the development of voluntary industry standards that will help achieve the objectives set forth in paragraph (1).

(x) EFFECT ON STATE OR LOCAL LAW.—

(I) IN GENERAL.—Subject to subclause (II), this subparagraph (including the regulations promulgated under this subparagraph) shall supersede any provision of

[9] So in original. Probably should be ''(i)(II)''.

State or local law that is inconsistent with this subparagraph (including the regulations).

(II) AVAILABILITY OF INFORMATION UNDER STATE LAW.—Nothing in this subparagraph precludes a State from making available data on the off-site consequences of chemical releases collected in accordance with State law.

(xi) REPORT.—

(I) IN GENERAL.—Not later than 3 years after August 5, 1999, the Attorney General, in consultation with appropriate State, local, and Federal Government agencies, affected industry, and the public, shall submit to Congress a report that describes the extent to which regulations promulgated under this paragraph have resulted in actions, including the design and maintenance of safe facilities, that are effective in detecting, preventing, and minimizing the consequences of releases of regulated substances that may be caused by criminal activity. As part of this report, the Attorney General, using available data to the extent possible, and a sampling of covered stationary sources selected at the discretion of the Attorney General, and in consultation with appropriate State, local, and Federal governmental agencies, affected industry, and the public, shall review the vulnerability of covered stationary sources to criminal and terrorist activity, current industry practices regarding site security, and security of transportation of regulated substances. The Attorney General shall submit this report, containing the results of the review, together with recommendations, if any, for reducing vulnerability of covered stationary sources to criminal and terrorist activity, to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate and other relevant committees of Congress.

(II) INTERIM REPORT.—Not later than 12 months after August 5, 1999, the Attorney General shall submit to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate, and other relevant committees of Congress, an interim report that includes, at a minimum—

(aa) the preliminary findings under subclause (I);

(bb) the methods used to develop the findings; and

(cc) an explanation of the activities expected to occur that could cause the findings of the report under subclause (I) to be different than the preliminary findings.

(III) AVAILABILITY OF INFORMATION.—Information that is developed by the Attorney General or requested by the Attorney General and received from a covered stationary source for the purpose of conducting the review under subclauses (I) and (II) shall be exempt from disclosure under section 552 of title 5 if such information would pose a threat to national security.

(xii) SCOPE.—This subparagraph—

(I) applies only to covered persons; and

(II) does not restrict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from off-site consequence analysis information.

(xiii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator and the Attorney General such sums as are necessary to carry out this subparagraph (including the regulations promulgated under clause (ii)), to remain available until expended.

(8) Research on hazard assessments

The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

(9) Order authority

(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 7603 of this title rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 7603 of this title.

(C) Within 180 days after November 15, 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 9606 of this title, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c), 1318, 1319,

1364(a)], sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act [42 U.S.C. 6927, 6928, 6934, 6973], sections 1445 and 1431 of the Safe Drinking Water Act [42 U.S.C. 300j–4, 300i], sections 5 and 7 of the Toxic Substances Control Act [15 U.S.C. 2604, 2606], and sections 7413, 7414, and 7603 of this title.

(10)Presidential review

The President shall conduct a review of release prevention, mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not later than 24 months after November 15, 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

(11)State authority

Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

(s) Periodic report

Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehensive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to—

(1) a status report on standard-setting under subsections (d) and (f) of this section;

(2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categories and subcategories;

(3) development and implementation of the national urban air toxics program; and

(4) recommendations of the Chemical Safety and Hazard Investigation Board with respect to the prevention and mitigation of accidental releases.

(July 14, 1955, ch. 360, title I, §112, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1685; amended Pub. L. 95–95, title I, §§109(d)(2), 110, title IV, §401(c), Aug. 7, 1977, 91 Stat. 701, 703, 791; Pub. L. 95–623, §13(b), Nov. 9, 1978, 92 Stat. 3458; Pub. L. 101–549, title III, §301, Nov. 15, 1990, 104 Stat. 2531; Pub. L. 102–187, Dec. 4, 1991, 105 Stat. 1285; Pub. L. 105–362, title IV, §402(b), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106–40, §§2, 3(a), Aug. 5, 1999, 113 Stat. 207, 208.)

REFERENCES IN TEXT

The date of enactment, referred to in subsec. (a)(11), probably means the date of enactment of Pub. L. 101–549, which amended this section generally and was approved Nov. 15, 1990.

The Atomic Energy Act, referred to in subsec. (d)(9), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsecs. (e)(5) and (m)(1)(D), (5)(D), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. Title II of the Act is classified generally to subchapter II (§1281 et seq.) of chapter 26 of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (k)(3)(C), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide and Rodenticide Act, referred to in subsec. (k)(3)(C), probably means the Federal Insecticide, Fungicide, and Rodenticide Act, act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Resource Conservation and Recovery Act, referred to in subsec. (k)(3)(C), probably means the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

The Safe Drinking Water Act, referred to in subsec. (m)(1)(D), (5)(D), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (n)(7), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 303 of the Clean Air Act Amendments of 1990, referred to in subsec. (o)(4), probably means section 303 of Pub. L. 101–549, which is set out below.

The Clean Air Act Amendments of 1990, referred to in subsec. (q)(1)–(3), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Emergency Planning and Community Right-To-Know Act of 1986, referred to in subsec. (r)(3), is title III

of Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Occupational Safety and Health Act, referred to in subsec. (r)(6)(C)(ii), (K), (L), probably means the Occupational Safety and Health Act of 1970, Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

In subsec. (r)(6)(N), ''section 6101 of title 41'' substituted for ''section 5 of title 41 of the United States Code'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section was formerly classified to section 1857c-7 of this title.

AMENDMENTS

1999—Subsec. (r)(2)(D). Pub. L. 106–40, § 2(5), added subpar. (D).

Subsec. (r)(4). Pub. L. 106–40, § 2, substituted ''Administrator—

''(A) shall consider—''

for ''Administrator shall consider each of the following criteria—'' in introductory provisions, redesignated subpars. (A) to (C) as cls. (i) to (iii), respectively, of subpar. (A) and added subpar. (B).

Subsec. (r)(7)(H). Pub. L. 106–40, § 3(a), added subpar. (H).

1998—Subsec. (n)(2)(C). Pub. L. 105–362 substituted ''On completion of the study, the Secretary shall submit to Congress a report on the results of the study and'' for ''The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study''.

1991—Subsec. (b)(1). Pub. L. 102–187 struck out ''7783064 Hydrogen sulfide'' from list of pollutants.

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), definitions; in subsec. (b), list of hazardous air pollutants, emission standards, and pollution control techniques; in subsec. (c), prohibited acts and exemption; in subsec. (d), State implementation and enforcement; and in subsec. (e), design, equipment, work practice, and operational standards.

1978—Subsec. (e)(5). Pub. L. 95–623 added par. (5).

1977—Subsec. (a)(1). Pub. L. 95–95, § 401(c), substituted ''causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness'' for ''may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness''.

Subsec. (d)(1). Pub. L. 95–95, § 109(d)(2), struck out ''(except with respect to stationary sources owned or operated by the United States)'' after ''implement and enforce such standards''.

Subsec. (e). Pub. L. 95–95, § 110, added subsec. (e).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (m)(5), (r)(6)(C)(ii), and (s) of this section are listed, respectively, as the 8th item on page 162, the 9th item on page 198, and the 9th item on page 162), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Aug. 19, 1993, 58 F.R. 52397, provided:

Memorandum for the Administrator of the Environmental Protection Agency

WHEREAS, the Environmental Protection Agency, the agencies and departments that are members of the National Response Team (authorized under Executive Order No. 12580, 52 Fed. Reg. 2923 (1987) [42 U.S.C. 9615 note]), and other Federal agencies and departments undertake emergency release prevention, mitigation, and response activities pursuant to various authorities;

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(r)(10) of the Clean Air Act (the ''Act'') (section 7412(r)(10) of title 42 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [42 U.S.C. 7401 et seq.], I hereby:

(1) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to conduct a review of release prevention, mitigation, and response authorities of Federal agencies in order to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources that may exist, to the extent such review is required by section 112(r)(10) of the Act; and

(2) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and de-

partments, to prepare and transmit a message to the Congress concerning the release prevention, mitigation, and response activities of the Federal Government with such recommendations for change in law as you deem appropriate, to the extent such message is required by section 112(r)(10) of the Act.

The authority delegated by this memorandum may be further redelegated within the Environmental Protection Agency.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Jan. 27, 2000, 65 F.R. 8631, provided:

Memorandum for the Attorney General[,] the Administrator of the Environmental Protection Agency[, and] the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 112(r)(7)(H) of the Clean Air Act (' 'Act' ') (42 U.S.C. 7412(r)(7)(H)), as added by section 3 of the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Public Law 106 - 40), and section 301 of title 3, United States Code, I hereby delegate to:

(1) the Attorney General the authority vested in the President under section 112(r)(7)(H)(ii)(I)(aa) of the Act to assess the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet;

(2) the Administrator of the Environmental Protection Agency (EPA) the authority vested in the President under section 112(r)(7)(H)(ii)(I)(bb) of the Act to assess the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(3) the Attorney General and the Administrator of EPA, jointly, the authority vested in the President under section 112(r)(7)(H)(ii)(II) of the Act to promulgate regulations, based on these assessments, governing the distribution of off-site consequence analysis information. These regulations, in proposed and final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

The Administrator of EPA is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

REPORTS

Pub. L. 106 - 40, § 3(b), Aug. 5, 1999, 113 Stat. 213, provided that:

' '(1) DEFINITION OF ACCIDENTAL RELEASE.—In this subsection, the term 'accidental release' has the meaning given the term in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2)).

' '(2) REPORT ON STATUS OF CERTAIN AMENDMENTS.—Not later than 2 years after the date of enactment of this Act [Aug. 5, 1999], the Comptroller General of the United States shall submit to Congress a report on the status of the development of amendments to the National Fire Protection Association Code for Liquefied Petroleum Gas that will result in the provision of information to local emergency response personnel concerning the off-site effects of accidental releases of substances exempted from listing under section 112(r)(4)(B) of the Clean Air Act (as added by section 3).

' '(3) REPORT ON COMPLIANCE WITH CERTAIN INFORMATION SUBMISSION REQUIREMENTS.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that—

' '(A) describes the level of compliance with Federal and State requirements relating to the submission to local emergency response personnel of information intended to help the local emergency response personnel respond to chemical accidents or related environmental or public health threats; and

' '(B) contains an analysis of the adequacy of the information required to be submitted and the efficacy of the methods for delivering the information to local emergency response personnel.' '

REEVALUATION OF REGULATIONS

Pub. L. 106 - 40, § 3(c), Aug. 5, 1999, 113 Stat. 213, provided that: ' 'The President shall reevaluate the regulations promulgated under this section within 6 years after the enactment of this Act [Aug. 5, 1999]. If the President determines not to modify such regulations, the President shall publish a notice in the Federal Register stating that such reevaluation has been completed and that a determination has been made not to modify the regulations. Such notice shall include an explanation of the basis of such decision.' '

PUBLIC MEETING DURING MORATORIUM PERIOD

Pub. L. 106 - 40, § 4, Aug. 5, 1999, 113 Stat. 214, provided that:

' '(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Aug. 5, 1999], each owner or operator of a stationary source covered by section 112(r)(7)(B)(ii) of the Clean Air Act [42 U.S.C. 7412(r)(7)(B)(ii)] shall convene a public meeting, after reasonable public notice, in order to describe and discuss the local implications of the risk management plan submitted by the stationary source pursuant to section 112(r)(7)(B)(iii) of the Clean Air Act, including a summary of the off-site consequence analysis portion of the plan. Two or more stationary sources may conduct a joint meeting. In lieu of conducting such a meeting, small business stationary sources as defined in section 507(c)(1) of the Clean Air Act [42 U.S.C. 7661f(c)(1)] may comply with this section by publicly posting a summary of the off-site consequence analysis information for their facility not later than 180 days after the enactment of this Act. Not later than 10 months after the date of enactment of this Act, each such owner or operator shall send a certification to the director of the Federal Bureau of Investigation stating that such meeting has been held, or that such summary has been posted, within 1 year prior to, or within 6 months after, the date of the enactment of this Act. This section shall not apply to sources that employ only Program 1 processes within the meaning of regulations promulgated under section 112(r)(7)(B)(i) of the Clean Air Act.

' '(b) ENFORCEMENT.—The Administrator of the Environmental Protection Agency may bring an action in the appropriate United States district court against any person who fails or refuses to comply with the requirements of this section, and such court may issue such orders, and take such other actions, as may be necessary to require compliance with such requirements.' '

RISK ASSESSMENT AND MANAGEMENT COMMISSION

Section 303 of Pub. L. 101 - 549 provided that:

' '(a) ESTABLISHMENT.—There is hereby established a Risk Assessment and Management Commission (hereafter referred to in this section as the 'Commission'), which shall commence proceedings not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and which shall make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

' '(b) CHARGE.—The Commission shall consider—

' '(1) the report of the National Academy of Sciences authorized by section 112(*o*) of the Clean Air Act [42 U.S.C. 7412(*o*)], the use and limitations of risk assessment in establishing emission or effluent standards, ambient standards, exposure standards, acceptable concentration levels, tolerances or other environmental criteria for hazardous substances that present a risk of carcinogenic effects or other chronic health effects and the suitability of risk assessment for such purposes;

‘‘(2) the most appropriate methods for measuring and describing cancer risks or risks of other chronic health effects from exposure to hazardous substances considering such alternative approaches as the lifetime risk of cancer or other effects to the individual or individuals most exposed to emissions from a source or sources on both an actual and worst case basis, the range of such risks, the total number of health effects avoided by exposure reductions, effluent standards, ambient standards, exposures standards, acceptable concentration levels, tolerances and other environmental criteria, reductions in the number of persons exposed at various levels of risk, the incidence of cancer, and other public health factors;

‘‘(3) methods to reflect uncertainties in measurement and estimation techniques, the existence of synergistic or antagonistic effects among hazardous substances, the accuracy of extrapolating human health risks from animal exposure data, and the existence of unquantified direct or indirect effects on human health in risk assessment studies;

‘‘(4) risk management policy issues including the use of lifetime cancer risks to individuals most exposed, incidence of cancer, the cost and technical feasibility of exposure reduction measures and the use of site-specific actual exposure information in setting emissions standards and other limitations applicable to sources of exposure to hazardous substances; and

‘‘(5) and comment on the degree to which it is possible or desirable to develop a consistent risk assessment methodology, or a consistent standard of acceptable risk, among various Federal programs.

‘‘(c) MEMBERSHIP.—Such Commission shall be composed of ten members who shall have knowledge or experience in fields of risk assessment or risk management, including three members to be appointed by the President, two members to be appointed by the Speaker of the House of Representatives, one member to be appointed by the Minority Leader of the House of Representatives, two members to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, and one member to be appointed by the President of the National Academy of Sciences. Appointments shall be made not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

‘‘(d) ASSISTANCE FROM AGENCIES.—The Administrator of the Environmental Protection Agency and the heads of all other departments, agencies, and instrumentalities of the executive branch of the Federal Government shall, to the maximum extent practicable, assist the Commission in gathering such information as the Commission deems necessary to carry out this section subject to other provisions of law.

‘‘(e) STAFF AND CONTRACTS.—

‘‘(1) In the conduct of the study required by this section, the Commission is authorized to contract (in accordance with Federal contract law) with nongovernmental entities that are competent to perform research or investigations within the Commission’s mandate, and to hold public hearings, forums, and workshops to enable full public participation.

‘‘(2) The Commission may appoint and fix the pay of such staff as it deems necessary in accordance with the provisions of title 5, United States Code. The Commission may request the temporary assignment of personnel from the Environmental Protection Agency or other Federal agencies.

‘‘(3) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chair, shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS–18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

‘‘(f) REPORT.—A report containing the results of all Commission studies and investigations under this section, together with any appropriate legislative recommendations or administrative recommendations, shall be made available to the public for comment not later than 42 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

‘‘(g) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the activities of the Commission established by this section.’’

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

FLEXIBLE IMPLEMENTATION OF THE MERCURY AND AIR TOXICS STANDARDS RULE

Memorandum of President of the United States, Dec. 21, 2011, 76 F.R. 80727, provided:

Memorandum for the Administrator of the Environmental Protection Agency

Today’s issuance, by the Environmental Protection Agency (EPA), of the final Mercury and Air Toxics Standards rule for power plants (the ‘‘MATS Rule’’) represents a major step forward in my Administration’s efforts to protect public health and the environment.

This rule, issued after careful consideration of public comments, prescribes standards under section 112 of the Clean Air Act to control emissions of mercury and other toxic air pollutants from power plants, which collectively are among the largest sources of such pollution in the United States. The EPA estimates that by substantially reducing emissions of pollutants that contribute to neurological damage, cancer, respiratory illnesses, and other health risks, the MATS Rule will produce major health benefits for millions of Americans—including children, older Americans, and other vulnerable populations. Consistent with Executive Order 13563 (Improving Regulation and Regulatory Review), the estimated benefits of the MATS Rule far exceed the estimated costs.

The MATS Rule can be implemented through the use of demonstrated, existing pollution control technologies. The United States is a global market leader in the design and manufacture of these technologies, and it is anticipated that U.S. firms and workers will provide much of the equipment and labor needed to meet the substantial investments in pollution control that the standards are expected to spur.

These new standards will promote the transition to a cleaner and more efficient U.S. electric power system. This system as a whole is critical infrastructure that plays a key role in the functioning of all facets of the U.S. economy, and maintaining its stability and reliability is of critical importance. It is therefore crucial that implementation of the MATS Rule proceed in a cost-effective manner that ensures electric reliability.

Analyses conducted by the EPA and the Department of Energy (DOE) indicate that the MATS Rule is not anticipated to compromise electric generating resource adequacy in any region of the country. The Clean Air Act offers a number of implementation flexibilities, and the EPA has a long and successful history of using those flexibilities to ensure a smooth transition to cleaner technologies.

The Clean Air Act provides 3 years from the effective date of the MATS Rule for sources to comply with its requirements. In addition, section 112(i)(3)(B) of the Act allows the issuance of a permit granting a source up to one additional year where necessary for the installation of controls. As you stated in the preamble to the MATS Rule, this additional fourth year should be broadly available to sources, consistent with the requirements of the law.

The EPA has concluded that 4 years should generally be sufficient to install the necessary emission control equipment, and DOE has issued analysis consistent with that conclusion. While more time is generally not expected to be needed, the Clean Air Act offers other important flexibilities as well. For example, section 113(a) of the Act provides the EPA with flexibility to bring sources into compliance over the course of an additional year, should unusual circumstances arise that warrant such flexibility.

To address any concerns with respect to electric reliability while assuring MATS' public health benefits, I direct you to take the following actions:

1. Building on the information and guidance that you have provided to the public, relevant stakeholders, and permitting authorities in the preamble of the MATS Rule, work with State and local permitting authorities to make the additional year for compliance with the MATS Rule provided under section 112(i)(3)(B) of the Clean Air Act broadly available to sources, consistent with law, and to invoke this flexibility expeditiously where justified.

2. Promote early, coordinated, and orderly planning and execution of the measures needed to implement the MATS Rule while maintaining the reliability of the electric power system. Consistent with Executive Order 13563, this process should be designed to ''promote predictability and reduce uncertainty,'' and should include engagement and coordination with DOE, the Federal Energy Regulatory Commission, State utility regulators, Regional Transmission Organizations, the North American Electric Reliability Corporation and regional electric reliability organizations, other grid planning authorities, electric utilities, and other stakeholders, as appropriate.

3. Make available to the public, including relevant stakeholders, information concerning any anticipated use of authorities: (a) under section 112(i)(3)(B) of the Clean Air Act in the event that additional time to comply with the MATS Rule is necessary for the installation of technology; and (b) under section 113(a) of the Clean Air Act in the event that additional time to comply with the MATS Rule is necessary to address a specific and documented electric reliability issue. This information should describe the process for working with entities with relevant expertise to identify circumstances where electric reliability concerns might justify allowing additional time to comply.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 7413. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as ''period of federally assumed enforcement''), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

SEC. 2. ***Designation of Facilities***. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as ' 'the Administrator' ') shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act [42 U.S.C. 7413(c)(1)] or section 309(c) of the Water Act [33 U.S.C. 1319(c)]. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. ***Contracts, Grants, or Loans***. (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. ***Procurement, Grant, and Loan Regulations***. The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. ***Rules and Regulations***. The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. ***Cooperation and Assistance***. The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of this agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. ***Enforcement***. The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. ***Exemptions—Reports to Congress***. (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. ***Related Actions***. The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. ***Applicability***. This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. ***Uniformity***. Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act [33 U.S.C. 1368] shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971 [formerly set out above], and section 306 of the Air Act [this section].

SEC. 12. ***Order Superseded***. Executive Order No. 11602 of June 29, 1971, is hereby superseded.

RICHARD NIXON.

§ 7607. Administrative proceedings and judicial review

(a) Administrative subpenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4) [1] or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the [2] chapter (including but not limited to section 7413, section 7414, section 7420, section 7429, section 7477, section 7524, section 7525, section 7542, section 7603, or section 7606 of this title),,[3] the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be dis-

[1] See References in Text note below.
[2] So in original. Probably should be ' 'this' ' .
[3] So in original.

closed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph,[4] the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title,,[3] any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5) [1] of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator' s action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c–10(c)(2)(A), (B), or (C) of this title (as in ef- fect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I of this chapter) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to [5] the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

[4] So in original. Probably should be ' 'subsection,' ' .

[5] So in original. The word ' 'to' ' probably should not appear.

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV–A of this chapter (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II of this chapter,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV–A of this chapter (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a ''rule''). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the ''comment period''). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management

and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) 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. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time 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, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public participation

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of

title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section [6] 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

(July 14, 1955, ch. 360, title III, § 307, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 92–157, title III, § 302(a), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93–319, § 6(c), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title III, §§ 303(d), 305(a), (c), (f)–(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub. L. 95–190, § 14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title I, §§ 108(p), 110(5), title III, § 302(g), (h), title VII, §§ 702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681–2684.)

REFERENCES IN TEXT

Section 7521(b)(4) of this title, referred to in subsec. (a), was repealed by Pub. L. 101–549, title II, § 230(2), Nov. 15, 1990, 104 Stat. 2529.

Section 7521(b)(5) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 101–549, title II, § 230(3), Nov. 15, 1990, 104 Stat. 2529.

Section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977), referred to in subsec. (b)(1), was in the original "section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Part C of subchapter I of this chapter, referred to in subsec. (d)(1)(J), was in the original "subtitle C of title I", and was translated as reading "part C of title I" to reflect the probable intent of Congress, because title I does not contain subtitles.

CODIFICATION

In subsec. (h), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedures Act" on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 1857h–5 of this title.

PRIOR PROVISIONS

A prior section 307 of act July 14, 1955, was renumbered section 314 by Pub. L. 91–604 and is classified to section 7614 of this title.

Another prior section 307 of act July 14, 1955, ch. 360, title III, formerly § 14, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, was renumbered section 307 by Pub. L. 89–272, renumbered section 310 by Pub. L. 90–148, and renumbered section 317 by Pub. L. 91–604, and is set out as a Short Title note under section 7401 of this title.

[6] So in original. Probably should be "sections".

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 703, struck out par. (1) designation at beginning, inserted provisions authorizing issuance of subpoenas and administration of oaths for purposes of investigations, monitoring, reporting requirements, entries, compliance inspections, or administrative enforcement proceedings under this chapter, and struck out "or section 7521(b)(5)" after "section 7410(f)".

Subsec. (b)(1). Pub. L. 101–549, § 706(2), which directed amendment of second sentence by striking "under section 7413(d) of this title" immediately before "under section 7419 of this title", was executed by striking "under section 7413(d) of this title," before "under section 7419 of this title", to reflect the probable intent of Congress.

Pub. L. 101–549, § 706(1), inserted at end: "The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action."

Pub. L. 101–549, § 702(c), inserted "or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title," before "or any other final action of the Administrator".

Pub. L. 101–549, § 302(g), substituted "section 7412" for "section 7412(c)".

Subsec. (b)(2). Pub. L. 101–549, § 707(h), inserted sentence at end authorizing challenge to deferrals of performance of nondiscretionary statutory actions.

Subsec. (d)(1)(C). Pub. L. 101–549, § 110(5)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "the promulgation or revision of any standard of performance under section 7411 of this title or emission standard under section 7412 of this title,".

Subsec. (d)(1)(D), (E). Pub. L. 101–549, § 302(h), added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (d)(1)(F). Pub. L. 101–549, § 302(h), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 101–549, § 110(5)(B), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "promulgation or revision of regulations pertaining to orders for coal conversion under section 7413(d)(5) of this title (but not including orders granting or denying any such orders),".

Subsec. (d)(1)(G), (H). Pub. L. 101–549, § 302(h), redesignated subpars. (F) and (G) as (G) and (H), respectively. Former subpar. (H) redesignated (I).

Subsec. (d)(1)(I). Pub. L. 101–549, § 710(b), which directed that subpar. (H) be amended by substituting "subchapter VI of this chapter" for "part B of subchapter I of this chapter", was executed by making the substitution in subpar. (I), to reflect the probable intent of Congress and the intervening redesignation of subpar. (H) as (I) by Pub. L. 101–549, § 302(h), see below.

Pub. L. 101–549, § 302(h), redesignated subpar. (H) as (I). Former subpar. (I) redesignated (J).

Subsec. (d)(1)(J) to (M). Pub. L. 101–549, § 302(h), redesignated subpars. (I) to (L) as (J) to (M), respectively. Former subpar. (M) redesignated (N).

Subsec. (d)(1)(N). Pub. L. 101–549, § 302(h), redesignated subpar. (M) as (N). Former subpar. (N) redesignated (O).

Pub. L. 101–549, § 110(5)(C), added subpar. (N) and redesignated former subpar. (N) as (U).

Subsec. (d)(1)(O) to (T). Pub. L. 101–549, § 302(h), redesignated subpars. (N) to (S) as (O) to (T), respectively. Former subpar. (T) redesignated (U).

Pub. L. 101–549, § 110(5)(C), added subpars. (O) to (T).

Subsec. (d)(1)(U). Pub. L. 101–549, § 302(h), redesignated subpar. (T) as (U). Former subpar. (U) redesignated (V).

Pub. L. 101–549, § 110(5)(C), redesignated former subpar. (N) as (U).

Subsec. (d)(1)(V). Pub. L. 101–549, § 302(h), redesignated subpar. (U) as (V).

Subsec. (h). Pub. L. 101–549, § 108(p), added subsec. (h).

1977—Subsec. (b)(1). Pub. L. 95–190 in text relating to filing of petitions for review in the United States Court of Appeals for the District of Columbia inserted provision respecting requirements under sections 7411 and 7412 of this title, and substituted provisions authorizing review of any rule issued under section 7413, 7419, or 7420 of this title, for provisions authorizing review of any rule or order issued under section 7420 of this title, relating to noncompliance penalties, and in text relating to filing of petitions for review in the United States Court of Appeals for the appropriate circuit inserted provision respecting review under section 7411(j), 7412(c), 7413(d), or 7419 of this title, provision authorizing review under section 1857c–10(c)(2)(A), (B), or (C) to the period prior to Aug. 7, 1977, and provisions authorizing review of denials or disapprovals by the Administrator under subchapter I of this chapter.

Pub. L. 95–95, § 305(c), (h), inserted rules or orders issued under section 7420 of this title (relating to noncompliance penalties) and any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter to the enumeration of actions of the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the District of Columbia, added the approval or promulgation by the Administrator of orders under section 7420 of this title, or any other final action of the Administrator under this chapter which is locally or regionally applicable to the enumeration of actions by the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the appropriate circuit, inserted provision that petitions otherwise capable of being filed in the Court of Appeals for the appropriate circuit may be filed only in the Court of Appeals for the District of Columbia if the action is based on a determination of nationwide scope, and increased from 30 days to 60 days the period during which the petition must be filed.

Subsec. (d). Pub. L. 95–95, § 305(a), added subsec. (d).

Subsec. (e). Pub. L. 95–95, § 303(d), added subsec. (e).

Subsec. (f). Pub. L. 95–95, § 305(f), added subsec. (f).

Subsec. (g). Pub. L. 95–95, § 305(g), added subsec. (g).

1974—Subsec. (b)(1). Pub. L. 93–319 inserted reference to the Administrator's action under section 1857c–10(c)(2)(A), (B), or (C) of this title or under regulations thereunder and substituted reference to the filing of a petition within 30 days from the date of promulgation, approval, or action for reference to the filing of a petition within 30 days from the date of promulgation or approval.

1971—Subsec. (a)(1). Pub. L. 92–157 substituted reference to section "7545(c)(3)" for "7545(c)(4)" of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7608. Mandatory licensing

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 7411, 7412, or 7521 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

(July 14, 1955, ch. 360, title III, § 308, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1708.)

CODIFICATION

Section was formerly classified to section 1857h–6 of this title.

PRIOR PROVISIONS

A prior section 308 of act July 14, 1955, was renumbered section 315 by Pub. L. 91–604 and is classified to section 7615 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect

basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) Additional auction participants

Any person holding allowances or to whom allowances are allocated by the Administrator may submit those allowances to the Administrator to be offered for sale at auction under this subsection. The proceeds of any such sale shall be transferred at the time of sale by the purchaser to the person submitting such allowances for sale. The holder of allowances offered for sale under this paragraph may specify a minimum sale price. Any person may purchase allowances offered for auction under this paragraph. Such allowances shall be allocated and sold to purchasers on the basis of bid price after the auction under paragraph (2) is complete. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(5) Recording by EPA

The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subchapter.

(e) Changes in sales, auctions, and withholding

Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance sales or advance auctions) and 2005 (in the case of spot sales or spot auctions) decrease the number of allowances withheld and sold under this section.

(f) Termination of auctions

The Administrator may terminate the withholding of allowances and the auction sales under this section if the Administrator determines that, during any period of 3 consecutive calendar years after 2002, less than 20 percent of the allowances available in the auction subaccount have been purchased. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(July 14, 1955, ch. 360, title IV, § 416, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2626.)

REFERENCES IN TEXT

Section 79b of title 15, referred to in subsec. (a)(2)(C), was repealed by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. See section 16451(1) of this title.

SUBCHAPTER V—PERMITS

§ 7661. Definitions

As used in this subchapter—

(1) Affected source

The term ''affected source'' shall have the meaning given such term in subchapter IV–A of this chapter.

(2) Major source

The term ''major source'' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

(A) A major source as defined in section 7412 of this title.

(B) A major stationary source as defined in section 7602 of this title or part D of subchapter I of this chapter.

(3) Schedule of compliance

The term ''schedule of compliance'' means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

(4) Permitting authority

The term ''permitting authority'' means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.

(July 14, 1955, ch. 360, title V, § 501, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2635.)

§ 7661a. Permit programs

(a) Violations

After the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate an affected source (as provided in subchapter IV–A of this chapter), a major source, any other source (including an area source) subject to standards or regulations under section 7411 or 7412 of this title, any other source required to have a permit under parts [1] C or D of subchapter I of this chapter, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this subchapter. (Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator

[1] So in original. Probably should be ''part''.

REGULATORY PROVISIONS

PART 64—COMPLIANCE ASSURANCE MONITORING

Sec.

AUTHORITY: 42 U.S.C. 7414 and 7661–7661f.

SOURCE: 62 FR 54940, Oct. 22, 1997, unless otherwise noted.

§ 64.1 Definitions.

The following definitions apply to this part. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable provisions of the Act.

Act means the Clean Air Act, as amended by Pub.L. 101–549, 42 U.S.C. 7401, *et seq.*

Applicable requirement shall have the same meaning as provided under part 70 of this chapter.

Capture system means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

Continuous compliance determination method means a method, specified by the applicable standard or an applicable permit condition, which:

(1) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(2) Provides data either in units of the standard or correlated directly with the compliance limit.

Control device means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of this part, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition shall be binding for purposes of this part.

Data means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

Emission limitation or standard means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either

as a specific quantity, rate or concentration of emissions (e.g., pounds of SO_2 per hour, pounds of SO_2 per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO_2) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO_2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of this part, an emission limitation or standard shall not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

Emissions unit shall have the same meaning as provided under part 70 of this chapter.

Exceedance shall mean a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

Excursion shall mean a departure from an indicator range established for monitoring under this part, consistent with any averaging period specified for averaging the results of the monitoring.

Inherent process equipment means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of this part, inherent process equipment is not considered a control device.

Major source shall have the same meaning as provided under part 70 or 71 of this chapter.

Monitoring means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Recordkeeping may be considered monitoring where such records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). The conduct of compliance method tests, such as the procedures in appendix A to part 60 of this chapter, on a routine periodic basis may be considered monitoring (or as a supplement to other monitoring), provided that requirements to conduct such tests on a one-time basis or at such times as a regulatory authority may require on a non-regular basis are not considered monitoring requirements for purposes of this paragraph. Monitoring may include one or more than one of the following data collection techniques, where appropriate for a particular circumstance:

(1) Continuous emission or opacity monitoring systems.

(2) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(3) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).

(4) Maintenance and analysis of records of fuel or raw materials usage.

(5) Recording results of a program or protocol to conduct specific operation and maintenance procedures.

(6) Verification of emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(7) Visible emission observations.

(8) Any other form of measuring, recording, or verifying on a routine basis

emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

Owner or operator means any person who owns, leases, operates, controls or supervises a stationary source subject to this part.

Part 70 or 71 permit shall have the same meaning as provided under part 70 or 71 of this chapter, provided that it shall also refer to a permit issued, renewed, amended, revised, or modified under any federal permit program promulgated under title V of the Act.

Part 70 or 71 permit application shall mean an application (including any supplement to a previously submitted application) that is submitted by the owner or operator in order to obtain a part 70 or 71 permit.

Permitting authority shall have the same meaning as provided under part 70 or 71 of this chapter.

Pollutant-specific emissions unit means an emissions unit considered separately with respect to each regulated air pollutant.

Potential to emit shall have the same meaning as provided under part 70 or 71 of this chapter, provided that it shall be applied with respect to an "emissions unit" as defined under this part in addition to a "stationary source" as provided under part 70 or 71 of this chapter.

Predictive emission monitoring system (PEMS) means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

Regulated air pollutant shall have the same meaning as provided under part 70 or 71 of this chapter.

§ 64.2 Applicability.

(a) *General applicability.* Except for backup utility units that are exempt under paragraph (b)(2) of this section, the requirements of this part shall apply to a pollutant-specific emissions unit at a major source that is required to obtain a part 70 or 71 permit if the unit satisfies all of the following criteria:

(1) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate thereof), other than an emission limitation or standard that is exempt under paragraph (b)(1) of this section;

(2) The unit uses a control device to achieve compliance with any such emission limitation or standard; and

(3) The unit has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this paragraph, "potential pre-control device emissions" shall have the same meaning as "potential to emit," as defined in § 64.1, except that emission reductions achieved by the applicable control device shall not be taken into account.

(b) *Exemptions*—(1) *Exempt emission limitations or standards.* The requirements of this part shall not apply to any of the following emission limitations or standards:

(i) Emission limitations or standards proposed by the Administrator after November 15, 1990 pursuant to section 111 or 112 of the Act.

(ii) Stratospheric ozone protection requirements under title VI of the Act.

(iii) Acid Rain Program requirements pursuant to sections 404, 405, 406, 407(a), 407(b), or 410 of the Act.

(iv) Emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved or promulgated by the Administrator under the Act that allows for trading emissions within a source or between sources.

(v) An emissions cap that meets the requirements specified in § 70.4(b)(12) or § 71.6(a)(13)(iii) of this chapter.

(vi) Emission limitations or standards for which a part 70 or 71 permit specifies a continuous compliance determination method, as defined in § 64.1. The exemption provided in this paragraph (b)(1)(vi) shall not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device

emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

Owner or operator means any person who owns, leases, operates, controls or supervises a stationary source subject to this part.

Part 70 or 71 permit shall have the same meaning as provided under part 70 or 71 of this chapter, provided that it shall also refer to a permit issued, renewed, amended, revised, or modified under any federal permit program promulgated under title V of the Act.

Part 70 or 71 permit application shall mean an application (including any supplement to a previously submitted application) that is submitted by the owner or operator in order to obtain a part 70 or 71 permit.

Permitting authority shall have the same meaning as provided under part 70 or 71 of this chapter.

Pollutant-specific emissions unit means an emissions unit considered separately with respect to each regulated air pollutant.

Potential to emit shall have the same meaning as provided under part 70 or 71 of this chapter, provided that it shall be applied with respect to an "emissions unit" as defined under this part in addition to a "stationary source" as provided under part 70 or 71 of this chapter.

Predictive emission monitoring system (PEMS) means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

Regulated air pollutant shall have the same meaning as provided under part 70 or 71 of this chapter.

§ 64.2 Applicability.

(a) *General applicability.* Except for backup utility units that are exempt under paragraph (b)(2) of this section, the requirements of this part shall apply to a pollutant-specific emissions unit at a major source that is required to obtain a part 70 or 71 permit if the unit satisfies all of the following criteria:

(1) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate thereof), other than an emission limitation or standard that is exempt under paragraph (b)(1) of this section;

(2) The unit uses a control device to achieve compliance with any such emission limitation or standard; and

(3) The unit has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this paragraph, "potential pre-control device emissions" shall have the same meaning as "potential to emit," as defined in § 64.1, except that emission reductions achieved by the applicable control device shall not be taken into account.

(b) *Exemptions*—(1) *Exempt emission limitations or standards.* The requirements of this part shall not apply to any of the following emission limitations or standards:

(i) Emission limitations or standards proposed by the Administrator after November 15, 1990 pursuant to section 111 or 112 of the Act.

(ii) Stratospheric ozone protection requirements under title VI of the Act.

(iii) Acid Rain Program requirements pursuant to sections 404, 405, 406, 407(a), 407(b), or 410 of the Act.

(iv) Emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved or promulgated by the Administrator under the Act that allows for trading emissions within a source or between sources.

(v) An emissions cap that meets the requirements specified in § 70.4(b)(12) or § 71.6(a)(13)(iii) of this chapter.

(vi) Emission limitations or standards for which a part 70 or 71 permit specifies a continuous compliance determination method, as defined in § 64.1. The exemption provided in this paragraph (b)(1)(vi) shall not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device

(such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test; in this example, this part would apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage).

(2) *Exemption for backup utility power emissions units.* The requirements of this part shall not apply to a utility unit, as defined in § 72.2 of this chapter, that is municipally-owned if the owner or operator provides documentation in a part 70 or 71 permit application that:

(i) The utility unit is exempt from all monitoring requirements in part 75 (including the appendices thereto) of this chapter;

(ii) The utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the part 70 or 71 permit term. The owner or operator shall provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and

(iii) The actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or such shorter time period that is available for units with fewer than three years of operation) are less than 50 percent of the amount in tons per year required for a source to be classified as a major source and are expected to remain so.

§ 64.3 Monitoring design criteria.

(a) *General criteria.* To provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit, monitoring under this part shall meet the following general criteria:

(1) The owner or operator shall design the monitoring to obtain data for one or more indicators of emission control performance for the control device, any associated capture system and, if necessary to satisfy paragraph (a)(2) of this section, processes at a pollutant-specific emissions unit. Indicators of performance may include, but are not limited to, direct or predicted emissions (including visible emissions or opacity), process and control device parameters that affect control device (and capture system) efficiency or emission rates, or recorded findings of inspection and maintenance activities conducted by the owner or operator.

(2) The owner or operator shall establish an appropriate range(s) or designated condition(s) for the selected indicator(s) such that operation within the ranges provides a reasonable assurance of ongoing compliance with emission limitations or standards for the anticipated range of operating conditions. Such range(s) or condition(s) shall reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operating conditions at least to the level required to achieve compliance with the applicable requirements. The reasonable assurance of compliance will be assessed by maintaining performance within the indicator range(s) or designated condition(s). The ranges shall be established in accordance with the design and performance requirements in this section and documented in accordance with the requirements in § 64.4. If necessary to assure that the control device and associated capture system can satisfy this criterion, the owner or operator shall monitor appropriate process operational parameters (such as total throughput where necessary to stay within the rated capacity for a control device). In addition, unless specifically stated otherwise by an applicable requirement, the owner or operator shall monitor indicators to detect any bypass of the control device (or capture system) to the atmosphere, if such bypass can occur based on the design of the pollutant-specific emissions unit.

(3) The design of indicator ranges or designated conditions may be:

(i) Based on a single maximum or minimum value if appropriate (e.g., maintaining condenser temperatures a certain number of degrees below the condensation temperature of the applicable compound(s) being processed) or

(such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test; in this example, this part would apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage).

(2) *Exemption for backup utility power emissions units.* The requirements of this part shall not apply to a utility unit, as defined in § 72.2 of this chapter, that is municipally-owned if the owner or operator provides documentation in a part 70 or 71 permit application that:

(i) The utility unit is exempt from all monitoring requirements in part 75 (including the appendices thereto) of this chapter;

(ii) The utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the part 70 or 71 permit term. The owner or operator shall provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and

(iii) The actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or such shorter time period that is available for units with fewer than three years of operation) are less than 50 percent of the amount in tons per year required for a source to be classified as a major source and are expected to remain so.

§ 64.3 Monitoring design criteria.

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(1) The owner or operator shall design the monitoring to obtain data for one or more indicators of emission control performance for the control device, any associated capture system and, if necessary to satisfy paragraph (a)(2) of this section, processes at a pollutant-specific emissions unit. Indicators of performance may include, but are not limited to, direct or predicted emissions (including visible emissions or opacity), process and control device parameters that affect control device (and capture system) efficiency or emission rates, or recorded findings of inspection and maintenance activities conducted by the owner or operator.

(2) The owner or operator shall establish an appropriate range(s) or designated condition(s) for the selected indicator(s) such that operation within the ranges provides a reasonable assurance of ongoing compliance with emission limitations or standards for the anticipated range of operating conditions. Such range(s) or condition(s) shall reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operating conditions at least to the level required to achieve compliance with the applicable requirements. The reasonable assurance of compliance will be assessed by maintaining performance within the indicator range(s) or designated condition(s). The ranges shall be established in accordance with the design and performance requirements in this section and documented in accordance with the requirements in § 64.4. If necessary to assure that the control device and associated capture system can satisfy this criterion, the owner or operator shall monitor appropriate process operational parameters (such as total throughput where necessary to stay within the rated capacity for a control device). In addition, unless specifically stated otherwise by an applicable requirement, the owner or operator shall monitor indicators to detect any bypass of the control device (or capture system) to the atmosphere, if such bypass can occur based on the design of the pollutant-specific emissions unit.

(3) The design of indicator ranges or designated conditions may be:

(i) Based on a single maximum or minimum value if appropriate (e.g., maintaining condenser temperatures a certain number of degrees below the condensation temperature of the applicable compound(s) being processed) or

at multiple levels that are relevant to distinctly different operating conditions (e.g., high versus low load levels).

(ii) Expressed as a function of process variables (e.g., an indicator range expressed as minimum to maximum pressure drop across a venturi throat in a particulate control scrubber).

(iii) Expressed as maintaining the applicable parameter in a particular operational status or designated condition (e.g., position of a damper controlling gas flow to the atmosphere through a by-pass duct).

(iv) Established as interdependent between more than one indicator.

(b) *Performance criteria.* The owner or operator shall design the monitoring to meet the following performance criteria:

(1) Specifications that provide for obtaining data that are representative of the emissions or parameters being monitored (such as detector location and installation specifications, if applicable).

(2) For new or modified monitoring equipment, verification procedures to confirm the operational status of the monitoring prior to the date by which the owner or operator must conduct monitoring under this part as specified in § 64.7(a). The owner or operator shall consider the monitoring equipment manufacturer's requirements or recommendations for installation, calibration, and start-up operation.

(3) Quality assurance and control practices that are adequate to ensure the continuing validity of the data. The owner or operator shall consider manufacturer recommendations or requirements applicable to the monitoring in developing appropriate quality assurance and control practices.

(4) Specifications for the frequency of conducting the monitoring, the data collection procedures that will be used (e.g., computerized data acquisition and handling, alarm sensor, or manual log entries based on gauge readings), and, if applicable, the period over which discrete data points will be averaged for the purpose of determining whether an excursion or exceedance has occurred.

(i) At a minimum, the owner or operator shall design the period over which data are obtained and, if applicable, averaged consistent with the characteristics and typical variability of the pollutant-specific emissions unit (including the control device and associated capture system). Such intervals shall be commensurate with the time period over which a change in control device performance that would require actions by owner or operator to return operations within normal ranges or designated conditions is likely to be observed.

(ii) For all pollutant-specific emissions units with the potential to emit, calculated *including* the effect of control devices, the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, for each parameter monitored, the owner or operator shall collect four or more data values equally spaced over each hour and average the values, as applicable, over the applicable averaging period as determined in accordance with paragraph (b)(4)(i) of this section. The permitting authority may approve a reduced data collection frequency, if appropriate, based on information presented by the owner or operator concerning the data collection mechanisms available for a particular parameter for the particular pollutant-specific emissions unit (e.g., integrated raw material or fuel analysis data, noninstrumental measurement of waste feed rate or visible emissions, use of a portable analyzer or an alarm sensor).

(iii) For other pollutant-specific emissions units, the frequency of data collection may be less than the frequency specified in paragraph (b)(4)(ii) of this section but the monitoring shall include some data collection at least once per 24-hour period (e.g., a daily inspection of a carbon adsorber operation in conjunction with a weekly or monthly check of emissions with a portable analyzer).

(c) *Evaluation factors.* In designing monitoring to meet the requirements in paragraphs (a) and (b) of this section, the owner or operator shall take into account site-specific factors including the applicability of existing monitoring equipment and procedures,

the ability of the monitoring to account for process and control device operational variability, the reliability and latitude built into the control technology, and the level of actual emissions relative to the compliance limitation.

(d) *Special criteria for the use of continuous emission, opacity or predictive monitoring systems.* (1) If a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS) or predictive emission monitoring system (PEMS) is required pursuant to other authority under the Act or state or local law, the owner or operator shall use such system to satisfy the requirements of this part.

(2) The use of a CEMS, COMS, or PEMS that satisfies any of the following monitoring requirements shall be deemed to satisfy the general design criteria in paragraphs (a) and (b) of this section, provided that a COMS may be subject to the criteria for establishing indicator ranges under paragraph (a) of this section:

(i) Section 51.214 and appendix P of part 51 of this chapter;

(ii) Section 60.13 and appendix B of part 60 of this chapter;

(iii) Section 63.8 and any applicable performance specifications required pursuant to the applicable subpart of part 63 of this chapter;

(iv) Part 75 of this chapter;

(v) Subpart H and appendix IX of part 266 of this chapter; or

(vi) If an applicable requirement does not otherwise require compliance with the requirements listed in the preceding paragraphs (d)(2)(i) through (v) of this section, comparable requirements and specifications established by the permitting authority.

(3) The owner or operator shall design the monitoring system subject to this paragraph (d) to:

(i) Allow for reporting of exceedances (or excursions if applicable to a COMS used to assure compliance with a particulate matter standard), consistent with any period for reporting of exceedances in an underlying requirement. If an underlying requirement does not contain a provision for establishing an averaging period for the reporting of exceedances or excursions, the criteria used to develop an averaging period in (b)(4) of this section shall apply; and

(ii) Provide an indicator range consistent with paragraph (a) of this section for a COMS used to assure compliance with a particulate matter standard. If an opacity standard applies to the pollutant-specific emissions unit, such limit may be used as the appropriate indicator range unless the opacity limit fails to meet the criteria in paragraph (a) of this section after considering the type of control device and other site-specific factors applicable to the pollutant-specific emissions unit.

§ 64.4 Submittal requirements.

(a) The owner or operator shall submit to the permitting authority monitoring that satisfies the design requirements in § 64.3. The submission shall include the following information:

(1) The indicators to be monitored to satisfy §§ 64.3(a)(1)–(2);

(2) The ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions shall be established;

(3) The performance criteria for the monitoring to satisfy § 64.3(b); and

(4) If applicable, the indicator ranges and performance criteria for a CEMS, COMS or PEMS pursuant to § 64.3(d).

(b) As part of the information submitted, the owner or operator shall submit a justification for the proposed elements of the monitoring. If the performance specifications proposed to satisfy § 64.3(b)(2) or (3) include differences from manufacturer recommendations, the owner or operator shall explain the reasons for the differences between the requirements proposed by the owner or operator and the manufacturer's recommendations or requirements. The owner or operator also shall submit any data supporting the justification, and may refer to generally available sources of information used to support the justification (such as generally available air pollution engineering manuals, or EPA or permitting authority publications on appropriate monitoring for various types of control devices or capture systems). To justify the appropriateness of the monitoring elements proposed, the owner

the ability of the monitoring to account for process and control device operational variability, the reliability and latitude built into the control technology, and the level of actual emissions relative to the compliance limitation.

(d) *Special criteria for the use of continuous emission, opacity or predictive monitoring systems.* (1) If a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS) or predictive emission monitoring system (PEMS) is required pursuant to other authority under the Act or state or local law, the owner or operator shall use such system to satisfy the requirements of this part.

(2) The use of a CEMS, COMS, or PEMS that satisfies any of the following monitoring requirements shall be deemed to satisfy the general design criteria in paragraphs (a) and (b) of this section, provided that a COMS may be subject to the criteria for establishing indicator ranges under paragraph (a) of this section:

(i) Section 51.214 and appendix P of part 51 of this chapter;

(ii) Section 60.13 and appendix B of part 60 of this chapter;

(iii) Section 63.8 and any applicable performance specifications required pursuant to the applicable subpart of part 63 of this chapter;

(iv) Part 75 of this chapter;

(v) Subpart H and appendix IX of part 266 of this chapter; or

(vi) If an applicable requirement does not otherwise require compliance with the requirements listed in the preceding paragraphs (d)(2)(i) through (v) of this section, comparable requirements and specifications established by the permitting authority.

(3) The owner or operator shall design the monitoring system subject to this paragraph (d) to:

(i) Allow for reporting of exceedances (or excursions if applicable to a COMS used to assure compliance with a particulate matter standard), consistent with any period for reporting of exceedances in an underlying requirement. If an underlying requirement does not contain a provision for establishing an averaging period for the reporting of exceedances or excursions, the criteria used to develop an averaging period in (b)(4) of this section shall apply; and

(ii) Provide an indicator range consistent with paragraph (a) of this section for a COMS used to assure compliance with a particulate matter standard. If an opacity standard applies to the pollutant-specific emissions unit, such limit may be used as the appropriate indicator range unless the opacity limit fails to meet the criteria in paragraph (a) of this section after considering the type of control device and other site-specific factors applicable to the pollutant-specific emissions unit.

§ 64.4 Submittal requirements.

(a) The owner or operator shall submit to the permitting authority monitoring that satisfies the design requirements in § 64.3. The submission shall include the following information:

(1) The indicators to be monitored to satisfy §§ 64.3(a)(1)–(2);

(2) The ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions shall be established;

(3) The performance criteria for the monitoring to satisfy § 64.3(b); and

(4) If applicable, the indicator ranges and performance criteria for a CEMS, COMS or PEMS pursuant to § 64.3(d).

(b) As part of the information submitted, the owner or operator shall submit a justification for the proposed elements of the monitoring. If the performance specifications proposed to satisfy § 64.3(b)(2) or (3) include differences from manufacturer recommendations, the owner or operator shall explain the reasons for the differences between the requirements proposed by the owner or operator and the manufacturer's recommendations or requirements. The owner or operator also shall submit any data supporting the justification, and may refer to generally available sources of information used to support the justification (such as generally available air pollution engineering manuals, or EPA or permitting authority publications on appropriate monitoring for various types of control devices or capture systems). To justify the appropriateness of the monitoring elements proposed, the owner

or operator may rely in part on existing applicable requirements that establish the monitoring for the applicable pollutant-specific emissions unit or a similar unit. If an owner or operator relies on presumptively acceptable monitoring, no further justification for the appropriateness of that monitoring should be necessary other than an explanation of the applicability of such monitoring to the unit in question, unless data or information is brought forward to rebut the assumption. Presumptively acceptable monitoring includes:

(1) Presumptively acceptable or required monitoring approaches, established by the permitting authority in a rule that constitutes part of the applicable implementation plan required pursuant to title I of the Act, that are designed to achieve compliance with this part for particular pollutant-specific emissions units;

(2) Continuous emission, opacity or predictive emission monitoring systems that satisfy applicable monitoring requirements and performance specifications as specified in § 64.3(d);

(3) Excepted or alternative monitoring methods allowed or approved pursuant to part 75 of this chapter;

(4) Monitoring included for standards exempt from this part pursuant to § 64.2(b)(1)(i) or (vi) to the extent such monitoring is applicable to the performance of the control device (and associated capture system) for the pollutant-specific emissions unit; and

(5) Presumptively acceptable monitoring identified in guidance by EPA. Such guidance will address the requirements under §§ 64.4(a), (b), and (c) to the extent practicable.

(c)(1) Except as provided in paragraph (d) of this section, the owner or operator shall submit control device (and process and capture system, if applicable) operating parameter data obtained during the conduct of the applicable compliance or performance test conducted under conditions specified by the applicable rule. If the applicable rule does not specify testing conditions or only partially specifies test conditions, the performance test generally shall be conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the pollutant-specific emissions unit. Such data may be supplemented, if desired, by engineering assessments and manufacturer's recommendations to justify the indicator ranges (or, if applicable, the procedures for establishing such indicator ranges). Emission testing is not required to be conducted over the entire indicator range or range of potential emissions.

(2) The owner or operator must document that no changes to the pollutant-specific emissions unit, including the control device and capture system, have taken place that could result in a significant change in the control system performance or the selected ranges or designated conditions for the indicators to be monitored since the performance or compliance tests were conducted.

(d) If existing data from unit-specific compliance or performance testing specified in paragraph (c) of this section are not available, the owner or operator:

(1) Shall submit a test plan and schedule for obtaining such data in accordance with paragraph (e) of this section; or

(2) May submit indicator ranges (or procedures for establishing indicator ranges) that rely on engineering assessments and other data, provided that the owner or operator demonstrates that factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary to establish indicator ranges at levels that satisfy the criteria in § 64.3(a).

(e) If the monitoring submitted by the owner or operator requires installation, testing, or other necessary activities prior to use of the monitoring for purposes of this part, the owner or operator shall include an implementation plan and schedule for installing, testing and performing any other appropriate activities prior to use of the monitoring. The implementation plan and schedule shall provide for use of the monitoring as expeditiously as practicable after approval of the monitoring in the part 70 or 71 permit pursuant to § 64.6, but in no case shall the schedule for completing installation

and beginning operation of the monitoring exceed 180 days after approval of the permit.

(f) If a control device is common to more than one pollutant-specific emissions unit, the owner or operator may submit monitoring for the control device and identify the pollutant-specific emissions units affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit separate monitoring for each pollutant-specific emissions unit.

(g) If a single pollutant-specific emissions unit is controlled by more than one control device similar in design and operation, the owner or operator may submit monitoring that applies to all the control devices and identify the control devices affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit a separate description of monitoring for each control device.

§ 64.5 Deadlines for submittals.

(a) *Large pollutant-specific emissions units.* For all pollutant-specific emissions units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in § 64.1) the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator shall submit the information required under § 64.4 at the following times:

(1) On or after April 20, 1998, the owner or operator shall submit information as part of an application for an initial part 70 or 71 permit if, by that date, the application either:

(i) Has not been filed; or

(ii) Has not yet been determined to be complete by the permitting authority.

(2) On or after April 20, 1998, the owner or operator shall submit information as part of an application for a significant permit revision under part 70 or 71 of this chapter, but only with respect to those pollutant-specific emissions units for which the proposed permit revision is applicable.

(3) The owner or operator shall submit any information not submitted under the deadlines set forth in paragraphs (a)(1) and (2) of this section as part of the application for the renewal of a part 70 or 71 permit.

(b) *Other pollutant-specific emissions units.* For all other pollutant-specific emissions units subject to this part and not subject to § 64.5(a), the owner or operator shall submit the information required under § 64.4 as part of an application for a renewal of a part 70 or 71 permit.

(c) The effective date for the requirement to submit information under § 64.4 shall be as specified pursuant to paragraphs (a)–(b) of this section and a permit reopening to require the submittal of information under this section shall not be required pursuant to § 70.7(f)(1)(i) of this chapter, provided, however, that, if a part 70 or 71 permit is reopened for cause by EPA or the permitting authority pursuant to § 70.7(f)(1)(iii) or (iv), or § 71.7(f) or (g), the applicable agency may require the submittal of information under this section for those pollutant-specific emissions units that are subject to this part and that are affected by the permit reopening.

(d) Prior to approval of monitoring that satisfies this part, the owner or operator is subject to the requirements of §70.6(a)(3)(i)(B).

§ 64.6 Approval of monitoring.

(a) Based on an application that includes the information submitted in accordance with § 64.5, the permitting authority shall act to approve the monitoring submitted by the owner or operator by confirming that the monitoring satisfies the requirements in § 64.3.

(b) In approving monitoring under this section, the permitting authority may condition the approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm the ability of the monitoring to provide data that are sufficient to satisfy the requirements of this part and to confirm the appropriateness of an indicator

and beginning operation of the monitoring exceed 180 days after approval of the permit.

(f) If a control device is common to more than one pollutant-specific emissions unit, the owner or operator may submit monitoring for the control device and identify the pollutant-specific emissions units affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit separate monitoring for each pollutant-specific emissions unit.

(g) If a single pollutant-specific emissions unit is controlled by more than one control device similar in design and operation, the owner or operator may submit monitoring that applies to all the control devices and identify the control devices affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit a separate description of monitoring for each control device.

§ 64.5 Deadlines for submittals.

(a) *Large pollutant-specific emissions units.* For all pollutant-specific emissions units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in § 64.1) the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator shall submit the information required under § 64.4 at the following times:

(1) On or after April 20, 1998, the owner or operator shall submit information as part of an application for an initial part 70 or 71 permit if, by that date, the application either:

(i) Has not been filed; or

(ii) Has not yet been determined to be complete by the permitting authority.

(2) On or after April 20, 1998, the owner or operator shall submit information as part of an application for a significant permit revision under part 70 or 71 of this chapter, but only with respect to those pollutant-specific emissions units for which the proposed permit revision is applicable.

(3) The owner or operator shall submit any information not submitted under the deadlines set forth in paragraphs (a)(1) and (2) of this section as part of the application for the renewal of a part 70 or 71 permit.

(b) *Other pollutant-specific emissions units.* For all other pollutant-specific emissions units subject to this part and not subject to § 64.5(a), the owner or operator shall submit the information required under § 64.4 as part of an application for a renewal of a part 70 or 71 permit.

(c) The effective date for the requirement to submit information under § 64.4 shall be as specified pursuant to paragraphs (a)–(b) of this section and a permit reopening to require the submittal of information under this section shall not be required pursuant to § 70.7(f)(1)(i) of this chapter, provided, however, that, if a part 70 or 71 permit is reopened for cause by EPA or the permitting authority pursuant to § 70.7(f)(1)(iii) or (iv), or § 71.7(f) or (g), the applicable agency may require the submittal of information under this section for those pollutant-specific emissions units that are subject to this part and that are affected by the permit reopening.

(d) Prior to approval of monitoring that satisfies this part, the owner or operator is subject to the requirements of §70.6(a)(3)(i)(B).

§ 64.6 Approval of monitoring.

(a) Based on an application that includes the information submitted in accordance with § 64.5, the permitting authority shall act to approve the monitoring submitted by the owner or operator by confirming that the monitoring satisfies the requirements in § 64.3.

(b) In approving monitoring under this section, the permitting authority may condition the approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm the ability of the monitoring to provide data that are sufficient to satisfy the requirements of this part and to confirm the appropriateness of an indicator

and beginning operation of the monitoring exceed 180 days after approval of the permit.

(f) If a control device is common to more than one pollutant-specific emissions unit, the owner or operator may submit monitoring for the control device and identify the pollutant-specific emissions units affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit separate monitoring for each pollutant-specific emissions unit.

(g) If a single pollutant-specific emissions unit is controlled by more than one control device similar in design and operation, the owner or operator may submit monitoring that applies to all the control devices and identify the control devices affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit a separate description of monitoring for each control device.

§ 64.5 Deadlines for submittals.

(a) *Large pollutant-specific emissions units.* For all pollutant-specific emissions units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in § 64.1) the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator shall submit the information required under § 64.4 at the following times:

(1) On or after April 20, 1998, the owner or operator shall submit information as part of an application for an initial part 70 or 71 permit if, by that date, the application either:

(i) Has not been filed; or

(ii) Has not yet been determined to be complete by the permitting authority.

(2) On or after April 20, 1998, the owner or operator shall submit information as part of an application for a significant permit revision under part 70 or 71 of this chapter, but only with respect to those pollutant-specific emissions units for which the proposed permit revision is applicable.

(3) The owner or operator shall submit any information not submitted under the deadlines set forth in paragraphs (a)(1) and (2) of this section as part of the application for the renewal of a part 70 or 71 permit.

(b) *Other pollutant-specific emissions units.* For all other pollutant-specific emissions units subject to this part and not subject to § 64.5(a), the owner or operator shall submit the information required under § 64.4 as part of an application for a renewal of a part 70 or 71 permit.

(c) The effective date for the requirement to submit information under § 64.4 shall be as specified pursuant to paragraphs (a)–(b) of this section and a permit reopening to require the submittal of information under this section shall not be required pursuant to § 70.7(f)(1)(i) of this chapter, provided, however, that, if a part 70 or 71 permit is reopened for cause by EPA or the permitting authority pursuant to § 70.7(f)(1)(iii) or (iv), or § 71.7(f) or (g), the applicable agency may require the submittal of information under this section for those pollutant-specific emissions units that are subject to this part and that are affected by the permit reopening.

(d) Prior to approval of monitoring that satisfies this part, the owner or operator is subject to the requirements of §70.6(a)(3)(i)(B).

§ 64.6 Approval of monitoring.

(a) Based on an application that includes the information submitted in accordance with § 64.5, the permitting authority shall act to approve the monitoring submitted by the owner or operator by confirming that the monitoring satisfies the requirements in § 64.3.

(b) In approving monitoring under this section, the permitting authority may condition the approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm the ability of the monitoring to provide data that are sufficient to satisfy the requirements of this part and to confirm the appropriateness of an indicator

range(s) or designated condition(s) proposed to satisfy § 64.3(a)(2) and (3) and consistent with the schedule in § 64.4(e).

(c) If the permitting authority approves the proposed monitoring, the permitting authority shall establish one or more permit terms or conditions that specify the required monitoring in accordance with § 70.6(a)(3)(i) of this chapter. At a minimum, the permit shall specify:

(1) The approved monitoring approach that includes all of the following:

(i) The indicator(s) to be monitored (such as temperature, pressure drop, emissions, or similar parameter);

(ii) The means or device to be used to measure the indicator(s) (such as temperature measurement device, visual observation, or CEMS); and

(iii) The performance requirements established to satisfy § 64.3(b) or (d), as applicable.

(2) The means by which the owner or operator will define an exceedance or excursion for purposes of responding to and reporting exceedances or excursions under §§ 64.7 and 64.8 of this part. The permit shall specify the level at which an excursion or exceedance will be deemed to occur, including the appropriate averaging period associated with such exceedance or excursion. For defining an excursion from an indicator range or designated condition, the permit may either include the specific value(s) or condition(s) at which an excursion shall occur, or the specific procedures that will be used to establish that value or condition. If the latter, the permit shall specify appropriate notice procedures for the owner or operator to notify the permitting authority upon any establishment or reestablishment of the value.

(3) The obligation to conduct the monitoring and fulfill the other obligations specified in §§ 64.7 through 64.9 of this part.

(4) If appropriate, a minimum data availability requirement for valid data collection for each averaging period, and, if appropriate, a minimum data availability requirement for the averaging periods in a reporting period.

(d) If the monitoring proposed by the owner or operator requires installation, testing or final verification of operational status, the part 70 or 71 permit shall include an enforceable schedule with appropriate milestones for completing such installation, testing, or final verification consistent with the requirements in § 64.4(e).

(e) If the permitting authority disapproves the proposed monitoring, the following applies:

(1) The draft or final permit shall include, at a minimum, monitoring that satisfies the requirements of § 70.6(a)(3)(i)(B);

(2) The permitting authority shall include in the draft or final permit a compliance schedule for the source owner to submit monitoring that satisfies §§ 64.3 and 64.4, but in no case shall the owner or operator submit revised monitoring more than 180 days from the date of issuance of the draft or final permit; and

(3) If the source owner or operator does not submit the monitoring in accordance with the compliance schedule as required in paragraph (e)(2) of this section or if the permitting authority disapproves the monitoring submitted, the source owner or operator shall be deemed not in compliance with part 64, unless the source owner or operator successfully challenges the disapproval.

§ 64.7 Operation of approved monitoring.

(a) *Commencement of operation.* The owner or operator shall conduct the monitoring required under this part upon issuance of a part 70 or 71 permit that includes such monitoring, or by such later date specified in the permit pursuant to § 64.6(d).

(b) *Proper maintenance.* At all times, the owner or operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(c) *Continued operation.* Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that

range(s) or designated condition(s) proposed to satisfy § 64.3(a)(2) and (3) and consistent with the schedule in § 64.4(e).

(c) If the permitting authority approves the proposed monitoring, the permitting authority shall establish one or more permit terms or conditions that specify the required monitoring in accordance with § 70.6(a)(3)(i) of this chapter. At a minimum, the permit shall specify:

(1) The approved monitoring approach that includes all of the following:

(i) The indicator(s) to be monitored (such as temperature, pressure drop, emissions, or similar parameter);

(ii) The means or device to be used to measure the indicator(s) (such as temperature measurement device, visual observation, or CEMS); and

(iii) The performance requirements established to satisfy § 64.3(b) or (d), as applicable.

(2) The means by which the owner or operator will define an exceedance or excursion for purposes of responding to and reporting exceedances or excursions under §§ 64.7 and 64.8 of this part. The permit shall specify the level at which an excursion or exceedance will be deemed to occur, including the appropriate averaging period associated with such exceedance or excursion. For defining an excursion from an indicator range or designated condition, the permit may either include the specific value(s) or condition(s) at which an excursion shall occur, or the specific procedures that will be used to establish that value or condition. If the latter, the permit shall specify appropriate notice procedures for the owner or operator to notify the permitting authority upon any establishment or reestablishment of the value.

(3) The obligation to conduct the monitoring and fulfill the other obligations specified in §§ 64.7 through 64.9 of this part.

(4) If appropriate, a minimum data availability requirement for valid data collection for each averaging period, and, if appropriate, a minimum data availability requirement for the averaging periods in a reporting period.

(d) If the monitoring proposed by the owner or operator requires installation, testing or final verification of operational status, the part 70 or 71 permit shall include an enforceable schedule with appropriate milestones for completing such installation, testing, or final verification consistent with the requirements in § 64.4(e).

(e) If the permitting authority disapproves the proposed monitoring, the following applies:

(1) The draft or final permit shall include, at a minimum, monitoring that satisfies the requirements of § 70.6(a)(3)(i)(B);

(2) The permitting authority shall include in the draft or final permit a compliance schedule for the source owner to submit monitoring that satisfies §§ 64.3 and 64.4, but in no case shall the owner or operator submit revised monitoring more than 180 days from the date of issuance of the draft or final permit; and

(3) If the source owner or operator does not submit the monitoring in accordance with the compliance schedule as required in paragraph (e)(2) of this section or if the permitting authority disapproves the monitoring submitted, the source owner or operator shall be deemed not in compliance with part 64, unless the source owner or operator successfully challenges the disapproval.

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(a) *Commencement of operation.* The owner or operator shall conduct the monitoring required under this part upon issuance of a part 70 or 71 permit that includes such monitoring, or by such later date specified in the permit pursuant to § 64.6(d).

(b) *Proper maintenance.* At all times, the owner or operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(c) *Continued operation.* Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that

the pollutant-specific emissions unit is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this part, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(d) *Response to excursions or exceedances.* (1) Upon detecting an excursion or exceedance, the owner or operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

(2) Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

(e) *Documentation of need for improved monitoring.* After approval of monitoring under this part, if the owner or operator identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the owner or operator shall promptly notify the permitting authority and, if necessary, submit a proposed modification to the part 70 or 71 permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

§ 64.8 Quality improvement plan (QIP) requirements.

(a) Based on the results of a determination made under § 64.7(d)(2), the Administrator or the permitting authority may require the owner or operator to develop and implement a QIP. Consistent with § 64.6(c)(3), the part 70 or 71 permit may specify an appropriate threshold, such as an accumulation of exceedances or excursions exceeding 5 percent duration of a pollutant-specific emissions unit's operating time for a reporting period, for requiring the implementation of a QIP. The threshold may be set at a higher or lower percent or may rely on other criteria for purposes of indicating whether a pollutant-specific emissions unit is being maintained and operated in a manner consistent with good air pollution control practices.

(b) Elements of a QIP:

(1) The owner or operator shall maintain a written QIP, if required, and have it available for inspection.

(2) The plan initially shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the owner or operator shall modify the plan to include procedures for

the pollutant-specific emissions unit is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this part, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(d) *Response to excursions or exceedances.* (1) Upon detecting an excursion or exceedance, the owner or operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

(2) Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

(e) *Documentation of need for improved monitoring.* After approval of monitoring under this part, if the owner or operator identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the owner or operator shall promptly notify the permitting authority and, if necessary, submit a proposed modification to the part 70 or 71 permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

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(b) Elements of a QIP:

(1) The owner or operator shall maintain a written QIP, if required, and have it available for inspection.

(2) The plan initially shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the owner or operator shall modify the plan to include procedures for

conducting one or more of the following actions, as appropriate:

(i) Improved preventive maintenance practices.

(ii) Process operation changes.

(iii) Appropriate improvements to control methods.

(iv) Other steps appropriate to correct control performance.

(v) More frequent or improved monitoring (only in conjunction with one or more steps under paragraphs (b)(2)(i) through (iv) of this section).

(c) If a QIP is required, the owner or operator shall develop and implement a QIP as expeditiously as practicable and shall notify the permitting authority if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

(d) Following implementation of a QIP, upon any subsequent determination pursuant to § 64.7(d)(2) the Administrator or the permitting authority may require that an owner or operator make reasonable changes to the QIP if the QIP is found to have:

(1) Failed to address the cause of the control device performance problems; or

(2) Failed to provide adequate procedures for correcting control device performance problems as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(e) Implementation of a QIP shall not excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act.

§ 64.9 Reporting and recordkeeping requirements.

(a) *General reporting requirements.* (1) On and after the date specified in § 64.7(a) by which the owner or operator must use monitoring that meets the requirements of this part, the owner or operator shall submit monitoring reports to the permitting authority in accordance with § 70.6(a)(3)(iii) of this chapter.

(2) A report for monitoring under this part shall include, at a minimum, the information required under § 70.6(a)(3)(iii) of this chapter and the following information, as applicable:

(i) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken;

(ii) Summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and

(iii) A description of the actions taken to implement a QIP during the reporting period as specified in § 64.8. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

(b) General recordkeeping requirements. (1) The owner or operator shall comply with the recordkeeping requirements specified in § 70.6(a)(3)(ii) of this chapter. The owner or operator shall maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan required pursuant to § 64.8 and any activities undertaken to implement a quality improvement plan, and other supporting information required to be maintained under this part (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).

(2) Instead of paper records, the owner or operator may maintain records on alternative media, such as microfilm, computer files, magnetic tape disks, or microfiche, provided that the use of such alternative media allows for expeditious inspection and review, and does not conflict with other applicable recordkeeping requirements.

§ 64.10 Savings provisions.

(a) Nothing in this part shall:

(1) Excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or

conducting one or more of the following actions, as appropriate:

(i) Improved preventive maintenance practices.

(ii) Process operation changes.

(iii) Appropriate improvements to control methods.

(iv) Other steps appropriate to correct control performance.

(v) More frequent or improved monitoring (only in conjunction with one or more steps under paragraphs (b)(2)(i) through (iv) of this section).

(c) If a QIP is required, the owner or operator shall develop and implement a QIP as expeditiously as practicable and shall notify the permitting authority if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

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(2) A report for monitoring under this part shall include, at a minimum, the information required under § 70.6(a)(3)(iii) of this chapter and the following information, as applicable:

(i) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken;

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(c) If a QIP is required, the owner or operator shall develop and implement a QIP as expeditiously as practicable and shall notify the permitting authority if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

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(i) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken;

(ii) Summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and

(iii) A description of the actions taken to implement a QIP during the reporting period as specified in § 64.8. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

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§ 64.10 Savings provisions.

(a) Nothing in this part shall:

(1) Excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or

any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act. The requirements of this part shall not be used to justify the approval of monitoring less stringent than the monitoring which is required under separate legal authority and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under separate authority under the Act, including monitoring in permits issued pursuant to title I of the Act. The purpose of this part is to require, as part of the issuance of a permit under title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of this part.

(2) Restrict or abrogate the authority of the Administrator or the permitting authority to impose additional or more stringent monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any provision of the Act, including but not limited to sections 114(a)(1) and 504(b), or state law, as applicable.

(3) Restrict or abrogate the authority of the Administrator or permitting authority to take any enforcement action under the Act for any violation of an applicable requirement or of any person to take action under section 304 of the Act.

PART 65—CONSOLIDATED FEDERAL AIR RULE

Subpart A—General Provisions

Sec.

Subpart B [Reserved]

Subpart C—Storage Vessels

Subpart D—Process Vents

Subpart E—Transfer Racks

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Part II

Environmental Protection Agency

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40 CFR Part 60 et al.

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL-4846-7]
RIN 2060-AC98

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 11, 1993, the EPA proposed General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements pursuant to section 112 of the Clean Air Act as amended in 1990 (the Act). This action announces the EPA's final decisions on the General Provisions.

The General Provisions, located in subpart A of part 63, codify general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the 189 substances listed as hazardous air pollutants (HAP) in or pursuant to section 112(b) of the Act. Standards for individual source categories are being developed separately, and they will be codified in other subparts of part 63. When sources become subject to standards established for individual source categories in other subparts of part 63, these sources also must comply with the requirements of the General Provisions, except when specific General Provisions are overridden by the standards.

This action also amends subpart A of parts 60 and 61 to bring them up to date with the amended Act and, where appropriate, to make them consistent with requirements in subpart A of part 63.

DATES: Effective Date. March 16, 1994.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by filing a petition for review in the U. S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these General Provisions is approved by the Director of the Office of the Federal Register as of March 16, 1994.

ADDRESSES: Docket. Docket No. A-91-09, containing information considered by the EPA in developing the promulgated General Provisions, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, including all non-Government holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260-7548. A reasonable fee may be charged for copying.

Background Information Document. A background information document (BID) for the promulgated General Provisions may be obtained from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487-4650. Please refer to ``General Provisions for 40 CFR Part 63, Background Information for Promulgated Regulation'' (EPA-450/3-91-019b). The BID contains: (1) a summary of the public comments made on the proposed General Provisions and responses to the comments and (2) a summary of the changes made to the General Provisions as a result of the Agency's responses to comments that are not addressed in this Federal Register notice.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Tabler, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-5256.

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

I. Background

Section 301 of title III of the Clean Air Act Amendments of 1990, Public Law 101-549, enacted on November 15, 1990, substantially amended section 112 of the Act regarding promulgation of NESHAP. These NESHAP are to be established for categories of stationary sources that emit one or more of the 189 HAP listed in or pursuant to section 112(b). Each standard established for a source category will be codified in a subpart (or multiple subparts) of part 63. In order to eliminate the repetition of general information and requirements within these subparts, General Provisions that are applicable to all sources regulated by subsequent standards in part 63 have been developed. The General Provisions have the legal force and effect of standards, and they may be enforced independently of relevant standards, if appropriate.

The General Provisions codify procedures and criteria that will be used to implement all NESHAP promulgated under the Act as amended November 15, 1990. The provisions include administrative procedures related to applicability determinations (including new versus existing and area versus major sources), compliance extensions, and requests to use alternative means of compliance. In addition, general requirements related to compliance-related activities outline the responsibilities of owners and operators to comply with relevant emission standards and other requirements. The compliance-related provisions include requirements for compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for performance testing and monitoring, and reporting and recordkeeping requirements. Finally, the EPA is promulgating amendments to the General Provisions for parts 60 and 61 to address new statutory requirements and, where appropriate, to make portions of these existing regulations consistent with the part 63 General Provisions.

Owners or operators who are subject to a subpart promulgated for a specific source category under sections 112(d), 112(f), or 112(h) of the Act are also subject to the requirements of the General Provisions. The General Provisions also will be incorporated, as appropriate, into requirements established under other section 112 authorities (e.g., the early reduction program and case-by-case control technology determinations). Nevertheless, in the development of a part 63 emission standard applicable to a specific source category, the EPA may determine that it is appropriate that the subpart contain provisions that override one or more requirements of the General Provisions. When this occurs, the EPA will describe in the subpart exactly which requirements of the General Provisions are applicable to the specific source category and which requirements have been overridden. If there is a conflict between a specific requirement in the General Provisions and a specific requirement of another subpart in part 63, the specific requirement of the subpart will supersede the General Provisions.

II. Summary of Major Changes Since Proposal

In response to comments received on the proposed General Provisions, numerous changes have been made in the final rule. A significant number of these are clarifying changes, designed to make the Agency's intent clearer as requested by commenters. In addition, many changes have been made in the final rule wherever reasonable to reduce the paperwork burden on sources affected by part 63 NESHAP and on State agencies that will implement part 63 NESHAP once they have been delegated the authority to do so.

Substantive changes made since proposal which have a broad impact on the regulated community that will be subject to the General Provisions are summarized in this section of the preamble. These, and other substantive changes made since proposal, are described in more detail in the following sections. The Agency's responses to public comments that are not addressed in this preamble and a summary of resulting changes in the final rule are contained in the BID for this final rulemaking (see ADDRESSES section of this notice).

Many comments were received on the timing and content of notifications and other reports required by the General Provisions and on recordkeeping requirements. Comments from owners or operators of facilities potentially subject to part 63 standards (and the General Provisions) generally asked for more time to prepare submittals than allowed in the proposed rule and for a reduction in the amount of information that must be recorded or submitted. State and local agencies that will be implementing the rule expressed concern about the timing and volume of information that would be submitted to them and about their ability to respond to these submittals. These agencies also requested flexibility in implementing requirements of the General Provisions.

The Agency made significant changes in the final rule from the proposed rule in response to these comments. These changes significantly reduce the burden on owners and operators but also recognize the need that enforcement agencies have for timely and adequate information to assess compliance with emission standards and other requirements established under section 112 of the Act. These significant changes are discussed below.

Initial Notification

Under Sec. 63.9(b) of the General Provisions, when a relevant part 63 standard is promulgated for a source category, owners or operators of sources that are subject to the standard must submit a notification. In the final rule, the time period allowed for submission of the initial notification has been extended from 45 days to 120 days. Also, the information required to be submitted with the initial notification has been reduced greatly.

Requests for Compliance Extensions

Changes were made from proposal to Sec. 63.6(i), which deals with compliance extension requests, to increase the allowable times for Agency review and for owners or operators to provide additional information. The EPA also added provisions to the final rule, pursuant to section 112(i)(6) of the Act, that establish procedures for a source to request a compliance extension if that source has installed best available control technology (BACT) or technology to meet a lowest achievable emission rate (LAER).

Excess Emission Reports

A major change was made in the recordkeeping and reporting requirements concerning the need for, and frequency of, quarterly excess emissions reports. In the proposed rule, if continuous monitoring systems (CMS) data were to be used for direct compliance determinations, a quarterly report on excess emissions or parameter monitoring exceedances was required in Sec. 63.10(e)(3), even if there were no occurrences of excess emissions or exceedances during that reporting period (``negative reporting''). In the final rule, as long as there are no occurrences of excess emissions or parameter monitoring exceedances, semiannual reporting is sufficient. In addition, the procedures for an affected source to reduce the frequency of required reports have been clarified in the final rule.

Performance Tests and Performance Evaluations

The performance test deadline specified under Sec. 63.7(a)(2) was extended from 120 days to 180 days after a source's compliance date. Similarly, the Sec. 63.7(b) requirement to provide notice of the date of the performance test was reduced from 75 days to 60 days before the test. Observation of the test by the EPA (or the delegated State agency) is intended to be optional, and this section was revised to clarify this point. A similar change was made to Sec. 63.8(e)(2), notice of performance evaluation (for CMS), to allow a 60-day notification period rather than a 75-day period. Also, Sec. 63.7(g) was revised to allow sources 60 days, instead of 45 days, to submit the required performance test results to the enforcing agency.

A major comment related to performance tests concerned the proposed requirement that sources submit site-specific performance test plans to the Administrator for review and approval before a required performance test is conducted. This requirement has been changed in the final rule such that the test plan must be developed and made available for review, but it does not need to be submitted for approval prior to a required performance test unless it is requested by the EPA or delegated State agency. A similar change has been made in the final rule regarding the development and submittal of site-specific performance evaluation test plans under Sec. 63.8(d).

Some commenters expressed confusion regarding the distinction between performance tests and performance evaluations, and the EPA has added definitions of ``performance test'' and ``performance evaluation'' to the final rule to respond to this confusion. In addition, the Agency has defined the phrase ``representative performance'' in the final rule for the purpose of clarifying the conditions for conducting performance tests.

Finally, the EPA clarified the situation when a final standard is more stringent than a proposed standard and when a source would be allowed to (1) conduct an initial performance test to demonstrate compliance with the proposed standard and a second test to demonstrate compliance with the final standard or (2) conduct an initial performance test to demonstrate compliance with the final standard.

Startup, Shutdown, and Malfunction Plan

Commenters generally objected to the level of detail they perceived to be required in the startup, shutdown, and malfunction plan (Sec. 63.6(e)). The intent and purpose of the plan is explained further in section IV.F.1 of this preamble and clarifying changes have been made in the rule. Specifically, the rule has been revised to delete the requirement for ``step-by-step'' procedures. Numerous comments were received relating to the timing and circumstances of reports of deviations from a source's plan. In response to the commenters'

concerns, the EPA has revised the rule to require reporting of actions that are ``not consistent'' (rather than ``not completely consistent'') with the plan. The Agency also has increased the time period for sources to provide ``immediate'' reports of these actions from 24 hours to 2 working days. The follow-up report is required within 7 working days.

Other Changes to Reporting and Recordkeeping Requirements

The final rule includes provisions for EPA Regional Offices to waive the duplicate submittal of notifications and reports at their discretion. Also, the requirements relating to negotiated schedules (i.e., ``mutual agreement provisions'') were revised from proposal to more clearly reflect implementing agencies' prerogatives to comply with the schedules outlined in the General Provisions. Finally, a recordkeeping requirement has been added (in Sec. 63.10(b)(3)) for owners and operators of area sources to maintain a record of the determination of their area source status when this determination is necessary to demonstrate that a relevant standard for major sources does not apply to them.

There were also significant changes in other areas of the rule from proposal. These are summarized below.

Monitoring

Several comments concerned the relevance and applicability of the part 63 monitoring provisions to related monitoring provisions contained in other parts (e.g., parts 60, 61, 64, and 70), as well as the relationship between monitoring provisions in the General Provisions and those in other subparts of part 63. The EPA has provided additional clarification and made changes to specific provisions as a result of these comments.

Repair Period for Continuous Monitoring Systems (CMS)

The Agency also received many comments on the proposed 7-day repair period for CMS. After consideration of these comments, the EPA revised Sec. 63.8(c)(1) of the rule to distinguish between routine and nonroutine CMS malfunctions. The final rule requires the immediate repair of ``routine'' CMS failures. In addition, the owner or operator will be required to identify these routine malfunctions in the source's startup, shutdown, and malfunction plan. Nonroutine failures of the CMS must be reported and repaired within 2 weeks after commencing actions inconsistent with the plan unless circumstances beyond the owner or operator's control prevent the timely repair or replacement of the CMS.

Construction and Reconstruction

Many comments were received regarding the administrative procedures for reviewing and approving plans for construction or reconstruction, and several changes were made to the rule in response to these comments. At the request of State and local agencies, the EPA has deleted the provision in Sec. 63.5(c) that allowed an owner or operator to request that the implementing agency prereview construction or reconstruction plans. In addition, the final rule has been revised to allow owners and operators of new or reconstructed major affected sources greater discretion in the timing of submitting applications for approval of construction or reconstruction. The final rule requires that these applications be submitted ``as soon as practicable'' before the construction or reconstruction is planned to commence, rather than

180 days in advance, as was proposed. The Agency also revised the definition of reconstruction and the ensuing requirements for a reconstructed source to clarify their applicability. The Agency received several comments regarding reconstruction determinations, especially where a source has installed control devices to meet emission standards established for existing sources. In response, the Agency has explained its policy on these issues and clarified that it is not the Agency's intent to penalize sources that make changes to comply with existing source maximum achievable control technology (MACT) requirements by subjecting them to new source MACT requirements to which they otherwise would not be subject.

Applicability

The rule has been revised in several places to clarify the applicability of the General Provisions. Revisions were made to Sec. 63.1 of the rule to clarify that a source that is subject to any part 63 standard or requirement is also subject to the requirements of the General Provisions unless otherwise specified in the General Provisions or the relevant standard. Provisions have been added to address two situations related to major and area source determinations. As noted earlier, the Agency added a recordkeeping requirement in the final rule to require sources that determine they are not subject to a relevant standard to keep a record of their applicability determination. The EPA also added provisions in the final rule to address compliance dates for unaffected area sources that increase their emissions such that they become major sources that are subject to part 63 NESHAP.

Separate Rulemaking on Potential to Emit

Under section 112, the determination of whether a facility is a major source or an area source is made on the basis of the facility's ``potential to emit'' HAP, ``considering controls.'' This is an important determination, because different requirements may be established in a part 63 standard for major and area sources, and area sources in a source category may not be regulated by some standards. The EPA's intended policy for implementing ``potential to emit considering controls'' was reflected in the definition proposed in Sec. 63.2 of the General Provisions for the term ``potential to emit.'' The proposed definition included the requirement that, for a physical or operational limitation on HAP emissions (including air pollution control devices) to be considered to limit a source's potential to emit for the purposes of part 63, the limitation or the effect it would have on emissions must be federally enforceable. A definition of ``federally enforceable'' was also proposed.

Many comments were received on the topic of potential to emit. As discussed later in this preamble, consistent with past Agency policies on potential to emit, the EPA has retained in today's final rule the same definition of potential to emit that was proposed. However, substantive issues were raised by commenters on the mechanisms and timeframe available for establishing the Federal enforceability of potential to emit limitations that went beyond the scope of issues addressed in the August 11, 1993 proposed rulemaking for the General Provisions.

Because of this, and because of the importance of potential to emit to determining the applicability of part 63 standards and other requirements, the Agency is planning to propose a separate rulemaking to address several specific potential to emit issues. This separate notice of proposed rulemaking, which will appear in the near future in

the Federal Register, would amend the General Provisions to provide mechanisms for validating limits on sources' potential to emit HAP until permanent mechanisms for creating HAP potential to emit limits are in place in States. In addition, this separate rulemaking would specify deadlines by which major sources of HAP would be required to establish the Federal enforceability of limitations on their potential to emit in order to avoid compliance with otherwise applicable emission standards or other requirements established in or under part 63.

The EPA will take final action on this separate proposal after receiving and considering public comments. Until the Agency takes final action on the proposal, any determination of potential to emit made to determine a facility's applicability status under a relevant part 63 standard should be made according to requirements set forth in the relevant standard and in the General Provisions promulgated today.

Cross Referencing in the Rule

Cross-references to other parts (e.g., regulations in part 71 establishing a Federal operating permit program) or subparts (e.g., subpart C, the list of hazardous air pollutants) were included in the proposed General Provisions as a convenience to inform readers where they may locate other general information. At present, no rules have been proposed or promulgated in either subpart C or in part 71. Consequently, these cross-references have been removed from the General Provisions.

III. Public Participation

Prior to proposal of the General Provisions, interested parties were advised by public notice in the Federal Register (56 FR 54576, October 22, 1991) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the draft General Provisions. That meeting was held on November 19-21, 1991. In addition, a status report on the General Provisions was presented to the NAPCTAC during the Committee's November 17-18, 1992 meeting. Both meetings were open to the public and each attendee was given an opportunity to comment on the draft General Provisions. In addition, numerous meetings and correspondence occurred between the Agency and representatives from affected industries, environmental groups, and State and local agencies during the process of drafting the proposed General Provisions. Documentation of these interactions can be found in docket A-91-09.

The proposed General Provisions were published in the Federal Register on August 11, 1993 (58 FR 42760). The preamble to the proposed General Provisions discussed the availability of the proposal BID (``General Provisions for 40 CFR part 63, Background Information for Proposed Regulation'' (EPA-450/3-91-019)), which provides an historical perspective on precedents set by the EPA in implementing similar General Provisions under the pre-1990 Act. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

The public comment period officially ended on October 12, 1993. A public hearing was not requested; however, seventy-one comment letters were received. The comments were carefully considered, and where determined to be appropriate by the Administrator, changes were made in the final General Provisions.

IV. Significant Comments and Changes to the Proposed General Provisions

Comments on the proposed General Provisions were received from

industry, State and local air pollution control agencies, Federal agencies, trade associations, and environmental groups. A detailed discussion of comments and the EPA's responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The major comments and responses are summarized in this preamble.

A. Applicability Determinations

1. Overview

Sections 112 (c) and (d) of the amended Act require the EPA to list and establish emission standards for major and area sources of the HAP that are listed in or pursuant to section 112(b). A list of categories of sources emitting listed HAP was published in the Federal Register on July 16, 1992 (57 FR 31576). Each standard developed by the EPA for a source category (referred to as a ``relevant standard'' or a ``source category-specific standard'') will be proposed for public comment in the Federal Register and when it is finalized, it will be codified in a subpart (or multiple subparts) of part 63.

Each standard promulgated for a source category will apply to major sources of HAP that contain equipment or processes that are defined and regulated by that standard. Area sources of HAP also may be subject to the standard if an area source category has been listed and the standard specifies that it applies to area sources. Each standard will include requirements for new and existing sources.

The determination of whether a source is a major source or an area source is made on the basis of its ``potential to emit'' HAP. In general, sources with a potential to emit, considering controls, 10 tons per year or more of any one listed HAP or 25 tons per year or more of any combination of listed HAP are major sources. For the purposes of implementing section 112, the major/area source determination is made on a plant-wide basis; that is, HAP emissions from all sources located within a contiguous area and under common control are considered in the determination, unless specific provisions elsewhere in section 112 (e.g., for oil and gas wells under section 112(n)(4)) override this general rule.

More than one source category on the EPA's source category list may be represented within a plant that is a major source of HAP. This will be the case, for example, at a large chemical manufacturing complex. The major source determination will be made on the basis of HAP emissions from all emission sources within the complex. However, there could be many operational units within the complex, with each unit producing a different petroleum or chemical product or intermediate. The EPA source category list defines many categories on the basis of product produced (e.g., polyether polyols production, chlorine production). Standards for each of these categories will be developed in separate rulemakings. The EPA believes that Congress intended that all portions of a major source be subject to MACT regardless of the number of source categories into which the facility is divided. Thus, the EPA will set one or more MACT standards for a major source, and sources within that major source will be covered by the standard(s), regardless of whether, when standing alone, each one of those regulated sources would be major.

As described earlier (as well as in the preamble to the proposed General Provisions), the General Provisions promulgated with this rulemaking are intended to bring together in one place (subpart A of part 63) those general requirements applicable to all owners and operators who must comply with standards established for the listed source categories. The General Provisions for part 63 contain provisions that are common to relevant standards such as definitions,

and requirements for initial notifications, performance testing, monitoring, and reporting and recordkeeping. The establishment of General Provisions for part 63 standards eliminates the need to repeat common elements in each source category-specific standard. It is also consistent with the approach taken previously by the EPA in developing and implementing new source performance standards (NSPS) under section 111 of the Act and NESHAP under section 112 of the Act before the 1990 Clean Air Act Amendments. General Provisions for these programs are contained in subpart A of part 60 and subpart A of part 61, respectively.

The basic approach in the General Provisions promulgated today for determining applicability (i.e., who is subject to these requirements) is the same as was proposed. That is, applicability of the General Provisions is determined by the applicability of relevant source category-specific standards promulgated in other subparts of part 63. Each owner or operator who is subject to a relevant source category-specific standard in part 63 is also subject to the General Provisions, except when the standard specifically overrides a specific General Provisions requirement. Section 63.1(b) of the final General Provisions, addressing initial applicability determinations for part 63, has been revised to clarify this approach for determining applicability. Section 63.1(b)(1) of the proposed rule stated that the owner or operator of any stationary source that is included in the most up-to-date source category list and that emits or has the potential to emit any HAP is subject to the provisions of part 63. The reference to the source category list has been removed from the final rule, and a paragraph has been added specifying that part 63 provisions apply to any stationary source that ``emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act and is subject to any standard, limitation, prohibition or other federally enforceable requirement established pursuant to [part 63].'' This clarifies that belonging to a listed category of sources alone does not render a source subject to the provisions of part 63; rather, the source must be subject to a part 63 standard or other requirement.

The term ``affected source'' is established and used in the General Provisions to designate the specific ``source,'' or group of ``sources,'' that is subject to a particular standard. This term is analogous to the term ``affected facility'' used in NSPS. Affected sources will be defined explicitly in each part 63 standard promulgated for a source category or established for a source on a case-by-case basis. The individual pieces of equipment, processes, production units, or emission points that will be defined as affected sources subject to emission limits or other requirements under that relevant standard will be determined in the development of the standard for the source category or the source. An affected source within a source category could be defined, for example, as a storage tank with greater than a specified capacity and containing organic liquids with greater than a specified vapor pressure. Within a major source, any individual ``source'' or group of ``sources'' that meets the definition of affected source in a relevant standard would be subject to the requirements in the standard for major sources.

In general, the timing of applicability (i.e., when does an owner or operator become subject to the General Provisions) is determined by when a relevant source category-specific standard is promulgated. The effective date for standards promulgated under sections 112(d), 112(h), and 112(f) of the Act is the date of promulgation. On the date of promulgation of a relevant source category-specific standard, the General Provisions also become applicable to owners or operators subject to the standard for the source category.

The EPA received numerous comments relating to various definitions

of ``source,'' how these definitions relate to one another, and how they determine which portions of a HAP-emitting industrial (or commercial) facility will be regulated by emission standards or other requirements under amended section 112. Some of these comments agreed with the EPA's proposed approach to defining these terms, some suggested alternative approaches, and many requested clarification on these topics. Major comments and the EPA's responses on the definitions of ``major source'' and ``area source,'' and on the definition of ``affected source,'' are discussed below. Comments on the relationship of the General Provisions to relevant source category-specific standards are discussed in section IV.C.1. Additional responses to comments relating to applicability of the General Provisions are included in the promulgation BID.

2. Definitions of Major Source and Area Source

Several commenters noted that the discussion in the proposal preamble on ``major source,'' as defined in the proposed rule, suggests inclusion of all stationary sources located on contiguous or adjacent property. These commenters argue that the EPA's interpretation goes beyond the statutory definition of major source in section 112(a)(1), which does not use the term ``adjacent.'' Another commenter stated that adding ``adjacent'' to the definition adds uncertainty to applicability determinations.

The EPA disagrees with these commenters. First, the use of the term ``adjacent'' is consistent with the language of the statute. The common dictionary definition of ``contiguous'' consists, in part, of ``nearby, neighboring, adjacent.'' On this basis, the EPA has historically interpreted ``contiguous property'' to mean the same as ``contiguous or adjacent property'' in the development of numerous regulations to implement the Act. Under this approach, the physical relationship of emission units to production processes is irrelevant if the units are adjacent geographically and under common ownership or control.

This approach clarifies, that as a practical matter, the fact that all property at a plant site may not be physically touching does not mean that separate plant sites exist. For example, it is common for a railroad right-of-way or highway to cut across a plant site. However, this does not create two separate plant sites. To claim that it does would be an artificial distinction, and it is contrary to the intent of the statutory definition of major source.

Many commenters asserted that the definition of ``major source'' in the General Provisions should include reference to standard industrial classification (SIC) codes as was done in the part 70 permit program regulations implementing title V of the Act. However, other comments were received that supported the proposed definition of ``major source'' and expressed concern that the EPA might adopt the title V approach to defining ``major source'' which, according to one commenter, would be inconsistent with the definition in section 112(a)(1) of the Act.

The EPA believes that, because Congress included a definition for ``major source'' in section 112 that does not include reference to SIC codes, Congress intended that major sources of HAP would encompass entire contiguous (or adjacent) plant sites without being subdivided according to industrial classifications. The separation of HAP emission sources by SIC code would be an artificial division of sources that, in reality, all contribute to public exposure around a plant site.

Furthermore, because of the different objectives of section 112 and title V of the Act, and because section 112 contains its own definition, the definition for ``major source'' in part 63 need not be identical to the definition for ``major source'' currently promulgated in part 70. The EPA believes that the definition for major source adopted in the General Provisions is appropriate for implementing

section 112. The EPA will consider whether changes to the definition of major source in part 70, as it relates to section 112, are appropriate. If the EPA concludes that such changes are needed, the EPA will propose changes to part 70 and take comment before reaching a final decision in the Federal Register.

Comments were received that the definition of ``area source'' should be changed to ``affected area source.'' Also, commenters suggested that the definitions of ``major source'' and ``area source'' should be revised to refer to emission units or groups of similar emission units that are in a specific category of major sources located within a contiguous area under common control and to clarify that area sources are not affected by NESHAP established for major sources.

The EPA believes that it is more appropriate and less confusing to define ``major source'' and ``area source'' consistent with the definitions in section 112(a) of the Act. Nonetheless, for the purposes of implementing section 112, consistent with the applicability discussion above, ``area sources'' may be further divided into affected area sources and unaffected area sources. An affected area source would be a plant site that is not a major source but is subject to a relevant part 63 emission standard that regulates area sources in that source category.

One commenter requested that the EPA address the issue of a compliance date for area sources that increase their emissions (or potential emissions) such that they become major sources and therefore subject to a relevant standard. The commenter said that this was a particular concern in situations where the area source has not obtained a construction permit.

The commenter is correct that the proposed General Provisions did not address area sources that subsequently become major sources and therefore subject to a relevant standard. Sections 63.6(b)(7) and (c)(5) have been added to the final rule to address this situation.

Section 63.6(b)(7) states that an unaffected new area source that increases its emissions of (or its potential to emit) HAP such that it becomes a major source, must comply with the relevant emission standard immediately upon becoming a major source. An unaffected existing area source that increases its emissions (or its potential to emit) such that it becomes a major source, must comply by the date specified for such a source in the standard. If such a date is not specified, the source would have an equivalent period of time to comply as the period specified in the standard for other existing sources. However, if the existing area source becomes a major source by the addition of a new affected source, or by reconstructing, the portion of the source that is new or reconstructed is required to comply with the standard's requirements for new sources. These compliance periods apply to area sources that become affected major sources regardless of whether the new or existing area source was previously affected by that standard.

3. Definition of Affected Source

The EPA received numerous comments on the usefulness of the term ``affected source,'' in response to the Agency's specific request for comments on this term in the proposal preamble. Comments were received that supported the Agency's proposed use of ``affected source,'' and others offered suggestions for changes or clarifications.

Some commenters stated that it is not clear how inclusive ``affected source'' is meant to be. For example, does it collectively cover all equipment associated with the source category?

Some commenters argued that the definition of ``affected source'' in the General Provisions should be narrow, encompassing as few emission points as possible. Others argued for a broad definition consistent with the EPA's policy on defining the ``affected source'' during the development of specific NESHAP.

Several commenters suggested terms as alternatives to ``affected source.'' Terms suggested included ``part 63 source'' and ``regulated source.'' Commenters claimed that alternative terms would be more appropriate and would reduce confusion about the applicability of a variety of EPA regulations including NESHAP under part 61 and the title IV acid rain regulations.

After a review of the suggestions made by commenters, the EPA decided to retain the term ``affected source'' in the final rule. No comments were received that disputed the need for a separate term to designate the units that are subject to requirements in a source category-specific standard. Further, the EPA did not find any of the arguments for alternative terms compelling. For example, commenters did not make it clear how the use of a term such as ``regulated source'' would be more descriptive and less confusing than ``affected source.''

Nevertheless, the EPA has endeavored to address any confusion that might arise on a case-by-case basis. For example, the EPA has revised the definition for the term ``affected source'' in part 63 to note that it should not be confused with the same term used in title IV of the Act and the rules developed to implement title IV, the acid rain provisions. Despite this revision, the Agency believes States may wish to draw a distinction in their regulations to implement the title V permit program and in individual sources' title V permits in order to avoid the possibility of confusion between the term affected source as used in part 63 and the term affected source as used in the title IV regulations. For example, the Agency believes it may be appropriate in some instances for State permitting authorities, when dealing with sources affected by both title IV and part 63 requirements, to refer to sources affected by part 63 as ``part 63 affected sources.''

With regard to those comments that requested narrow or broad definitions of the term ``affected source,'' the EPA believes these comments would be addressed more appropriately in the context of rulemakings that will establish standards for individual source categories. The General Provisions merely define a term, ``affected source,'' that refers to the collection of processes, equipment, or groups of equipment that will be defined in each relevant standard under part 63 (including case-by-case MACT standards or ``equivalent emission limitations'') for the purposes of defining the scope of applicability of that standard. Consistent with the approach of using the nonspecific term ``affected source,'' the EPA believes it is inappropriate for the General Provisions rule to restrict in advance the definition of the affected source that may be developed for the purposes of regulation by a particular standard established under part 63.

B. Potential to Emit

The EPA received many comments on the definition of potential to emit that appeared in the proposed General Provisions. Many of these comments questioned the appropriateness of considering only federally enforceable controls or limitations in determining a source's potential to emit. The commenters suggested that all operational controls or limitations or, alternatively, all legally enforceable controls or limitations, should be considered in determining potential to emit, not just federally enforceable ones. One commenter further suggested that all physical or operational limitations that keep a source below the major source threshold are effectively federally enforceable, as any operation with HAP emissions above the threshold values would violate the title V permit and MACT standard compliance requirements for major sources.

The Agency believes that these comments are similar in all relevant

respects to arguments the Agency already has considered and responded to in a previous rulemaking that dealt with the Federal enforceability of emissions controls and limitations at a source. For a thorough discussion on this topic, see ``Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Air Quality, New Source Review; Final Rules'' that appeared in the Federal Register on June 28, 1989 (54 FR 27274). (A copy of this notice has been included in the docket for this rulemaking.) After careful consideration during that rulemaking, the EPA decided to retain the requirement for Federal enforceability. At this time, the Agency sees no reason to rescind its decisions described in the June 28, 1989 Federal Register notice. On the contrary, the Agency here is affirming the relevance of the Federal enforceability requirements set forth in the June 28, 1989 notice in the context of determinations of major source status under the new Federal air toxics program.

In the context of implementing the air toxics program under amended section 112, the purposes of the Federal enforceability requirements are as follows: (1) To make certain that limits on a source's capacity are, in fact, part of its physical and operational design, and that any claimed limitations will be observed; (2) to ensure that an entity with strong enforcement capability (i.e., the Federal government) has legal and practical means to make sure that such commitments are actually carried out; and (3) to support the goal of the Act that the EPA should be able to enforce all relevant features of the air toxics program as developed pursuant to section 112. The Agency continues to believe that, if sources may avoid the requirements of a Federal air pollution control program by relying on State or local limitations, it is essential to the integrity of the National air toxics program that such limitations be actually and effectively implemented. Thus, Federal enforceability is both necessary and appropriate to ensure that such limitations and reductions are actually incorporated into a source's design and followed in practice. Further, Federal enforceability is needed to back up State and local enforcement efforts and to provide incentive to source operators to ensure adequate compliance. Federal enforceability also enables citizen enforcement under section 304 of the Act.

Thus, in the final General Provisions rulemaking, the Agency is retaining the existing Federal enforceability requirement in the definition of potential to emit for the purposes of implementing section 112 of the Act as amended in 1990.

In the June 28, 1989 Federal Register notice, the EPA established that, to be federally enforceable, emission limitations established for a source must be practicably enforceable. To be practicably enforceable, the limitations or conditions must ensure adequate testing, monitoring, recordkeeping, and reporting to demonstrate compliance with the limitations and conditions. Restrictions on operation, production, or emissions must reflect the shortest practicable time period (generally one month). ``Blanket'' emission limitations such as calendar year limits (e.g., tons per year) are not considered practicably enforceable. In contrast, hourly, daily, weekly, or monthly rolling averages generally are considered acceptable.

Many of the comments requesting that the EPA credit controls that are not federally enforceable in the potential to emit determination were based on a concern over the limited mechanisms available by which emission controls can qualify as federally enforceable. For example, although the EPA will consider terms and conditions in a permit issued under title V of the Act to be federally enforceable, approved State title V permit programs are not yet in place. This effectively limits the mechanisms available to sources subject to early MACT standards. Comments were also received requesting further clarification on how the

Agency's potential to emit policy would be implemented, and on how this policy could be implemented with the least burden on both States and affected sources.

As noted earlier in this preamble, the EPA is preparing a separate notice of proposed rulemaking to address potential to emit issues. This notice will propose for public comment a thorough discussion on the Agency's policy with regard to implementing potential to emit in the air toxics program. Among other actions, this rulemaking would amend the General Provisions to provide an interim mechanism for controls to qualify as federally enforceable for HAP until permanent mechanisms are in place. The Agency will consider comments on this proposal and take final action on an expedited schedule.

C. Relationship of General Provisions to Other Clean Air Act Requirements.

1. Relationship to Individual NESHAP.

The promulgated General Provisions to part 63 are applicable to all source categories that will be regulated by part 63 NESHAP. Emissions of HAP from all listed source categories eventually will be regulated by NESHAP pursuant to section 112 of the Clean Air Act Amendments of 1990. The General Provisions provide basic, common requirements for all sources subject to applicable standards, and they are intended to avoid unnecessary duplication of information in all subsequent subparts. All parts of the General Provisions apply to an affected source regulated by an applicable standard, unless otherwise specified by the particular standard.

The EPA recognizes that in the development of a standard applicable to a specific source category, the Agency may determine that certain General Provisions of subpart A may not be appropriate. Consequently, as mentioned earlier, subpart A allows individual subparts to supersede some of the requirements of subpart A. Should there be a conflict between the requirements in the General Provisions and specific requirements of another subpart in part 63, whether or not the subpart explicitly overrides the General Provisions, the requirements of the other subpart will prevail.

The Agency received many comments regarding the proposed relationship between the General Provisions and part 63 standards for specific source categories. A substantial number of commenters expressed the opinion that the EPA should reverse the presumptive relationship that the General Provisions apply unless specifically overridden in a source category-specific standard. These commenters argued that the General Provisions should not be applicable until specifically incorporated by an applicable standard. Thus, instead of automatic applicability to any regulated source, the General Provisions would have no regulatory force until specifically incorporated by individual subparts. Specific reasons cited by commenters for advocating this approach focused on minimizing the potential for conflict between the General Provisions and individual subparts and reducing confusion on the part of owners or operators who must establish which provisions are applicable. Some commenters also stated that only generic requirements should be included in the General Provisions, and more specific requirements should be left to individual NESHAP.

The Agency believes that the alternative approach suggested by these commenters is not appropriate. Consequently, the proposed approach has been retained in the final rule. The Agency's concern is that minimum regulatory requirements be established for the control of HAP emissions from source categories. The General Provisions as promulgated ensure an appropriate baseline level of requirements for

all sources, and they provide guidance at an early stage to sources regarding the types of requirements that will ensue upon promulgation of an applicable standard. The EPA believes that the provisions of subpart A are the minimum generic requirements necessary for the implementation of NESHAP. The EPA's experience with existing General Provisions under parts 60 and 61 confirms that such provisions eliminate repetition within individual standards. They also improve consistency and understanding of the basic requirements for affected sources among the regulated community and compliance personnel.

Despite the preceding discussion, the EPA does recognize the potentially confusing task faced by owners and operators who must determine which provisions of the General Provisions apply to them, which are explicitly superseded by an applicable subpart, and which are superseded because they conflict with a requirement in an individual standard. Many commenters are concerned about the potential for confusion regarding their compliance responsibilities. By establishing a mechanism whereby all the provisions of subpart A are applicable to an affected source unless otherwise specified, the EPA believes some source responsibilities are directly clarified.

Furthermore, as the Agency continues to develop emission standards for specific source categories, the EPA intends to indicate clearly in these subsequent rulemakings which requirements of subpart A sources in the category are subject to and which requirements are superseded by the individual subpart. The public will have the opportunity to review and comment on Agency decisions on which requirements of the General Provisions are overridden in a source category-specific standard when that standard is proposed in the Federal Register.

Other issues were raised by commenters pertaining to general features of the relationship between the General Provisions and individual MACT standards. Several commenters expressed concern with the potential for a situation where there are conflicting provisions between the individual subpart and subpart A, and the individual subpart does not specifically supersede the General Provisions requirement. Proposed Sec. 63.1(a)(13) stated that individual subparts will specify which General Provisions are superseded. Certain commenters believe that provisions in individual subparts should prevail, even if they do not explicitly state that they supersede General Provisions.

The EPA agrees with these commenters. It is the Agency's intent that when there are conflicting requirements in the General Provisions and a source category-specific standard, the requirements of the standard will supersede the General Provisions. If a specific standard does not address a requirement within the General Provisions, then the General Provisions must be followed by the owner or operator. The Agency intends to review thoroughly the appropriateness of applying the General Provisions when developing each source category-specific standard and to indicate clearly in the standard any requirements of the General Provisions that are overridden. However, the Agency appreciates the concerns of the commenters that a conflicting requirement may be overlooked and not explicitly identified in the standard. Therefore, to avoid confusion should a conflicting requirement not be explicitly identified in the standard, the EPA has deleted the statement in Sec. 63.1(a)(13) that individual subparts always will specify which provisions of subpart A are superseded.

2. Relationship to Section 112(g), Section 112(j), and Section 112(i)(5) of the Act

Several comments were received on the relationship of the General Provisions for part 63 to requirements under sections 112(g) and 112(j) of the Act. Regulations to implement section 112(g) and section 112(j) are being developed by the EPA in separate rulemakings. Section 112(g)

addresses the modification, construction, and reconstruction of major sources after the effective date of title V permit programs and primarily before source category-specific standards are promulgated. Section 112(j) addresses equivalent emission limitations to be established by the States through title V permits if the EPA fails to promulgate a standard for a category of sources on the schedule established under section 112(e).

Under both of these sections, States may be required to make case-by-case MACT determinations for sources if the EPA has not yet established an applicable emission limitation under section 112. For example, under section 112(g)(2), after the effective date of a title V permit program in any State, no person may modify a major source of HAP in the State, unless the Administrator (or the State) determines that the MACT emission limitation under section 112 for existing sources will be met. This determination must be made on a case-by-case basis where an applicable emission limitation has not been established by the EPA. A similar determination involving new source MACT must be made before a major source is constructed or reconstructed.

Several commenters stated that it was unclear if the General Provisions are intended to be minimum requirements that would apply to sources subject to case-by-case MACT standards established under sections 112 (g) and (j).

The EPA is still considering the most appropriate way to link the General Provisions to the case-by-case MACT standards established under sections 112 (g) and (j). While the EPA believes that some requirements of the General Provisions should apply to any MACT standard established under section 112 (including case-by-case MACT standards), the Agency also recognizes that there may be situations where blanket application of the General Provisions to a particular source or source category may not be appropriate. As discussed elsewhere in this preamble and as stated in the applicability section of the final rule, an emission standard established for a particular source category can override some provisions of the General Provisions, as appropriate. The EPA is reviewing whether it is appropriate to provide similar authority to States with approved title V permit programs to override the General Provisions in case-by-case MACT standards established under sections 112(g) and 112(j) and how such authority should be implemented. In general, the EPA believes that the General Provisions provide an appropriate framework for many aspects of demonstrating compliance with case-by-case MACT determinations. The issue of the relationship of the General Provisions to section 112(g) and section 112(j) will be addressed in the rulemakings implementing these subsections or in future EPA guidance material.

One commenter wanted the EPA to clarify that the General Provisions are superseded by forthcoming subpart B regulations to implement section 112(g).

The EPA disagrees with this commenter. From a general perspective, it cannot be stated that the General Provisions would be superseded by regulations established under section 112(g). Many definitions and requirements of the General Provisions will be appropriate for standards established under section 112(g) (e.g., definitions of key terms such as ``major source'' and ``HAP''). However, as discussed in the response to the previous comment, the EPA is reviewing whether it is appropriate to allow case-by-case MACT standards developed under section 112(g) to override individual requirements of the General Provisions.

A commenter stated that the definition of ``federally enforceable'' in the proposed General Provisions was different from the definition proposed in regulations to implement section 112(j) (58 FR 37778, July 13, 1993). This commenter further stated that only one definition

should appear, and that it should be in subpart A.

The EPA agrees with the commenter and intends that the definition of federally enforceable in the General Provisions should apply to all requirements developed pursuant to section 112 including standards developed under section 112(j) and section 112(g). A definition of ``federally enforceable'' was included in the proposed regulations to implement section 112(j) because those regulations were published before the proposal date of the General Provisions. The final regulations implementing section 112(j) of the Act and forthcoming regulations implementing section 112(g) will defer to the definition of federally enforceable that is included in the General Provisions.

One commenter argued that the issue of preconstruction review should be left to the rule that will implement section 112(g) of the Act. Further, the commenter stated that if the proposed preconstruction review requirements in the General Provisions are adopted, they should be consistent with procedures in the section 112(g) rule.

The EPA disagrees with these comments. The requirements for preconstruction review included in the General Provisions are intended to implement the preconstruction review requirements of section 112(i)(1) of the Act, which the EPA views as inherently different from the preconstruction review requirements of section 112(g). Section 112(i)(1) requires review by the EPA (or a State with delegated authority) prior to the construction or reconstruction of a major source of HAP in cases where there is an applicable emission limitation that has been promulgated by the EPA under sections 112 (d), (f), or (h); that is, a national emission standard has been promulgated. The requirements of a national emission standard undergo public review and comment during development of the rule.

In contrast, requirements in section 112(g) for review prior to construction, reconstruction, or modification of a major source address situations where a national emission standard has not been promulgated and MACT must be determined on a case-by-case basis. In this situation, there has been no prior opportunity for public review of and comment on applicable requirements.

This basic difference makes it appropriate to have separate provisions implementing the preconstruction review requirements of sections 112(i)(1) and 112(g) of the Act. In addition, section 112(g) does not apply before the effective date of the title V permit program in each State, whereas section 112(d) or 112(h) standards may go into effect before the permit program and thus need independent regulatory provisions governing preconstruction review.

One commenter said that the EPA should state that after the effective date of a MACT standard established by the EPA, compliance with that standard by a source would also constitute compliance with section 112(g).

The EPA generally agrees that compliance with an applicable MACT standard promulgated by the EPA under section 112(d) or section 112(h) also would constitute compliance with section 112(g). Although section 112(g) requires an administrative determination that MACT will be met whenever a major source is constructed, reconstructed, or modified, a case-by-case MACT determination is required under section 112(g) only when no applicable emission limitations have been established by the EPA. The forthcoming rulemaking for section 112(g) will clarify the streamlined nature of the section 112(g) administrative requirements for major sources subject to already promulgated standards.

Several commenters were confused by the last sentence in proposed Sec. 63.5(b)(6) that ``this paragraph is not intended to implement the modification provisions of section 112(g) of the Act.'' One commenter asked what this paragraph was intended to implement if not section 112(g).

Section 63.5(b) is intended to clarify the general compliance requirements imposed by section 112 for sources subject to a relevant emission standard that has been promulgated in part 63 (which may be major or area sources). The emission units or emission points that are subject to a NESHAP in a part 63 subpart applicable to a specific source category are defined in each subpart and are designated as the affected source. The intent of Sec. 63.5(b)(6) is simply to emphasize that changes to an affected source (e.g., process changes or equipment additions) that are within the definition of affected source in the applicable subpart are considered to be part of that affected source and, therefore, they also are subject to the standard. In the final rule, additional language was added to Sec. 63.5(b)(6) to further clarify that if the change consists of the addition of a new affected source, the new affected source would be subject to requirements established in the standard for new sources.

Section 112(g) requirements are much broader and different in that they address changes to a major source, regardless of whether a relevant emission limitation has been promulgated by the EPA. These broader requirements are being addressed in the separate rulemaking to implement section 112(g).

Upon review of the wording of the proposed General Provisions, the EPA has concluded that the statement in proposed Sec. 63.5(b)(6) indicating that this paragraph is not intended to implement section 112(g) creates confusion rather than clarifying the Agency's intent. Therefore, it has been removed in the final rule.

The relationship between the General Provisions and section 112(i)(5) of the Act also has been clarified in the final rule. Section 112(i)(5) of the Act outlines provisions for extensions of compliance for sources that achieve early reductions in HAP emissions. Under these provisions, an existing source may comply with an emission limitation promulgated pursuant to section 112(d) 6 years after the compliance date, provided that the source achieves a 90 percent (95 percent, in the case of particulates) reduction in emissions before the otherwise applicable standard is first proposed. Regulations implementing section 112(i)(5) are contained in subpart D of part 63.

Section 63.1(c)(4) of the General Provisions addresses the applicability of the General Provisions to such sources, and it has been revised in the final rule. The revision to this section reflects the fact that the General Provisions are applicable to other requirements established pursuant to section 112 of the Act, except when overridden. The proposed language required that an owner or operator comply with the requirements of subpart A that are specifically addressed in the extension of compliance. In the final rule, Sec. 63.1(c)(4) has been revised to state that an owner or operator who has received an extension of compliance under the early reduction program in subpart D shall comply with all requirements in the General Provisions except those requirements that are specifically overridden in the extension of compliance. This revision to the rule clarifies the Agency's intended relationship between these two subparts of part 63.

3. State Options Under Section 112(l) of the Act

Several comments were received that States should be allowed flexibility in implementing the requirements of the General Provisions. General flexibility was requested as well as flexibility in implementing specific aspects such as frequency of source reporting and action timelines that may be impractical for some States. One commenter stated that incorporation of the General Provisions into an existing State or local program will interfere with the existing program. Another commenter stated that existing State procedures and timelines for preconstruction review should supersede the General Provisions.

The EPA believes that the opportunity for States to have flexibility in implementing the General Provisions is provided through the rulemaking that implements section 112(l) of the Act (see subpart E of part 63). Under subpart E of part 63, each State may develop and submit to the EPA for approval a program for the implementation and enforcement of emission standards and other requirements promulgated under section 112. The EPA may approve alternative requirements or programs submitted by States as long as the State's alternatives are at least as stringent as the Federal programs they replace. Thus, States have the opportunity to propose to the EPA, through the subpart E process, alternative requirements to the General Provisions. Alternative requirements that could be proposed by a State include those items (e.g., timelines and provisions for preconstruction review) cited by commenters on the proposed General Provisions.

An alternative requirement to a General Provisions requirement that is proposed by a State will be reviewed by the EPA to determine if it would accomplish the same objective(s) as the comparable General Provisions requirement and not compromise implementation and enforcement of part 63 emission standards.

Subpart E of part 63 was promulgated in the Federal Register on November 26, 1993 (58 FR 62262). This final rulemaking describes in detail the process for a State to receive approval for alternative requirements to those promulgated at the Federal level. Additional guidance on this process is available, and information on how to obtain it is discussed in section V of the subpart E proposal preamble (58 FR 29296, May 19, 1993).

Section 112(d)(7) of the Act and paragraph 63.1(a)(3) of the applicability section of the General Provisions clearly indicate that an emission limit or other applicable requirement more stringent than the General Provisions may be issued under State authority. The EPA believes that this, along with the opportunity provided through subpart E for a State to propose alternative requirements, provides the flexibility that the commenters are seeking without further revision to the General Provisions. The EPA plans to supplement the guidance developed thus far for implementing section 112(l) with additional material to address approval criteria for alternative procedures that may be proposed by a State in place of the General Provisions.

The EPA disagrees with the commenter who stated that existing procedures and timelines for preconstruction review in a State should automatically supersede the General Provisions. States seeking to implement and enforce any provisions of their own programs in lieu of regulations established by the EPA under section 112 must receive approval under section 112(l).

4. Permitting of Section 112 Sources Under Title V

Title V of the Act instructs the EPA to establish the minimum elements of a national air pollution control operating permit program to be implemented by State or local agencies if they qualify. Owners or operators are required to obtain a permit when a State's operating permit program becomes effective. Furthermore, when sources become subject to part 63 regulations, these regulations must be incorporated into the permits for these sources. Permit requirements will be drawn directly from the requirements in Federal regulations such as NESHAP. Thus, the General Provisions in this part will form the basis for specific permit conditions, as they form the basis for specific requirements under subsequent part 63 rulemakings. The part 70 regulations implementing the title V permit program, promulgated at 57 FR 32250 (July 21, 1992), identify when a source of HAP is required to obtain a permit. The promulgated General Provisions contain language that informs owners or operators of some of the situations in which a source of HAP would be required to apply for a permit.

Section 70.3(a) allows States to defer temporarily the requirement to obtain a permit for any sources that are not major sources but would otherwise be subject to title V. If the EPA approves a State program with such a deferral provision, the EPA will complete a future rulemaking to consider the appropriateness of any permanent exemption for categories of nonmajor sources. Nonmajor sources subject to a section 112 standard are addressed in Sec. 70.3(b), which states that the EPA has authority to allow States to exempt or defer these nonmajor sources from permitting requirements, and that the EPA will exercise this authority, if at all, at the time of promulgation of a section 112 standard. Consistent with this provision, the EPA will determine in each future rulemaking under part 63 that establishes an emission standard that affects area sources whether to: (1) Give States the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., by exempting the category of area sources altogether from the permitting requirement); (2) give States the option to defer permitting of area sources in that category until the EPA takes a rulemaking action to determine applicability of the permitting requirements; or (3) confirm that area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit in all States.

Although the EPA will decide whether and when to permit regulated area sources in each applicable part 63 rulemaking, the Agency believes, in general, that it is appropriate for all sources regulated under part 63 to undergo the title V permitting process, as this will enhance effective implementation and enforcement of the requirements of section 112 of the Act. Unless a determination by the EPA is made by rule that compliance with permitting requirements by regulated area sources would be ``impractical, infeasible, or unnecessarily burdensome'' and thus an exemption is appropriate or the EPA allows States to exercise their option to defer permitting of area sources, all affected sources under part 63, including area sources, will be required to obtain a permit. Thus, affected area sources will be immediately subject to part 70 when they become subject to a part 63 emission standard. (When area sources become subject to part 70 they will have up to 12 months to apply for a permit.) Section 63.1(c)(2) of the final General Provisions has been revised to clarify that emission standards established in part 63 will specify what the permitting requirements will be for area sources affected by those standards, and that if a standard remains silent on these matters, then nonmajor sources that are subject to the standard are also subject to the requirement to obtain a title V permit without deferral.

D. Monitoring and Performance Testing Requirements

1. Monitoring

a. Relationship to part 64. Some commenters said that the part 63 monitoring requirements are duplicative of the part 64 enhanced monitoring program. Alternatively, other commenters claimed that all of the monitoring requirements should be included in each part 63 subpart.

The proposed part 64 enhanced monitoring program (58 FR 54648, October 22, 1993) applies only to existing regulations and does not apply to new regulations being developed under part 63. Furthermore, the proposed part 64 provisions only apply to major sources, while the General Provisions can apply to area sources as well. The EPA will incorporate the concept of enhanced monitoring directly into all new rules under part 63. This approach is consistent with the statement in the preamble to the part 70 operating permits program (July 21, 1992, 57 FR 32250) that all future rulemakings will have no gaps in their monitoring provisions. The General Provisions include generic

requirements that apply to all affected sources, while individual subparts under part 63 will include additional monitoring provisions specific to each source category.

b. Definition of ``continuous monitoring system.'' Commenters said that the definitions for CMS and continuous emission monitoring systems (CEMS) are very broad and appear to include total equipment. For example, sample systems may be used to serve several analyzers, all of which are considered one CMS. If one analyzer fails, the proposed rule appears to assume that the entire CMS has failed, and data from properly functioning analyzers may not be used because one analyzer has failed to function properly.

Some commenters said that Sec. 63.8(c)(6) should be revised to clearly distinguish between CEMS, continuous opacity monitoring systems (COMS), and continuous parameter monitors. In particular, the measurement devices used to monitor parameters such as temperature, flow, and pressure are very stable and do not require frequent or ongoing calibration error determinations. One commenter said that language should be added that states: ``Continuous parameter monitoring systems (CPMS's) must be calibrated prior to installation and checked daily for indication that the system is responding. If the CPMS includes an internal system check, results must be recorded and checked daily for proper operation.''

One commenter said that the EPA should review Sec. 63.8 to amend references to ``continuous monitoring systems'' whenever a requirement should not apply to continuous parameter monitoring systems.

Another commenter said that the EPA should differentiate between CMS and continuous parameter monitoring systems when setting calibration drift provisions in Sec. 63.8(c)(1).

After review of these comments, the Administrator determined that the definition of ``continuous monitoring system'' should be clarified. The definition of CMS has been clarified to include any system used to demonstrate compliance with the applicable regulation on a continuous basis in accordance with the specifications for that regulation. The definition has been changed as follows:

Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

This definition is intended to apply to the CMS required by the regulation for a regulated pollutant or process parameter. If any portion of such a CMS fails (e.g., flow analyzer), the CMS data cannot be used for compliance determination and the entire CMS is out of control. The repair of the faulty portion of the CMS and a subsequent successful performance check of that portion would bring the entire CMS back into operation.

If, for example, the regulation requires a CEMS for each of two pollutants (e.g., SO2 and NOx) and the two CEMS share diluent analyzers, failure of one of the pollutant analyzers (e.g., the SO2 analyzer) would not necessarily put the NOx CEMS into an out-of-control situation. The distinction is that these are two CEMS, not one. On the other hand, if the diluent analyzer serving both CEMS fails, both CEMS are out of control.

The definition of CMS was revised to include continuous parameter monitoring system with the intent that basic performance requirements that appear in the General Provisions would apply to all CMS including continuous parameter monitoring systems. Responses to other comments

and subsequent revisions to the regulation further clarify that performance specifications relevant to certain types of CMS would be proposed and promulgated with accompanying new regulations, and would indicate precisely what performance requirements apply and the frequency of checks, and other requirements, beyond those in the General Provisions.

The general CMS performance requirements outlined in the General Provisions apply to any type of CMS, including continuous parameter monitoring systems. The General Provisions sections that define daily and other periodic performance checks and requirements for CMS consistently refer to applicable performance specifications and individual regulations for procedures and other specific requirements. Individual regulations may include more or less restrictive performance requirements, as appropriate.

c. Relevance of part 60 performance specifications. According to some commenters, Secs. 63.8(c)(2), (c)(3), and (e)(4) of the proposed General Provisions require continuous monitoring systems to meet existing part 60 performance specifications, which were written for criteria pollutant measurement and contain many items that are not applicable to HAP. New methods, specific to HAP, should be proposed for public comment.

The EPA agrees with the commenters. Therefore, all references to part 60 CEMS performance specifications have been deleted. Specific methods to evaluate CEMS performance will be included within the individual subparts of part 63. It should be noted that, if appropriate, these subparts may refer to Appendix B of part 60. However, in all instances, the required performance specifications for an individual subpart will be subject to public comment upon proposal.

d. Repair period for continuous monitoring systems. According to some commenters, the proposed 7-day period for the repair of CMS in Sec. 63.8(c)(1) is too restrictive, for example, in cases where a major component has failed and replacement parts may not be available within 7 days. In addition, when a critical component fails and is replaced, the entire monitoring system may have to undergo another performance specification test and/or extensive recalibration. These requirements may take up to 14 days to perform. The EPA should clarify that there is no violation in situations where the repairs or adjustments require more than 7 days, so long as the owner or operator responds with reasonable promptness. The adoption of the part 64 approach, which requires the submittal of a corrective action plan and schedule in the event of a monitor failure, would be more reasonable than specifying a specific time period and would increase the consistency between the two rules. Alternatively, a longer time period for repair of systems should be allowed either in the General Provisions or in each individual standard. One commenter said that Sec. 63.8(c) should be revised to allow up to 10 days of downtime per quarter. Finally, the EPA could establish a minimum level of acceptable data collection frequency (e.g., 75 to 95 percent monthly), which would provide up-front time flexibility for repairs and adjustments without compromising environmental benefit.

One commenter said that the EPA must provide downtime for routine maintenance because proper maintenance of the equipment will extend the life of the equipment as well as ensure the quality of data collected by the CMS. Section 63.8(c)(4) should be revised to add the exclusion of maintenance periods from the operation requirements. Another commenter said that the owner or operator should not be required to conduct sampling or daily zero and high-level checks if the manufacturing process is not in operation, and that process shutdowns should be included in the list of ``exempted'' periods under Sec. 63.8(c)(4). Finally, one commenter said that Sec. 63.8(c)(4)

should be revised to include performance evaluations and other quality assurance/quality control activities as exceptions to the downtime reporting requirements.

After consideration of these comments, the EPA has revised Sec. 63.8(c)(1) to require ``immediate'' repair or replacement of CMS parts that are considered ``routine'' or otherwise predictable. The startup, shutdown, and malfunction plan required by Sec. 63.6(e)(3) will identify those CMS malfunctions that fall into the ``routine'' category, and the owner or operator is required to keep the necessary parts for repair of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action can be reported in the semiannual startup, shutdown, and malfunction report required under Sec. 63.10(d)(5)(i).

For those events that affect the CMS and are considered atypical (i.e., not addressed by the startup, shutdown, and malfunction plan), the owner or operator must report actions that are not consistent with the startup, shutdown, and malfunction plan within 24 hours after commencing actions inconsistent with the plan. The owner or operator must send a follow-up report within 2 weeks after commencing inconsistent actions that either certifies that corrections have been made or includes a corrective action plan and schedule. This approach is similar to the approach in 40 CFR part 64 regarding monitor failures. The owner or operator should be able to provide proof that repair parts have been ordered or any other records that would indicate that the delay in making repairs is beyond his or her control. Otherwise, it would cause enforcement difficulties to decide when a delay is caused in spite of best efforts and when the delay is caused by less than best efforts. Therefore, all delays beyond the 2-week period may be considered violations. As discussed in section 2.4.8 of the promulgation BID, if the delay is caused by a malfunction and the source follows its malfunction plan, that is not considered a violation.

The Agency agrees with the commenter that routine maintenance of all CMS is necessary and has revised Sec. 63.8(c)(4) to include maintenance periods in the list of periods when CMS are excepted from the monitoring requirements.

2. Performance Testing

a. Relationship to other testing requirements. Several commenters had concerns regarding the relationship between the requirements in Sec. 63.7, Performance testing requirements, and the testing requirements that will be contained in other subparts of part 63. One commenter noted a discrepancy between proposed Sec. 63.7(e), which requires performance testing under representative conditions, and Sec. 63.103(b)(3) of the proposed Hazardous Organic NESHAP (HON) (December 31, 1992, 57 FR 62690), which requires performance testing at ``maximum'' representative operating conditions, and the commenter asked that the EPA either make the performance test requirements consistent for all part 63 subparts or allow sources to defer to the HON requirement. Another commenter indicated that performance tests may not always be meaningful, particularly in situations where the applicable subpart requires the elimination of the use of HAP in the process.

Other commenters stated that methods for performance testing should be defined in each individual NESHAP under part 63 and that methods under analysis by the EPA should be subject to comment by the regulated community. Others objected to reference to methods contained in the appendices of part 60 because they are for measuring criteria pollutants and not HAP.

The testing requirements contained in Sec. 63.7 are general and represent an infrastructure for performance testing as required by the

individual standards developed under part 63. The general testing requirements contained in Sec. 63.7 specify when the initial performance test must be conducted, under what operating conditions the test must be conducted, the content of the site-specific test plan, how long the Agency has to review the test plan (if review is required--see next comment), how many runs are needed, procedures for applying for the use of an alternative test method, procedures to request a waiver of the performance test, and other general requirements. Each subpart will include specific testing requirements, such as the test method that must be used to determine compliance, the required duration and frequency of testing, and any other testing requirements unique to that standard.

As described in Sec. 63.7(a)(4), subparts may contain testing provisions that supersede portions of Sec. 63.7. The example in the proposed HON (subpart F) cited by the commenter is a prime illustration of this situation. Section 63.103(b)(3) of the proposed subpart F states that ``Performance tests shall be conducted according to the provisions of Sec. 63.7(e), except that performance tests shall be conducted at maximum representative operating conditions for the process * * *.'' (December 31, 1992, 57 FR 62690). This section clearly states that all of the requirements of Sec. 63.7(e) apply, except that the test must be conducted at maximum operating conditions, instead of at representative conditions, as required by Sec. 63.7(e). It is also possible that the EPA could waive all performance testing requirements for a particular standard if it is determined that performance tests could not be used for determining compliance with the standard, and other procedures, in lieu of performance testing, would be specified for the determination of compliance.

For each subpart, the EPA will evaluate the possibility of using existing test methods that are contained in parts 51, 60, and 61. However, if a previously promulgated method is not appropriate, the EPA will propose a new test method. Any requirement to test for HAP in part 63, other than the requirements in Sec. 63.7, and any new test method(s), will be subject to public comment at the time the standard and method are proposed.

b. Definition of ``representative performance.'' Several commenters had concerns regarding the lack of a definition of ``representative performance'' required for performance test conditions. One commenter said that Sec. 63.7(e) should be revised to reflect maximum design operating conditions that the source or control device will normally experience. Several commenters stated that the source should be allowed to determine representative operating conditions for a performance test. One commenter thought that the source should determine representative operating conditions, subject to EPA approval. Another commenter stated that Sec. 63.7(e)(1) is acceptable as proposed.

The term ``representative performance'' used in Sec. 63.7(e) means performance of the source that represents ``normal operating conditions.'' At some facilities, normal operating conditions may represent maximum design operating conditions. In any event, representative performance or conditions under which the source will normally operate are established during the initial performance test and will serve as the basis for comparison of representative performance during future performance tests. To clarify this intent, a phrase has been added in Sec. 63.7(e) to indicate that representative performance is that based on normal operating conditions for the source.

c. Two performance tests. Commenters said that, for sources constructed with the proposed rule in mind, the EPA should not require two performance tests under Sec. 63.7(a)(2)(ix) if one will suffice. As proposed, Sec. 63.7(a)(2)(ix) requires that, if the owner or operator

commences construction or reconstruction after proposal and before promulgation of a part 63 standard and if the promulgated standard is more stringent than the proposed standard, the owner or operator must conduct a performance test to demonstrate compliance with the proposed standard within 120 days of the promulgation (i.e., effective) date and a second performance test within 3 years and 120 days from the effective date of the standard to demonstrate compliance with the promulgated standard. The commenter said that if the source can comply with the more stringent promulgated standard within 120 days of the effective date, it should only be required to perform one test.

The EPA does not believe that an additional performance test is an unreasonable burden, given that the source is allowed an additional 3 years to come into compliance with the promulgated part 63 standard. However, the EPA agrees with the commenter that if the source chooses to comply with the promulgated standard within 180 days (changed from 120 days per the discussion in section IV.G.2.b of this preamble) of the effective date, then a second performance test should not be required. While this was always the intent of this section, the EPA also agrees that this section of the proposed rule could have been interpreted to require two source tests in all situations. Therefore, Sec. 63.7(a)(2)(ix) has been revised to allow owners or operators of new or reconstructed sources the option to comply with the promulgated standards within 180 days after the standard's effective date.

d. Review of site-specific test plans. The provisions pertaining to site-specific test plans contained in Sec. 63.7(c)(2) received a great deal of attention from commenters. Several commenters indicated that the level of detail required in the site-specific test plan would create an unreasonable burden. One commenter estimated that it could take up to 2 years to prepare a test plan with the level of detail required in Sec. 63.7(c)(2). Many suggested that site-specific test plans should be required only when there is a deviation from the reference methods.

A number of commenters believe the proposed requirements that every site-specific test plan be submitted to the Agency, and then approved by the Agency within 15 days, would be extremely burdensome for both the owners and operators and regulatory agencies.

As a result of these comments, significant changes have been made to Sec. 63.7(c). Owners or operators still must prepare site-specific test plans, and the required elements of such plans are the same as those proposed. The EPA believes the requirements of the test plan are basic and necessary to ensure that the test will be conducted properly. However, the requirement that all site-specific test plans be submitted to, and approved by, the Administrator has been deleted. The rationale for these decisions is discussed in the following paragraphs.

The Agency believes that test plans should be prepared for all performance tests. The test plan assures that all involved parties understand the objectives and details of the test program. A well-planned test program is vital to ensure that the source is in compliance with the standard. The EPA does not believe that the preparation of site-specific test plans is overly burdensome to facilities. In fact, experienced testing professionals routinely prepare site-specific test plans (including quality assurance programs) that would meet the performance test requirements of Sec. 63.7(c)(2).

In addition, the EPA has created a guideline document, ``Preparation and Review of Site-Specific Test Plans'' (December 1991) to assist owners, operators, and testing professionals in the preparation of complete site-specific test plans. This guidance can be downloaded from the EPA Office of Air Quality Planning and Standards bulletin board, the Technology Transfer Network (TTN).

Upon review of the comments, particularly those from State and

local agencies, the EPA decided that it was appropriate to make significant changes in the provisions requiring submittal and approval of site-specific test plans. As noted above, each affected source owner or operator must prepare a site-specific test plan. However, owners or operators are only required to submit this plan to the Agency for review and approval upon request from the Administrator (or delegated State). In addition, the provisions relating to the approval of site-specific test plans have been modified to allow greater flexibility; that is, the timelines have been modified to allow more time for interim activities performed by both the Administrator and the owner or operator.

In order to be consistent with the changes made regarding performance test plans, the EPA has also revised Sec. 63.8(d)(2) of the General Provisions, and the submittal of a site-specific performance evaluation test plan for the evaluation of CMS performance is also optional at the Administrator's request.

E. Construction and Reconstruction

1. Definition of Reconstruction

In response to comments, the EPA has revised the definition of reconstruction to make it clearer and easier to understand. The revised definition clarifies that reconstruction may refer to an affected or a previously unaffected source that becomes an affected source upon reconstruction. This definition also clarifies that the source must be able to meet the relevant standards established by the Administrator or by a State. Major affected sources, or previously unaffected major sources that reconstruct to become major affected sources, must undergo preconstruction review in accordance with procedures described in Secs. 63.5 (b)(3) and (d). Affected sources that are nonmajor or previously unaffected nonmajor sources that reconstruct must submit a notification in accordance with Sec. 63.5(b)(4), but they are not required to undergo preconstruction review.

2. Construction/Reconstruction Plan Review

Comments also were received on the need for procedures governing the review of construction and reconstruction plans under proposed Sec. 63.5(c). State and local agencies commented that they do not have the resources to conduct optional plan reviews at the source's request, nor did they feel that this is an appropriate requirement for the General Provisions.

Upon review of these comments, the Agency has decided to delete Sec. 63.5(c) from the final rule. While the Agency encourages communication between delegated authorities and owners or operators of new or reconstructed sources that may be affected by a part 63 standard during the preparation of construction/reconstruction applications, the Agency has decided to reduce the burden on State and local agencies by not mandating the informal review of plans in the General Provisions.

One State agency indicated that the General Provisions should allow existing State construction permit programs to be used as the administrative mechanism for performing preconstruction reviews for sources subject to part 63 standards. As discussed in greater detail in section IV.C.3 of this preamble, States can use existing construction permit programs to implement the provisions in Sec. 63.5 if the programs are approved under the section 112(l) approval process developed in subpart E of part 63.

3. Determination of Reconstruction

Several commenters had concerns about the manner in which reconstruction determinations would be made. One commenter indicated that replacements ``in-kind'' and retrofitting should be exempt from a reconstruction determination. Other commenters felt that the cost of

control devices to comply with existing source MACT, reasonably available control technology, or any other emissions standard should not be included.

The reconstruction determination formula is based upon factors outlined in the rule, including a fixed capital cost comparison between a replacement project and a comparable new source. This cost comparison may include the cost of control equipment, consistent with the EPA's existing policy as stated in the December 16, 1975 Federal Register notice (see 40 FR 58416) that deals with modification, notification, and reconstruction requirements under 40 CFR part 60. The preamble to that regulation states that:

> The term ``fixed capital cost'' is defined as the capital needed to provide all the depreciable components and is intended to include such things as the costs of engineering, purchase, and installation of major process equipment, contractors' fees, instrumentation, auxiliary facilities, buildings, and structures. Costs associated with the purchase and installation of air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, etc.) are not considered in estimating the fixed capital cost of a comparable entirely new facility unless that control equipment is required as part of the process (e.g., product recovery).

Retrofitting and replacements are the type of activities to which the reconstruction provisions are intended to apply. In those instances where changes are instigated specifically to comply with a relevant part 63 standard, and the changes are integral to the process, it is not the EPA's intent to penalize existing sources by subjecting them to new source MACT requirements.

4. Application for Approval of Construction or Reconstruction

Several commenters objected to the requirement that new major affected sources submit an application for approval of construction or reconstruction 180 days before construction or reconstruction is planned to commence.

Although the EPA does not agree with the commenters' contention that the 180-day time period is overly burdensome, Sec. 63.5(d)(1)(i) of the final rule has been revised to allow owners and operators of new major affected sources greater discretion in the timing of submitting applications. The final rule requires owners or operators to submit the application ``as soon as practicable'' before the construction or reconstruction is planned to commence. The burden is on the owner or operator to ensure that the application is submitted in a timely fashion, so that adequate review may take place under the procedures specified in Sec. 63.5(e) and commencement of construction or reconstruction will not be delayed. The EPA believes it is in owners' and operators' best interests to submit preconstruction review applications as early as is feasible. The requirements in Sec. 63.9(b)(4)(i) and Sec. 63.9(b)(5) for a notification of intention to construct or reconstruct a new major affected source or a new affected source have also been revised to reflect this change in the final rule.

F. Operation and Maintenance Requirements: Startup, Shutdown, and Malfunction Plans

1. Content of Plans

Several commenters complained that the Sec. 63.6(e)(3)(i) requirement that the startup, shutdown, and malfunction plan contain detailed ``step-by-step'' procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction'' was

overly burdensome and did not allow the facility to devise maintenance actions that would ensure compliance with the relevant emission limitation. In addition, commenters said that the overall level of detail required in the startup, shutdown, and malfunction plan was excessive.

Commenters said that the plan should focus only on equipment that is actually used to achieve and maintain compliance with a relevant standard such as pollution abatement equipment, process equipment used as the last piece of recovery equipment if not followed by emission control equipment, emission or parameter monitoring equipment, and recordkeeping equipment. Also, Sec. 63.6(e)(3)(i) should be revised to clarify that the plan requirements apply to: ``malfunctioning process and air pollution equipment used to comply with the relevant standard.'' Another commenter said that process equipment should not be included in the plan because companies already have adequate incentives to maintain their process equipment.

Another comment concerned the timeframe under which the plan must be developed and implemented. The commenter noted that Sec. 63.6(e)(3)(i) implies that the source might have to develop the plan before the compliance date for the relevant standard or startup.

The EPA intends the startup, shutdown, and malfunction plans to be thorough. On the other hand, the EPA expects these plans to be based on reasonable evaluations by the owner or operator, and the plans are intended to provide flexibility to the owner or operator to act appropriately at all times to reduce emissions during these events. The requirement for ``step-by-step'' procedures has been deleted because it conveys a level of detail that is not always needed. In addition, the suggestion to limit the requirements to that equipment that can have an effect on compliance with the relevant standard has been adopted as well. Process equipment may be included, however, because process equipment can affect emissions.

In general, the level of detail is left to the discretion of the owner or operator who must decide how much detail plant personnel need in order to ensure proper operation and maintenance of equipment during startup, shutdown, and malfunction events. Excess emissions occur during these events when air pollution is emitted in quantities greater than anticipated by the applicable standard. Excess emissions are often determined by compliance monitoring required by the applicable standard. If excess emissions are not reasonably anticipated during these events, the plans could be very simple. Alternatively, if excess emissions are expected to occur during startup, shutdown, or malfunction events, the plan needs to be correspondingly detailed to ensure that appropriate actions are taken to control the emissions.

Excess emissions are typically direct indications of noncompliance with the emission standard and, therefore, are directly enforceable. Without demonstrating that a startup, shutdown, or malfunction event caused the excess emissions, the owner or operator cannot certify compliance. In such instances where the excess emissions occurred during a startup, shutdown, or malfunction, the owner or operator must also have followed the plan to certify compliance. If the owner or operator prepares a deficient plan, the EPA can request that the plan be upgraded and may consider enforcement actions.

Section 63.6(e)(3)(i) has been revised to clarify that the plan must be developed before and implemented by the compliance date for the source.

2. Option to Use Standard Operating Procedures

Commenters supported the use of standard operating procedures (SOP) as a surrogate for the development of a separate startup, shutdown, and malfunction plan. However, they pointed out two concerns with the use of SOP. The first potential problem is that SOP generally are very

complex (at least at chemical plants), and they are developed to allow the operator to respond to a wide variety of process conditions. Commenters were concerned that an excessive amount of time could be spent in educating permitting agencies regarding the contents of the SOP. A second concern is that SOP may contain confidential business information. Commenters said that the rules should provide that such information will be kept confidential by the Agency.

One commenter noted that facilities covered by Occupational Health and Safety Administration (OSHA) operating requirements should be allowed to use the OSHA plan to meet the intent of Sec. 63.6(e), Operation and maintenance requirements, and file a notification that they are covered by OSHA in place of submitting a startup, shutdown, and malfunction plan. Other plans such as hazardous waste emergency response plans should be accepted as alternatives, too.

A few commenters also asked whether it is necessary to maintain a separate plan if the startup, shutdown, and malfunction plan becomes part of the operating permit. If SOP are used, they could simply be referenced in the operating permit. Alternatively, commenters said that SOP used for startup, shutdown, and malfunction plans should not be required in permits and are not enforceable under part 70.

The intent of allowing the use of SOP is to provide the owner or operator an option of complying with these requirements that may result in reduced recordkeeping burden. If the owner or operator determines that use of SOP is too cumbersome, he or she should develop a specific startup, shutdown, and malfunction plan.

Because the need for startup, shutdown, and malfunction plans is determined by Federal requirements, each plan would be incorporated by reference into the source's part 70 operating permit. As such, the plans would be considered public information; however, confidential business information can be protected according to the procedures in part 70 and Sec. 63.15 of the General Provisions. The EPA believes that, while an owner or operator should not include confidential information in the plan, if certain confidential information is necessary for the plan to be used properly, the owner or operator should discuss the situation with the enforcing agency.

Facilities would be allowed to use an OSHA or other plan (or any portion thereof) in lieu of a startup, shutdown, and malfunction plan only if it meets the requirements in Sec. 63.6(e). The burden is on the source owner or operator to demonstrate that any plan not specifically developed to comply with the requirements in Sec. 63.6(e) meets the intent and all applicable requirements in that section.

3. Reporting Requirements

Some commenters said that startup, shutdown, and malfunction reports should only be required (at least in the case of area sources) when excess/reportable emissions to the atmosphere occurred as a direct result. Commenters requested that the EPA should encourage sources to discover ways not to emit amounts of pollutants in excess of applicable standards, or not to exceed established parametric limits, during periods of startup, shutdown, and malfunctions by inserting the concept of ``emissions in excess of an otherwise applicable standard or operation outside of established parametric requirements'' into the definitions of startup, shutdown, and malfunction situations. If a source does not experience a period where some emission or parameter requirement is exceeded, no records or reports should be required, according to commenters. In addition, commenters stated that the requirement that a responsible corporate official certify a report of action taken under a startup, shutdown, and malfunction plan is well beyond statutory authority and should be withdrawn.

As discussed below, the EPA has changed the General Provisions to clarify that startup, shutdown, and malfunction reports need only

address events that cause emissions in excess of an otherwise applicable standard or operation outside of an established parametric requirement. This change will encourage owners and operators to maintain emissions at all times to the levels required by the standard. When no excess emissions occur under this approach, no records or reports are required. On the other hand, if an owner or operator fails to record the necessary information when excess emissions do occur, they cannot certify compliance with the startup, shutdown, and malfunction plan.

Section 63.10(d)(5) has been revised to allow the reports to be signed by the owner or operator or other responsible official. In some cases, ``corporate'' officials may not be located at the plant site. Also, smaller companies may not be incorporated and may only have a few employees. For example, dry cleaning facilities are generally small businesses, in which case the owner must sign the report.

Commenters also said that the EPA should provide flexibility to owners and operators in correcting malfunctions rather than requiring that actions be ``completely'' consistent with the source's startup, shutdown, and malfunction plan. It is impossible for owners and operators to develop plans that address every conceivable malfunction. Instead, the EPA should require that actions be ``materially'' consistent with the plan.

One purpose of the startup, shutdown, and malfunction reports is to provide an explanation of why the plan was not followed during a startup, shutdown, or malfunction. Presumably, an owner or operator cannot certify compliance with the standards for such events. In the event of a startup, shutdown, or malfunction, the Agency believes there is value in receiving these reports for actions that are not consistent with the plan. These reports establish an historical record for review by the enforcing agency. However, in order to respond to commenters' concerns, the regulation has been revised to remove the word ``completely'' from the phrase ``completely consistent'' in Secs. 63.6(e)(3) (iii) and (iv) and Sec. 63.10(b)(2)(v). This revision still satisfies the Agency's intent to receive reports for actions that are not consistent with the plan.

Commenters complained that immediate startup, shutdown, and malfunction reports required under Sec. 63.10(d)(5)(ii) should not be required because they are redundant with respect to reporting requirements found in the Superfund Amendments and Reauthorization Act (section 304) and the Comprehensive Environmental Response, Compensation, and Liability Act (section 103), in the permit rules, and in the individual standards themselves.

The alternate notification systems referred to by the commenter generally are concerned with releases in quantities and under conditions that may not be consistent with the reporting and compliance needs of the authorities delegated the authority to enforce part 63 requirements. To the extent that other reporting mechanisms provide duplicate information, they can be used to satisfy the part 63 requirements. This information would then be compiled in the source's part 70 operating permit.

4. Reporting Timelines

Several commenters suggested changes to the required timelines in Sec. 63.6(e)(3)(iv). In the case of reporting any actions taken that are not ``completely consistent with the procedures in the affected source's startup, shutdown, and malfunction plan'' within 24 hours, commenters suggested that this requirement should be changed to be ``the next working day.'' Alternatively, the requirement could be changed to be consistent with the title V emergency provisions that require reporting within 2 working days.

Commenters suggested that because an event can last for several

days, the requirement to submit a follow-up report should be revised to state that the report is due 7 days ``after the end of the event.'' Other commenters said that only deviations that are significant (e.g., last more than 24 hours) and which fail to correct or which prolong the malfunction should be reportable in writing, and then only within 14 days of the occurrence. Other commenters said that quarterly reports should be sufficient or that no reports should be required if the events are recorded in the source's operating log.

Upon review and consideration of the comments, Secs. 63.6(e)(3)(iv) and 63.10(d)(5)(ii) have been revised to require reporting of actions that are not consistent with the plan within 2 working days instead of within 24 hours. This allows the General Provisions and the operating permits program established under title V to be consistent. In addition, the regulation has been revised to require that follow-up reports for deviations are due ``7 working days after the end of the event.''

5. Compliance With Emission Limits

According to some commenters, the EPA should require that affected sources meet otherwise applicable emission limits during startups, shutdowns, and malfunctions. Commenters saw the assumption that emissions can and will occur as inconsistent with the Agency's approach in the part 61 NESHAP, which requires that sources comply with emission limitations at all times. Also, some commenters stated that the EPA has not shown that exceedance of standards is always necessary during these periods or that malfunctions are not avoidable. These commenters believed that difficulties in determining violations do not justify relaxing standards.

Other commenters said that sources should take steps to minimize emissions during startup, shutdown, and malfunction periods. For example, a time limitation on the length of a startup or shutdown could be established. Alternatively, the EPA should exempt facilities from the requirements associated with the startup, shutdown, and malfunction plans if they can comply with the standards during these events. A simple notification that the source intends to comply at all times rather than develop and implement the provisions of Sec. 63.6(e) (i.e., a startup, shutdown, and malfunction plan) should be added to recognize this condition.

In contrast, other commenters wanted to strengthen the assumption that excess emissions during these events is not a violation unless specified in the relevant standard or a determination is made under Sec. 63.6(e)(2) that acceptable operation and maintenance procedures are not being followed.

The EPA believes, as it did at proposal, that the requirement for a startup, shutdown, and malfunction plan is a reasonable bridge between the difficulty associated with determining compliance with an emission standard during these events and a blanket exemption from emission limits. The purpose of the plan is for the source to demonstrate how it will do its reasonable best to maintain compliance with the standards, even during startups, shutdowns, and malfunctions. In addition, individual standards may override these requirements in cases where it is possible to hold sources to stricter standards. In some cases it may be reasonable to require certain source categories to meet the emission standards at all times.

Another point to consider is the beneficial effect of enhanced monitoring. Once enhanced monitoring requirements are effective through the individual standards, owners and operators will be required to pay extremely close attention to the performance of their process and emission control systems. If the enhanced monitoring requirements are generated reflecting normal operational variations, the number of potential noncomplying emissions should be minimized and only truly

significant malfunctions will need to be addressed in the plan. Enhanced monitoring should drive sources to continuous good performance that minimizes emissions and, thus, startup, shutdown, and malfunction plans can focus on the less common events. In this way, concerns regarding excess emissions during startups, shutdowns, or malfunctions should lessen.

The EPA agrees that sources that can demonstrate that compliance with the emission standards is not in question during periods of startup, shutdown, and malfunctions should not be required to develop and implement full-blown startup, shutdown, and malfunction plans. Instead, these sources should demonstrate in their startup, shutdown, and malfunction plan why standards cannot be exceeded during periods of startup, shutdown, and malfunction.

In a related matter, the EPA has also clarified Sec. 63.6(e)(1)(i) to state that sources must minimize emissions ``at least to the levels required by all relevant standards'' to respond to a commenter's concern that the original language to ``minimize emissions'' could exceed the requirements of the Act.

G. Recordkeeping and Reporting Requirements

1. Notification Requirements

a. Applicability. A significant number of commenters supported the proposed requirement that only affected major and area sources within a category of sources for which a part 63 standard is promulgated be required to submit an initial notification. On the other hand, four commenters believe that all sources, affected and unaffected, should be required to submit an initial notification to identify sources that may be subject to a part 63 standard or other requirement. One of these commenters stated that sources claiming that they are below the major source threshold should notify both the EPA and the State and should submit documentation of their claim (e.g., a copy of the permit showing control requirements). One commenter suggested that delegated agencies should be responsible for identifying affected sources, rather than requiring initial notifications.

In addition, many commenters complained that the initial notification requirement for affected sources was too detailed and suggested a few ways to simplify the initial notification: (1) Include only notification of name and address of owner or operator, address of affected source, and compliance date; or (2) require only a letter of notification identifying subject sources.

The EPA requested comments on the proposed requirement for initial notification by only affected sources within a category of sources, specifically on whether the proposed requirements offer sufficient opportunity for the EPA or delegated agencies to identify sources that may be subject to a part 63 standard, or other requirement, and to review and confirm a source's determination of its applicability status with regard to that standard or requirement. The EPA has evaluated the comments received and has decided that the final General Provisions will require initial notification by only affected sources within a category of sources, the same as proposed. This would reduce the burden on area sources, many of which are small businesses. The implementation of the parts 70 and 71 permit programs will be the process to bring overlooked or noncomplying sources into the regulatory program. In addition, the MACT technical support documents defining the source categories and well-designed toxics emission inventories also will help agencies to identify affected sources. The EPA believes that these mechanisms are sufficient for the EPA or delegated agencies to identify additional sources that may be subject to a part 63 standard or other requirement.

Although only affected sources will be required to submit an initial notification, the EPA has added a requirement for the owner or operator of an unregulated source to keep a record of the applicability determination made for his or her source. Section 63.10(b)(3) requires that an owner or operator who determines that his or her stationary source is not subject to a relevant standard or other provision of part 63 keep a record of this applicability determination. This record must include an analysis demonstrating why the source is unaffected. This information must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with respect to the relevant part 63 standard or requirement.

In response to the comments requesting simplification of the initial notification requirements for affected sources, the final rule provides that some of the information that the proposed rule would have required in the initial notification be provided later in the notification of compliance status [Sec. 63.9(h)]. The initial notification will include only the following information: (1) The name and address of the owner or operator; (2) the address (i.e., physical location) of the affected source; (3) an identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date; (4) a brief description of the nature, size, design and method of operation of the source, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each HAP; and (5) a statement of whether the affected source is a major source or an area source.

In addition, Sec. 63.9(h), Notification of compliance status, has been revised to include the information formerly required in the proposed initial notification under Sec. 63.9(b)(2) (v) through (viii).

b. Duplicate notification submittal. Some commenters said that the Sec. 63.9(a)(4)(ii) requirement that sources in a State with an approved permit program submit notifications to both the part 70 permitting authority and the relevant EPA Regional Office is unnecessary. A similar requirement is found in Sec. 63.10(a)(4)(ii) regarding report submittal. According to these commenters, once a State has permitting authority, it should have the full authority to receive all notifications and reports.

The rule has been amended to allow EPA Regional Offices the option of waiving the requirement for the source to provide a duplicate copy of notifications and reports. The EPA has tried to limit the amount of duplicate reporting a source is required to do under part 63. However, in some cases it is necessary for both the permitting authority and the Regional Office to receive notifications and reports. Even when the EPA has delegated a program to a permitting authority, the Regional Offices must receive some baseline information to track implementation of the programs and provide guidance for national and regional consistency.

c. Negotiated schedules. Section 63.9(i)(2) of the proposed General Provisions, which requires delegated agencies to request in writing a source's permission to take additional time to review information, is inappropriate according to some commenters. Agencies should not have to request additional time to review information.

Upon review and consideration of this comment, the Administrator determined that this proposed provision is in conflict with the Administrator's authority to gather and consider information granted under section 114 of the Act. As a result, this aspect of the negotiated schedule provision has been deleted from the final rule. However, the Administrator also believes that reasonable accommodations regarding schedule negotiations can and should be made between administering agencies and affected sources so long as overall

environmental goals are achieved. Language has been added to Sec. 63.9(i)(4) to require agencies to notify sources of delays in schedules and to inform the sources of amended schedules to facilitate communication between the two parties.

2. Timeline Issues

As part of the Agency's evaluation process in developing the final rule, timing issues in general were considered, along with individual comments from industry, State and local agencies, trade associations, and other parties. A summary of the General Provisions as they relate to timelines of the individual requirements is presented in Appendix A of the promulgation BID for the General Provisions. (This summary is too lengthy to include in this preamble.) The Agency considers these provisions to be significant because they represent the critical path timing constraints to be met by all affected sources.

a. Compliance extension requests. Because Sec. 63.6(i)(12)(ii) as proposed only allows a source 15 days to respond to an EPA request for additional information on a compliance extension request, commenters said that the EPA should provide additional time to account for times when additional testing is needed or there are other circumstances that require additional time to prepare a response. Similarly, a 7-day deadline for a source to respond to a notice of an intent to deny a request for extension (Sec. 63.6(i)(12)(iii)(B)) or a notice that an application is incomplete (Sec. 63.6(i)(13)(iii)(B)) is insufficient, according to commenters. One commenter said that the time periods should be mutually agreed upon by the owner or operator and the permitting authority. Another commenter said that a simple mechanism for States to alter the timeframes of these and other notification, reporting, and recordkeeping provisions should be added.

Other commenters said that the deadlines for Agency review and responses should be increased.

The majority of the deadlines in Secs. 63.6(i)(12) and (i)(13) have been increased to allow additional time for Agency review and for owners or operators to provide additional information. In particular, Sec. 63.6(i)(13)(i) has been changed to allow the Administrator 30 days to notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance. Sections 63.6(i)(12)(i) and (i)(13)(i) have been changed to allow the Administrator 30 days and 15 days, respectively, to notify the owner or operator of the status of his/her application. Sections 63.6(i)(12)(ii) and (i)(13)(ii) have been changed to allow the owner or operator 30 days and 15 days, respectively, to provide additional information after receiving notice of an incomplete application. Sections 63.6(i)(12)(iii)(B) and (i)(13)(iii)(B) have been changed to allow the owner or operator 15 days to provide additional information after receiving notice of an intended denial. Finally, Sec. 63.6(i)(13)(iv) has been revised to allow the Administrator 30 days to issue a final determination.

The increased time periods for review and response may result in some instances where a request for an extension could be denied, leaving the source with very little time to demonstrate compliance under the existing schedule. This may be an issue for sources subject to the section 112(f) residual risk standards, which are to be promulgated 8 years after the section 112(d) MACT standards. However, the EPA believes that the likelihood of this scenario occurring is relatively remote and would only occur under a worst-case situation of one or more requests for additional information and both parties using the full time period allotted for their individual actions. In addition, other changes made to performance test requirements (e.g., a decrease in the performance test notification period and the change to make submission of site-specific test plans for approval at the

Agency's discretion) will decrease the lead time required for a source to demonstrate compliance, thus limiting the impacts of a ``late'' denial of an extension request.

Furthermore, as part of the section 112(l) approval process, State agencies may establish different timelines to allow better coordination with existing State programs, with some exceptions such as compliance dates. Also, as discussed in Sec. 63.9(i), an owner or operator and the permitting agency may mutually agree to schedule changes.

Commenters also stated that the General Provisions should include provisions for a 5-year extension of compliance for installation of BACT or technology to attain LAER pursuant to section 112(i)(6) of the Act.

In response to these comments, the EPA has revised the regulation to incorporate these compliance extensions. Provisions implementing extensions of compliance for installation of BACT or technology to meet LAER are included in the final rule in Sec. 63.6(i)(5).

b. Performance test deadlines. Many commenters said that sources should be allowed more than 120 days from startup or other triggering milestones to conduct a performance test. Most suggested 180 days as a more appropriate time period. Hazardous air pollutant performance testing is perceived to be more complicated than performance testing for criteria pollutants. An additional argument is that the part 60 general provisions (Sec. 60.8(a)) provide 180 days in which to conduct performance tests after startup and that the part 63 requirements should be consistent.

The Agency agrees that, in many cases, 180 days to conduct performance tests may be necessary, and there is also some merit in having the performance testing deadlines in parts 60 and 63 be consistent. Therefore, the EPA has modified Sec. 63.7(a)(2) to set performance test deadlines within 180 days of the effective date of the relevant standards, the initial startup date, or the compliance date, as applicable.

c. Notification of performance test. Many commenters felt that the Sec. 63.7(b) requirement that owners or operators submit a notification of a performance test 75 days before the test is scheduled to begin was an excessive period of time. Commenters also said that the observation of the test by the EPA should be optional.

Section 63.7(b) has been revised to reduce the notification period to 60 days. This time period should provide sufficient notice given that the requirement to submit these plans for review and approval is now at the Administrator's discretion (see section IV.D.2.c of this preamble). Observation of the test by the EPA is intended to be optional, and the section has been revised to clarify this point. A similar change was made to Sec. 63.8(e)(2), notice of performance evaluation (for CMS) to allow a 60-day period rather than a 75-day period.

In the same general vein of allowing additional time to comply with the performance testing requirements, the times allowed for an owner or operator to respond to the Administrator's request to review a site-specific test plan under Sec. 63.7(c) and for the Administrator to provide a decision have been changed to allow both parties more time to conduct these activities. The same changes were also made to similar requirements related to site-specific performance evaluation plans under Secs. 63.8(d) and (e).

d. Test results. Commenters said that Sec. 63.7(g) should be revised to allow more than 45 days for sources to submit the results of performance tests to the appropriate agencies.

Section 63.7(g) has been revised to allow sources 60 days to submit the required performance test results to the enforcing agency.

e. Initial notification. Several commenters said that affected

sources should be given more than 45 days under Sec. 63.9(b) to provide an initial notification. In many cases, 45 days will not be enough time to learn of the adoption of an emission standard, determine whether the standard is applicable to the source, and file the initial notification. Many commenters suggested 120 days as a more appropriate period. Some noted that the EPA already has proposed under the HON to require the initial notification up to 120 days after the effective date of that rule.

The Agency agrees that many sources will require more time than allowed at proposal to determine whether they are affected by individual standards and to file the initial notification required by Sec. 63.9(b). Therefore, the initial notification period in the final rule has been increased from 45 days to 120 days after the effective date of standards (or after a source becomes subject to a standard). For most sources, this change will enhance their ability to meet the initial notification requirements and will not affect their ability to meet other milestones, such as conducting any required performance testing and ensuring that the source is in compliance with the standard by the compliance date, which in many cases will be 3 years from the effective date. However, in cases where the existing source compliance date is considerably shorter than the 3-year maximum allowed period or the source in question is a new source that must comply within 180 days of the effective date (or startup), a shorter initial notification period may be set in the individual standards to accommodate those cases where an earlier notification would be desirable from both the source's and the permitting agency's perspective. As discussed in section IV.G.1.a of this preamble, the requirement to submit several pieces of information was removed from the initial notification and added to the compliance status report, which decreases the burden and time required to develop the initial notification. Therefore, the Agency believes that 120 days is adequate for submitting the initial notification.

3. Recordkeeping and Reporting

a. Records retention--length. Several comments were received on Sec. 63.10(b)(1) related to the 5-year record retention period. Some commenters argued that: (1) The EPA has not established a need for a 5-year period, (2) there is no statutory requirement for 5 years of records retention, and consistency with the part 70 provisions is not an adequate basis, and (3) the 5-year records retention requirement is in conflict with EPA policy and the Paperwork Reduction Act. Some commenters suggested that a 2- or 3-year period would be preferable.

In contrast, some commenters supported the 5-year period because it is consistent with the part 70 provisions.

The EPA believes that the 5-year records retention requirement is reasonable and needed for consistency with the part 70 permit program and the 5-year statute of limitations, on which the permit program based its requirement. The retention of records for 5 years would allow the EPA to establish a source's history and patterns of compliance for purposes of determining the appropriate level of enforcement action. The EPA believes, based on prior enforcement history, that the most flagrant violators frequently have violations extending beyond the 5-year statute of limitations. Therefore, the EPA should not be artificially foreclosed, by allowing the destruction of potential evidence of violations, from pursuing the worst violators to the fullest extent of the law because of nonexistent records.

b. Quarterly reports. Some commenters opposed the requirement that excess emissions and continuous monitoring systems reports must be submitted quarterly when the CMS data are to be used directly for compliance determination (Sec. 63.10(e)(3)(i)(B)). Commenters especially objected to this provision when ``negative'' reports (that

show the source is in compliance) would be submitted. Instead, commenters believed that the reports should be submitted semiannually, which is consistent with the requirements of title V. In cases where reporting less frequently than semiannually will not compromise enforcement of a relevant emissions standard, commenters said that the EPA should allow even less frequent reporting.

Other commenters suggested that all sources should be required to report quarterly. According to these commenters, allowing sources to report quarterly at first and later switch to a semiannual or quarterly schedule, depending on compliance status and history, would be confusing and difficult for States to administer. Furthermore, the commenters suggested that only sources that have demonstrated compliance with all requirements of the Act should be allowed to reduce their reporting frequency.

Some commenters stated that if the Agency's current approach is adopted, any request to reduce the frequency of reporting should be deemed approved unless expressly denied within 30 days. Other commenters said that the Sec. 63.10(e)(3)(iii) requirement that the source provide written notification of a reduction in reporting frequency is unwarranted and should be eliminated. Instead, these commenters suggested that the reduction should automatically occur after a year of compliance.

One commenter said that 1 year of data is insufficient to use as a basis for reducing the frequency of reports, while another said that it is inappropriate to use more than the previous year of data collected.

In consideration of these comments, Sec. 63.10(e)(3)(i) has been revised to allow semiannual reports for sources that are using CMS data for compliance but have no excess emissions to report. Quarterly reports still are required when excess emissions occur at sources that use CMS data for compliance, and the frequency of reporting may be reduced only through the procedures described in Sec. 63.10(e)(3)(ii). The Administrator believes that this change will reduce the number of reports and the burden on sources.

Section 63.10(e)(3)(iii) has been revised to clarify that, in the absence of a notice of disapproval of a request to reduce the frequency of excess emissions and continuous monitoring systems reports within 45 days, approval is granted. However, the Administrator believes that excess emissions and compliance parameter monitoring reports are a critical enforcement tool and that any reductions in their frequency should be considered carefully by the implementing agency.

As for the comment that 1 year of data may be inappropriate to use in evaluating a request for a reduction in frequency, the 1-year period is the minimum required for a source to submit a request. Up to 5 years of data may be considered, at the Administrator's discretion. Because of the potential variability among sources and the possible issues associated with an individual source's compliance status (e.g., a history of noncompliance), it is important to preserve the Administrator's discretion in reviewing more extensive data to make a determination.

The EPA is committed to identifying ways to increase industry's flexibility to comply with the part 63 General Provisions where it does not impair achieving environmental objectives. As such, the provisions that allow for a reduction in reporting burden are appropriate. (The part 70 operating permit provisions preclude the EPA from allowing sources to report less frequently than semiannually.) However, the EPA believes that the burden should be on sources to demonstrate ongoing compliance with applicable standards prior to considering a request to reduce the reporting frequency. While the EPA is sensitive to the possible difficulty that sources and States might face in tracking varying reporting schedules, the specific conditions in title V

operating permits are intended, in part, to help address the variability among sources.

V. Administrative Requirements

A. Docket

The docket for this rulemaking is A-91-09. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the ADDRESSES section of this notice.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is ``significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Is likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or

(4) Is likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a ``significant regulatory action'' within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

Any written comments from the OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under ADDRESSES. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, (6102), ATTN: Docket No. A-91-09, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

C. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., the OMB must clear any reporting and recordkeeping requirements that qualify as an ``information collection request'' under the PRA. Approval of an information collection request is not required for this

rulemaking because, for sources affected by section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by part 63 will be estimated when a standard applicable to such category is promulgated.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that have ``significant impact on a substantial number of small entities.'' Small entities are small businesses, organizations, and governmental jurisdictions. This analysis is not necessary for this rulemaking, however, because it is unknown at this time which requirements from the General Provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the General Provisions will be assessed when emission standards affecting those sources are developed.

List of Subjects

40 CFR Part 60

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 61

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

40 CFR Part 63

Environmental Protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: February 28, 1994.
Carol M. Browner,
Administrator.

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

PART 60--STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.1 is amended by adding paragraph (c) to read as follows:

Sec. 60.1 Applicability.

* * * * *

(c) In addition to complying with the provisions of this part, the owner or operator of an affected facility may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

3. Section 60.2 is amended by revising the definitions of ``Act'' and ``Malfunction'' and by adding in alphabetical order the definitions ``Approved permit program,'' ``Issuance,'' ``Part 70 permit,'' ``Permit program,'' ``Permitting authority,'' ``State,'' ``Stationary source,'' and ``Title V permit'' to read as follows:

Sec. 60.2 Definitions.

* * * * *

Act means the Clean Air Act (42 U.S.C. 7401 et seq.)

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

* * * * *

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

* * * * *

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

* * * * *

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated

authority to implement: (1) The provisions of this part; and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

* * * * *

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

* * * * *

4. In Sec. 60.7, paragraphs (e), (f), and (g) are redesignated as paragraphs (f), (g), and (h), respectively, and new paragraph (e) is added to read as follows:

Sec. 60.7 Notification and recordkeeping.

* * * * *

(e)(1) Notwithstanding the frequency of reporting requirements specified in paragraph (c) of this section, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(i) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this part continually demonstrate that the facility is in compliance with the applicable standard;

(ii) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the applicable standard; and

(iii) The Administrator does not object to a reduced frequency of reporting for the affected facility, as provided in paragraph (e)(2) of this section.

(2) The frequency of reporting of excess emissions and monitoring systems performance (and summary) reports may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the required recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(3) As soon as monitoring data indicate that the affected facility is not in compliance with any emission limitation or operating parameter specified in the applicable standard, the frequency of reporting shall revert to the frequency specified in the applicable

standard, and the owner or operator shall submit an excess emissions and monitoring systems performance report (and summary report, if required) at the next appropriate reporting period following the noncomplying event. After demonstrating compliance with the applicable standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard as provided for in paragraphs (e)(1) and (e)(2) of this section.

5. Section 60.19 is added to subpart A to read as follows:

Sec. 60.19 General notification and reporting requirements.

(a) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word ``calendar'' is absent, unless otherwise specified in an applicable requirement.

(b) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(c) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(d) If an owner or operator of an affected facility in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such facility under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(e) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 61, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary

source is required to be in compliance with the applicable subpart in this part, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or part 63 of this chapter standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(f)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (f)(2) and (f)(3) of this section, the owner or operator of an affected facility remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (f)(2) and (f)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

PART 61--NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

6. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

7. Section 61.01 is amended by adding paragraph (d) to read as follows:

Sec. 61.01 List of pollutants and applicability of part 61.

* * * * *

(d) In addition to complying with the provisions of this part, the owner or operator of a stationary source subject to a standard in this part may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

* * * * *

8. Section 61.02 is amended by adding in alphabetical order the

definitions ``Approved permit program,'' ``Issuance,'' ``Part 70 permit,'' ``Permit program,'' ``Permitting authority,'' ``State,'' and ``Title V permit'' to read as follows:

Sec. 61.02 Definitions.

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

* * * * *

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

* * * * *

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

* * * * *

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement:

(1) The provisions of this part; and/or

(2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

* * * * *

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

* * * * *

9. Section 61.10 is amended by adding paragraphs (e) through (j) to read as follows:

Sec. 61.10 Source reporting and waiver request.

* * * * *

(e) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word ``calendar'' is absent, unless otherwise specified in an applicable requirement.

(f) For the purposes of this part, if an explicit postmark deadline

is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(g) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(h) If an owner or operator of a stationary source in a State with delegated authority is required to submit reports under this part to the State, and if the State has an established timeline for the submission of reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(i) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 60, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part, or 1 year after the source is required to be in compliance with the applicable part 60 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(j)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (j)(2) and (j)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (j)(2) and (j)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner

or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

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

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

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended by Pub. L. 101-549 (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

11. Part 63 is amended by adding subpart A to read as follows:

Subpart A--General Provisions

Sec.

Subpart A--General Provisions

Sec. 63.1 Applicability.

(a) General. (1) Terms used throughout this part are defined in Sec. 63.2 or in the Clean Air Act (Act) as amended in 1990, except that individual subparts of this part may include specific definitions in addition to or that supersede definitions in Sec. 63.2.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act

as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in this part pursuant to section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in this part are independent of NESHAP contained in 40 CFR part 61. The NESHAP in part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to this part.

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (including those requirements in part 60 of this chapter), or a standard issued under State authority.

(4) The provisions of this subpart (i.e., subpart A of this part) apply to owners or operators who are subject to subsequent subparts of this part, except when otherwise specified in a particular subpart or in a relevant standard. The general provisions in subpart A eliminate the repetition of requirements applicable to all owners or operators affected by this part. The general provisions in subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

(5) [Reserved]

(6) To obtain the most current list of categories of sources to be regulated under section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD-13), Research Triangle Park, North Carolina 27711.

(7) Subpart D of this part contains regulations that address procedures for an owner or operator to obtain an extension of compliance with a relevant standard through an early reduction of emissions of hazardous air pollutants pursuant to section 112(i)(5) of the Act.

(8) Subpart E of this part contains regulations that provide for the establishment of procedures consistent with section 112(l) of the Act for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(9) [Reserved]

(10) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word ``calendar'' is absent, unless otherwise specified in an applicable requirement.

(11) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator,

similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(12) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in Sec. 63.9(i).

(13) Special provisions set forth under an applicable subpart of this part or in a relevant standard established under this part shall supersede any conflicting provisions of this subpart.

(14) Any standards, limitations, prohibitions, or other federally enforceable requirements established pursuant to procedural regulations in this part [including, but not limited to, equivalent emission limitations established pursuant to section 112(g) of the Act] shall have the force and effect of requirements promulgated in this part and shall be subject to the provisions of this subpart, except when explicitly specified otherwise.

(b) Initial applicability determination for this part. (1) The provisions of this part apply to the owner or operator of any stationary source that--

(i) Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act; and

(ii) Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.

(2) In addition to complying with the provisions of this part, the owner or operator of any such source may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Act (42 U.S.C. 7661). For more information about obtaining an operating permit, see part 70 of this chapter.

(3) An owner or operator of a stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants who determines that the source is not subject to a relevant standard or other requirement established under this part, shall keep a record of the applicability determination as specified in Sec. 63.10(b)(3) of this subpart.

(c) Applicability of this part after a relevant standard has been set under this part. (1) If a relevant standard has been established under this part, the owner or operator of an affected source shall comply with the provisions of this subpart and the provisions of that standard, except as specified otherwise in this subpart or that standard.

(2) If a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from the permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources will specify whether--

(i) States will have the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., the standard will exempt the category of area sources altogether from the permitting requirement);

(ii) States will have the option to defer permitting of area sources in that category until the Administrator takes rulemaking action to determine applicability of the permitting requirements; or

(iii) Area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title

V permit in all States. If a standard fails to specify what the permitting requirements will be for area sources affected by that standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without deferral. If the owner or operator is required to obtain a title V permit, he or she shall apply for such permit in accordance with part 70 of this chapter and applicable State regulations, or in accordance with the regulations contained in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

(3) [Reserved]

(4) If the owner or operator of an existing source obtains an extension of compliance for such source in accordance with the provisions of subpart D of this part, the owner or operator shall comply with all requirements of this subpart except those requirements that are specifically overridden in the extension of compliance for that source.

(5) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source also shall be subject to the notification requirements of this subpart.

(d) [Reserved]

(e) Applicability of permit program before a relevant standard has been set under this part. After the effective date of an approved permit program in the State in which a stationary source is (or would be) located, the owner or operator of such source may be required to obtain a title V permit from the permitting authority in that State (or revise such a permit if one has already been issued to the source) before a relevant standard is established under this part. If the owner or operator is required to obtain (or revise) a title V permit, he/she shall apply to obtain (or revise) such permit in accordance with the regulations contained in part 70 of this chapter and applicable State regulations, or the regulations codified in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

Sec. 63.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

Act means the Clean Air Act (42 U.S.C. 7401 et seq., as amended by Pub. L. 101-549, 104 Stat. 2399).

Actual emissions is defined in subpart D of this part for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Affected source, for the purposes of this part, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act. Each relevant standard will define the ``affected source'' for the purposes of that standard. The term ``affected source,'' as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Sources

regulated under part 60 or part 61 of this chapter are not affected sources for the purposes of part 63.

Alternative emission limitation means conditions established pursuant to sections 112(i)(5) or 112(i)(6) of the Act by the Administrator or by a State with an approved permit program.

Alternative emission standard means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator's satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the Administrator's satisfaction, using Method 301 in Appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Commenced means, with respect to construction or reconstruction of a stationary source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

Compliance date means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Compliance plan means a plan that contains all of the following:

(1) A description of the compliance status of the affected source with respect to all applicable requirements established under this part;

(2) A description as follows: (i) For applicable requirements for which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that the source is required to comply with by a future date, a statement that the source will meet such requirements on a timely basis;

(iii) For applicable requirements for which the source is not in compliance, a narrative description of how the source will achieve compliance with such requirements on a timely basis;

(3) A compliance schedule, as defined in this section; and

(4) A schedule for the submission of certified progress reports no less frequently than every 6 months for affected sources required to have a schedule of compliance to remedy a violation.

Compliance schedule means: (1) In the case of an affected source that is in compliance with all applicable requirements established under this part, a statement that the source will continue to comply with such requirements; or

(2) In the case of an affected source that is required to comply with applicable requirements by a future date, a statement that the source will meet such requirements on a timely basis and, if required

by an applicable requirement, a detailed schedule of the dates by which each step toward compliance will be reached; or

(3) In the case of an affected source not in compliance with all applicable requirements established under this part, a schedule of remedial measures, including an enforceable sequence of actions or operations with milestones and a schedule for the submission of certified progress reports, where applicable, leading to compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established pursuant to section 112 of the Act for which the affected source is not in compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

Construction means the on-site fabrication, erection, or installation of an affected source.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of emissions.

Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

Continuous opacity monitoring system (COMS) means a continuous monitoring system that measures the opacity of emissions.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Effective date means: (1) With regard to an emission standard established under this part, the date of promulgation in the Federal Register of such standard; or

(2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part. The effective date of a permit program established under title V of the Act (42 U.S.C. 7661) is determined according to the regulations in this chapter establishing such programs.

Emission standard means a national standard, limitation, prohibition, or other regulation promulgated in a subpart of this part pursuant to sections 112(d), 112(h), or 112(f) of the Act.

Emissions averaging is a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emissions from points that are not controlled to the level required by the relevant standard.

EPA means the United States Environmental Protection Agency.

Equivalent emission limitation means the maximum achievable control technology emission limitation (MACT emission limitation) for hazardous air pollutants that the Administrator (or a State with an approved permit program) determines on a case-by-case basis, pursuant to section 112(g) or section 112(j) of the Act, to be equivalent to the emission

standard that would apply to an affected source if such standard had been promulgated by the Administrator under this part pursuant to section 112(d) or section 112(h) of the Act.

Excess emissions and continuous monitoring system performance report is a report that must be submitted periodically by an affected source in order to provide data on its compliance with relevant emission limits, operating parameters, and the performance of its continuous parameter monitoring systems.

Existing source means any affected source that is not a new source.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator and citizens under the Act or that are enforceable under other statutes administered by the Administrator. Examples of federally enforceable limitations and conditions include, but are not limited to:

(1) Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to section 112 of the Act as amended in 1990;

(2) New source performance standards established pursuant to section 111 of the Act, and emission standards established pursuant to section 112 of the Act before it was amended in 1990;

(3) All terms and conditions in a title V permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable;

(4) Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP);

(5) Limitations and conditions that are part of a Federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR part 51;

(6) Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the EPA into a SIP as meeting the EPA's minimum criteria for Federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability;

(7) Limitations and conditions in a State rule or program that has been approved by the EPA under subpart E of this part for the purposes of implementing and enforcing section 112; and

(8) Individual consent agreements that the EPA has legal authority to create.

Fixed capital cost means the capital needed to provide all the depreciable components of an existing source.

Fugitive emissions means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under section 112 of the Act, all fugitive emissions are to be considered in determining whether a stationary source is a major source.

Hazardous air pollutant means any air pollutant listed in or pursuant to section 112(b) of the Act.

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

Lesser quantity means a quantity of a hazardous air pollutant that is or may be emitted by a stationary source that the Administrator establishes in order to define a major source under an applicable subpart of this part.

Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that

emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part.

One-hour period, unless otherwise defined in an applicable subpart, means any 60-minute period commencing on the hour.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Performance audit means a procedure to analyze blind samples, the content of which is known by the Administrator, simultaneously with the analysis of performance test samples in order to provide a measure of test data quality.

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Permit modification means a change to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661).

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permit revision means any permit modification or administrative permit amendment to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661).

Permitting authority means: (1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions

is federally enforceable.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary source to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

Regulation promulgation schedule means the schedule for the promulgation of emission standards under this part, established by the Administrator pursuant to section 112(e) of the Act and published in the Federal Register.

Relevant standard means:

(1) An emission standard;

(2) An alternative emission standard;

(3) An alternative emission limitation; or

(4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation.

A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator (or a State) establishes for new or existing sources to which such standard or limitation applies. Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part and all applicable appendices of this part or of other parts of this chapter that are referenced in that standard.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: ``responsible official'' shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Run means one of a series of emission or other measurements needed

to determine emissions for a representative operating period or cycle as specified in this part.

Shutdown means the cessation of operation of an affected source for any purpose.

Six-minute period means, with respect to opacity determinations, any one of the 10 equal parts of a 1-hour period.

Standard conditions means a temperature of 293 K (68 deg. F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

Startup means the setting in operation of an affected source for any purpose.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

Test method means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of Appendix A of this part.

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

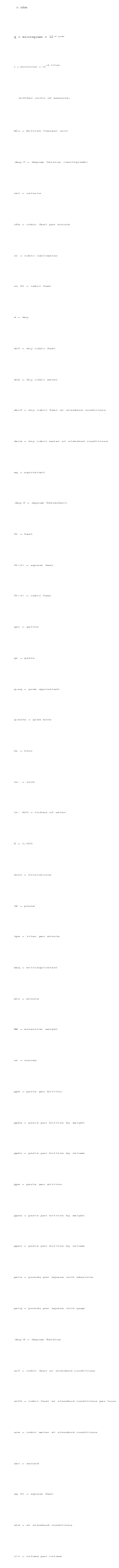
Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

Sec. 63.3 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) System International (SI) units of measure:

A = ampere
g = gram
Hz = hertz
J = joule
deg.K = degree Kelvin
kg = kilogram
l = liter
m = meter
m\3\ = cubic meter
mg = milligram = 10^{-3} gram
ml = milliliter = 10^{-3} liter
mm = millimeter = 10^{-3} meter
Mg = megagram = 10\6\ gram = metric ton
MJ = megajoule
mol = mole
N = newton
ng = nanogram = 10^{-9} gram
nm = nanometer = 10^{-9} meter
Pa = pascal
s = second
V = volt
W = watt



a title V permit obtained by an owner or operator subject to the

provisions of this part, the provisions of this part are federally

enforceable.

Sec. 63.5 Construction and reconstruction.

(a) Applicability. (1) This section implements the preconstruction

review requirements of section 112(i)(3) for sources subject to a

relevant emission standard that has been promulgated in this part. In

addition, this section includes other requirements for constructed and

reconstructed stationary sources that are or become subject to a

relevant promulgated emission standard.

(2) After the effective date of a relevant standard promulgated

under this part, the requirements in this section apply to owners or

operators who construct a new source or reconstruct a source after the

proposal date of that standard. New or reconstructed sources that start

up before the standard's effective date are not subject to the

preconstruction review requirements specified in paragraphs (b)(3),

(d), and (e) of this section.

(b) Requirements for existing, newly constructed, and reconstructed

sources. (1) Upon construction an affected source is subject to

relevant standards for new sources, including compliance dates. Upon

reconstruction, an affected source is subject to relevant standards for

new sources, including compliance dates, irrespective of any change in

emissions of hazardous air pollutants from that source.

(2) [Reserved]

(3) After the effective date of any relevant standard promulgated

by the Administrator under this part, whether or not an approved permit

program is effective in the State in which an affected source is (or

would be) located, no person may construct a new major affected source

or reconstruct a major affected source subject to such standard, or

reconstruct a major source such that the source becomes a major

affected source subject to the standard, without obtaining written

approval in advance from the Administrator in accordance with the

procedures specified in paragraphs (d) and (e) of this section.

(4) After the effective date of any relevant standard promulgated

by the Administrator under this part, whether or not an approved permit

program is effective in the State in which an affected source is (or

would be) located, no person may construct a new affected source or

reconstruct an affected source subject to such standard, or reconstruct

a source such that the source becomes an affected source subject to the

standard, without notifying the Administrator of the intended

construction or reconstruction. The notification shall be submitted in

accordance with the procedures in Sec. 63.9(b) and shall include all

the information required for an application for approval of

construction or reconstruction as specified in paragraph (d) of this

section. For major sources, the application for approval of

construction or reconstruction may be used to fulfill the notification

requirements of this paragraph.

(5) After the effective date of any relevant standard promulgated

by the Administrator under this part, whether or not an approved permit

program is effective in the State in which an affected source is

located, no person may operate such source without complying with the

provisions of this subpart and the relevant standard unless that person has received an exemption of compliance or an exemption from compliance under Sec. 63.6(i) or Sec. 63.7(j) of this subpart.

(d) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, equipment added to a process changed to an affected source that is within the scope of the definition of affected source under the relevant standard shall be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source. If a new affected source is added to the facility, the new affected source shall be subject to all the provisions of the relevant standard that are established for new sources including compliance dates.

(e) [Reserved]

(f) Application for approval of construction or reconstruction. The provisions of this paragraph implement section 112(i)(5) of the Act.

(1) General application requirements. (i) An owner or operator who is subject to the requirements of paragraph (b)(3) of this section shall submit to the Administrator an application for approval of the construction of a new major affected source, the reconstruction of a major affected source, or the reconstruction of a major source such that the source becomes a major affected source subject to the standard. The application shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part). The application shall be submitted as soon as practicable before startup but not later than 45 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of Sec. 63.9(b)(5) of this subpart. The owner or operator may submit the application for approval well in advance of the date construction or reconstruction is planned to commence in order to assure a timely review by the Administrator and that the planned commencement date will not be delayed.

(ii) A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include all of the following:

(A) The applicant's name and address;

(B) A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in Sec. 63.2;

(C) The address (i.e., physical location) or proposed address of the source;

(D) An identification of the relevant standard that is the basis of the application;

(B) The expected commencement date of the construction or

reconstruction.

(C) The expected completion date of the construction or

reconstruction.

(D) The anticipated date of initial startup of the source.

(E) The type and quantity of hazardous air pollutants emitted by

the source, reported in units and averaging times and in accordance

with the test methods specified in the relevant standard, or if actual

emissions data are not yet available, an estimate of the type and

quantity of hazardous air pollutants expected to be emitted by the

source reported in units and averaging times specified in the relevant

standard. The owner or operator may submit percent reduction

information if a relevant standard is established in terms of percent

reduction. However, operating parameters, such as flow rate, shall be

included in the submission to the extent that they demonstrate

performance and compliance; and

(F) [Reserved]

(G) Other information as specified in paragraphs (d)(3) and (d)(4)

of this section.

(iii) An owner or operator who submits estimates or projections

information in place of the actual emissions data and analysis required

in paragraphs (d)(1)(ii)(D) and (d)(3) of this section shall submit the

actual, measured emissions data and other correct information as soon

as available but no later than with the notification of compliance

status required in Sec. 63.9(h) [see Doc. 93-31751(H)].

(2) Applications for approval of construction. Each application for

approval of construction shall include, in addition to the information

required in paragraph (d)(1)(ii) of this section, technical information

describing the proposed nature, size, design, operating design

capacity, and method of operation of the source, including an

identification of each point of emission for each hazardous air

pollutant that is emitted (or could be emitted) and a description of

the planned air pollution control system (equipment or method) for each

emission point. The description of the equipment to be used for the

control of emissions shall include each control device for each

hazardous air pollutant and the estimated control efficiency (percent)

for each control device. The description of the method to be used for

the control of emissions shall include an estimated control efficiency

(percent) for that method. Each technical information shall include

calculations of emission estimates in sufficient detail to permit

assessment of the validity of the calculations. An owner or operator

who submits approximations of control efficiencies under this

paragraph shall submit the actual control efficiencies as specified

in paragraph (d)(1)(iii) of this section.

(3) Application for approval of reconstruction. Each application

for approval of reconstruction shall include, in addition to the

information required in paragraph (d)(1)(ii) of this section:

(i) A brief description of the affected source and the components

that are to be replaced;

(ii) A description of present and proposed emission control system

(i.e., equipment or methods). The description of the equipment to be

used for the control of emissions shall include each control device for

each hazardous air pollutant and the estimated control efficiency

(percent) for each control device. The description of the method to be

used for the control of emissions shall include an estimated control

efficiency (percent) for that method. Each technical information shall

include calculations of emission estimates in sufficient detail to

permit assessment of the validity of the calculations.

(iii) An estimate of the fixed capital cost of the replacements and

of constructing a comparable entirely new source.

(iv) The estimated life of the affected source after the

replacements; and

(v) A discussion of any economic or technical limitations the

source may have in complying with relevant standards or other

requirements after the proposed replacements. The discussion shall be

sufficiently detailed to demonstrate to the Administrator's

satisfaction that the technical or economic limitations affect the

source's ability to comply with the relevant standard and how they so

do.

(vi) If in the application for approval of reconstruction the owner

or operator designates the affected source as a reconstructed source

and believes that there are no economic or technical limitations to

prevent the source from complying with all relevant standards or other

requirements, the owner or operator need not submit the information

required in subparagraphs (d)(3) (iii) through (v) of this section.

Where:

(A) Additional information. The Administrator may request

additional relevant information after the submittal of an application

for approval of construction or reconstruction.

(B) Approval of construction or reconstruction. (1)(i) If the

Administrator determines that, if properly constructed, or

reconstructed, and operated, a new or existing source for which an

application under paragraph (d) of this section was submitted will not

cause violation or violation of the relevant standard(s) and any other

federally enforceable requirements, the Administrator will approve the

construction or reconstruction.

(ii) In addition, in the case of reconstruction, the

Administrator's determination under this paragraph will be based on:

(A) The fixed capital cost of the replacements in comparison to the

fixed capital cost that would be required to construct a comparable

entirely new source;

(B) The estimated life of the source after the replacements

compared to the life of a comparable entirely new source;

(C) The extent to which the components being replaced cause or

contribute to the emissions from the source; and

(D) Any economic or technical limitations on compliance with

relevant standards that are inherent in the proposed replacements.

(2)(i) The Administrator will notify the owner or operator in

writing of approval or intention to deny approval of construction or

reconstruction within 60 calendar days after receipt of sufficient

information to evaluate an application submitted under paragraph (d) of

this section. The 60-day approval or denial period will begin after the

owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(B) Before denying any application for approval of construction or reconstruction, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with--

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator to enable further action on the application.

(C) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 30 calendar days of presentation of additional information or arguments (if the application is complete), or within 30 calendar days after the final date specified for presentation if no presentation is made.

(D) Neither the submission of an application for approval nor the Administrator's approval of construction or reconstruction shall--

(i) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(3) Approval of construction or reconstruction based on prior State preconstruction review. (i) The Administrator may approve an application for construction or reconstruction specified in paragraphs (e)(1) and (e) of this section if the owner or operator of a new or reconstructed source who is subject to such requirement demonstrates to the Administrator's satisfaction that the following conditions have been or will be met:

(A) The owner or operator of the new or reconstructed source has undergone a preconstruction review and approval process in the State in which the source is (or would be) located before the promulgation date of the relevant standard and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant emission standard as proposed, if the source is properly built and operated.

(B) In making its finding, the State has considered factors

substantially equivalent to those specified in paragraph (a)(1) of this section; and either

(i)(A) The preemption standard is no more stringent than the proposed standard in any relevant aspect that could affect the Administrator's decision to approve or disapprove an application for approval of construction or reconstruction under this section; or

(B) The preemption standard is more stringent than the proposed standard but the owner or operator will comply with the standard as proposed during the 3-year period immediately following the effective date of the standard as allowed for in Sec. 60.33(b)(1) of this subpart.

(2) The owner or operator shall submit to the Administrator the request for approval of construction or reconstruction under this paragraph no later than the application deadline specified in paragraph (e)(1) of this section [see also Sec. 60.33(b)(2) of this subpart]. The owner or operator shall include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in paragraph (e) of this section. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction under this paragraph.

Sec. 60.6 Compliance with standards and maintenance requirements.

(a) Applicability. (1) The requirements in this section apply to owners or operators of affected sources for which any relevant standard has been established pursuant to section 111 of the Act unless--

(i) The Administrator (or a State with an approved permit program) has granted an exemption of compliance consistent with paragraph (h) of this section; or

(ii) The President has granted an exemption from compliance with any relevant standard in accordance with section 111(i)(3) of the Act.

(2) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard or other requirement.

(b) Compliance dates for new and reconstructed sources. (1) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup before the effective date of a relevant standard established under this part pursuant to sections 111(b), 111(d), or 112(d) of the Act shall comply with such standard not later than the standard's effective date.

(2) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard established under this part pursuant to sections 111(d), 111(f), or 112(d) of the Act shall comply with such standard upon startup of the source.

(3) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposed date of

a relevant standard established under this part pursuant to section

111(b), 111(d), or 112(b) of the Act but before the effective date

(that is, promulgation) of such standard shall comply with the relevant

emission standard no later than the date 3 years after the effective

date of:

(A) The promulgated standard (that is, the relevant standard) is

more stringent than the proposed standard; and

(B) The owner or operator complies with the standard as proposed

during the 3-year period immediately after the effective date.

(ii) The owner or operator of an affected source for which

construction or reconstruction is commenced after the proposal date of

a relevant standard established pursuant to section 111(d) or 112(b) of the Act

but before the proposal date of a relevant standard established

pursuant to section 111(f) shall comply with the emission standard

under section 111(f) not later than the date 10 years after the date

construction or reconstruction is commenced, except that, if the

section 111(f) standard is promulgated more than 10 years after

construction or reconstruction is commenced, the owner or operator

shall comply with the standard as provided in paragraphs (b)(1) and

(b)(3) of this section.

(B) The owner or operator of a new source that is subject to the

compliance requirements of paragraph (b)(3) or paragraph (b)(4) of this

section shall notify the Administrator in accordance with Sec. 63.9(d)

of this subpart.

(C) [Reserved]

(D) After the effective date of an emission standard promulgated

under this part, the owner or operator of an unaffected new area source

(i.e., an area source for which construction or reconstruction was

commenced after the proposal date of the standard that becomes its

existence of (or its potential to emit) hazardous air pollutants such

that the source becomes a major source that is subject to the emission

standard, shall comply with the relevant existing standard immediately

upon becoming a major source. This compliance date shall apply to any

area source that becomes affected major sources regardless of whether

the new area source previously was affected by that standard. The new

affected major source shall comply with all requirements of that

standard that affect new sources.

(iv) Compliance dates for existing sources. (A) After the effective

date of a relevant standard established under this part pursuant to

section 111(d) or 112(d) of the Act, the owner or operator of an

existing source shall comply with such standard by the compliance date

established by the Administrator in the applicable subparts of this

part. Except as otherwise provided for in section 112 of the Act, no

case will the compliance date established for an existing source in an

applicable subpart of this part exceed 3 years after the effective date

of such standard.

(B) After the effective date of a relevant standard established

under this part pursuant to section 111(f) of the Act, the owner or

operator of an existing source shall comply with such standard not

later than 90 days after the standard's effective date unless the

Administrator has granted an extension to the source under paragraph

(c)(1)(ii) of this section.

(2)–(3) [Reserved]

(4) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected existing area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard shall comply by the date specified in the standard for existing area sources that become major sources. If no such compliance date is specified in the standard, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in that standard for other existing sources. This compliance period shall apply to existing area sources that become affected major sources regardless of whether the existing area source previously was affected by that standard. Notwithstanding the previous two sentences, however, if the existing area source becomes a major source by the addition of a new affected source or by reconstructing, the portion of the existing facility that is a new affected source or a reconstructed source shall comply with all requirements of that standard that affect new sources, including the compliance date for new sources.

(5) [Reserved]

(6) Operation and maintenance requirements. (i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (a)(6) of this section.

(iii) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emission limitations or other requirements in relevant standards.

(7) Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (a)(6) of this section), review of operation and maintenance records, and inspection of the source.

(8) Startup, Shutdown, and Malfunction Plan. (i) The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective actions for malfunctioning process and air pollution control equipment used to comply with the relevant standard. As required under

Sec. 63.6(e)(3)(i), the plan shall identify all routine or otherwise predictable SSM activities. This plan shall be developed by the owner or operator by the source's compliance date for that relevant standard. The plan shall be incorporated by reference into the source's title V

period. The purpose of the startup, shutdown, and malfunction plan is

to...

(A) Ensure that, at all times, owners or operators operate and

maintain affected sources, including associated air pollution control

equipment, in a manner consistent with good air pollution control

practices for minimizing emissions at least to the levels required by

all relevant standards;

(B) Ensure that owners or operators are prepared to correct

malfunctions as soon as practicable after their occurrence in order to

minimize excess emissions of hazardous air pollutants; and

(C) Reduce the reporting burden associated with periods of startup,

shutdown, and malfunction (including corrective action taken to restore

malfunctioning process and air pollution control equipment to its

normal or usual manner of operation).

(ii) During periods of startup, shutdown, and malfunction, the

owner or operator of an affected source shall operate and maintain such

source (including associated air pollution control equipment) in

accordance with the procedures specified in the startup, shutdown, and

malfunction plan developed under paragraph (d)(5)(i) of this section.

(iii) When actions taken by the owner or operator during a startup,

shutdown, or malfunction (including actions taken to correct a

malfunction) are consistent with the procedures specified in the

affected source's startup, shutdown, and malfunction plan, the owner or

operator shall keep records for that event that demonstrate that the

procedures specified in the plan were followed. These records may take

the form of a ``checklist,'' or other effective form of recordkeeping,

that confirms conformance with the startup, shutdown, and malfunction

plan for that event. In addition, the owner or operator shall keep

records of these events as specified in Sec. 63.10(b) (and elsewhere in

this part), including records of the occurrence and duration of each

startup, shutdown, or malfunction of operation and each malfunction of

the air pollution control equipment. Furthermore, the owner or operator

shall confirm that actions taken during the relevant reporting period

during periods of startup, shutdown, and malfunction were consistent

with the affected source's startup, shutdown and malfunction plan in

the semiannual (or more frequent) startup, shutdown, and malfunction

report required in Sec. 63.10(d)(5).

(iv) If an action taken by the owner or operator during a startup,

shutdown, or malfunction (including an action taken to correct a

malfunction) is not consistent with the procedures specified in the

affected source's startup, shutdown, and malfunction plan, the owner or

operator shall record the actions taken for that event and shall report

such actions within 2 working days after commencing actions

inconsistent with the plan, followed by a letter within 7 working days

after the end of the event, in accordance with Sec. 63.10(d)(5) (unless

the owner or operator makes alternative reporting arrangements, in

advance, with the Administrator (see Sec. 63.10(d)(5)(ii)).

(v) The owner or operator shall keep the written startup, shutdown,

and malfunction plan on record after it is developed to be made

available for inspection, upon request, by the Administrator for the

life of the affected source or until the affected source is no longer

subject to the provisions of this part. In addition, if the startup,

shutdown, and malfunction plan is revised, the owner or operator shall

keep previous (i.e., superseded) versions of the startup, shutdown, and

malfunction 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.

(iii) To satisfy the requirements of this section to develop a

startup, shutdown, and malfunction plan, the owner or operator may use

the affected source's standard operating procedures (SOP) manual, or an

Occupational Safety and Health Administration (OSHA) or other plan,

provided the alternative plan meet the requirements of this

section and are made available for inspection when requested by the

Administrator.

(iv)(A) Based on the results of a determination made under paragraph

(a)(4) of this section, the Administrator may require that an owner or

operator of an affected source make changes to the startup, shutdown,

and malfunction plan for that source. The Administrator may require

reasonable revisions to a startup, shutdown, and malfunction plan, if

the Administrator finds that the plan:

(1) Does not address a startup, shutdown, or malfunction event that

has occurred;

(2) Fails to provide for the operation of the source (including

associated air pollution control equipment) during a startup, shutdown,

or malfunction event in a manner consistent with good air pollution

control practices for minimizing emissions at least to the levels

required by all relevant standards; or

(3) Does not provide adequate procedures for correcting

malfunctioning process and/or air pollution control equipment as

quickly as practicable.

(B)(1) If the startup, shutdown, and malfunction plan fails to

address or inadequately addresses an event that meets the

characteristics of a malfunction but was not included in the startup,

shutdown, and malfunction plan at the time the owner or operator

developed the plan, the owner or operator shall revise the startup,

shutdown, and malfunction plan within 45 days after the event to

include detailed procedures for operating and maintaining the source

during similar malfunction events and a program of corrective action

for similar malfunctions of process or air pollution control equipment.

(2) Compliance with inadequately developed standards.(i)

Applicability. The inadequately developed standards set forth in this part

shall apply at all times except during periods of startup, shutdown,

and malfunction, and as otherwise specified in an applicable subpart.

(ii) Methods for determining compliance. (A) The Administrator will

determine compliance with inadequately developed standards in this part

based on the results of performance tests conducted according to the

procedures in Sec. 63.7, unless otherwise specified in an applicable

subpart of this part.

(B) The Administrator will determine compliance with inadequately

developed standards in this part by evaluation of an owner or operator's

conformance with operation and maintenance requirements, including the

evaluation of monitoring data, as specified in Sec. 63.6(e) and

applicable subparts of this part.

(iii) If an affected source conducts performance testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if--

(A) The performance test was conducted within a reasonable amount of time before an initial performance test is required to be conducted under the relevant standard;

(B) The performance test was conducted under representative operating conditions for the source;

(C) The performance test was conducted and the resulting data were refined using EPA-approved test methods and procedures, as specified in Sec. 63.7(e) of this subpart; and

(D) The performance test was appropriately quality-assured, as specified in Sec. 63.7(c) of this subpart.

(iv) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by review of records, inspection of the source, and other procedures specified in applicable subparts of this part.

(v) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(3) Finding of compliance. The Administrator will make a finding concerning an affected source's compliance with a nonopacity emission standard, as specified in paragraphs (f)(1) and (f)(2) of this section, upon obtaining all the compliance information required by the relevant standard including the written reports of performance test results, monitoring results, and other information, if applicable; and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(g) Use of an alternative nonopacity emission standard. (1) If, in the Administrator's judgment, an owner or operator of an affected source has established that an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant from an affected source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act, the Administrator will publish in the Federal Register a notice permitting the use of the alternative emission standard for purposes of compliance with the promulgated standard. Any Federal Register notice under this paragraph shall be published only after the public is notified and given the opportunity to comment. Such notice will restrict the permission to the stationary source(s) or category(ies) of sources from which the alternative emission standard will achieve equivalent emission reductions. The Administrator will condition permission in such notice on requirements to assure the proper operation and maintenance of equipment and practices required for compliance with the alternative emission standard and other

requirements, including appropriate quality assurance and quality

control requirements, that are deemed necessary.

(3) In order to operate regulated generation under this paragraph

shall, unless otherwise specified in an applicable subpart, submit a

proposed test plan or the results of testing and monitoring in

accordance with Sec. 63.7 and Sec. 63.8, a description of the

procedures followed in testing or monitoring, and a description of

pertinent conditions during testing or monitoring. Any testing or

monitoring conducted to request permission to use an alternative

nonopacity emission standard shall be appropriately quality assured and

quality controlled, as specified in Sec. 63.7 and Sec. 63.8.

(4) The Administrator may establish general procedures in an

applicable subpart that accomplish the requirements of paragraphs

(a)(3) and (a)(4) of this section.

(b) Compliance with opacity and visible emission standards.(1)

Applicability. The opacity and visible emission standards set forth in

this part shall apply at all times except during periods of startup,

shutdown, and malfunction, and as otherwise specified in an applicable

subpart.

(2) Methods for determining compliance. (i) The Administrator will

determine compliance with opacity and visible emission standards in

this part based on the results of the test method specified in an

applicable subpart. Whenever a continuous opacity monitoring system

(COMS) is required to be installed to determine compliance with

numerical opacity emission standards in this part, compliance with

opacity emission standards in this part shall be determined by using

the results from the COMS. Whenever an opacity emission test method is

not specified, compliance with opacity emission standards in this part

shall be determined by conducting observations in accordance with Test

Method 9 in appendix A of part 60 of this chapter or the method

specified in paragraph (b)(2)(ii)(A) of this section. Whenever a visible

emission test method is not specified, compliance with visible emission

standards in this part shall be determined by conducting observations

in accordance with Test Method 22 in appendix A of part 60 of this

chapter.

(ii) [Reserved]

(iii)(A) If an affected source undergoes opacity or visible emission

testing at startup to obtain an operating permit in the State in which

the source is located, the results of such testing may be used to

demonstrate compliance with a relevant standard if--

(1) The opacity or visible emission test was conducted within a

reasonable amount of time before a performance test is required to be

conducted under the relevant standard;

(2) The opacity or visible emission test was conducted under

representative operating conditions for the source;

(3) The opacity or visible emission test was conducted and the

monitoring data were reduced using EPA-approved test methods and

procedures, as specified in Sec. 63.7(e) of this subpart; and

(4) The opacity or visible emission test was appropriately quality-

assured, as specified in Sec. 63.7(c) of this section.

(B) [Reserved]

(d) Notification of opacity or visible emission observations. The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting opacity or visible emission observations in accordance with Sec. 63.6(f), if such observations are required for the source by a relevant standard.

(e) Conduct of opacity or visible emission observations. When a relevant standard under this part includes an opacity or visible emission standard, the owner or operator of an affected source shall comply with the following:

(1) For the purpose of demonstrating initial compliance, opacity or visible emission observations shall be conducted concurrently with the initial performance test required in Sec. 63.7 unless one of the following conditions applies:

(i) If no performance test under Sec. 63.7 is required, opacity or visible emission observations shall be conducted within 30 days after achieving the maximum production rate at which a new or reconstructed source will be operated, but not later than 120 days after initial startup of the source, or within 120 days after the effective date of the relevant standard in the case of new sources that start up before the standard's effective date. If no performance test under Sec. 63.7 is required, opacity or visible emission observations shall be conducted within 120 days after the compliance date for an existing or modified source; or

(ii) If visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under Sec. 63.7, or within the time period specified in paragraph (e)(1)(i)(A) of this section, the source's owner or operator shall reschedule the opacity or visible emission observations as soon after the initial performance test, or time period, as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. The rescheduled opacity or visible emission observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under Sec. 63.7. The visible emission observer shall determine whether visibility or other conditions prevent the opacity or visible emission observations from being made concurrently with the initial performance test in accordance with procedures contained in Test Method 9 or Test Method 22 in Appendix A of part 60 of this chapter.

(2) For the purpose of demonstrating initial compliance, the minimum total time of opacity observations shall be 3 hours (18 1-minute averages) for the performance test or other required set of observations (e.g., for flares, see the applicable general provisions standard) unless one of the following conditions applies:

(i) The owner or operator of an affected source to which an opacity or visible emission standard in this part applies shall conduct opacity or visible emission observations in accordance with the provisions of this section, record the results of the evaluation, and report to the Administrator the opacity or visible emission results in accordance with the provisions of Sec. 63.10(d).

(ii) [Reserved]

(d) Opacity readings of portions of plumes that contain condensed uncombined water vapor shall not be used for purposes of determining compliance with opacity emission standards.

(e) Availability of records. The owner or operator of an affected source shall make available, upon request by the Administrator, such records that the Administrator deems necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification.

(f) Use of a continuous opacity monitoring system.

(1) The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under Sec. 60.7 and shall furnish the Administrator a written report of the monitoring results in accordance with the provisions of Sec. 60.13(e)(2).

(2) Whenever an opacity emission test method has not been specified in an applicable subpart, or the owner or operator of an affected source is required to conduct Test Method 9 observations (see Appendix A of part 60 of this chapter), the owner or operator may submit, for compliance purposes, COMS data results produced during any performance test required under Sec. 60.7 in lieu of Method 9 data. If the owner or operator elects to submit COMS data for compliance with the opacity emission standard, he or she shall notify the Administrator of that decision, in writing, simultaneously with the notification under Sec. 60.7(a) of the date the performance test is scheduled to begin. Once the owner or operator of an affected source has notified the Administrator in that effect, the COMS data results will be used to determine opacity compliance during subsequent performance tests required under Sec. 60.7, unless the owner or operator notifies the Administrator in writing to the contrary not later than with the notification under Sec. 60.7(a) of the date the subsequent performance test is scheduled to begin.

(3)(i) For the purposes of determining compliance with the opacity emission standard during a performance test required under Sec. 60.7 using COMS data, the COMS data shall be reduced to 6-minute averages over the duration of the mass emission performance test.

(ii) The owner or operator of an affected source using a COMS for compliance purposes is responsible for demonstrating that he/she has complied with the performance evaluation requirements of Sec. 60.13(c), that the COMS has been properly maintained, operated, and data quality assured, as specified in Sec. 60.13(d) and Sec. 60.13(e), and that the resulting data have not been altered in any way.

(4) Except as provided in paragraph (e)(3)(iii) of this section, the results of continuous monitoring by a COMS that indicate that the opacity of the time-mixed observations were made was not in excess of the emission standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the affected source proves that, at the time of the alleged violation, the instrument used was properly maintained, as specified in Sec. 60.13(e), and met Performance Specification 1 in Appendix B of part 60 of this chapter, and that the resulting data have not been altered in any way.

(d) Finding of compliance. The Administrator will make a finding

concerning an affected source's compliance with an opacity or visible

emission standard upon obtaining all the compliance information

required by the relevant standard (including the written reports of the

results of the performance tests required by Sec. 61.7), the results of

Test Method 9 or another required opacity or visible emission test

method, the observer certification required by paragraph (b)(4) of this

section, and the continuous opacity monitoring system results,

whichever is applicable, and any information available to the

Administrator needed to determine whether proper operation and

maintenance practices are being used.

(e) Adjustment to an opacity emission standard.

(1) If the Administrator finds under paragraph (b)(4) of this

section that an affected source is in compliance with all relevant

standards for which initial performance tests were conducted under

Sec. 61.7, but during the time such performance tests were conducted

fails to meet any relevant opacity emission standard, the owner or

operator of such source may petition the Administrator to make

appropriate adjustment to the opacity emission standard for the

affected source. Until the Administrator notifies the owner or operator

of the appropriate adjustment, the relevant opacity emission standard

remains applicable.

(2) The Administrator may grant such a petition upon a

demonstration by the owner or operator that--

(i) The affected source and its associated air pollution control

equipment were operated and maintained in a manner to minimize the

opacity of emissions during the performance tests;

(ii) The performance tests were performed under the conditions

established by the Administrator; and

(iii) The affected source and its associated air pollution control

equipment were incapable of being adjusted or operated to meet the

relevant opacity emission standard.

(3) The Administrator will establish an adjusted opacity emission

standard for the affected source meeting the above requirements at a

level at which the source will be able, as indicated by the performance

and opacity tests, to meet the opacity emission standard at all times

during which the source is meeting the mass or concentration emission

standard. The Administrator will promulgate the new opacity emission

standard in the Federal Register.

(4) After the Administrator promulgates an adjusted opacity

emission standard for an affected source, the owner or operator of such

source shall be subject to the new opacity emission standard, and the

new opacity emission standard shall apply to such source during any

subsequent performance tests.

(5) Extension of compliance with emission standards. (i) Until an

extension of compliance has been granted by the Administrator (or a

State with an approved permit program under this paragraph), the owner

or operator of an affected source subject to the requirements of this

section shall comply with all applicable requirements of this part.

(ii) Extension of compliance for early reductions and other

modifications. Early reductions, pursuant to section 112(i)(5) of the

act, if the owner or operator of an existing source demonstrates that

the source has achieved a reduction in emissions of hazardous air

pollutants in accordance with the provisions of subpart D of this part,

the Administrator (or the State with an approved permit program) will

grant the owner or operator an extension of compliance with specific

requirements of this part, as specified in subpart D.

(iii) Other reductions. Pursuant to section 112(i)(3) of the Act, if

the owner or operator of an existing source has installed best

available control technology (BACT) (as defined in section 169(3) of

the Act) or technology required to meet a lowest achievable emission

rate (LAER) (as defined in section 171 of the Act) prior to the

promulgation of an emission standard in this part applicable to such

source and the same pollutant (or stream of pollutants) controlled

pursuant to the BACT or LAER installation, the Administrator will grant

the owner or operator an extension of compliance with such emission

standard that will apply until the date 5 years after the date on which

such installation was achieved, as determined by the Administrator.

(4) Request for extension of compliance. Paragraphs (c)(4) through

(c)(7) of this section contain requests for an extension of compliance

with a relevant standard under this part (except requests for an

extension of compliance under paragraph (c)(3)(i) of this section will

be handled through procedures specified in subpart D of this part).

(c)(4)(i) The owner or operator of an existing source who is unable

to comply with a relevant standard established under this part pursuant

to section 112(d) of the Act may request that the Administrator (or a

State, when the State has an approved part 70 permit program and the

source is required to obtain a part 70 permit under that program, or a

State, when the State has been delegated the authority to implement and

enforce the emission standard for that source) grant an extension

allowing the source up to 1 additional year to comply with the

standard, if such additional period is necessary for the installation

of controls. An additional extension of up to 3 years may be added for

mining waste operations, if the 4-year extension of compliance is

insufficient to dry and cover mining waste in order to remove benzene

at any treatment unit pursuant. The owner or operator of an affected

source who has requested an extension of compliance under this

paragraph and who is otherwise required to obtain a title V permit

shall apply for such permit or apply to have the source's title V

permit revised to incorporate the conditions of the extension of

compliance. The conditions of an extension of compliance granted under

this paragraph will be incorporated into the affected source's title V

permit according to the provisions of part 70 or Federal title V

regulations in this chapter (40 C.F.R. Part), whichever are applicable.

(ii) Any request under this paragraph for an extension of compliance

with a relevant standard shall be submitted in writing to the

appropriate authority not later than 12 months before the affected

source's compliance date (as specified in paragraphs (b) and (c) of

this section) for sources that are not including emission points in an

emissions average, or not later than 18 months before the affected

source's compliance date (as specified in paragraphs (b) and (c) of

this section) for sources that are including emission points in an

emission standard. Revised standards established under this part may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard to read that it is (x) (6) months after the standard's effective date.

(iii) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted to the Administrator not later than 12 months after the effective date of the relevant standard.

(iv) The owner or operator of an existing source that has installed BACT or technology required to meet LAER (as specified in paragraph (b)(5)(i)(A) of this section) prior to the promulgation of a relevant emission standard in this part may request that the Administrator grant an extension allowing the source 5 years from the date on which such installation was achieved, as determined by the Administrator, to comply with the standard. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 180 days after the promulgation date of the standard. The Administrator may grant such an extension if he or she finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(v)(A) The request for a compliance extension under paragraph (b)(5) of this section shall include the following information:

(1) A description of the controls to be installed to comply with the standard.

(2) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(i) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(ii) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;

(iii) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(iv) The date by which final compliance is to be achieved.

(3) A description of interim emission control steps that will be taken during the extension period, including actions to assure proper operation and maintenance of emission control and process

equipment, and

(B) Whether the owner or operator is also requesting an extension

of other applicable requirements (e.g., performance testing

requirements).

(ii) The request for a compliance extension under paragraph (c)(3)

of this section shall include all information needed to demonstrate to

the Administrator's satisfaction that the installation of BACT or

technology to meet LAER controls the same pollutant (or stream of

pollutants) that would be controlled at that source by the relevant

emission standard.

(4) Advice on requesting an extension of compliance may be obtained

from the Administrator (or the State with an approved permit program).

(5) Approval of request for extension of compliance. Paragraphs

(c)(5) through (c)(14) of this section contain approval of an extension

of compliance requested under paragraphs (c)(3) through (c)(4) of this

section.

(6) Based on the information provided in any request made under

paragraphs (c)(3) through (c)(4) of this section, or other information,

the Administrator (or the State with an approved permit program) may

grant an extension of compliance with an emission standard, as

specified in paragraphs (c)(8) and (c)(9) of this section.

(7)(i) The extension will be in writing and will:

(A) Identify each affected source covered by the extension;

(B) Specify the termination date of the extension;

(C)(1) Specify the dates by which steps toward compliance are to be

taken, if appropriate;

(2) Specify other applicable requirements to which the compliance

extension applies (e.g., performance tests); and

(3) Under paragraph (c)(7), specify any additional conditions

that the Administrator (or the State) deems necessary to ensure

installation of the necessary controls and protection of the health of

persons during the extension period; or

(D) Under paragraph (c)(8), specify any additional conditions that

the Administrator deems necessary to assure the proper operation and

maintenance of the installed controls during the extension period.

(ii) The owner or operator of an existing source that has been

granted an extension of compliance under paragraph (c)(6) of this

section may be required to submit to the Administrator (or the State

with an approved permit program) progress reports indicating whether

the steps toward compliance outlined in the compliance schedule have

been reached. The contents of the progress reports and the dates by

which they shall be submitted will be specified in the written

extension of compliance granted under paragraph (c)(6) of this

section.

(iii)(A) The Administrator (or the State with an approved permit

program) will notify the owner or operator in writing of approval or

intention to deny approval of a request for an extension of compliance

within 30 calendar days after receipt of sufficient information to

evaluate a request submitted under paragraph (c)(3)(i) or (c)(3) of

this section. The 30-day approval or denial period will begin after the

owner or operator has been notified in writing that his/her application

to complete. The Administrator (or the State) will notify the owner or

operator in writing of the status of his/her application, that is,

whether the application contains sufficient information to make a

determination, within 30 calendar days after receipt of the original

application and within 30 calendar days after receipt of any

supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application

is not complete, the Administrator will specify the information needed

to complete the application and provide notice of opportunity for the

applicant to present, in writing, within 30 calendar days after he/she

is notified of the incomplete application, additional information or

arguments to the Administrator to enable further action on the

application.

(iii) Before denying any request for an extension of compliance,

the Administrator (or the State) will notify the owner or operator in writing of the Administrator's (or the

State's) intention to issue the denial, together with--

(A) Notice of the information and findings on which the intended

denial is based; and

(B) Notice of opportunity for the owner or operator to present in

writing, within 15 calendar days after he/she is notified of the

intended denial, additional information or arguments to the

Administrator (or the State) before further action on the request.

(iv) The Administrator's final determination to deny any request

for an extension will be in writing and will set forth the specific

grounds on which the denial is based. The final determination will be

made within 30 calendar days after presentation of additional

information or arguments (if the application is complete), or within 30

calendar days after the final date specified for the presentation if no

presentation is made.

(v)(A) The Administrator will notify the owner or operator in

writing of approval or intention to deny approval of a request for an

extension of compliance within 30 calendar days after receipt of

sufficient information to evaluate a request submitted under paragraph

(c)(4)(ii) of this section. The 30-day approval or denial period will

begin after the owner or operator has been notified in writing that

his/her application is complete. The Administrator (or the State) will

notify the owner or operator in writing of the status of his/her

application, that is, whether the application contains sufficient

information to make a determination, within 30 calendar days after

receipt of the original application and within 30 calendar days after

receipt of any supplementary information that is submitted.

(vi) When notifying the owner or operator that his/her application

is not complete, the Administrator will specify the information needed

to complete the application and provide notice of opportunity for the

applicant to present, in writing, within 30 calendar days after he/she

is notified of the incomplete application, additional information or

arguments to the Administrator to enable further action on the

application.

(vii) Before denying any request for an extension of compliance,

the Administrator will notify the owner or operator in writing of the

Administrator's intention to issue the permit, together with:

(A) Notice of the information and findings on which the intended

decision is based; and

(B) Notice of opportunity for the owner or operator to present to

writing, within 15 calendar days after he/she is notified of the

intended decision, additional information or arguments to the

Administrator before further action on the request.

(iv) A final determination to deny any request for an exemption

will be in writing and will set forth the specific grounds on which the

denial is based. The final determination will be made within 15

calendar days after presentation of additional information or argument

(if the application is complete), or within 15 calendar days after the

final date specified for the presentation if no presentation is made.

(v) The Administrator (or the State with an approved permit)

proposed any limitation or schedule of compliance at an earlier date

than specified at any specification under paragraph (h)(2)(iii)(A) or

(h)(2)(iv) of this section is not met.

(vi) [Reserved]

(vii) The granting of an exemption under this section shall not

preclude the Administrator's authority under section 114 of the Act.

(i) Exemption from compliance with emission standards. The

President may exempt any stationary source from compliance with any

relevant standard established pursuant to section 112 of the Act for a

period of not more than 2 years if the President determines that the

technology to implement such standard is not available and that it is

in the national security interests of the United States to do so. An

exemption under this paragraph may be extended for 1 or more additional

periods, each period not to exceed 2 years.

Sec. 61.7 Performance testing requirements.

(a) Applicability and performance test dates. (1) Unless otherwise

specified, this section applies to the owner or operator of an affected

source required to do performance testing, or another form of

compliance demonstration, under a relevant standard.

(2) If required to do performance testing by a relevant standard,

and unless a waiver of performance testing is obtained under this

section or the conditions of paragraph (a)(3)(ii)(B) of this section

apply, the owner or operator of the affected source shall perform such

tests as follows:

(i) Within 180 days after the effective date of a relevant standard

for a new source that has an initial startup date before the effective

date, or

(ii) Within 180 days after initial startup for a new source that

has an initial startup date after the effective date of a relevant

standard, or

(iii) Within 180 days after the compliance date specified in an

applicable subpart of this part for an existing source subject to an

emission standard established pursuant to section 112(d) of the Act, or

within 180 days after startup of an existing source if the source

begins operation after the effective date of the relevant emission

standard, or

(iv) Within 180 days after the compliance date for an existing

part or taking any other action under the Act.

(c) Quality assurance program. (1) The results of the quality assurance program required in this paragraph will be considered by the Administrator when he/she determines the validity of a performance test.

(2)(i) Submission of site-specific test plan. Before conducting a required performance test, the owner or operator of an affected source shall develop and, if requested by the Administrator, shall submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of test data precision; an example of internal QA is the sampling and analysis of replicate samples.

(iii) The external QA program shall include, at a minimum, application of plans for a test method performance audit (PA) during the performance test. The PA's consist of blind audit samples provided by the Administrator and analyzed during the performance test in order to provide a measure of test data bias. The external QA program may also include systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iv) The owner or operator of an affected source shall submit the site-specific test plan to the Administrator upon the Administrator's request at least 60 calendar days before the performance test is scheduled to take place; that is, simultaneously with the notification of intention to conduct a performance test required under paragraph (b) of this section, or on a mutually agreed upon date.

(v) The Administrator may request additional relevant information after the submittal of a site-specific test plan.

(3) Approval of site-specific test plan. (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the site-specific test plan (if review of the site-specific test plan is requested) within 30 calendar days after receipt of the original plan and within 30 calendar days after receipt of any supplemental information that is submitted under paragraph (c)(2)(i)(C)(2) of this section. Before disapproving any site-specific test plan, the Administrator will notify the applicant of the Administrator's intention to disapprove the plan together with--

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present, within 30 calendar days after he/she is notified of the intended disapproval, additional information to the Administrator before final action on the plan.

(iii) In the event that the Administrator fails to approve or disapprove the site-specific test plan within the time period specified

in paragraph (c)(3)(i) of this section, the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the test methods specified in the relevant standard, the owner or operator shall conduct the performance test within the time specified in this section using the specified method(s).

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator shall refrain from conducting the performance test until the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or until after the alternative method is approved (see paragraph (f) of this section). If the Administrator does not approve the site-specific test plan (if review is requested) or the use of the alternative method within 30 days before the test is scheduled to begin, the performance test dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 30 calendar days after the Administrator approves the site-specific test plan or after use of the alternative method is approved. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

(C)(1) Neither the submission of a site-specific test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall:

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(2)(i) Performance test method audit program. The owner or operator shall analyze performance audit (PA) samples during each performance test. The owner or operator shall request performance audit materials 45 days prior to the test date. Cylinder audit gases may be obtained by contacting the Cylinder Audit Coordinator, Quality Assurance Division (MD-77B), Atmospheric Research and Exposure Assessment Laboratory (AREAL), U.S. EPA, Research Triangle Park, North Carolina 27711. All other audit materials may be obtained by contacting the Source Test Audit Coordinator, Quality Assurance Division (MD-77B), AREAL, U.S. EPA, Research Triangle Park, North Carolina 27711.

(ii) The Administrator will have sole discretion to require any subsequent remedial actions of the owner or operator based on the PA results.

(iii) If the Administrator fails to provide required PA materials to an owner or operator of an affected source in time to analyze the PA samples during a performance test, the requirement to conduct a PA under this paragraph shall be waived for such source for that

performance test. Error under this paragraph of the requirement to conduct a PA for a particular performance test does not constitute a waiver of the requirement to conduct a PA for future required performance tests.

(d) Performance testing facilities. If required to do performance testing, the owner or operator of each new source must, at the request of the Administrator, the owner or operator of each existing source, shall provide performance testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to such source. This includes:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.

(2) Safe sampling platform(s).

(3) Safe access to sampling platform(s).

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) Conduct of performance tests. (1) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Operation during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under Sec. 60.11(g). 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.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 52, 60, and 61 of this chapter unless the Administrator--

(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(ii) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(iv) Waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Administrator's satisfaction that the affected source is in compliance with the relevant standard.

(3) Unless otherwise specified in a relevant standard or test

method, each performance test shall consist of three separate runs

using the applicable test method. Each run shall be conducted for the

time and under the conditions specified in the relevant standard. For

the purpose of determining compliance with a relevant standard, the

arithmetic mean of the results of the three runs shall apply. Upon

receiving approval from the Administrator, results of a test run may be

replaced with results of an additional test run in the event that--

(A) A sample is accidentally lost after the testing team leaves the

site; or

(B) Conditions occur in which one of the three runs must be

discontinued because of forced shutdown; or

(C) Extreme meteorological conditions occur; or

(D) Other circumstances occur that are beyond the owner or

operator's control.

(ii) Nothing in paragraphs (e)(1) through (e)(1)(i) of this section

shall be construed to abrogate the Administrator's authority to require

testing under section 114 of the Act.

(2) Use of an alternative test method.(i) General. Until

permission to use an alternative test method has been granted by the

Administrator under this paragraph, the owner or operator of an

affected source remains subject to the requirements of this section and

the relevant standard.

(ii) The owner or operator of an affected source required to do

performance testing by a relevant standard may use an alternative test

method from that specified in the standard provided that the owner or

operator--

(A) Notifies the Administrator of his or her intention to use an

alternative test method no later than with the submittal of the site-

specific test plan (if requested by the Administrator) or at least 60

days before the performance test is scheduled to begin if a site-

specific test plan is not submitted;

(B) Uses Method 301 in Appendix A of this part to validate the

alternative test method; and

(C) Submits the results of the Method 301 validation process

along with the notification of intention and the justification for not

using the specified test method. The owner or operator may submit the

information required in this paragraph well in advance of the deadline

specified in paragraph (f)(2)(ii) of this section to ensure a timely

review by the Administrator in order to meet the performance test date

specified in this section or the relevant standard.

(D) The Administrator will determine whether the owner or

operator's validation of the proposed alternative test method is

adequate when the Administrator approves or disapproves the site-

specific test plan required under paragraph (e) of this section. If the

Administrator finds reasonable grounds to dispute the results obtained

by the Method 301 validation process, the Administrator may require the

use of a test method specified in a relevant standard.

(3) If the Administrator finds reasonable grounds to dispute the

results obtained by an alternative test method for the purposes of

demonstrating compliance with a relevant standard, the Administrator

may require the use of a test method specified in a relevant standard.

(3) If the owner or operator uses an alternative test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative test method for subsequent performance tests at that affected source until he or she receives approval from the Administrator to use another test method as allowed under Sec. 63.7(f).

(4) Neither the validation and approval process nor the failure to validate an alternative test method shall abrogate the owner or operator's responsibility to comply with the requirements of this part.

(g) Data analysis, recordkeeping, and reporting. (1) Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, results of a performance test shall include the analysis of samples, determination of emissions, and the data a performance test is ''completed'' when field sample collection is terminated. The owner or operator of an affected source shall report the results of the performance test to the Administrator before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator (see Sec. 63.9(i)). The results of the performance test shall be submitted as part of the notification of compliance status required under Sec. 63.9(h). Before a Title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Administrator. After a Title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the appropriate permitting authority.

(2) [Reserved]

(3) For a minimum of 5 years after a performance test is conducted, the owner or operator shall retain and make available, upon request, for inspection by the Administrator the records or results of such performance test and other data needed to determine emissions from an affected source.

(h) Waiver of performance tests. (1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, to the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) Request to waive a performance test. (i) If a request is made for an extension of compliance under Sec. 63.6(i), the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If an extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the

performance test if the site-specific test plan under paragraph (c) of this section is not submitted.

(iv) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or annual emissions and continuous monitoring system performance report (such as those required under Sec. 63.9(i), Sec. 63.10(e) and Sec. 63.10(e) or specified in a relevant standard or in the source's title V permit), but it shall be submitted at least 60 days before the performance test of the site-specific test plan required under paragraph (c) of this section is not submitted.

(v) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(2) Approval of request to waive performance test. The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (b)(1) of this section when he/she:

(i) Approves or denies an extension of compliance under Sec. 63.6(i)(4), or

(ii) Approves or disapproves a site-specific test plan under Sec. 63.7(c), or

(iii) Makes a determination of compliance following the submission of a required compliance status report or annual emissions and continuous monitoring system performance report, or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

Sec. 63.8 Monitoring requirements.

(a) Applicability. (1) (i) Unless otherwise specified in a relevant standard, this section applies to the owner or operator of an affected source required to do monitoring under that standard.

(ii) Relevant standards established under this part will specify monitoring systems, methods, or procedures, monitoring frequency, and other pertinent requirements for routinely regulated by those standards. This section specifies general monitoring requirements such as those governing the conduct of monitoring and supports the alternative monitoring methods. In addition, this section specifies detailed requirements that apply to affected sources required to use continuous monitoring systems (CMS) under a relevant standard.

(2) For the purposes of this part, all CMS required under relevant standards shall be subject to the provisions of this section upon promulgation of performance specifications for CMS as specified in the relevant standard or otherwise by the Administrator.

(3) [Reserved]

(3) Additional monitoring requirements for control devices used to comply with provisions in relevant standards of this part are specified in Sec. 63.11.

(4) Conduct of monitoring. (i) Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless the Administrator:

(A) Specifies or approves the use of minor changes to methodology for the specified monitoring requirements and procedures; or

(B) Approves the use of alternatives to any monitoring requirements or procedures.

(ii) Owners or operators with flares subject to Sec. 63.11(b) are not subject to the requirements of this section unless otherwise specified in the relevant standard.

(5)(i) When the effluents from a single affected source, or from two or more affected sources, are combined before being released to the atmosphere, the owner or operator shall install an applicable CMS on each effluent.

(ii) If the combined effluent is a mass emission standard and the effluent from one affected source is released to the atmosphere through more than one point, the owner or operator shall install an applicable CMS at each emission point unless the installation of fewer systems is:

(A) Approved by the Administrator; or

(B) Provided for in a relevant standard (e.g., instead of requiring that a CMS be installed at each emission point before the effluents from those points are combined in a common control device, the standard specifies that only one CMS is required to be installed at the exit of the control device).

(6) When more than one CMS is used to measure the emissions from one affected source (e.g., multiple beamlines, multiple outlets), the owner or operator shall report the results as required for each CMS.

However, when one CMS is used as a backup to another CMS, the owner or operator shall report the results from the CMS used to meet the monitoring requirements of this part. If both such CMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CMS for the relevant compliance period.

(d) Operation and maintenance of continuous monitoring systems. (1) The owner or operator of an affected source shall maintain and operate each CMS as specified in this section, or in a relevant standard, and in a manner consistent with good air pollution control practices.

(2) The owner or operator of an affected source shall develop the immediate repair or replacement of CMS parts to control ''routine'' or otherwise predictable CMS malfunctions as defined in the source's startup, shutdown, and malfunction plan required by Sec. 63.6(e)(3).

The owner or operator shall keep the necessary parts for routine repairs of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under Sec. 63.10(d)(5)(i).

(3) For those malfunctions or other events that affect the CMS and

are not addressed by the startup, shutdown, and malfunction plan, the

owner or operator shall report actions that are not consistent with the

startup, shutdown, and malfunction plan within 24 hours after

commencing actions inconsistent with the plan. The owner or operator

shall send a follow-up report within 7 days after commencing actions

inconsistent with the plan that either certifies that corrections have

been made or includes a corrective action plan and schedule. The owner

or operator shall provide proof that repair parts have been ordered or

any other records that would indicate that the delay in making repairs

is beyond his or her control.

(iii) The Administrator's determination of whether acceptable

operation and maintenance procedures are being used will be based on

information that may include, but is not limited to, review of

operation and maintenance procedures, operation and maintenance

records, manufacturing recommendations and specifications, and

inspection of the CMS. Operation and maintenance procedures written by

the CMS manufacturer and other guidance also can be used to develop

and operate each CMS.

(2) Each CMS shall be installed such that representative

measurements of emissions or process parameters from the affected

source are obtained. In addition, CEMS shall be located according to

procedures contained in the applicable performance specifications.

(3) Each CMS shall be installed, operational, and the data verified

as specified in the relevant standard either prior to or in conjunction

with conducting performance tests under Sec. 63.7. Verification of

operational status shall, at a minimum, include completion of the

manufacturer's written specifications or recommendations for

installation, operation, and calibration of the system.

(4) Except for system breakdowns, out-of-control periods, repairs,

maintenance periods, calibration checks, and zero (low-level) and high-

level calibration drift adjustments, all CMS, including CEMS and COMS,

shall be in continuous operation and shall meet minimum frequency of

operation requirements as follows:

(i) Each CEMS shall complete a minimum of one cycle of sampling and

analyzing for each successive 15-minute period and one cycle of data

recording for each successive 1-minute period.

(ii) Each COMS for measuring emissions other than opacity shall

complete a minimum of one cycle of operation (sampling, analyzing, and

data recording) for each successive 15-minute period.

(5) Unless otherwise approved by the Administrator, written

procedures for CEMS shall include a method for producing a simulated

zero opacity condition and an upscale (high-level) opacity condition

using a certified neutral density filter or other certified technique to

produce a known obscuration of the light beam. Such procedures shall

provide a system check of all the analyzer's internal optical surfaces

and all electronic circuitry, including the lamp and photodetector

assembly normally used in the measurement of opacity.

(6) The owner or operator of a CMS installed in accordance with the

provisions of this part and the applicable CMS performance

specifications must check the zero (low-level) and high-level

calibration drifts at least once daily in accordance with the written

procedure specified in the performance evaluation plan developed under

paragraphs (a)(3)(i) and (a)(3)(ii) of this section. The zero (low-

level) and high-level calibration drifts shall be adjusted, at a

minimum, whenever the 24-hour zero (low-level) drift exceeds two times

the limits of the applicable performance specifications specified in

the relevant standard. The system must allow the amount of excess zero

(low-level) and high-level drift measured at the 24-hour interval

checks to be recorded and quantified, whenever specified. For CEMS, all

optical and instrumental surfaces exposed to the effluent gases shall

be cleaned prior to performing the zero (low-level) and high-level

drift adjustments; the optical surfaces and instrumental surfaces shall

be cleaned when the cumulative automatic zero compensation, if

applicable, exceeds 4 percent opacity.

(7)(i) A CEMS is out of control if--

(A) The zero (low-level), mid-level (if applicable), or high-level

calibration drift (CD) exceeds two times the applicable CD

specification in the applicable performance specification or in the

relevant standard; or

(B) The CEMS fails a performance test audit (e.g., cylinder gas

audit), relative accuracy audit, relative accuracy test audit, or

linearity test audit; or

(C) The CEMS (7) exceeds two times the limit in the applicable

performance specification in the relevant standard.

(ii) When the CEMS is out of control, the owner or operator of the

affected source shall take the necessary corrective action and shall

repeat all necessary tests which indicate that the system is out of

control. The owner or operator shall take corrective action and conduct

retesting until the performance requirements are below the applicable

limits. The beginning of the out-of-control period is the hour the

owner or operator conducts a performance check (e.g., calibration

drift) that indicates an exceedance of the performance requirements

established under this part. The end of the out-of-control period is

the hour following the completion of corrective action and successful

demonstration that the system is within the allowable limits. During

the period the CEMS is out of control, recorded data shall not be used

in data averages and calculations, or to meet any data availability

requirement established under this part.

(8) The owner or operator of a CEMS that is out of control as

defined in paragraph (c)(7) of this section shall submit all

information concerning out-of-control periods, including start and end

dates and hours and descriptions of corrective actions taken, in the

excess emissions and continuous monitoring system performance report

required in Sec. 60.7(c)(3).

(d) Quality control program. (1) The results of the quality control

program required in this paragraph will be considered by the

Administrator when he/she determines the validity of monitoring data.

(2) The owner or operator of an affected source that is required to

use a CEMS and is subject to the monitoring requirements of this section

and a relevant standard shall develop and implement a CEM quality

control program. As part of the quality control program, the owner or

operator shall develop and submit to the Administrator for approval

upon request a site-specific performance evaluation test plan for the

CEM performance evaluation required in paragraph (a)(3)(i) of this

section, according to the procedures specified in paragraph (e). In

addition, each quality control program shall include, at a minimum, a

written protocol that describes procedures for each of the following

operations:

(i) Initial and any subsequent calibration of the CEMS;

(ii) Determination and adjustment of the calibration drift of the

CEMS;

(iii) Preventive maintenance of the CEMS, including spare parts

inventory;

(iv) Data recording, calculation, and reporting;

(v) Accuracy audit procedures, including sampling and analysis

methods; and

(vi) Program of corrective action for a malfunctioning CEMS.

(b) The owner or operator 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, the owner or operator 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. Where relevant, e.g., program of corrective action for a

malfunctioning CEMS, these written procedures may be incorporated as

part of the affected source's startup, shutdown, and malfunction plan

to avoid duplication of planning and recordkeeping efforts.

(c) Performance evaluation of continuous monitoring systems.(1)

General. When required by a relevant standard, and at any other time

the Administrator may require under section 114 of the Act, the owner

or operator of an affected source being monitored shall conduct a

performance evaluation of the CEM. Such performance evaluation shall be

conducted according to the applicable specifications and procedures

described in this section or in the relevant standard.

(2) Notification of performance evaluation. The owner or operator

shall notify the Administrator in writing of the date of the

performance evaluation simultaneously with the notification of the

performance test date required under Sec. 63.7(b) or at least 60 days

prior to the date the performance evaluation is scheduled to begin if

no performance test is required.

(3)(i) Submission of site-specific performance evaluation test

plan. Before conducting a required CEM performance evaluation, the

owner or operator of an affected source shall develop and submit a

site-specific performance evaluation test plan to the Administrator for

approval upon request. The performance evaluation test plan shall

include the evaluation program objectives, an evaluation program

summary, the performance evaluation schedule, data quality objectives,

and both an internal and external QA program. Data quality objectives

are the pre-evaluation expectations of precision, accuracy, and

completeness of data.

(ii) The internal QA program shall include, at a minimum, the

activities planned by routine operation and analysis to provide an

assessment of CEM performance. The network QA program shall include,

at a minimum, systems audits that include the opportunity for on-site

evaluation by the Administrator of instrument calibration, data

collection, sample logging, and documentation of quality control data

and field maintenance activities.

(iii) The owner or operator of an affected source shall submit the

site-specific performance evaluation test plan to the Administrator if

requested at least 45 days before the performance test or performance

evaluation is scheduled to begin, or as mutually agreed upon date,

and review and approval of the performance evaluation test plan by the

Administrator will occur with the review and approval of the site-

specific test plan. If review of the site-specific test plan is

requested,

(iv) The Administrator may request additional relevant information

after the submittal of a site-specific performance evaluation test

plan.

(v) In the event that the Administrator fails to approve or

disapprove the site-specific performance evaluation test plan within

the time period specified in Sec. 61.71(i)(3), the following conditions

shall apply:

(A) If the owner or operator intends to demonstrate compliance

using the monitoring methods specified in the relevant standard, the

owner or operator shall conduct the performance evaluation within the

time specified in this subpart using the specified methods;

(B) If the owner or operator intends to demonstrate compliance by

using an alternative to a monitoring method specified in the relevant

standard, the owner or operator shall refrain from conducting the

performance evaluation until the Administrator approves the use of the

alternative method. If the Administrator does not approve the use of

the alternative method within 45 days before the performance evaluation

is scheduled to begin, the performance evaluation deadlines specified

in paragraph (e)(3) of this section may be extended such that the owner

or operator shall conduct the performance evaluation within 45 calendar

days after the Administrator approves the use of the alternative

method. Notwithstanding the requirements in the preceding two

sentences, the owner or operator may proceed to conduct the performance

evaluation as required in this section (without the Administrator's

prior approval of the site-specific performance evaluation test plan)

if he/she subsequently chooses to use the specified monitoring

method(s) instead of an alternative.

(vi) Neither the submission of a site-specific performance

evaluation test plan for approval, nor the Administrator's approval or

disapproval of a plan, nor the Administrator's failure to approve or

disapprove a plan in a timely manner shall--

(A) Relieve an owner or operator of legal responsibility for

compliance with any applicable provisions of this part or with any

other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this

part or taking any other action under the Act.

(4) Content of performance evaluations and performance evaluation

date. The owner or operator of an affected source shall conduct a

performance evaluation of a required CMS during any performance test

required under Sec. 63.7 in accordance with the applicable performance

specifications as specified in the relevant standard. Notwithstanding

the requirement in the previous sentence, if the owner or operator of

an affected source elects to submit CEMS data for compliance with a

relevant opacity emission standard as provided under Sec. 63.6(d)(7),

he/she shall conduct a performance evaluation of the CEMS as specified

in the relevant standard, before the performance test required under

Sec. 63.7 is conducted in time to submit the results of the performance

evaluation as specified in paragraph (e)(2)(iii) of this section. If a

performance test is not required, or the requirement for a performance

test has been waived under Sec. 63.7(h), the owner or operator of an

affected source shall conduct the performance evaluation not later than

180 days after the appropriate compliance date for the affected source,

as specified in Sec. 63.7(a), or as otherwise specified in the relevant

standard.

(d) Reporting performance evaluation results. (1) The owner or

operator shall furnish the Administrator a copy of a written report of

the results of the performance evaluation simultaneously with the

results of the performance test required under Sec. 63.7 or within 60

days of completion of the performance evaluation if no test is

required, unless otherwise specified in a relevant standard. The

Administrator may request that the owner or operator submit the raw

data from a performance evaluation in the report of the performance

evaluation results.

(2) The owner or operator of an affected source using a CEMS to

determine opacity compliance during any performance test required under

Sec. 63.7 and described in Sec. 63.6(d)(6) shall furnish the

Administrator two or, upon request, three copies of a written report of

the results of the CEMS performance evaluation under this paragraph.

The copies shall be provided at least 15 calendar days before the

performance test required under Sec. 63.7 is conducted.

(e) Use of an alternative monitoring method.(1) General. Until

permission to use an alternative monitoring method has been granted by

the Administrator under this paragraph, the owner or operator of an

affected source remains subject to the requirements of this section and

the relevant standard.

(2) After receipt and consideration of written application, the

Administrator may approve alternatives to any monitoring methods or

procedures of this part including, but not limited to, the following:

(i) Alternative monitoring requirements when installation of a CMS

specified by a relevant standard would not provide accurate

measurements due to liquid water or other interferences caused by

substances within the effluent gases.

(ii) Alternative monitoring requirements when the affected source

is infrequently operated.

(iii) Alternative monitoring requirements to accommodate CEMS that

require additional measurements to correct for stack moisture

conditions.

(iv) Alternative locations for installing CMS when the owner or

operator can demonstrate that installation at alternate locations will

enable accurate and representative measurements;

(ii) Alternate methods for conducting pollutant concentration

measurements in units of the relevant standard;

(iii) Alternate procedures for performing daily checks of zero (low-

level) and high-level drift that do not involve use of high-level gases

or test cells;

(iv) Alternatives to the American Society for Testing and

Materials (ASTM) test methods or sampling procedures specified by any

relevant standard;

(v)(A) Alternative CEMS that do not meet the design or performance

requirements in this part, but adequately demonstrate a definite and

consistent relationship between their measurements and the measurements

of opacity by a system complying with the requirements as specified in

the relevant standard. The Administrator may require that such

demonstration be performed for each affected source; or

(vi) Alternative monitoring requirements when the affected fuel-a

single affected source or the combined affected fuel-has two or more

affected sources released to the atmosphere through more than one

point.

(B) If the Administrator finds reasonable grounds to dispute the

results obtained by an alternative monitoring method, requirement, or

procedure, the Administrator may require the use of a method,

requirement, or procedure specified in this section or in the relevant

standard. If the results of the specified and alternative method,

requirement, or procedure do not agree, the results obtained by the

specified method, requirement, or procedure shall prevail.

(3)(i) Request to use alternative monitoring method. An owner or

operator who wishes to use an alternative monitoring method shall

submit an application to the Administrator as described in paragraph

(f)(3)(ii) of this section, below. The application may be submitted at

any time provided that the monitoring method is not used to demonstrate

compliance with a relevant standard or other requirement. If the

alternative monitoring method is to be used to demonstrate compliance

with a relevant standard, the application shall be submitted not later

than with the site-specific test plan required in Sec. 60.7(a) (if

required) or with the site-specific performance evaluation plan (if

required) or at least 60 days before the performance evaluation is

scheduled to begin.

(ii) The application shall contain a description of the proposed

alternative monitoring system and a performance evaluation test plan,

if required, as specified in paragraph (e)(3) of this section. In

addition, the application shall include information justifying the

owner or operator's request for an alternative monitoring method, such

as the technical or economic infeasibility, or the impracticality, of

the affected source using the required method.

(iii) The owner or operator may submit the information required in

this paragraph well in advance of the submittal dates specified in

paragraph (f)(3)(i) above to ensure a timely review by the

Administrator in order to meet the compliance demonstration date

specified in this section or the relevant standard.

(3) Approval of request to use alternative monitoring method. (i)

The Administrator will notify the owner or operator of approval or

intention to deny approval of the request to use an alternative

monitoring method within 90 calendar days after receipt of the original

request and within 30 calendar days after receipt of any supplementary

information that is submitted. Before disapproving any request to use

an alternative monitoring method, the Administrator will notify the

applicant of the Administrator's intention to disapprove the request

together with--

(A) Notice of the information and findings on which the intended

disapproval is based; and

(B) Notice of opportunity for the owner or operator to present

additional information to the Administrator before final action on the

request. At the time the Administrator notifies the applicant of his or

her intention to disapprove the request, the Administrator will specify

how much time the owner or operator will have after being notified of

the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and

criteria in a rulemaking to accomplish the requirements of

paragraph (f)(3)(i) of this section.

(iii) If the Administrator approves the use of an alternative

monitoring method for an affected source under paragraph (f)(3)(i) of

this section, the owner or operator of such source shall continue to

use the alternative monitoring method until he or she receives approval

from the Administrator to use another monitoring method as allowed by

this section.

(4) Alternative to the relative accuracy test. An alternative to

the relative accuracy test for CEMS specified in a relevant standard

may be requested as follows:

(i) Criteria for approval of alternative procedures. An alternative

to the test method for determining relative accuracy is available for

affected sources with emission rates demonstrated to be less than 50

percent of the relevant standard. The owner or operator of an affected

source may petition the Administrator under paragraph (f)(3)(i) of

this section to substitute the relative accuracy test in section 7 of

Performance Specification 2 with the procedures in section 10 of the

results of a performance test conducted according to the requirements

in Sec. 63.7, or other tests performed following the criteria in

Sec. 63.7, demonstrate that the emission rate of the pollutant of

interest in the units of the relevant standard is less than 50 percent

of the relevant standard. For affected sources subject to emission

limitations expressed as control efficiency levels, the owner or

operator may petition the Administrator to substitute the relative

accuracy test with the procedures in section 10 of Performance

Specification 2 if the control device exhaust emission rate is less

than 50 percent of the level needed to meet the control efficiency

requirement. The alternative procedures do not apply if the CEMS is

used continuously to determine compliance with the relevant standard.

(ii) Petition to use alternative to relative accuracy test. The

petition to use an alternative to the relative accuracy test shall

include a detailed description of the procedures to be applied, the

location and the procedure for conducting the alternative, the

identification of suspect tests of the alternative emitter accuracy

sensitivity, and the other equipment checks included in the alternative

procedure(s). The Administrator will review the petition for

completeness and applicability. The Administrator's determination to

approve an alternative will depend on the intended use of the CEMS data

and may require specifications more stringent than in Performance

Specification 2.

(iii) Rejection of approval to use alternative to relative

accuracy test. The Administrator will review the petition to use an

alternative to the CEMS relative accuracy test and may rescind such

permission if the CEMS data from a successful completion of the

alternative relative accuracy procedure indicate that the affected

source's emissions are approaching the level of the relevant standard.

The criterion for rescinding the permission is that the collection of

CEMS data shows that emissions have exceeded 70 percent of the relevant

standard for any averaging period, as specified in the relevant

standard. For affected sources subject to emission limitations

expressed as control efficiency levels, the criterion for rescinding the

permission is that the collection of CEMS data shows that emission

emissions have exceeded 70 percent of the level needed to meet the

control efficiency requirement for any averaging period, as specified

in the relevant standard. The owner or operator of the affected source

shall establish records and determine the level of emissions relative to

the criterion for permission to use an alternative for relative

accuracy testing. If this criterion is exceeded, the owner or operator

shall notify the Administrator within 10 days of such occurrence and

include a description of the nature and cause of the increased

emissions. The Administrator will review the notification and may

rescind permission to use an alternative and require the owner or

operator to conduct a relative accuracy test of the CEMS as specified

in section 7 of Performance Specification 2.

(g) Reduction of monitoring data. (1) The owner or operator of each

CEMS shall reduce the monitoring data as specified in this paragraph. In

addition, each relevant standard may include additional requirements

for reducing monitoring data. Such additional requirements are

specified in a relevant standard; the standard will identify any

exceptions or duplicated requirements in this paragraph that the owner

or operator need not comply with.

(2) The owner or operator of each CEMS shall reduce all data to 1-

minute averages calculated from four or more data points equally spaced

over each 1-minute period. Data from CEMS for measurement other than

opacity, unless otherwise specified in the relevant standard, shall be

reduced to 1-hour averages computed from four or more data points

equally spaced over each 1-hour period, except during periods when

calibration, quality assurance, or maintenance activities pursuant to

provisions of this part are being performed. During these periods, a

valid hourly average shall consist of at least two data points with

each representing a fifteen minute period. Alternatively, an arithmetic or

integrated 1-hour average of CEMS data may be used. The procedure for

averaging are defined in Sec. 60.2.

(3) The data may be recorded in natural or normalized form (e.g., gpb pollutant and percent by or mg/l of pollutant).

(4) All emission data shall be recorded into units of the standard standard for reporting purposes using the conversion procedures specified in that standard. After recording into units of the standard standard, the data may be rounded to the same number of significant digits as used in that standard to specify the emission limit (e.g., rounded to the nearest 1 percent opacity).

(5) Monitoring data recorded during periods of unavoidable CEM breakdown, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any data average computed under this part.

Sec. 63.9 Notification requirements.

(a) Applicability and general information. (1) The requirements in this section apply to owners and operators of affected sources that are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a notice that contains all the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(4)(i) Before a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notification to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in Sec. 63.13).

(ii) After a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notification to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each notification submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any notifications on its discretion.

(5) Initial notifications. (i)(A) The requirements of this paragraph apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

(B) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be

subject to the notification requirements of this section.

(iii) Affected sources that are required under this paragraph to submit an initial notification may use the application for approval of construction or reconstruction under Sec. 63.5(d) of this subpart, if submitted, to fulfill the initial notification requirements of this paragraph.

(b) The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

(1) The name and address of the owner or operator;

(2) The address (i.e., physical location) of the affected source;

(3) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

(4) A brief description of the nature, size, design, and method of operation of the source, including its operating design capacity and an identification of each point of emission for each hazardous air pollutant, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each hazardous air pollutant; and

(5) A statement of whether the affected source is a major source or an area source.

(c) The owner or operator of a new or reconstructed affected source, or a source that has reconstructed such that it is an affected source, that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is not required under Sec. 63.5(d), shall notify the Administrator in writing that the source is subject to the relevant standard no later than 120 days after initial startup. The notification shall provide all the information required in paragraphs (b)(1)(i) through (b)(1)(v) of this section, delivered or postmarked with the notification required in paragraph (a)(1)(i).

(d) The owner or operator of a new or reconstructed major affected source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is required under Sec. 63.5(d), shall provide the following information in writing in the notification:

(1) A notification of intention to construct a new major affected source, reconstruct a major affected source, or reconstruct a major source such that the source becomes a major affected source with the application for approval of construction or reconstruction as specified in Sec. 63.5(d)(1)(i);

(2) A notification of the date when construction or reconstruction was commenced, submitted simultaneously with the application for

approval of construction or reconstruction, if construction or

reconstruction was commenced before the effective date of the relevant

standard;

(iii) A notification of the date when construction or

reconstruction was commenced, delivered or postmarked not later than 30

days after such date, if construction or reconstruction was commenced

after the effective date of the relevant standard;

(iv) A notification of the anticipated date of startup of the

source, delivered or postmarked not more than 60 days nor less than 30

days before such date; and

(v) A notification of the actual date of startup of the source,

delivered or postmarked within 15 calendar days after that date.

(3) After the effective date of any relevant standard established

by the Administrator under this part, whether or not an approved permit

program is effective in the State in which an affected source is (or

would be) located, no owner or operator who intends to construct a new

affected source or reconstruct an affected source subject to such

standard, or reconstruct a source such that it becomes an affected

source subject to such standard, shall notify the Administrator, in

writing, of the intended construction or reconstruction. The

notification shall be submitted as soon as practicable before the

construction or reconstruction is planned to commence (but no sooner

than the effective date of the relevant standard if the construction

or reconstruction commences after the effective date of a relevant

standard promulgated in this part). The notification shall be submitted

as soon as practicable before startup but no later than 30 days after

the effective date of a relevant standard promulgated in this part if

the construction or reconstruction had commenced and initial startup

had not occurred before the standard's effective date. The notification

shall include all the information required for an application for

approval of construction or reconstruction as specified in

Sec. 63.5(d). For major sources, the application for approval of

construction or reconstruction may be used to fulfill the requirements

of this paragraph.

(4) Request for extension of compliance. If the owner or operator

of an affected source cannot comply with a relevant standard by the

applicable compliance date for that source, or if the owner or operator

has installed BACT or technology to meet LAER consistent with

Sec. 63.6(i)(5) of this subpart, he/she may submit to the Administrator

(or the State with an approved permit program) a request for an

extension of compliance as specified in Sec. 63.6(i)(4) through

Sec. 63.6(i)(6).

(5) Notification that source is subject to special compliance

requirements. An owner or operator of a new source that is subject to

special compliance requirements as specified in Sec. 63.6(b)(3) and

Sec. 63.6(b)(4) shall notify the Administrator of his/her compliance

obligations not later than the notification dates established in

paragraph (b) of this section for new sources that are not subject to

the special provisions.

(6) Notification of performance test. The owner or operator of an

affected source shall notify the Administrator in writing of his or her

intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under Sec. 63.7(c), if requested by the Administrator, and to have an observer present during the test.

(d) Notification of opacity and visible emission observations. The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting the opacity or visible emission observations specified in Sec. 63.6(h)(5), if such observations are required for the source by a relevant standard. The notification shall be submitted with the notification of the performance test date, as specified in paragraph (a) of this section, or if no performance test is required or visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under Sec. 63.7, the owner or operator shall deliver or postmark the notification not less than 30 days before the opacity or visible emission observations are scheduled to take place.

(e) Additional notification requirements for sources with continuous monitoring systems. The owner or operator of an affected source required to use a CEM by a relevant standard shall furnish the Administrator written notification as follows:

(1) A notification of the date the CEM performance evaluation under Sec. 63.8(e) is scheduled to begin, submitted simultaneously with the notification of the performance test date required under Sec. 63.7(b). If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under Sec. 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation at least 30 calendar days before the evaluation is scheduled to begin.

(2) A notification that CEM data results will be used to determine compliance with the applicable opacity emission standard during a performance test required by Sec. 63.7 in lieu of Method 9 or other opacity emission test method data, as allowed by Sec. 63.6(h)(7)(ii), of compliance with an opacity emission standard is required for the source by a relevant standard. The notification shall be submitted at least 30 calendar days before the performance test is scheduled to begin; and

(3) A notification that the criteria necessary to continue use of an alternative to selected monitory testing, as provided by Sec. 63.8(f)(2), has been exceeded. The notification shall be delivered or postmarked not later than 30 days after the occurrence of such exceedance, and it shall include a description of the nature and cause of the increased emissions.

(f) Notification of compliance status. (1) The requirements of paragraphs (f)(2) through (f)(5) of this section apply when an affected source becomes subject to a relevant standard.

(2)(i) Before a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit to the Administrator a notification of

compliance status, signed by the responsible official who shall certify

its accuracy, attesting to whether the source has complied with the

relevant standard. The certification shall include:

(A) The methods that were used to determine compliance;

(B) The results of any performance tests, opacity or visible

emission observations, continuous monitoring system (CMS) performance

evaluations, and/or other monitoring procedures or methods that were

conducted;

(C) The methods that will be used for determining continuing

compliance, including a description of monitoring and reporting

requirements and test methods;

(D) The type and quantity of hazardous air pollutants emitted by

the source (or otherwise pollutants if specified in the relevant

standard), reported in units and averaging times and in accordance with

the test methods specified in the relevant standards;

(E) An analysis demonstrating whether the affected source is a

major source or an area source (using the calculation data generated for

this notification);

(F) A description of the air pollution control equipment (or

method) for each emission point, including each control device (or

method) for each hazardous air pollutant and the control efficiency

(percent) for each control device (or method); and

(G) A statement by the owner or operator of the affected existing,

new, or reconstructed source as to whether the source has complied with

the relevant standard or other requirements.

(ii) The notification shall be sent before the close of business on

the 30th day following the completion of the relevant compliance

demonstration activity specified in the relevant standard (unless a

different reporting period is specified in a relevant standard, in

which case the letter shall be sent before the close of business on the

day the report of the relevant testing or monitoring results is

required to be delivered or postmarked). For example, the notification

shall be sent before close of business on the 30th (or other required)

day following completion of the initial performance test and again

before the close of business on the 30th (or other required) day

following the completion of any subsequent required performance test.

If no performance test is required but opacity or visible emission

observations are required to demonstrate compliance with an opacity or

visible emission standard under this part, the notification of

compliance status shall be sent before close of business on the 30th

day following the completion of opacity or visible emission

observations.

(3) After a title V permit has been issued to the owner or operator

of an affected source, the owner or operator of such source shall

comply with all requirements for compliance status reports contained in

the source's title V permit, including reports required under this

part. After a title V permit has been issued to the owner or operator

of an affected source, and each time a notification of compliance

status is required under this part, the owner or operator of such

source shall submit the notification of compliance status to the

appropriate permitting authority following completion of the relevant

compliance demonstration activity specified in the relevant standard.

(4) [Reserved]

(5) If an owner or operator of an affected source submits estimates or preliminary information in the application for approval of construction or reconstruction required in Sec. 63.5(d) in place of the actual emissions data or control efficiencies required in paragraphs (d)(1)(i)(A) and (d)(1)(i)(B) of Sec. 63.5, the owner or operator shall submit the actual emissions data and other correct information as soon as available but no later than with the initial notification of compliance status required in this section.

(6) Advice on a notification of compliance status may be obtained from the Administrator.

(c) Adjustment to time periods or postmark deadlines for submittal and review of required communications. (1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (c)(2) and (c)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (c)(2) and (c)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

(d) Change in information already provided. Any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

Sec. 63.10 Recordkeeping and reporting requirements.

(a) Applicability and general information. (1) The requirements of this section apply to owners or operators of affected sources who are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(d) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extension.

(e) If any State requires a report that contains all the information required in a report listed in this section, an owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(f)(1) Before a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the appropriate Regional Office of the EPA (in the direction of the Director of the Division indicated in the list of the EPA Regional Offices in Sec. 63.13).

(2) After a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the delegated State authority (which may be the same as the permitting authority), in addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each report submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any reports at the discretion

(3) If an owner or operator of an affected source in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has established timelines for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. For each relevant standard established pursuant to section 112 of the Act, the extension to the previous sentence applies to each State beginning 1 year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in Sec. 63.9(i).

(4) If an owner or operator submits one or more preliminary, pre-filed, or draft documents to the EPA or delegated State authority prior to the compliance report, then the owner or operator may submit one copy of those documents for the purpose of satisfying the initial notification requirements for any subsequent notification or report. For the purposes of this paragraph, subsequent notifications or reports are those that must be submitted within 60 days after the initial notification or report.

(5) If an owner or operator submits one or more preliminary, pre-filed, or draft documents to the EPA or delegated State authority prior to the compliance report, then the owner or operator may submit one copy of those documents for the purpose of satisfying the initial notification requirements for any subsequent notification or report. For the purposes of this paragraph, subsequent notifications or reports are those that must be submitted within 60 days after the initial notification or report.

(6) If an owner or operator submits one or more preliminary, pre-filed, or draft documents to the EPA or delegated State authority prior to the compliance report, then the owner or operator may submit one copy of those documents for the purpose of satisfying the initial notification requirements for any subsequent notification or report. For the purposes of this paragraph, subsequent notifications or reports are those that must be submitted within 60 days after the initial notification or report.

(7) If an owner or operator submits one or more preliminary, pre-filed, or draft documents to the EPA or delegated State authority prior to section 112 of

the Act (as amended November 15, 1990) and standards set under part 60,

part 61, or both such parts of this chapter, he/she may arrange by

mutual agreement between the owner or operator and the Administrator

(or the State permitting authority) a common schedule on which periodic

reports required by each relevant (i.e., applicable) standard shall be

submitted throughout the year. The allowance in the previous sentence

applies to each State beginning 1 year after the stationary source is

required to be in compliance with the relevant section 112 standard, or

1 year after the stationary source is required to be in compliance with

the applicable part 60 or part 61 standard, whichever is later.

Procedures governing the implementation of this provision are specified

in Sec. 63.10(a).

(b) General recordkeeping requirements. (1) The owner or operator

of an affected source subject to the provisions of this part shall

maintain files of all information (including all reports and

notifications) required by this part recorded in a form suitable and

readily available for expeditious inspection and review. The files

shall be retained for at least 5 years following the date of each

occurrence, measurement, maintenance, corrective action, report, or

record. At a minimum, the most recent 2 years of data shall be retained

on site. The remaining 3 years of data may be retained off site. Such

files may be maintained on microfilm, on a computer, on computer floppy

disks, on magnetic tape disks, or on microfiche.

(2) The owner or operator of an affected source subject to the

provisions of this part shall maintain relevant records for such source

of--

(i) The occurrence and duration of each startup, shutdown, or

malfunction of operation (i.e., process equipment);

(ii) The occurrence and duration of each malfunction of the air

pollution control equipment;

(iii) All maintenance performed on the air pollution control

equipment;

(iv) Actions taken during periods of startup, shutdown, and

malfunction (including corrective actions to restore malfunctioning

process and air pollution control equipment to its normal or usual

manner of operation) when such actions are different from the

procedures specified in the affected source's startup, shutdown, and

malfunction plan (see Sec. 63.6(e)(3));

(v) All information necessary to demonstrate conformance with the

affected source's startup, shutdown, and malfunction plan (see

Sec. 63.6(e)(3)) when all actions taken during periods of startup,

shutdown, and malfunction (including corrective actions to restore

malfunctioning process and air pollution control equipment to its

normal or usual manner of operation) are consistent with the procedures

specified in such plan. (The information needed to demonstrate

conformance with the startup, shutdown, and malfunction plan may be

recorded using a ``checklist,'' or some other effective form of

recordkeeping, in order to minimize the recordkeeping burden for

conforming events);

(vi) Each period during which a CMS is malfunctioning or

inoperative (including out-of-control periods);

(xiii) Any required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, instrument drawings of CMS duct, test platforms testing measurements, and the performance evaluation measurements, that support data that the source is required to report);

(xiv) All results of performance tests, CMS performance evaluations, and quality assurance observations;

(xv) All measurements as may be necessary to determine the conditions of performance tests and performance evaluations;

(xvi) All CMS calibration checks;

(xvii) All adjustments and maintenance performed on CMS;

(xviii) Any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements under this part, if the source has been granted a waiver under paragraph (f) of this section;

(xix) All emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, if the source has been granted such permission under Sec. 51.24(f)(4); and

(xx) All documentation supporting initial notifications and notifications of compliance status under Sec. 51.9.

(b) Recordkeeping requirement for applicability determinations. If an owner or operator determines that his or her stationary source that emits or has the potential to emit, without considering controls, one or more hazardous air pollutants is not subject to a relevant standard or other requirement established under this part, the owner or operator shall keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination shall include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) shall be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis shall be performed in accordance with requirements established in subparts of this part for that purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any.

(c) Additional recordkeeping requirements for sources with continuous monitoring systems. In addition to complying with the requirements specified in paragraphs (b)(1) and (b)(2) of this section, the owner or operator of an affected source required to install a CMS by a relevant standard shall maintain records for each source of:

(1) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods);

(2)-(3) [Reserved]

(4) The date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level checks;

(5) The date and time identifying each period during which the CMS

are out of control, as defined in Sec. 63.6(c)(7).

(7) The specific identification (i.e., the date and time of

commencement and completion) of each period of excess emissions and

parameter monitoring exceedances, as defined in the relevant

standard(s), that occurs during startup, shutdown, and malfunction

of the affected source.

(8) The specific identification (i.e., the date and time of

commencement and completion) of each time period of excess emissions

and parameter monitoring exceedances, as defined in the relevant

standard(s), that occurs during periods other than startup, shutdown,

and malfunction of the affected source.

(9) [Reserved]

(10) The nature and cause of any malfunction (if known).

(11) The corrective action taken or preventive measures adopted.

(12) The nature of the repairs or adjustments to the CEM that was

inoperative or out of control.

(13) The total process operating time during the reporting period.

and

(14) Any procedure that was part of a quality control program

developed and implemented for CEM under Sec. 63.8(d).

(15) In order to satisfy the requirements of paragraphs (c)(7)

through (c)(12) of this section and to avoid duplicative recordkeeping

efforts, the owner or operator may use the affected source's startup,

shutdown, and malfunction plan or records kept to satisfy the

recordkeeping requirements of the startup, shutdown, and malfunction

plan specified in Sec. 63.6(e), provided that such plan and records

adequately address the requirements of paragraphs (c)(7) through

(c)(12).

(d) General reporting requirements. (1) Notwithstanding the

requirements in this paragraph or paragraph (e) of this section, the

owner or operator of an affected source subject to reporting

requirements under this part shall submit reports to the Administrator

in accordance with the reporting requirements in the relevant

standard(s).

(2) Reporting results of performance tests. Before a title V permit

has been issued to the owner or operator of an affected source, the

owner or operator shall report the results of any performance test

under Sec. 63.7 to the Administrator. After a title V permit has been

issued to the owner or operator of an affected source, the owner or

operator shall report the results of a required performance test to the

appropriate permitting authority. The owner or operator of an affected

source shall report the results of the performance test to the

Administrator (or the State with an approved permit program) before the

close of business on the 60th day following the completion of the

performance test, unless specified otherwise in a relevant standard or

an approval otherwise in writing by the Administrator. The results of

the performance test shall be submitted as part of the notification of

compliance status required under Sec. 63.9(h).

(3) Reporting results of opacity or visible emission observations.

The owner or operator of an affected source required to conduct opacity

or visible emission observations by a relevant standard shall report

the opacity or visible emission results produced using Test Method 9

or Test Method 22, or an alternative to these test methods along with

the results of the performance test required under Sec. 60.7, if no

performance test is required, or if monitoring or other monitoring

system the opacity or visible emission observations from being

conducted concurrently with the performance test required under

Sec. 60.7, the owner or operator shall report the opacity or visible

emission results before the close of business on the 30th day following

the completion of the opacity or visible emission observations.

(d) Progress reports. The owner or operator of an affected source

who is required to submit progress reports as a condition of receiving

an extension of compliance under Sec. 60.11(i) shall submit such reports

to the Administrator (or the State with an approved permit program) by

the dates specified in the written extension of compliance.

(e)(1) Excess startup, shutdown, and malfunction reports. If

actions taken by an owner or operator during a startup, shutdown, or

malfunction of an affected source (including actions taken to correct a

malfunction) are consistent with the procedures specified in the

source's startup, shutdown, and malfunction plan (see Sec. 60.6(e)(3)),

the owner or operator shall state such information in a startup,

shutdown, and malfunction report. Reports shall only be required if a

startup, shutdown, or malfunction occurred during the reporting period.

The startup, shutdown, and malfunction report shall consist of a

letter, containing the name, title, and signature of the owner or

operator or other responsible official who is certifying its accuracy,

that shall be submitted to the Administrator semiannually (or on a more

frequent basis if specified otherwise in a relevant standard or as

established otherwise by the permitting authority in the source's title

V permit). The startup, shutdown, and malfunction report shall be

delivered or postmarked by the 30th day following the end of each

calendar half (or other calendar reporting period, as appropriate). If

the owner or operator is required to submit excess emissions and

continuous monitoring system performance (or other periodic) reports

under this part, the startup, shutdown, and malfunction reports

required under this paragraph may be submitted simultaneously with the

excess emissions and continuous monitoring system performance (or

other) reports. If startup, shutdown, and malfunction reports are

submitted with excess emissions and continuous monitoring system

performance (or other periodic) reports, and the owner or operator

obtains approval to reduce the frequency of reporting for the latter

under paragraph (e) of this section, the frequency of reporting for the

startup, shutdown, and malfunction reports also may be reduced if the

Administrator does not object to the intended change. The procedures to

implement the allowance in the preceding sentence shall be the same as

the procedures specified in paragraph (e)(2) of this section.

(2) Immediate startup, shutdown, and malfunction reports.

Notwithstanding the allowance to reduce the frequency of reporting for

periodic startup, shutdown, and malfunction reports under paragraph

(e)(1)(i) of this section, any time an action taken by an owner or

operator during a startup, shutdown, or malfunction (including actions

taken to correct a malfunction) is not consistent with the procedures

specified in the affected source's startup, shutdown, and malfunction

plan, the owner or operator shall report the actions taken for that

event within 2 working days after commencing actions inconsistent with

the plan followed by a letter within 7 working days after the end of

the event. The immediate report required under this paragraph shall

consist of a telephone call (or facsimile (FAX) transmission) to the

Administrator within 2 working days after commencing actions

inconsistent with the plan, and it shall be followed by a letter,

delivered or postmarked within 7 working days after the end of the

event, that contains the name, title, and signature of the owner or

operator or other responsible official who is certifying its accuracy,

explaining the circumstances of the event, the reasons for not

following the startup, shutdown, and malfunction plan, and whether any

excess emissions and/or parameter monitoring exceedances are believed

to have occurred. Notwithstanding the requirements of the previous

sentence, after the effective date of an approved permit program in the

State in which an affected source is located, the owner or operator may

make alternative reporting arrangements, in advance, with the

permitting authority in that State. Procedures governing the

arrangement of alternative reporting requirements under this paragraph

are specified in Sec. 63.9(i).

(ii) Additional reporting requirements for sources with continuous

monitoring systems.(1) General. When more than one CEMS is used to

measure the emissions from one affected source (e.g., multiple

breechings, multiple outlets), the owner or operator shall report the

results as required for each CEMS.

(2) Reporting results of continuous monitoring system performance

evaluations. (i) The owner or operator of an affected source required

to install a CEMS by a relevant standard shall furnish the Administrator

a copy of a written report of the results of the CEMS performance

evaluation, as required under Sec. 63.8(e), simultaneously with the

results of the performance test required under Sec. 63.7, unless

otherwise specified in the relevant standard.

(ii) The owner or operator of an affected source using a CEMS to

determine opacity compliance during any performance test required under

Sec. 63.7 and described in Sec. 63.6(d)(6) shall furnish the

Administrator two or, upon request, three copies of a written report of

the results of the CEMS performance evaluation conducted under

Sec. 63.8(e). The copies shall be furnished at least 75 calendar days

before the performance test required under Sec. 63.7 is conducted.

(3) Excess emissions and continuous monitoring system performance

report and summary report. (i) Excess emissions and parameter

monitoring exceedances are defined in relevant standards. The owner or

operator of an affected source required to install a CEMS by a relevant

standard shall submit an excess emissions and continuous monitoring

system performance report and/or a summary report to the Administrator

semiannually, except when--

(A) More frequent reporting is specifically required by a relevant

standard;

(B) The Administrator determines on a case-by-case basis that more

frequent reporting is necessary to accurately assess the compliance

status of the source, or

(2) The CEM data are to be used directly for compliance determination and the source experienced excess emissions, in which case quarterly reports shall be submitted. For a source reports excess emissions, the owner shall follow a quarterly reporting format until a request to reduce reporting frequency under paragraph (a)(3)(iii) of this section is approved.

(iii) Request to reduce frequency of excess emissions and continuous monitoring system performance reports. Notwithstanding the frequency of reporting requirements specified in paragraph (a)(3)(i) of this section, an owner or operator who is required by a relevant standard to submit excess emissions and continuous monitoring system performance (and summary) reports on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(A) For 1 full year (e.g., 4 quarters) or 8 monthly reporting periods) the affected source's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance with the relevant standard;

(B) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the relevant standard; and

(C) The Administrator does not object to a reduced frequency of reporting for the affected source, as provided in paragraph (a)(3)(iii) of this section.

(iv) The frequency of reporting of excess emissions and continuous monitoring system performance (and summary) reports required to comply with a relevant standard may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the 5-year recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(v) As soon as CEM data indicate that the source is not in compliance with any emission limitation or operating parameter specified in the relevant standard, the frequency of reporting shall revert to the frequency specified in the relevant standard, and the owner or operator shall submit excess emission and continuous monitoring system performance (and summary) report for the noncomplying

[illegible]

percent of the total source operating time during that reporting

period, and a breakdown of the total CEM downtime during the reporting

period into periods that are due to monitoring equipment malfunction,

nonmonitoring equipment malfunction, quality assurance/quality control

calibrations, other known causes, and other unknown causes.

(B) A description of any changes in CEM, procedures, or controls

since the last reporting period.

(C) The name, title, and signature of the responsible official who

is certifying the accuracy of the report; and

(D) The date of the report.

(iii) If the total duration of excess emissions or process or

control system parameter exceedances for the reporting period is less

than 1 percent of the total operating time for the reporting period,

and CEM downtime for the reporting period is less than 5 percent of the

total operating time for the reporting period, only the summary report

shall be submitted, and the full excess emissions and continuous

monitoring system performance report need not be submitted unless

required by the Administrator.

(iv)(A) If the total duration of excess emissions or process or

control system parameter exceedances for the reporting period is 1

percent or greater of the total operating time for the reporting

period, or the total CEM downtime for the reporting period is 5 percent

or greater of the total operating time for the reporting period, both

the summary report and the excess emissions and continuous monitoring

system performance report shall be submitted.

(B) Reporting continuous opacity monitoring system data produced

during a performance test. The owner or operator of an affected source

required to use a CEM shall record the monitoring data produced during

a performance test required under Part 51.7 and shall furnish the

Administrator a written report of the monitoring results. The report of

CEM data shall be submitted simultaneously with the report of the

performance test results required in paragraph (d)(2) of this section.

(3) Waiver of recordkeeping or reporting requirements. (i) Until a

waiver of a recordkeeping or reporting requirement has been granted by

the Administrator under this paragraph, the owner or operator of an

affected source remains subject to the requirements of this section.

(ii) Recordkeeping or reporting requirements may be waived upon

written application to the Administrator if, in the Administrator's

judgment, the affected source is achieving the relevant standard(s), or

the source is operating under an extension of compliance, or the owner

or operator has requested an extension of compliance and the

Administrator is still considering that request.

(iii) If an application for a waiver of recordkeeping or reporting is

made, the application shall accompany the request for an extension of

compliance under Part 51.7(c), any required compliance progress report

or compliance status report required under this part (such as under

Part 51.7(c) and Part 51.7(d)) or by the source's title V permit, or an

excess emissions and continuous monitoring system performance report

required under paragraph (e) of this section, whichever is applicable.

The application shall include whatever information the owner or

operator considers useful to convince the Administrator that a waiver

of recordkeeping or reporting is exercised.

(d) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she:

(1) Approves or denies an extension of compliance; or

(2)(i) Makes a determination of compliance following the submission of a required compliance status report or semiannual monitoring system performance report; or

(ii)(A) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(B) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(e) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

Sec. 63.11 Control device requirements.

(a) Applicability. This section contains requirements for control devices used to comply with provisions in relevant standards. These requirements apply only to affected sources covered by relevant standards referring directly or indirectly to this section.

(b) Flares. (1) Owners or operators using flares to comply with the provisions of this part shall monitor these control devices to ensure that they are operated and maintained in conformance with their design. Applicable subparts will provide provisions stating how owners or operators using flares shall monitor these control devices.

(2) Flares shall be steam-assisted, air-assisted, or non-assisted.

(3) Flares shall be operated at all times when emissions may be vented to them.

(4) Flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. Test Method 22 in Appendix A of part 60 of this chapter shall be used to determine the compliance of flares with the visible emission provisions of this part. The observation period is two hours and shall be used according to Method 22.

(5) Flares shall be operated with a flame present at all times. The presence of a flame pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(6) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

Variables:

Where:

Hhtal heating value of the sample; MJ/scm, where the net enthalpy per mole of offgas is based on combustion at 25 deg.C and 760 mm Hg,

8.706=Constant.

0.7084=Constant.

HT=The net heating value as determined in paragraph (b)(6) of this section.

Sec. 63.12 State authority and delegations.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from--

(1) Adopting and enforcing any standard, limitation, prohibition, or other regulation applicable to an affected source subject to the requirements of this part, provided that such standard, limitation, prohibition, or regulation is not less stringent than any requirement applicable to such source established under this part;

(2) Requiring the owner or operator of an affected source to obtain permits, licenses, or approvals prior to initiating construction, reconstruction, modification, or operation of such source; or

(3) Requiring emission reductions in excess of those specified in subpart D of this part as a condition for granting the extension of compliance authorized by section 112(i)(5) of the Act.

(b)(1) Section 112(l) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards and other requirements pursuant to section 112 for stationary sources located in that State. Because of the unique nature of radioactive material, delegation of authority to implement and enforce standards that control radionuclides may require separate approval.

(2) Subpart E of this part establishes procedures consistent with section 112(l) for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(c) All information required to be submitted to the EPA under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act, provided that each specific delegation may exempt sources from a certain Federal or State reporting requirement. The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency.

Sec. 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted to the appropriate Regional Office of the U.S. Environmental Protection Agency indicated in the following list of EPA Regional Offices.

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air, Pesticides and Toxics Division, J.F.K. Federal Building, Boston, MA 02203-2211.

EPA Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, 26 Federal

New York, NY 10278.

EPA Region III (Delaware, District of Columbia, Maryland,

Pennsylvania, Virginia, West Virginia), Director, Air, Radiation and

Toxics Division, 841 Chestnut Street, Philadelphia, PA 19107.

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi,

North Carolina, South Carolina, Tennessee), Director, Air,

Pesticides and Toxics Management Division, 345 Courtland Street,

NE., Atlanta, GA 30365.

EPA Region V (Illinois, Indiana, Michigan, Minnesota, Ohio,

Wisconsin), Director, Air and Radiation Division, 77 West Jackson

Blvd., Chicago, IL 60604-3507.

EPA Region VI (Arkansas, Louisiana, New Mexico, Oklahoma),

Texas), Director, Air, Pesticides and Toxics, 1445 Ross Avenue,

Dallas, TX 75202-2733.

EPA Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air

and Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101.

EPA Region VIII (Colorado, Montana, North Dakota, South Dakota,

Utah, Wyoming), Director, Air and Toxics Division, 999 18th Street,

1 Denver Place, Suite 500, Denver, CO 80202-2405.

EPA Region IX (Arizona, California, Hawaii, Nevada, American

Samoa, Guam), Director, Air and Toxics Division, 75 Hawthorne

Street, San Francisco, CA 94105.

EPA Region X (Alaska, Idaho, Oregon, Washington), Director, Air

and Toxics Division, 1200 Sixth Avenue, Seattle, WA 98101.

(b) All information required to be submitted to the Administrator

under this part also shall be submitted to the appropriate State agency

of any State to which authority has been delegated under section 111(c)

of the Act. The owner or operator of an affected source may contact the

appropriate EPA Regional Office for the mailing addresses for those

States whose delegation requests have been approved.

(c) If any State requires a submittal that contains all the

information required in an application, notification, request, report,

statement, or other communication required in this part, an owner or

operator may send the appropriate Regional Office of the EPA a copy of

that submittal to satisfy the requirements of this part for that

communication.

Sec. 61.14 Incorporations by reference.

(a) The materials listed in this section are incorporated by

reference in the corresponding sections noted. These incorporations by

reference were approved by the Director of the Federal Register in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are

incorporated as they exist on the date of the approval, and notice of

any change in these materials will be published in the Federal

Register. The materials are available for purchase at the corresponding

addresses noted below, and all are available for inspection at the

Office of the Federal Register, 800 North Capitol Street, NW, suite

700, Washington, DC, at the Air and Radiation Docket and Information

Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA

Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The materials listed below are available for purchase from at

least one of the following addresses: American Society for Testing and

Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946-77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for Sec. 63.11(b)(6).

(2) ASTM D2382-76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved for Sec. 63.11(b)(6).

Sec. 63.15 Availability of information and confidentiality.

(a) Availability of information. (1) With the exception of information protected through part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), notification of compliance status, excess emissions and continuous monitoring systems performance report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(2) The availability to the public of information provided to or otherwise obtained by the Administrator under this part shall be governed by part 2 of this chapter.

(b) Confidentiality. (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

[FR Doc. 94-5312 Filed 3-15-94; 8:45 am]

BILLING CODE 6560-50-P

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: November 20, 2006.

Michael S. Hacskaylo,

Administrator.

[FR Doc. E6–20438 Filed 12–1–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8250–5]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html*. The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by e-mail at: *malave.maria@epa.gov*. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. Although the 40 CFR part 63 NESHAP and section 111(d) of the Clean Air Act (CAA) regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the 40 CFR part 63 and section 111(d) of the CAA programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 63 such documents added to the ADI on November 10, 2006. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html*.

The following table identifies the database control number for each document posted on the ADI database system on November 10, 2006; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

Control	Category	Subpart	Title
0600001	NSPS	Dc	Alternative Fuel Monitoring.
0600002	NSPS	BB	Exemption from TRS Standard for Brown Stock Washer.
0600003	NSPS	BB	Alternative Monitoring for Scrubber.
0600004	NSPS	Db, Dc	Fuel Supplier Certification Statements.
0600006	NSPS	J	Alternative Monitoring Plan for a Catalytic Cracking Unit.
0600007	NSPS	J	Alternative Monitoring Plan for a Flare.
0600008	NSPS	AAa	Alterations to an Electric Arc Furnace.
0600082	NSPS	A, J	Alternative Monitoring Plan for Hydrogen Production Facility.
M060001	MACT	MMM	Compliance Test Waiver Request.
M060002	MACT	MMMM	Post Vulcanized Rubber-to-Metal Parts Bonding.

Control	Category	Subpart	Title
M060003	MACT	DDDDD	Common Duct Testing and Acid Rain Program Opt-in.
M060004	MACT	DDDDD	Firetube Boilers.
M060005	MACT	EEE	Liquid-to-Gas Ratio Operating Parameter Limit.
M060006	MACT	IIII	Use of Previously Conducted Transfer Efficiency Test.
M060007	MACT	MM	Alternative Monitoring for Scrubber.
M060008	MACT	A, EEE	Alternative Monitoring Locations and Parameters.
M060009	MACT	A, EEE	Alternative Monitoring Plan for Hazardous Waste Combustor.
Z060001	NESHAP	FF, V	Alternative Monitoring Plan for Dual Purpose Valves.
0600009	NSPS	WWW	Landfill Gas Processing System as Treatment.
0600010	NSPS	WWW	Landfill Gas Processing System as Treatment.
0600011	NSPS	WWW	Landfill Gas Processing System as Treatment.
0600012	NSPS	WWW	Landfill Gas Processing System as Treatment.
0600013	NSPS	WWW	Landfill Gas Processing System as Treatment.
0600014	NSPS	WWW	Temperature Monitors in Gas Turbines.
0600015	NSPS	VV	Liquid Urea Manufacturing Operations.
A060001	Asbestos	M	Demolition under Control of Same Owner or Operator.
A060002	Asbestos	M	Removal of Floor Mastic Using a Mechanical Buffer.
A060003	Asbestos	M	Applicability of 260 Linear Feet Requirement.
A060004	Asbestos	M	Test Method for Spray-applied Acoustical Materials.
A060005	Asbestos	M	Regulated Asbestos Containing Material.
A060006	Asbestos	M	Meaning of Preclude Access and Dripping.
M060010	MACT	HH, HHH	Clarification of Ownership and Co-location.
M060011	MACT	NNN	Metal Building Insulation.
M060012	MACT	MMMM	Post Vulcanized Rubber-to-Metal Parts Bonding.
M060013	MACT	PPP	Use of Tetrahydrofuran (THF) as Raw Material.
M060014	MACT	H	Nitrile Stripper Column System.
M060015	MACT	FFFF, HHHHH	Non-Dedicated Mixing Vessels.
0600016	NSPS	A, G	Modification of Nitric Acid Plant.
0600017	NSPS	UUU	Tile Dryers.
0600018	NSPS	SS	Coating of Dishwasher Racks.
0600019	NSPS	A, KKKK	Commencement of Construction.
0600020	NSPS	UUU	Opacity Monitoring Exemption.
0600021	NSPS	A, KKKK	Commencement of Construction.
0600022	NSPS	Dc	Reporting Frequency Requirements.
0600023	NSPS	OOO	Air Classifiers.
0600024	NSPS	UUU	Titanium Dioxide Ore Dryers and Product Dryers.
0600025	NSPS	A, D	State Monitoring Requirements in Lieu of 40 CFR Part 60.
0600026	NSPS	Dc	Alternative Opacity Monitoring.
0600027	NSPS	A, CC	Modification and Capital Expenditure Calculations.
0600028	NSPS	A, CC	Modification and Capital Expenditure Calculations.
0600029	NSPS	A	SIP-mandated Expenditures and Reconstruction.
M060016	MACT	G	Once In/Always In Rule.
M060017	MACT	YY	Dry Spinning Spandex Production Process Units.
M060018	MACT	HHHHH, MMMM	Coating of Test Panels Not Used in Final Product.
M060019	MACT	MM	Alternative Monitoring of Smelt Dissolving Tank Scrubber.
M060020	MACT	JJJJ, OOOO	Point of Determination for Group of Coating Lines.
M060021	MACT	NNNNN	Alternative Monitoring Plan for HCL Scrubber.
M060022	MACT	S	Alternative Monitoring Parameters for a Dual Control System.
M060023	MACT	S	Clean Condensate Alternative & Creditable Reductions.
M060024	MACT	S	Applicability of White Liquor Oxidation System.
M060025	MACT	EEEEE	Molding and Core Making.
M060026	MACT	S	Clean Condensate Alternative & Creditable Reductions.
Z060003	NESH	FF	Benzene Emissions from Exchange Leaks.

Summary of Headers and Abstracts

Abstracts

Abstract for [A060001]

Q: Are residential structures that are demolished as part of a larger project, such as highway expansion, subject to the asbestos requirements under 40 CFR part 61, subpart M?

A: Yes. EPA finds, pursuant to 40 CFR 61.145, that if two or more residences under the control of the same owner or operator are part of a larger demolition project, such as highway expansion, they are subject to the asbestos regulation, NESHAP subpart M.

Abstract for [A060002]

Q1: Is floor mastic a Category 1 asbestos-containing material under 40 CFR part 61, subpart M?

A1: No. EPA finds that floor mastic is not a Category 1 asbestos-containing material under the Asbestos NESHAP. However, pursuant to 40 CFR 61.141, it is a Category II asbestos-containing material.

Q2: Does the use of a mechanical buffer with an abrasive pad on floor mastic cause the floor mastic to become friable, and thus a Regulated Asbestos-Containing Material (RACM) under 40 CFR part 61, subpart M?

A2: Yes. EPA finds that pursuant to 40 CFR 61.141, the use of a mechanical buffer with an abrasive pad causes floor mastic to become friable and, thus, it is considered a RACM under the asbestos NESHAP.

Abstract for [A060003]

Q: Does the regulatory threshold of 260 linear feet on pipes apply to caulking and roof flashing materials that qualify as regulated asbestos-containing material (RACM) under 40 CFR part 61, subpart M?

A: No. EPA finds the 260 linear feet threshold is applicable only to pipes

under the asbestos NESHAP. Other materials, such as caulking or roof flashing, are subject to the 160 square foot standard as specified in 40 CFR 61.145.

Abstract for [A060004]

Q1: Has EPA issued guidance specifically about spray-applied acoustical materials under 40 CFR part 61, subpart M?

A1: No. EPA has not issued guidance under the asbestos NESHAP specifically about spray-applied acoustical materials.

Q2: Does EPA recommend that the public assure spray-applied acoustical materials to contain asbestos without testing, and, what method(s) should be used to test these materials under 40 CFR part 61, subpart M?

A2: No. EPA is not recommending that the public assure spray-applied acoustical materials to contain asbestos without testing. In regards to testing spray-applied acoustical materials, Polarized Light Microscopy (PLM) is specified in 40 CFR part 63 as the approved testing method; however, Transmission Electron Microscopy (TLM) is also an acceptable method.

Abstract for [A060005]

Q: Does 40 CFR part 61, subpart M, require that all asbestos-containing materials be removed before the demolition of a facility?

A: No. The asbestos NESHAP does not require all asbestos-containing materials to be removed before demolition. However, all Regulated Asbestos Containing Material (RACM) must be removed from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

Abstract for [A060006]

Q: Could EPA clarify the meaning of the words ''preclude access'' and ''dropping'' in 40 CFR 61.145(c)(1) and 61.145(c)(6) of the asbestos NESHAP, subpart M?

A: EPA finds that the use of the term ''preclude access'' in 40 CFR 61.145(c)(1) of the asbestos NESHAP is intended to ensure that all Regulated Asbestos Containing Material (RACM) expected to be disturbed during the demolition or renovation is removed from the facility before any action is taken that could prevent safe removal of the RACM during a later phase of the project. The use of the term ''dropping'' is intended to prevent RACM from falling (instead of being ''placed'') on the floor and to ensure that RACM is moved in a careful way to minimize asbestos fiber release.

Abstract for [M060001]

Q: Does EPA waive the Method 5 test requirement for a second process vent, under 40 CFR part 63, subpart MMM, at the Arkema facility in Riverview, Michigan?

A: Yes. EPA waives the Method 5 test because information submitted by the facility shows that it is impractical to test the second vent due to short operating time, low flow rate, and low pressure drop. Dust emissions will be drawn through the first vent which will be tested, and any remaining dust will be trapped in the vent collection tank or in the mineral oil scrubbers.

Abstract for [M060002]

Q: Does EPA find that a coating being applied at the Cooper Tire & Rubber facility in Findlay, Ohio, that uses the same methodology, composition, and function as a rubber-to-metal coating, but that is bonded during a heating process not involving the vulcanization of rubber, is a rubber-to-metal coating under 40 CFR part 63, subpart MMMM?

A: No. EPA finds that because the bonding process is not performed during the vulcanization process, it is not considered a rubber-to-metal coating and should not be included in that category. Instead, the coating is subject to the general use coating subcategory emission limit in 40 CFR 63.3890(b)(1).

Abstract for [M060003]

Q1: Can the required emission tests, under 40 CFR part 63, subpart DDDDD, be conducted in the common duct for boilers 1, 2, and 3 at the Dairyland Power Cooperative Alma Station in LaCrosse, Wisconsin?

A1: No. 40 CFR 63.7510 requires that each unit be tested, and the language in Section II.F of the September 13, 2004 Preamble to the Final Rule reinforces this requirement. The facility is required to submit an alternative test procedure request with appropriate technical justification, if it wants to conduct common duct testing. However, testing in a common duct is considered a minor change to a test method; thus, EPA Regions and delegated States may approve such a request.

Q2: Does EPA find that boilers 1, 2, and 3 would be exempt from the boiler MACT, under 40 CFR part 63, subpart DDDDD, if they opt into the Acid Rain Program?

A2: No. EPA finds that 40 CFR 63.7491 includes no such exemption. A source cannot avoid controlling mercury emissions by agreeing to control sulfur dioxide and nitrogen oxides.

Abstract for [M060004]

Q: Does EPA find that the two 250-horsepower firetube boilers planned for installation at Green Bay Packaging in Green Bay, Wisconsin, should be regulated within the ''small gaseous fuel subcategory'' as defined in MACT subpart DDDDD, 40 CFR 63.7575, even if each boiler's heat input rating at 100 percent efficiency may reach 10.5 million BTU per hour?

A: Yes. EPA finds that these boilers are regulated within the ''small gaseous fuel subcategory'' as that term is defined in MACT subpart DDDDD, 40 CFR 63.7575. In response to comments, the Agency agreed to add firetube boilers to the definition of small liquid fuel and gaseous fuel subcategories in the final rule.

Abstract for [M060005]

Q: Does EPA approve a request from Minnesota Mining & Manufacturing Company (3M), under 40 CFR part 63, subpart EEE, to establish a high energy wet scrubber's hydrogen chloride/chlorine liquid-to-gas ratio operating parameter limit for a hazardous waste incinerator unit that is equal to 20.4 gallons per 1,000 dry standard cubic feet based upon the data from 3M's September 1 and 2, 2004, comprehensive performance test and not upon the data from 3M's July 2001, Resource Conservation and Recovery Act Trial Burn?

A: No. EPA does not approve the request because the company has not demonstrated that the proposed hydrogen chloride/chlorine liquid-to-gas ratio operating parameter limit also corresponds to compliance with the particulate matter, semi-volatile metal, and low volatile metals emission standards.

Abstract for [M060006]

Q: Does EPA approve at the General Motors (GM) Orion Assembly Plant in Orion, Michigan, the use of the results of a transfer efficiency test conducted in December 2004 for the primer surfacer and topcoat operations in lieu of performing another transfer efficiency test, under 40 CFR part 63, subpart IIII?

A: Yes. EPA approves the use of the December 2004 test results for the primer surfacer and the topcoat operations in lieu of performing an initial test to determine transfer efficiency. The test meets the requirements of MACT subpart IIII, 40 CFR 63.3160(c). There have been no process or equipment changes since the test that would trigger retesting, and the required operating parameters and transfer efficiency were established during the test.

Abstract for [M060007]

Q: Does EPA approve the continuous monitoring of fan amps and total scrubbing liquid flow rate as an alternative to the scrubber monitoring parameters required by NSPS Subpart BB and NESHAP Subpart MM, at the Weyerhaeuser Company facility in Bennettsville, South Carolina?

A: Yes. EPA approves this alternative continuous monitoring plan under MACT subpart MM and NSPS subpart BB because the dynamic scrubber operates near atmospheric pressure and the proposed monitoring is an acceptable alternative. Consistent with the requirements of 40 CFR 63.864, fan amps and scrubber liquid flow rate must be monitored at least once each successive 15-minute period, and continuous compliance must be determined based on a 3-hour average.

Abstract for [M060008]

Q1: Does EPA approve the request for an alternative monitoring location to continuously monitor total hydrocarbons and carbon monoxide, under 40 CFR part 63, subpart EEE, at the Ash Grove Cement Company facility in Overland Park, Kansas?

A1: Yes. EPA approves the request to monitor hydrocarbons in the by-pass and between stages numbers 2 and 3 of the preheater instead of in the main stack, pursuant to MACT subpart EEE, 40 CFR 63.1209(g)(1) and 63.8(f). Both the bypass and preheater gas streams must have a hydrocarbon limit of 10 ppmv on an hourly rolling average basis as defined in MACT subpart EEE. The location of the hydrocarbon monitors must be as specified in the Comprehensive Performance Test Plan, downstream of the bypass baghouse, while the preheater monitor shall be located in the gas stream between stages numbers 2 and 3 of the pre-heater in a manner that ensures a representative sample of gas will be monitored.

Q2: Does EPA also approve the request for an alternative method to calculate the maximum gas temperature at the inlet to the facility's particulate matter control device, under 40 CFR part 63, subpart EEE?

A2: Yes. EPA approves this request for an alternative calculation pursuant to MACT subpart EEE, 40 CFR 63.1209(g)(1) and 63.8(f) due to the potential danger associated with operating the coal mill baghouse at an elevated temperature. The facility will establish that the maximum gas temperature at the inlet of the coal mill baghouse does not exceed 200 degrees Fahrenheit. Establishing the maximum gas temperature at the inlet is an alternative for the coal mill baghouse only.

Q3: Does EPA also approve the request for an alternative to calculate the minimum combustion chamber temperature limit as required by 40 CFR 63.1209(j)(1) and (k)(2)?

A3: No. EPA does not approve the request to set the minimum combustion chamber temperature as the average of the highest hourly rolling averages measured in each trial run burn. However, EPA finds the source could establish a minimum combustion chamber temperature by matching the combustion chamber temperature profile during the comprehensive performance test using the specific procedures described in EPA's response as an alternative to establishing the minimum combustion chamber temperature.

Abstract for [M060009]

Q: Does EPA approve the alternative monitoring request to continuously monitor oxygen and temperature instead of carbon monoxide or total hydrocarbons, under 40 CFR part 63, subpart EEE, at the Holcim facility in Clarksville, Montana?

A: Yes. EPA approves this alternative monitoring request pursuant to MACT subpart EEE, 40 CFR 63.1209(g)(1) and 63.8(f), provided the facility meets the conditions established for the performance test for destruction and removal efficiency (DRE) that demonstrates compliance with the DRE standard found in 40 CFR 63.1204(c), and carbon monoxide and total hydrocarbon standards found in 40 CFR 63.1204(a)(5), as indicated in EPA's response.

Abstract for [M060010]

Q: Could EPA clarify the relationship between ownership and co-location in regards to the applicability of 40 CFR part 63, subpart HH, to the Mocane Cryogenic/Compressor Station located near Forgan, Oklahoma, and owned by Regency Gas Services and Colorado Interstate Gas?

A: EPA finds that all the facility operations are located at a single site, as defined in 40 CFR 63.761 of MACT subpart HH, and, because the transmission and storage source category begins where natural gas enters the transmission pipeline, the site is subject to MACT subpart HH. EPA also finds the equipment qualifies as a single Title V source with all equipment subject to Title V permitting. Because of separate ownership, individual Title V permits will be issued to the owner of the specific equipment.

Abstract for [M060011]

Q: Does 40 CFR part 63, subpart NNN, apply to the metal building insulation produced at CertainTeed's facility in Kansas City, Kansas?

A: Yes. EPA finds that metal building insulation meets the definition of building insulation for purposes of MACT subpart NNN, and that production of this insulation at the CertainTeed facility is subject to MACT subpart NNN.

Abstract for [M060012]

Q: Does EPA find that an autoclave should be included in the rubber-to-metal or general use subcategory, under 40 CFR part 63, subpart MMMM, if a partial vulcanization occurs in the first heating step and the part is submitted fully vulcanized in the autoclave, as is the case of the Cooper Standard Automotive facility in Michigan?

A: EPA finds that the autoclave should be included in the rubber-to-metal subcategory under MACT subpart MMMM. EPA has determined that the second coating step of a metal insert bonded to rubber does involve vulcanization based on the stress test results done on two metal parts coated with the same adhesive, and should be included in such subcategory.

Abstract for [M060013]

Q: Does EPA find that the substantive control, testing, and monitoring requirements of 40 CFR part 63, subpart PPP, apply to the 3M process using tetrahydrofuran (THF) as a raw material at the Specialty Material Manufacturing facility in Cottage Grove, Minnesota?

A: Yes. EPA finds that the language at 40 CFR 63.1420(d)(3) only exempts those processes which produce polyether polyols from epoxide polymerization, and, by its terms, does not extend the exemption under MACT subpart PPP to processes which produce polyether polyols from THF. The facility did not provide the Agency sufficient information to determine whether only the recordkeeping or demonstration requirements at 40 CFR 63.1420(b)(1) would apply to the process.

Abstract for [M060014]

Q1: Does EPA find that the nitrile stripper column (NSC) system at the INVISTA S.a.r.l. (INVISTA) Victoria plant should be classified as a waste management unit or a recovery device, under 40 CFR part 63, subpart PPP, or can it be subject to two sets of requirements at the same time because it may qualify both as a waste management and a recovery device under the Hazardous Organic National Emissions Standard for Hazardous Air

Pollutants (HON) rule, 40 CFR part 63, subpart F?

A1: EPA finds that the NSC system cannot be subject to two sets of standards under the HON rule and that it should be classified as a waste management unit under that rule. Based on the concept of "discarded" within the terms "point of determination" and "wastewater" in the HON rule, the NSC system must either be a recovery device within the CMPU or a waste management unit outside of the CMPU. The fact that the NSC system is receiving the stormwater stream from the Victoria plant, in addition to the stream from the ADN unit for which it was originally designed, clarifies for the Agency that the NSC system is outside of the CMPU. The liquid stream transferred from the ADN process to the NSC system is, therefore, "discharged" to the NSC system. This makes the NSC system a "waste management unit" and the ADN stream "wastewater", subject to the performance standards of 40 CFR 63.138 of the HON rule.

Q2: What is the appropriate classification for the NSC system if the stormwater runoff is no longer routed to the ADN unit?

A2: When the stormwater runoff is removed from the NSC system, the NSC system should be evaluated as a recovery device because the NSC system potentially serves the purpose of recovering chemicals for fuel value, use, reuse or for sale for fuel value, use or reuse.

Abstract for [M060015]

Q: Could EPA clarify the applicability of the Miscellaneous Organic Chemical Manufacturing NESHAP (MON rule) and the Miscellaneous Coating Manufacturing NESHAP (MCM rule), under 40 CFR part 63, subparts FFFF and HHHHH respectively, to non-dedicated mixing vessels which support coatings manufacturing in three different areas at the Cytec Industries facility in Havre de Grace, Maryland?

A: EPA determines that in area one the non-dedicated HAP mixing vessels are used in the production of "pre-react" isolated intermediates which are stored below ambient temperature until further processing to produce a coating occurs, and therefore, are subject to the MON. The pre-react is similar to a synthesis operation producing a MON chemical described by SIC code 289, rather than a coating. EPA agrees that since the "pre-react" meets all of the criteria specified in EPA's response, it is a MON product and therefore the mixing vessel that produces it is subject to the MON. In area two, the MON chemical is mixed with curing systems, fillers, and other additives, and a coating is produced. Since the non dedicated HAP mixing vessels in area two are associated with the production of a coating, they are part of the miscellaneous coating manufacturing subject to the MCM rule. Area three consists of the application of the coating produced in area two. Neither the MON nor the MCM apply to the application of coatings.

Abstract for [M060016]

Q: Does MACT subpart G, pursuant to 40 CFR 63.100(b)(4), provide minor source status to International Specialty Products' butanediol facility in Lima, Ohio, given that the facility is no longer part of the BP Amoco Chemical Company (BP) major source; has actual emissions of less than 2 tpy of individual hazardous air pollutants (HAP) and less than 4 tpy of total HAP; shares no common control or ownership with BP; and is a discrete facility that is not contiguous with any BP property or any of the remaining sources listed on the current BP Title V permit?

A: No. EPA finds that the facility is not eligible for minor source status under MACT subpart G. It was constructed and permitted as a major source on the compliance date for new sources in the HON. Thus, according to the "once in, always in" policy, it remains subject to the HON rule, even if it subsequently reduces its emissions below major source thresholds.

Abstract for [M060017]

Q: Does 40 CFR part 63, subpart YY, apply to the spandex production equipment at the Invista facility in Waynesboro, Virginia, where the equipment is part of one or more dry spinning spandex production process units?

A: No. EPA finds that the spandex production equipment is not subject to MACT subpart YY. 40 CFR 63.1103(h)(1)(ii) defines emission points, listed in paragraphs (h)(1)(i)(A) through (C), that are associated with a dry spinning spandex production process unit that are not subject to the requirements of 40 CFR 63.1103(h)(3) even though the process is part of the spandex production source category.

Abstract for [M060018]

Q: Does 40 CFR part 63, subpart MMMM, apply to a spray booth at the PPG Industries, Inc. (PPG) facility in Springdale, Pennsylvania, that would be used to prepare painted sample panels to be tested at a laboratory?

A: No. EPA determines that PPG's proposed new spray booth would not be subject to NESHAP subpart MMMM, the Surface Coating of Miscellaneous Metal Parts and Products rule, since the spray booth would not be used to apply surface coating of "miscellaneous metal parts or products," which include certain various "industrial, household, and consumer products," or their "metal components," i.e., parts, as defined in 40 CFR 63.3881. The sample panels that PPG plans to prepare in its new spray booth do not qualify as "industrial, household, and consumer products" because they will be prepared solely to allow coatings to be tested in a laboratory, will not be sold in commerce, and will eventually be recycled as scrap metal. The sample panels also do not qualify as "metal components" of "industrial, household, and consumer products" because the panels will never become part of an industrial, household, or consumer product.

Abstract for [M060019]

Q: Does EPA approve continuous monitoring of fan amperage and scrubbing liquid flow rate in lieu of scrubber pressure drop under 40 CFR part 63, subpart MM, for the smelt dissolving tank scrubber at the Smurfit-Stone Container Hopewell Mill in Hopewell, Virginia?

A: Yes. EPA finds that pressure drop is not the best indicator of control device performance for low-energy entrainment scrubbers. Compliance with MACT subpart MM could be demonstrated by verifying ID fan operation, maintaining a scrubber liquid flow rate, and maintaining a scrubbing liquid supply pressure based on established parameters from the facility's performance test.

Abstract for [M060020]

Q: Does EPA agree that the Point of Determination (POD) for the predominant use ratio (e.g., 90 percent/10 percent) which, according to 40 CFR 63.4281(e), would determine whether part 63, subpart OOOO ("Fabric NESHAP") or subpart JJJJ ("Paper and Other Web Coating NESHAP, POWC NESHAP") would apply, can be located at the entry point to the common control device for the Cytec Engineered Materials Inc. facility in Havre de Grace, Maryland?

A: No. EPA does not approve Cytec's request to consider the entry point to the common control device for the four coaters/dryers as a POD for purposes of establishing the MACT subpart OOOO predominant use ratio. 40 CFR 63.4281(e) states that "any web coating line must comply with the subpart of this part that applies to the predominant use activity conducted at the affected

source." This indicates that a predominant use determination under the Fabric NESHAP can be made only with respect to a single coating line, not groups of coating lines. Therefore, Cytec, Inc. must assure ensure that its three coaters/dryers subject to POWC NESHAP comply with all of the POWC NESHAP's requirements, and that its one coater/dryer subject to the Fabric NESHAP complies with all of the Fabric NESHAP's requirements.

Abstract for [M060021]

Q: Does EPA approve, under 40 CFR part 63, subpart NNNNN, the monitoring of alternative operating limit parameters (scrubber base temperature and indicators of proper liquid flow) at the DuPont Washington Works facility in Washington, West Virginia?

A: Yes. EPA finds that DuPont has demonstrated that the scrubber monitoring specified under MACT subpart NNNNN is not appropriate for its process, and that the proposed alternative monitoring meets the requirements for approval in 40 CFR 63.9025(b) and 63.8(f).

Abstract for [M060022]

Q: Does EPA approve monitoring the secondary power from the electrostatic precipitator (ESP) as an alternative monitoring parameter to monitoring pressure drop on the scrubber, under 40 CFR part 63, subpart S, for a dual-control device consisting of an ESP followed by a packed tower scrubber at the International Paper Georgetown Mill, in Georgetown, South Carolina?

A: No. EPA does not approve monitoring secondary power from the ESP in-lieu-of monitoring the pressure drop on the scrubber because there is no demonstration to show that the negative electric charge on particles exiting the ESP will have anything more than negligible effects on the efficiency of the scrubber.

Abstract for [M060023]

Q: Does EPA approve that emission reductions achieved as a result of upgrades to a wastewater lagoon at the Buckeye facility in Perry, Florida, are creditable to demonstrate compliance with the condensate collection requirements in 40 CFR 63.446(c) of the Pulp and Paper MACT, 40 CFR part 63, subpart S?

A: EPA determines that the reductions may be creditable provided that Buckeye can provide the necessary data to satisfactorily demonstrate continuous compliance with the lb/ODTP compliance option for condensate collection and treatment, beginning at the initial compliance date, as described in EPA's response. The data would be generally considered creditable if it demonstrates that such emission reductions resulted from efficiency improvements to a control device that can be verified; are clearly from additional improvements in technology; and are not otherwise needed to meet regulatory requirements.

Abstract for [M060024]

Q: Does EPA find that the White Liquor Oxidation (WLO_x) system portion of a pulp and paper mill's oxygen delignification system subject to the requirements of the Pulp and Paper MACT, 40 CFR part 63, subpart S, at the Palatka Mill in Palatka, Florida?

A: No. EPA finds that the WLO_x system is not named as one of the pieces of process equipment in the regulatory definition of an oxygen delignification system and therefore is not subject to the MACT subpart S requirements in 40 CFR 63.443.

Abstract for [M060025]

Q: Does EPA find that mold and core making lines that use the "Expandable Pattern Casting" (or "Lost Foam") process at the Mueller Company's facility in Albertville, Alabama subject to the MACT requirements for Iron and Steel Foundries under 40 CFR part 63, subpart EEEEE?

A: Yes. The pouring, cooling, and shakeout operations of Mueller's Expendable Pattern Casting process are not significantly different than a conventional sand casting operation, and therefore should be considered as such for 40 CFR part 63, subpart EEEEE purposes. In addition, Mueller's pouring operations would be classified as pouring stations, not pouring areas. The main distinctions between a pouring station and a pouring area are that pouring stations are automated and that the pouring can reasonably be assumed to occur at distinct points.

Abstract for [M060026]

Q: Does EPA approve that emission reductions resulting from improvements to the pulp washer line fans, under 40 CFR part 63, subpart S, creditable for the Pulp & Paper MACT Clean Condensate Alternative (CCA) at the Smurfit-Stone facility in Fernandina Beach, Florida?

A: No. Generally, a mill can make efficiency improvements to a control device and then use the incremental improvements for CCA credit if the emission changes are verifiable and clearly from additional improvements in technology. The modifications described for this facility are not additional improvements in technology, but rather equipment upgrades to meet proper operating levels and result in HAP reductions from emissions that should never have been emitted.

Abstract for [Z060001]

Q: Does EPA approve an alternative monitoring plan for pressure/vacuum relief valves, under 40 CFR part 61, subpart FF, for the wastewater treatment plant tanks and oil-water separator at the Flint Hills Resources refinery in Saint Paul, Minnesota?

A: Yes. EPA concludes that the pressure/vacuum relief valves function as both pressure relief devices and dilution air openings. Further, the Agency recognizes that the requirements of 40 CFR 61.343(a)(1)(i)(B) and (C) do not account for this dichotomy, and it approves the proposed alternative monitoring plan under NESHAP subpart FF to resolve the conflicting requirements.

Abstract for [0600001]

Q: Does EPA approve an alternative monitoring plan altering the required daily monitoring, under 40 CFR part 60, subpart Dc, 40 CFR 60.48c(g), to a monthly monitoring schedule for natural gas fuel usage at the Ypsilanti Community Utilities Authority facility in Ypsilanti, Michigan?

A: Yes. EPA conditionally approves the alternative monitoring request to record natural gas usage for two new boilers on a monthly, rather than a daily basis. EPA finds that compliance with NSPS Subpart Dc can be adequately verified by keeping fuel usage records on a monthly basis if only natural gas is burned. The facility must also specify how the total fuel usage will be apportioned to individual boilers.

Abstract for [0600002]

Q: Does EPA approve an exemption from the Total Reduced Sulfur (TRS) standard in NSPS subpart BB, 40 CFR 60.283(a)(1)(iv), for the brown stock washer (BSW) system at the Buckeye Florida Limited Partnership facility in Perry, Florida?

A: Yes. Based on cost information supplied and recent cost estimates from other facilities, EPA finds that the BSW system qualifies for a temporary exemption under NSPS subpart BB. Should future changes make the control of TRS emissions from the Number 2 Mill BSW system cost effective, this exemption will no longer apply, and it will be necessary for Buckeye to control TRS emissions.

Abstract for [0600003]

Q: Does EPA approve the continuous monitoring of fan amps and the total

scrubbing liquid flow rate as an alternative to the scrubber monitoring parameters required by 40 CFR part 60, subpart BB, and 40 CFR part 63, subpart MM, for a smelt dissolving tank dynamic scrubber at the Weyerhaeuser Company facility in Bennettsville, South Carolina?

A: Yes. EPA approves these alternative monitoring parameters. The dynamic scrubber operates near atmospheric pressure and thus the proposed monitoring, in combination with monitoring of scrubber liquid flow rate, is an acceptable alternative to the NESHAP subpart MM requirement to monitor the pressure loss of the gas stream and the scrubbing liquid flow rate. In addition, EPA approves the request to monitor scrubbing liquid flow rate as an alternative to the NSPS subpart BB requirement to monitor scrubber liquid supply pressure.

Abstract for [0600004]

Q: Does EPA exempt facilities which use very low sulfur oil from the requirement to obtain certifications of sulfur content for each shipment of fuel oil delivered, under 40 CFR part 60, subparts Db and Dc, and permit them to provide only receipts indicating the type of fuel delivered?

A: No. EPA does not exempt facilities from the requirement to obtain certifications of sulfur content for shipments of fuel oil. The requirements of NSPS subparts Db and Dc regarding certification of fuel sulfur content must be met.

Abstract for [0600006]

Q: Does EPA approve a request for an exemption from the requirement in NSPS subpart J, 40 CFR 60.105(a)(2)(ii), to install, calibrate, operate, and maintain a carbon monoxide continuous emission monitor with a 1,000-ppmv span gas for a fluid catalytic cracking unit at the Flint Hills Resources facility in Saint Paul, Minnesota?

A: Yes. EPA finds that the facility qualifies for the exemption set forth in 40 CFR 60.105(a)(2)(ii) because the company has met the following requirements: calibrated a CO CEM with a span value of 100 parts per million by volume, dry basis (PPMVD); demonstrated that the relative accuracy is 10 percent of the average CO emissions or 5 PPM CO, whichever is greater; and demonstrated that the average CO emissions during a 30-day period are less than 50 PPMVD with the CO CEM. The facility still must comply with a state air permit requirement to install and maintain a CO CEM with a 100 PPMV span.

Abstract for [0600007]

Q: Does EPA approve an alternative monitoring plan for a zinc thermal oxidizer flare used during periods of maintenance or malfunction of a vapor recovery unit at a gasoline loading rack, under 40 CFR part 60, subpart J, at the Flint Hills Resources facility in Saint Paul, Minnesota?

A: Yes. EPA finds that the company has demonstrated that this refinery fuel gas meets the criteria in EPA's guidance for refinery fuel gas stream alternative monitoring plans and approves the alternative monitoring plan.

Abstract for [0600008]

Q1: Does EPA find that the alterations made in 1985 to electric arc furnace (EAF) number 2 at Oregon Steel Mill's facility in Portland, Oregon, meet the definition of "modification" under 40 CFR part 60, subpart AAa?

A1: No. Based on the information provided, EPA finds that the alterations made in 1985 to EAF number 2 do not constitute a modification under NSPS subpart AAa. Although the alterations increased the production rate of steel from 25 tons per hour to 50 tons per hour, they did not increase particulate matter emissions.

Q2: Does EPA find that the alterations meet the definition of "reconstruction" under 40 CFR part 60, subpart AAa?

A2: No. Based on the information provided, EPA finds that the changes made in 1985 to EAF number 2 do not constitute a reconstruction under NSPS subpart AAa. Reconstruction is based on a comparison of the fixed capital cost of the new components and a comparable entirely new facility, that is, a new eccentric bottom tap EAF capable of producing 50 tons of steel per hour. The EAF consists of the furnace shell and roof and the transformer. The cost of the 1985 alterations was 31.8 percent of the cost of the comparable entirely new facility, which is less than the 50 percent reconstruction cost threshold.

Q3: Does EPA find that the other changes made to the EAF number that resulted in an increase on the potential emission rate was accomplished with a "capital expenditure" as defined under 40 CFR part 60, subpart AAa?

A3: No. EPA finds that the changes made in 1987, 1990, 1991, 1993, 1997 and 1998 to EAF number 2 did not require capital expenditures as defined in 40 CFR 60.2. The annual asset guideline repair allowance percentage for an EAF is 18 percent. The changes that enabled increases in production rate included the purchase of a transformer and the installation of oxy-fuel burners, a post combustion system, aluminum current arms, and other changes, all of which did not cost more than 18 percent of the basis for an EAF.

Abstract for [0600009]

Q: Does EPA find that the gas processing system at the Bethel Landfill in Hampton, Virginia, qualifies as treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C)?

A: Yes. EPA considers compression, filtration, and moisture removal from a landfill gas for use in eight reciprocating internal combustion engines to be treatment pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the engines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction Plan (SSM Plan) required by 40 CFR part 63, subpart AAAA. However, the treatment system supplying gas to the turbines will have to be included in the SSM Plan.

Abstract for [0600010]

Q: Does EPA consider the gas processing system that includes the three turbines at the Grand Central Landfill in Pen Argyl, Pennsylvania, to be treatment under 40 CFR part 60, subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C)?

A: Yes. EPA considers compression, filtration, and moisture removal from a landfill gas for use in an energy recovery device to be treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the engines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction Plan (SSM Plan) required by 40 CFR part 63, subpart AAAA. However, the treatment system supplying gas to the turbines will have to be included in the SSM Plan. Also, Pennsylvania may include state enforceable requirements in any permit it issues, based on its review of state laws and regulations.

Abstract for [0600011]

Q: Does EPA consider the gas processing system at Keystone Potato Products' facility in Hegins, Pennsylvania, to be treatment under 40 CFR part 60, subpart WWW?

A: Yes. EPA considers compression, filtration, and moisture removal from a landfill gas for use in an energy recovery device to be treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the engines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction Plan (SSM Plan) required by 40 CFR Part 63, subpart AAAA. However, the treatment system supplying gas to the turbines

will have to be included in the SSM Plan. Also, Pennsylvania may include state enforceable requirements in any permit it issues, based on its review of state laws and regulations.

Abstract for [0600012]

Q: Does EPA consider the gas processing system at the Lake View Landfill in Philadelphia, Pennsylvania, to be treatment under 40 CFR part 60, subpart WWW?

A: Yes. EPA considers compression, filtration, and moisture removal from a landfill gas for use in an energy recovery device to be treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the engines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction Plan (SSM Plan) required by 40 CFR Part 63, subpart AAAA. However, the treatment system supplying gas to the turbines will have to be included in the SSM Plan.

Abstract for [0600013]

Q: Does EPA consider gas processing system to be treatment as specified under 40 CFR part 60, subpart WWW at the Modern Landfill facility in York, Pennsylvania?

A: Yes. EPA considers compression, filtration, and moisture removal from a landfill gas for use in an energy recovery device to be treatment under NSPS subpart WWW, pursuant to 40 CFR 60.752(b)(2)(iii)(C). Because the engines will be exempt from monitoring, they do not have to be included in the Startup, Shutdown, and Malfunction Plan (SSM Plan) required by 40 CFR Part 63, subpart AAAA. However, the treatment system supplying gas to the turbines will have to be included in the SSM Plan.

Abstract for [0600014]

Q: Does EPA approve the use of post-combustion chamber temperature monitors as an alternative to combustion chamber temperature monitors in turbines at the Pottstown Landfill facility in Pottstown, Pennsylvania, required by 40 CFR part 60, subpart WWW?

A: Yes. EPA has determined that the location of the temperature monitors on these turbines is acceptable as an alternative to being located in the combustion zone of the turbines.

Abstract for [0600015]

Q: Does 40 CFR part 60, subpart VV, apply to liquid urea manufacturing operations?

A: EPA has not provided a site-specific determination in this case because the source has not been identified. Additionally, EPA is not prepared to issue a blanket exemption for liquid urea manufacturing operations as none was issued during the rulemaking process. In addition, a liquid urea facility must look to the same criteria in 40 CFR 60.480(a) and (b) as other manufacturers of listed chemicals to determine whether it is subject to NSPS subpart VV. The facility must then consider whether it might be exempted under 40 CFR 60.480(d).

Abstract for [0600016]

Q: Will plant changes to increase production capacity result in a modification of the C–1 Nitric Acid Plant located at the PCS Nitrogen Fertilizer facility in Augusta, Georgia? Is the use of pre-change and post-change emission testing the appropriate means of determining whether the change results in an increase in the NO_X emission rate that will trigger the finding of a modification?

A: Yes. EPA finds that the plant changes do constitute a modification under the NSPS, and the unit would become subject to NSPS subpart G. EPA also finds that the manner in which the Masar emission control system has been operated in the past and its improper maintenance makes it impossible to establish rational pre-change test conditions for purposes of determining whether the plant changes will cause an increase in NO_X emission rate. In this case, emission factors are the most appropriate method to determine if an emission increase occurs, and the appropriate factors show that the increase in nitric acid production capacity will result in an emission increase. Thus, the plan will be subject to NSPS subpart G requirements following the proposed production rate increase.

Abstract for [0600017]

Q: Does 40 CFR part 60, subpart UUU, apply to a tile dryer at the Florim USA facility in Clarksville, Tennessee, that dries formed tiles by convection?

A: No. EPA finds that the tile dryer operates in a manner that is typical of tunnel dryers, which are exempt from NSPS subpart UUU.

Abstract for [0600018]

Q: Does 40 CFR part 60, subpart SS, apply to surface coating operations at the Nestaway facility in McKenzie, Tennessee, which fabricates and coats wire racks that are sold for use in new dishwashers of various manufacturers and as aftermarket replacements?

A: No. EPA finds that because the facility is not part of a large appliance assembly plant, NSPS subpart SS does not apply to its surface coating operation.

Abstract for [0600019]

Q: What requirements under 40 CFR part 60, subpart KKKK, would apply to a simple cycle combustion turbine to be operated at the Stock Island Power Plant in Key West, Florida, since the Florida Municipal Power Agency and GE Packaged Power entered into a contract for the fabrication and construction of the turbine on February 18, 2005, the final date by which a unit must have commenced construction to be treated as an existing unit not subject to NSPS subpart KKKK?

A: EPA finds that additional documentation must be submitted to make a determination. Without adequate documentation that the February 18, 2005 contract for the fabrication and construction of the turbine will result in a continuous program of construction, the combustion turbine in question would be considered subject to NSPS subpart KKKK requirements for new affected facilities. Refer to ADI determination 0600021.

Abstract for [0600020]

Q: Does EPA approve an exemption from opacity monitoring under 40 CFR part 60, subpart UUU, for a flash dryer that uses baghouses to control emissions as it dries product at the DuPont DeLisle titanium dioxide production facility in Pass Christian, Mississippi?

A: Yes. EPA finds that because the dryer has a particulate matter emission rate of less than 11 tons/year, an exemption from the opacity monitoring requirement of NSPS subpart UUU is appropriate.

Abstract for [0600021]

Q: What requirements under 40 CFR part 60, subpart KKKK, would apply to a simple cycle combustion turbine to be operated at the Stock Island Power Plant in Key West, Florida, since the Florida Municipal Power Agency and GE Packaged Power entered into a contract for the fabrication and construction of the turbine on February 18, 2005, the final date by which a unit must have commenced construction to be treated as an existing unit not subject to NSPS subpart KKKK. The facility has provided follow-up information in response to EPA's request for more information. Refer to ADI determination 0600019.

A: Based on the information submitted, EPA concludes that the combustion turbine, construction of which commenced on February 18,

2005, will not be subject to NSPS subpart KKKK, provided that a continuous program of construction is maintained and construction is completed within a reasonable time.

Abstract for [0600022]

Q: Does EPA allow the owners or operators of certain affected facilities under 40 CFR part 60, subpart Dc to submit reports annually instead of each six-month period, as required by 40 CFR 60.48(c)(j), if a facility is not required to obtain a Title V permit?

A: No. EPA finds that the reporting frequency in NSPS subpart Dc is intended to apply to owners and operators of affected facilities regardless of whether they are required to obtain a Title V permit.

Abstract for [0600023]

Q: Does 40 CFR part 60, subpart OOO, apply to air classifiers at nonmetallic mineral processing plants?

A: EPA finds that air classifiers are regulated by NSPS subpart OOO if they are part of a grinding mill. A grinding mill is the only affected facility under NSPS subpart OOO that includes air classifiers. If air classifiers are not part of a grinding mill, then they are not regulated by the standard since these are not identified as a separate category in the rule.

Abstract for [0600024]

Q: Does EPA find that 40 CFR part 60, subpart UUU, applies to the Line 2 ore dryer and product dryer at the DuPont DeLisle Plant in Pass Christian, Mississippi, where the facility uses a chlorination-oxidation process to manufacture titanium dioxide pigment?

A: Yes. EPA finds that although the chlorination-oxidation process is exempt from NSPS subpart UUU, the ore dryer and product dryer at the DuPont plant are not part of the chlorination-oxidation process. Thus, the dryers are subject to NSPS subpart UUU.

Abstract for [0600025]

Q: Does EPA find that the requirements of the 25 Pennsylvania (PA) Code Chapter 139 and the PA Department of Environmental Protection (PADEP) Continuous Source Monitoring Manual can be applied in lieu of the requirements in 40 CFR part 60, subparts A and D, and 40 CFR part 60.13, for sulfur dioxide (SO_2) emissions for two power boilers at Weyerhaeuser's Johnsonburg Mill in Johnsonburg, Pennsylvania?

A: Yes. EPA finds that the requirements of 25 PA Code Chapter 139 and PADEP's Continuous Source Monitoring Manual can be applied in lieu of corresponding NSPS requirements in CFR part 60, subparts A and D and 40 CFR part 60.13, provided that SO_2 emissions from the two power boilers remain less than 0.20 lbs/mmBtu and provided that, for validating hourly averages, the source computes one hour averages from 6 or more data points equally spaced over the one-hour period.

Abstract for [0600026]

Q: Does EPA approve EPA Method 9 visible emissions observations as an alternative to installing and certifying a continuous opacity monitoring system (COMS) when oil is burned in a boiler subject to 40 CFR part 60, subpart Dc, at the Penreco plant in Karns City, Pennsylvania?

A: Yes. EPA finds that the alternative opacity monitoring can be performed in lieu of installing and certifying a COMS. However, specific procedures outlined in EPA's response must be followed to ensure compliance with this approval under NSPS subpart Dc. The procedures are consistent with those that EPA has approved for other Subpart Dc boilers that burn gas as a primary fuel and that have an annual capacity factor of 10 percent or less for oil when used as a backup fuel.

Abstract for [0600027]

Q: Do the changes at the glass melting furnace, Furnace 52, cause an emissions increase at the Flat River Glass facility in Park Hills, Missouri, and if so, was the increase accomplished through a capital expenditure such that it would be considered a modification pursuant to 40 CFR part 60, subparts A and CC? Refer to ADI Control No. 0600028.

A: Yes. EPA finds that the changes at the furnace constitute a capital expenditure and therefore, the furnace has been modified for purposes of NSPS subparts A and CC. This determination provides further detail on the equipment considered in the calculations, the estimated cost of the changes, and the results of the calculation that show a capital expenditure.

Abstract for [0600028]

Q1: Do the physical or operational changes to Furnace 52 at the Flat River Glass facility in Park Hills, Missouri, result in an emissions increase pursuant to 40 CFR part 60, subparts A and C? Refer to ADI determination 0600027.

A1: Yes. Based on evaluation of the AP–42 factors, historical test data, and 40 CFR part 60, Appendix C calculations, EPA has determined that Furnace 52 has been modified since a kilogram per hour emission increase did occur as a result of the change, and that such modification was accomplished with a capital expenditure.

Q2: Was the emissions increase accomplished through a capital expenditure pursuant to 40 CFR 60.14(e) at the Flat River Glass facility in Park Hills, Missouri?

A2: Yes. EPA finds that there was a capital expenditure made for purposes of NSPS subpart CC. Based on the information submitted, EPA has determined that the cost of the changes made to the furnace exceeded 12 percent of the facility's basis, the threshold for a capital expenditure. Because the company did not include any cost data for the initial installation of the glass furnace, the existing facility's basis was calculated by using the current cost of a new glass furnace and back-calculating the cost to the year of installation.

Abstract for [0600029]

Q: Does EPA find that a source's intent in incurring costs of component replacement as a result of SIP control requirements should be a factor in determining whether a source has exceeded the 50 percent cost threshold of the NSPS reconstruction provisions under 40 CFR part 60, subpart A?

A: EPA finds that replacement costs may not be disregarded based on the owner's intent in incurring them. Creating an intent-based exemption for owners whose SIP-related expenditures pass the 50 percent threshold in Section 60.15 would be inconsistent with Section 111. However, EPA could conclude in the future that only certain facilities should be considered new once the 50 percent threshold for reconstruction is surpassed. Alternatively, EPA could determine that it is appropriate to exempt sources in individual cases or to exempt identifiable groups of sources where NSPS compliance is not "technologically or economically feasible," which is consistent with section 111 of the Clean Air Act.

Abstract for [Z060003] and [M060035]

Q: Does EPA find that benzene emissions that occur from heat exchanger leaks at a facility, located in Texas and represented by Baker Botts, are to be included in the calculation of the Total Annual Benzene (TAB) quantity from facility waste water under the NESHAP for Benzene Waste Operations, 40 CFR part 61, subpart FF?

A: Yes. EPA finds that neither benzene emissions occurring from non-contact heat exchanger leaks into cooling tower water nor benzene

quantities from ''contact heat exchangers'' qualify for the exemption or exclusion from the required benzene calculation (TAB) under the NESHAP for Benzene Waste Operations, 40 CFR part 61, subpart FF. Therefore, waste in the form of gases or vapors that is emitted from process fluids is required to be part of the calculation of the total annual benzene quantity in facility waste generation. This determination is based on the fact that the benzene emissions are directly generated by the respective process, and are neither the result of leakage nor of process offgas.

Abstract for [0600082]

Q: Does EPA approve a request for an alternative monitoring plan for a hydrogen production facility to allow grab sampling of refinery fuel gas combusted in the two reformer furnaces on a staggered schedule, as opposed to installing a continuous emissions monitoring system (CEMS), under 40 CFR part 60, subpart J, at the Air Products and Chemicals hydrogen production facility at the Exxon Mobil refinery in Joliet, Illinois?

A: Yes. EPA conditionally approves the request for an alternative monitoring plan under NSPS subpart J, provided the facility meets the conditions and terms of approval specified in EPA's response. This AMP approval is consistent with the EPA guidance entitled ''Alternative Monitoring Plan for NSPS Subpart J Refinery Fuel Gas: Conditions for Approval of the Alternative Monitoring Plan for Miscellaneous Refinery Fuel Gas Streams.''

Dated: November 22, 2006.

Lisa C. Lund,

Acting Director, Office of Compliance.

[FR Doc. E6–20440 Filed 12–1–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 2, 2007.

ADDRESSES: You may submit comments, identified by FR 4004 (OMB No. 7100–0112), by any of the following methods:

• Agency Web Site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• E–mail: *regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.

• FAX: 202–452–3819 or 202–452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission, supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Written Security Program for State Member Banks
Agency form number: FR 4004
OMB control number: 7100–0112
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 35 hours
Estimated average hours per response: 0.5 hours
Number of respondents: 70
General description of report: This recordkeeping requirement is mandatory pursuant to section 3 of the Bank Protection Act [12 U.S.C. § 1882(a)] and Regulation H [12 CFR § 208.61]. Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act normally arises. However, copies of such documents included in examination work papers would, in such form, be confidential pursuant to exemption 8 of the Freedom of Information Act [5 U.S.C. § 552(b)(8)].

Abstract: Each state member bank must develop and implement a written security program and maintain it in the

action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 18, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–22415 Filed 12–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63 [EPA–HQ–OAR–2004–0094; FRL–8263–3] RIN 2060–AM75

National Emission Standards for Hazardous Air Pollutants: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the General Provisions to the national emission standards for hazardous air pollutants(NESHAP). The proposed amendments would replace the policy described in the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors. The proposed amendments provide that a major source may become an area source at any time by limiting its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Thus, under the proposed amendments, a major source can become an area source at any time, including after the first substantive compliance date of an applicable MACT standard so long as it limits its potential to emit to below the major source thresholds. We are also proposing to revise tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions we are proposing to add through this notice.

DATES: *Comments.* Written comments must be received on or before March 5, 2007.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 23, 2007, a public hearing will be held on February 2, 2007. Persons interested in attending the public hearing should contact Ms. Lala Alston at (919) 541–5545 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0094, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2004–0094.
- *Facsimile:* (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2004–0094.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: 3334, Mail Code: 6102T, Washington, DC 20460, Attention E-Docket ID No. EPA–HQ–OAR–2004–0094.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: 3334, Mail Code: 6102T, Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2004–0094. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0094. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2004–0094, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the index. Although listed in the *www.regulations.gov* index, some information is not publicly available, (i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

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

Public Hearing. If a public hearing is held, it will be held at the EPA facility complex in Research Triangle Park, NC or an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Rick Colyer, Program Design Group (D205–02), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5262, electronic mail (e-mail) address, *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include all major sources regulated under section 112 of the CAA.

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

Outline

The information presented in this preamble is organized as follows:

I. Summary of Proposed Action

Today's proposed amendments would replace an existing EPA policy established in a May 16, 1995, EPA memorandum entitled "Potential to Emit for MACT Standards-Guidance on Timing Issues." *See* "Potential to Emit for MACT Standards-Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors. The 1995 policy provides that a major source may become an area source by limiting its potential to emit (PTE) HAP emissions to below major source levels (10 tpy or more of any individual HAP or 25 tpy or more of any combination of HAP), no later than the source's first substantive compliance date under an applicable NESHAP (also known as a MACT standard). Thus, under the 1995 policy, a source that limits its PTE and thereby attains area source designation by the first compliance date of the MACT is not subject to major source requirements. By contrast, a source that does not have a PTE limit in place by the first substantive compliance date would be subject to major source MACT, regardless of its subsequent HAP emissions. The 1995 policy is generally referred to as EPA's "once in, always in" (OIAI) policy for MACT standards.

The regulatory amendments proposed today, if finalized, would replace the 1995 OIAI policy and allow a major source of HAP emissions to become an area source at any time by limiting its PTE for HAP to below the major source thresholds.

II. Background

Section 112 of the CAA distinguishes between "major" and "area" sources of HAP. A major source of HAP is defined as "* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants." (section 112(a)(1)). An area source is defined as any stationary source of HAP that is not a major source. (section 112(a)(2)). "Hazardous air pollutant" is defined as "* * * any air pollutant listed pursuant to subsection (b)" of section 112. (section 112(a)(6)).

"Potential to emit" is currently defined in the NESHAP General Provisions as "* * * the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable." (40 CFR 63.2).[1]

The CAA treats the regulation of major sources and area sources differently. Generally, major source categories are listed under section 112(c)(1), while area source categories are listed under section 112(c)(3) following a finding that either the source category presents a threat of adverse human health or environmental effects that warrants regulation under section 112, or the category falls within the purview of CAA section 112(k)(3)(B). See CAA section 112(c)(1) and (3). Standards for major sources are based on the performance of the maximum achievable control technology (MACT) currently employed by the best controlled sources in the industry. Standards for area sources may be based on MACT, but alternatively may be based on generally available control technology (GACT) or generally available management practices that reduce HAP emissions. See CAA section 112(d)(2) and (5).

Major sources can achieve significant HAP emission reductions and emit at levels below the major source thresholds through a variety of mechanisms. In order to be recognized as an area source and thereby avoid the application of major source MACT requirements, however, a major source must limit its potential to emit HAP to ensure that its emissions remain below major source thresholds. See CAA section 112(a)(1) (defining major source HAP thresholds); 40 CFR 63.2 (same).

A significant question that arose early in the development of the MACT program was when major sources may limit their PTE to below the major source thresholds in order to avoid having to comply with major source MACT standards. The EPA issued

[1] As explained further below, in *National Mining Association* v. *EPA,* 59 F. 3d 1351(D.C. Cir. 1995) (*NMA*), the D.C Circuit remanded the definition of "potential to emit" found in 40 CFR 63.2 to the extent it required that physical or operational limits be "federally enforceable." The court did not vacate the rule during the remand. Two additional cases were decided after *National Mining.* In *Chemical Manufacturers Ass'n* v. *EPA, (CMA)* No. 89–1514, 1995 WL 650098 (D.C. Cir. Sept. 15, 1995), the court, in light of *National Mining,* vacated and remanded to EPA the federal enforceability component in the potential to emit definition in the PSD and NSR (40 CFR parts 51 and 52) regulations. In *Clean Air Implementation Project* v. *EPA,* No. 96–1224 1996 WL 393118 (D.C. Cir. June 28, 1996) (*CAIP*), the court vacated and remanded the federal enforceability requirement in the title V (40 CFR part 70) regulations. The *CMA* and the *CAIP* orders were similar in that they contained no independent legal analysis, but rather relied on the *National Mining* decision.

Before any of the above cases were decided, EPA implemented a "transitional" policy to allow sources to rely on state-only enforceable PTE limits. "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" (Jan. 25, 1995), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/ptememo.pdf.* After the court decisions, EPA extended the transition policy several times. See "Third Extension of January 25, 1995 Potential to Emit Transition Policy" (December 20, 1999), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/4thext.pdf.* Under the Third Extension, sources can rely on state-only enforceable PTE limits until we finalize our response to the remands. EPA intends to issue a proposed PTE rule in the near future.

guidance on this and related issues on May 16, 1995, in a memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards, to the EPA regional air division directors. The May 1995 memorandum addressed three issues:

- "By what date must a facility limit its potential to emit if it wishes to avoid major source requirements of a MACT standard?"
- "Is a facility that is required to comply with a MACT standard permanently subject to that standard?"
- "In the case of facilities with two or more sources in different source categories: If such a facility is a major source for purposes of one MACT standard, is the facility necessarily a major source for purposes of subsequently promulgated MACT standards?"

In the May 1995 memorandum, EPA took the policy position that the latest date by which a source could obtain area source status by limiting its HAP PTE would be the first substantive compliance date of an applicable MACT standard. For existing sources, this would be no later than 3 years after the effective date of the regulation (which for MACT standards is the date of publication in the **Federal Register**), but could be sooner; for example, some standards for leaking equipment require compliance no later than 6 months after the effective date of the regulation.

Furthermore, in the May 16, 1995, memorandum, EPA stated that once a source was required to comply with a MACT standard, i.e., once the first substantive compliance date had passed without the source limiting its PTE, it must always comply, even though compliance with the standard may reduce HAP emissions from the source to below major source thresholds.

Finally, the May 16, 1995 memorandum provided that a source that is major for one MACT standard would not be considered major for a subsequent MACT standard if the potential to emit HAP emissions were reduced to below major source levels by complying with the first MACT standard.

The 1995 memorandum, on which we did not seek notice and comment, set forth transitional policy guidance and was intended to remain in effect only until such time as the Agency proposed and promulgated amendments to the Part 63 General Provisions. We are today proposing to amend the General Provisions and replace the 1995 policy memorandum.

III. Rationale for the Proposed Amendments

A. Why Is EPA Proposing These Amendments?

EPA issued the May 1995 memorandum in an effort to provide answers to pressing questions raised shortly after the inception of the air toxics program. Since issuance of the memorandum, EPA has received questions concerning the OIAI policy and recommendations to revise the policy.

In August 2000, EPA met with representatives of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) to explore ways to revise the OIAI policy to promote pollution prevention (P2). The STAPPA/ALAPCO stated its belief that the OIAI policy provides no incentive for sources, after the first substantive compliance date of a MACT standard, to implement P2 measures in order to reduce their emissions to below major source thresholds because there are no benefits to be gained, e.g., no reduced monitoring, recordkeeping, and reporting, and no opportunity to get out of major source requirements. In light of these concerns, the STAPPA/ALAPCO recommended that the Agency revise the OIAI policy to encourage P2. To accommodate some of these P2 concerns, in May 2003 we proposed to amend the part 63 General Provisions (68 FR 26249; May 15, 2003) in the following ways. First, the proposed amendments encourage P2 by allowing an affected source that completely eliminates all HAP emissions after the first compliance date of the MACT standard to submit a request to the Administrator that it no longer be subject to the MACT standard. If the request is approved, the affected source would no longer be subject to the MACT standard provided the source does not resume emitting HAP from the regulated source(s) of emissions. Second, the proposed amendments encourage P2 by allowing an affected source that uses P2 to reduce HAP emissions to the level required by the MACT standard, or below, to request "P2 alternative compliance requirements," which could include alternative monitoring, recordkeeping and reporting. If the request is approved, the alternative compliance requirements would replace the compliance requirements in the MACT standard.

It is important to understand the differences in applicability between the P2 amendments, and OIAI and today's proposal revising that policy. The proposed P2 amendments are targeted at the "affected source" as that term is defined in 40 CFR 63.2. "Affected source" describes the collection of regulated emission points defined as the entity subject to a specific MACT standard. See 40 CFR 63.2. For example, an affected source could be a single production unit or the combination of all production units within a single contiguous area and under common control, or a single emission point or a collection of many related emission points within a single contiguous area and under common control. Each MACT standard defines the "affected source" for regulation.

By contrast, the 1995 OIAI policy and today's proposed amendments that seek to replace that policy focus on "major sources," as defined in 40 CFR 63.2. As explained above, major sources are defined by the total amount of HAP emitted from a stationary source or group of stationary sources located within a contiguous area and under common control. See 40 CFR 63.2. A major source can include several different affected sources subject to multiple MACT standards.

The relationship between the proposed P2 amendments and today's proposal is best illustrated by the following example. Consider a major source that emits 50 tpy total HAP which is comprised of 5 affected sources subject to various MACT. If the Agency finalizes the P2 amendments and one of the affected sources that emitted 15 tpy of HAP eliminated all its HAP emissions, the affected source, if its request is approved by the permitting authority, would no longer be subject to MACT. However, the other four affected sources within the major source would still be subject to their respective MACT because the sources' combined emissions would be 35 tpy, which exceeds the major source threshold. We are considering the comments received on the proposed P2 amendments and have not yet taken any final action with regard to that proposal.

In addition to the feedback from STAPPA concerning the OIAI policy, EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard. For example, one source whose emissions after applying MACT were still above major source thresholds has significant emissions of one HAP for which the MACT standard does not require reductions. The source has indicated it is willing to substantially reduce that HAP to achieve area source status, but would not do so as long as

the OIAI policy applied and the source could not be redesignated as an area source. Another source, which has maintained actual HAP emissions well below major source levels, discovered its PTE limit (designating it as an area source) was based on an erroneous emission factor. Even though actual emissions have always been below major source levels, its PTE, when recalculated using the correct emission factors, exceeded the major source threshold. In this example, the source did not realize its problem until after the first substantive compliance date, which meant that, under the OIAI policy, the source was subject to the MACT standard.

Moreover, the OIAI policy, as written, does not encourage sources to explore the use of different control techniques, P2, or new and emerging technologies that would result in lower emissions. Thus, under OIAI, the same source could be subject to substantially different requirements based solely on the date by which the source reduced its potential to emit HAP to below the major source thresholds. For example, under OIAI, a major source that is subject to a MACT standard may become an area source prior to the first substantive compliance date of that standard, without reaching MACT levels of emissions reductions. As a result, prior to the first substantive compliance date of a MACT standard, a source emitting 30 tpy of a combination of HAP could reduce emissions by 10 tpy, take a HAP PTE limitation at 20 tpy, emit less than 10 tpy of any one HAP, and become an area source. Such a source would no longer meet the applicability criteria of a potentially applicable major source MACT standard and would, therefore, not be required to comply with that standard. By contrast, if the same source reduced its emissions of HAP to 20 tpy (and didn't emit 10 tpy or more of any single HAP) by complying with an applicable major source MACT standard after the first substantive compliance date of the standard, it would have to continue to comply with the requirements of the major source MACT standard because the first substantive compliance date had passed. The only difference in these two situations is the date on which the source reduced its emissions. As explained below, there is nothing in the CAA that compels the conclusion that a source cannot attain area source status after the first substantive compliance date of a MACT standard.

B. What Is the Authority for This Action?

As noted above, Congress expressly defined the terms "major source" and "area source" in section 112(a). A "major source" is a source that "emits or has the potential to emit considering controls, in the aggregate," 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and an "area source" is any stationary source that is not a "major source." CAA section 112(a)(1) and (a)(2).[2] Notably absent from these definitions is any reference to the compliance date of a MACT standard. Rather, Congress defined major source by reference to the amount of HAP the source "emits *or has the potential to emit considering controls*," and required EPA to determine whether that amount exceeds certain specified levels. 42 U.S.C. 112(a)(1) (emphasis added). Congress placed no temporal limitations on the determination of whether a source emits or has the potential to emit HAP in sufficient quantity to qualify as a major source.

In March 1994, EPA issued final regulations interpreting the term "major source." See 59 FR 12408 (March 16, 1994) (the General Provisions governing the section 112 program).[3] The regulatory definition of "major source" is virtually identical to the statutory definition. Specifically, EPA defined "major source" as "any stationary source or group of stationary sources * * * that emits *or has the potential to emit considering controls*" at or above major source thresholds. 40 CFR 63.2. EPA, in turn, defined the phrase "potential to emit" that appears in the definition of "major source," as the "maximum capacity of a stationary source to emit a pollutant under its physical and operational design." *Id.* To give effect to the phrase "considering controls" in the statutory definition of "major source," (CAA section 112(a)(1)), EPA further defined the term "potential to emit" in its regulations as follows:

> Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

40 CFR 63.2.

The Court of Appeals for the District of Columbia Circuit reviewed EPA's definition of "potential to emit" and, in July 1995, remanded the definition to EPA to the extent the definition required that physical or operational limitations be "federally enforceable." *National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995).[4] In remanding the rule, the D.C. Circuit held that "EPA has not explained * * * how its refusal to consider limitations other than those that are 'federally enforceable' serves the statute's directive to 'consider[] controls' when it results in a refusal to credit controls imposed by a state or locality even if they are unquestionably effective." *Id.* at 1363. The court also noted that "[i]t is not apparent why a state's or locality's controls, when demonstrably effective, should not be credited in determining whether a source subject to those controls should be classified as a major or area source." *Id.; see also id.* at 1365 ("By no means does that suggest that Congress necessarily intended for state emissions controls to be disregarded in determining whether a source is classified as a 'major' or 'area' source.").

As noted above, EPA is in the process of developing a proposed PTE rule that responds to the Court's remand in *NMA* and, among other things, proposes amendments to the definition of PTE in 40 CFR part 63. EPA anticipates issuing the proposed rule in the near future. See n.1.

Today's proposed rule is wholly consistent with the plain language of section 112(a)(1). Specifically, under today's proposed regulations, any source with a PTE limit that limits HAP emissions to less than the major source thresholds is, by definition, not a "major source" because its *"potential to emit considering controls"* is less than the identified major source thresholds. 42 U.S.C. 7412(a)(1) (emphasis added). By

[2] In addition to "major sources" and "area sources," Congress identified a third type of source under section 112: electric utility steam generating units ("Utility Units"). See section 112(a)(8). Congress created a special statutory provision for Utility Units in section 112(n)(1)(A). Discussion of that provision is not relevant to this proposal. Today's proposal focuses solely on "major sources" and "area sources." See CAA 112(a)(1), 112(a)(2).

[3] The General Provisions in 40 CFR Part 63 eliminate the repetition of general information and requirements in individual NESHAP subparts by consolidating all generally applicable information in one location. The General Provisions include sections on applicability, definitions, compliance dates, and monitoring, recordkeeping and reporting requirements, among others. In addition, the General Provisions include administrative sections concerning actions that the EPA Administrator must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing NESHAP. The General Provisions apply to every facility that is subject to a NESHAP subpart, except where specifically overridden by that subpart.

[4] In that same opinion, the Court otherwise upheld EPA's definition of "major source."

contrast, under the 1995 policy memorandum, a source is treated as a major source in perpetuity even if sometime after the first compliance date of a MACT standard the source no longer meets the statutory definition of "major source" (i.e., the source has a "potential to emit considering controls" less than the major source thresholds). EPA believes that the approach proposed today gives full effect to the statutory definitions and to the distinctions that Congress created between "major" and "area" sources. *Id.* at 1353–54 (discussing differences in requirements affecting major and area sources and recognizing that Congress did not contemplate that all area sources be subject to regulation); *see also* 42 U.S.C. 7412(c)(3), 7412(k)(3)(B).

Moreover, nothing in the structure of the Act counsels against today's proposed approach. Congress defined major and area sources differently and established different requirements for such sources. *See NMA,* 59 F3d 1353–54. The 1995 policy memorandum creates a dividing line between major and area sources that does not exist on the face of the statute by including a temporal limitation on when a source can become an area source by limiting its PTE.

Furthermore, as noted in the May 1995 OIAI memorandum itself, EPA intended that the memorandum be a transitional policy which would remain in effect only until EPA undertook notice and comment rulemaking, which it is now doing. Nothing precludes the Agency from revising a prior agency position where, as here, we have a principled basis for doing so. As the Supreme Court recently observed:

> "An initial agency interpretation is not instantly carved in stone. On the contrary, the agency * * * must consider varying interpretations and the wisdom of its policy on a continuing basis, *Chevron, supra* at 863–64, for example, in response to changed factual circumstances, or a change in administrations."

National Cable & Telecomms. Ass'n v. *Brand X Internet Servs.,* 545 U.S. 967 (2005) (citations omitted); *see also American Trucking Ass'n* v. *Atchison, Topeka & Santa Fe Ry.,* 387 U.S. 397, 416 (1967); *Mobil Oil Corp.* v. *EPA,* 871 F.2d 149, 152 (D.C. Cir. 1989) ("an agency's reinterpretation of statutory language is nevertheless entitled to deference, so long as the agency acknowledges and explains the departure from its prior views"). We solicit comment on all aspects of today's proposal, including EPA's position that today's proposed approach gives proper effect to the statutory definitions in section 112(a) and is consistent with the language and structure of the Act.

C. What Are the Implications of This Proposed Action?

In the 1995 memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the "maximum achievable emissions reductions that Congress mandated for major sources would not be achieved." We agree that Congress mandated that sources that meet the definition of "major source" in section 112(a) be required to comply with MACT, but a source that takes a PTE limit that limits its PTE to below the major source HAP thresholds does not, as explained above, meet the statutory definition of "major source," and therefore should not be subject to the requirements applicable to a major source.

EPA recognizes that some sources in complying with an applicable MACT standard will reduce HAP emissions below the major source thresholds because that is the level of emissions necessary to maintain compliance with the MACT standard. If this rule is finalized, we believe it is unlikely that such sources would, in becoming area sources, increase their current emissions to a level just below the major source thresholds. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s).[5] This conclusion is based on a number of factors.

First, many sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, *i.e.*, the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.

[5] We recognize that there may be instances where a source will emit at a level that is below the level required by the MACT. EPA cannot mandate that sources emit at such a level. Accordingly, in discussing potential emission increases as the result of today's proposal, we properly limit our discussion to those sources that emit below the major source thresholds because they must do so to meet the MACT standard, not those sources that, for other reasons, emit at a level below the level required by the MACT standard.

Second, several additional programs have been implemented under the CAA since the issuance of the 1995 OIAI memorandum. Specifically, in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act, such as RACT controls on emissions of volatile organic compounds, which are also HAP. Sources may also need to maintain their current level of control for other reasons, including, for example, for emissions netting and emissions trading purposes.

Third, if this rule is finalized, those sources that seek to maintain area source status will likely take PTE limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action. 42 U.S.C. 7413(g); *see NMA,* 59 F.3d at 1363 n.20 (noting that a source that claims to have lowered its emissions to below major source thresholds, but has actual emissions that exceed such thresholds, can be subject to sanctions under CAA section 113).

Fourth, permitting authorities will likely encourage emission reduction maintenance and impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds. Such terms and conditions may include shorter compliance periods and perhaps more robust monitoring, recordkeeping, and reporting to ensure that the source does not exceed its PTE.

Finally, many sources that take a PTE limitation to become an area source will ultimately be subject to area source standards issued pursuant to section 112. To date, EPA has issued emission standards for approximately 20 area source categories. Over the next three years, EPA is required to develop area source standards for approximately 50 additional categories. While the level at which those standards will be set is not known at this time, the standards will reflect at least generally available control technology and some may be set at MACT-based levels, which would mean that many sources could be required to maintain their current emission levels. *See, e.g.*, 42 U.S.C. 7412(d)(2), (d)(5), 7412(k)(3)(B).

For all of these reasons, we believe it is unlikely that a source that currently emits at a level below the major source

thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule. However, even if such increases occur, the increases will likely be offset by emission reductions at other sources that should occur as the result of this proposal. Specifically, this proposal provides an incentive for those sources that are currently emitting above major source thresholds and complying with MACT, to reduce their HAP emissions to below the major source thresholds.

We solicit comment on the issues discussed above. Please include with your comments any relevant factual information and describe the scenarios under which sources, in response to this proposal, would likely increase emissions from the level required by MACT to just below the major source thresholds.

D. What Regulatory Changes Are We Proposing?

For the reasons discussed above, we believe that the 1995 OIAI policy should be replaced and today are proposing to allow a major source to become an area source at any time by taking a PTE limit on its HAP emissions. Specifically, we are proposing to amend section 63.1 by adding a new paragraph (c)(6). That paragraph would specify that a major source may become an ''area source'' at any time by restricting its ''potential to emit'' (PTE) hazardous air pollutants, as that term is defined in 40 CFR Part 63, Subpart A, to below major source thresholds. [6] [7] If a source takes a PTE limit, it will no longer be subject to major source requirements that apply to HAP emissions, subject to certain restrictions described below. The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting). As an area source complying with its PTE limit, the source would nonetheless be subject to any applicable area source requirements issued pursuant to section 112, and title V if EPA has not exempted the area source category from such requirements.

There are two provisions of the current regulations that are relevant for background purposes: Sections 63.6(b)(7) and 63.6(c)(5). Section 63.6(b)(7) provides that when an area source becomes a major source ''by the addition of equipment or operations that meet the definition of new affected source in the relevant standard, the portion of the existing facility that is a new affected source must comply with all requirements of that standard applicable to *new sources*,'' and the source must comply with the relevant standard upon startup. 40 CFR 63.6(b)(7) (Emphasis added). Section 63.6(c)(5), in turn, states: ''Except as provided in section 63.6(b)(7),'' an area source that becomes a major source is treated as an existing major source and must comply with applicable MACT standards by the date specified in the standard for area sources that become major sources.[8] For those major source MACT standards that do not specify such a date, the affected source has a period of time to comply that is equivalent to the compliance period specified in the standard for existing affected sources (which is up to three years). 40 CFR 63.6(c)(5). Section 63.6(c)(5) was designed to address existing area sources that have not previously been subject to a MACT standard, but that later increase their emissions and become a major source. Section 63.6(c)(5) only applies, however, where the change that resulted in the increased emissions does not meet the definition of a new affected source under the relevant major source MACT standard.

As noted above, EPA today proposes to amend section 63.1 to add a new paragraph (c)(6) that would authorize a major source to become an area source at any time by obtaining a PTE limit limiting its HAP emissions to below major source thresholds. EPA proposes, however, the following restrictions.

The first restriction relates to a regulatory provision that we are adding to address the situation where sources switch between major and area source status more than once. Specifically, there may be situations where sources that are major sources as of the first substantive compliance date of the MACT standard later take PTE limitations to attain area source status, and then subsequently seek to switch back to major source status. In these situations, EPA proposes that 40 CFR 63.6(c)(5) not apply, and that, except as noted below, the source must meet the major source MACT standard immediately upon that standard again becoming applicable to the source. See proposed regulations at 40 CFR 63.1(c)(6)(i).[9] In this scenario, existing affected sources at the major source were previously subject to the MACT standard. The affected sources therefore should be able to comply with the standard immediately upon the standard again becoming applicable to them. *Id.*

To date, we have identified one set of circumstances where additional time would be necessary for the source to comply with the major source MACT. Specifically, there are situations where major source MACT rules may be amended and either become more stringent or apply to additional emission points or additional HAP. For example, under section 112(d)(6) MACT standards must be reviewed every 8 years and revised if necessary. If revisions issued pursuant to section 112(d)(6) increase the stringency of the standards or revise the standards such that they apply to additional emission points or HAP, it would be necessary to allow existing sources sufficient time to come into compliance with the new requirements. The revision of a MACT standard pursuant to section 112(d)(6) is only one example of a situation where a MACT rule may be revised. MACT rules are also amended for other reasons, including as the result of settlements resolving pending litigation over a standard. Any type of rule amendment situation where the

[6] We recognize that there may be sources that were major sources as of the first substantive compliance date of a MACT standard that, by complying with non-section 112 CAA requirements, became area sources for HAP emissions. In this instance, EPA proposes that the source obtain a PTE limit for its HAP emissions to ensure that those emissions remain below major source thresholds.

[7] Some individual MACT standards in Part 63 provide sources the opportunity to become area sources not by limiting total mass emissions directly, but by limiting material use or by taking other measures, which in turn, correlate to emissions below major source levels (*e.g.*, see subpart KK, Printing and Publishing and subpart JJ, Wood Furniture Manufacturing Operations (limiting HAP usage to below major source thresholds). We recommend that sources refer to the applicable NESHAP for guidance in determining whether the source meets the major source thresholds. See 40 CFR 63.2 (defining ''potential to emit''by reference to physical or operational limitations, including, for example, ''restrictions on hours of operation, or on the type or amount or material combusted, stored, or processed'').

[8] EPA explained the purpose of section 63.6(b)(7) in the preamble to the General Provisions as follows:

Section 63.6(b)(7) states that an unaffected new area source that increases its emissions of (or its potential to emit) HAP such that it becomes a major source, must comply with the relevant emission standard immediately upon becoming a major source. [Under section 63.6(b)(7), a]n unaffected existing area source that increases its emissions (or its potential to emit) such that it becomes a major source, must comply by the date specified for such a source in the standard. If such a date is not specified, the source would have an equivalent period of time to comply as the period specified in the standard for other existing sources. However, if the existing area source becomes a major source by the addition of a new affected source, or by reconstructing, the portion of the source that is new or reconstructed is required to comply with the standard's requirements for new sources.

59 FR 12408, 12413 (Mar. 16, 1994).

[9] The new proposed 40 CFR 63.1(c)(6)(i), like section 63.6(c)(5), is subject to the provisions of 40 CFR 63.6(b)(7).

amendments substantively modify the MACT could necessitate additional time for compliance. We are thus proposing that sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures. We propose that such sources have the same period of time to comply with the revised MACT standard as is allowed for existing sources subject to the revised standard. We solicit comment on this proposed compliance time-frame and whether the proposed regulatory text adequately captures the intended exception.

We are proposing the immediate compliance rule, with the above-noted exception, because we believe that in most cases, sources achieve and maintain area source status by operating the controls they used to meet the MACT standard. Therefore, a source that reverts to major source status should be in a position to comply immediately with the MACT standard. Sources may, in addition to, or in lieu of, operating controls, reduce their production level or hours of operation, but regardless of the means employed to attain area source status, we believe that the sources will likely not be removing the controls used to meet the MACT standard. We recognize that some MACT standards allow alternative compliance options, such as the use of low HAP materials, but these options should continue to be available for the affected source. Moreover, the addition of equipment or process units to an existing affected source should not change the source's ability to meet the MACT standard upon startup of the new equipment or unit because the equipment or process units should be accompanied by either a tie-in to existing controls or installation of new controls. See also 40 CFR 63.6(b)(7) (applying to new affected sources). We solicit comment on whether our assumptions, as stated in this paragraph, are correct.

More specifically, we solicit comment on the appropriateness of the proposed immediate compliance rule and whether such rule should be finalized. If it should be maintained, we solicit comment on whether there are other situations, in addition to the one noted above, that would necessitate an extension of the time period for compliance with the MACT standards. We further solicit comment on whether we should instead allow all sources that revert back to major source status a specific period of time in which to comply with the MACT standard, which would be consistent with the approach provided for in 40 CFR 63.6(c)(5). If we pursue this approach in the final rule, we request comment on whether we should provide the same time periods as are already provided for in 40 CFR 63.6(c)(5), or whether a different time period is appropriate and why. To the extent a commenter proposes a compliance time-frame, we request that the commenter explain the basis for providing that time-frame. Thus, depending on the comments received and the factual circumstances identified, we will consider (1) not finalizing the immediate compliance, with exceptions, approach, and instead providing all sources that revert back to major source status a defined period of time to comply consistent with the provisions of 40 CFR 63.6(c)(5); and (2) retaining the proposed immediate compliance rule, and adopting additional exceptions to that rule, if we receive persuasive and concrete scenarios that we believe would warrant allowing additional time to comply with a previously applicable MACT standard.[10] If we pursue the former approach, we would likely amend 40 CFR 63.6(c)(5). If we pursue the latter approach and retain the immediate compliance rule, but create exceptions in addition to the one noted above, there are two ways to implement the exceptions: Through a case-by-case compliance extension request process or by identifying in the final rule specific exceptions to the immediate compliance rule and providing a time period for compliance for each identified exception. Under the case-by-case approach, the permitting authority could grant limited additional time for compliance upon a specific showing of need. A case-by-case compliance extension request process would call for the owners or operators of sources to submit to the relevant permitting authority a request that (i) identifies the specific additional time needed for compliance, and (ii) explains, in detail, why the source needs additional time to come into compliance with the MACT standard. The permitting authority would review the request and could either approve it in whole, or in part (*i.e.*, by specifying a different compliance timeframe or allowing different timeframes for different parts of the affected sources), or deny the request.

We envision that a request for a compliance extension, if such an option is provided in the final rule, would ordinarily be made in the context of the title V permit application or an application to modify an existing title V permit. Any compliance extension, if granted, would be memorialized in the title V permit. Another option sources may consider is seeking approval to include in their title V permit alternative operating scenarios that address the source's different projected operating scenarios. By incorporating alternative operating scenarios into the permit, the source could avoid having to reopen and revise the permit if it chooses to switch source status and again become a major source.

If we retain the proposed immediate compliance rule with exceptions, we will also consider the option of including in the final rule defined compliance extension time-frames for defined factual scenarios, as we have done for the exception described above. Under this approach, if a source satisfies the criteria identified in the final rule, it would automatically be afforded the defined extension of time to comply with the MACT standard upon the source again becoming subject to MACT. This extension approach would be useful if there are specific factual scenarios that affect a broad number of sources, because defining the compliance extension time-frame in the final rule eliminates the burden on permitting authorities associated with the case-by-case approach.

In submitting your comments on the above-noted issues and proposed section 63.6(c)(6), please identify, with specificity, the factual circumstances that would warrant a compliance extension, explain why the source would need the extension under the circumstances identified, and why the source could not comply with the standard immediately upon returning to major source status given the identified circumstances. We specifically solicit comment on our discussion above as to the mechanics of obtaining a compliance extension if a case-by-case approach is finalized, including, for example, the type of information requested from the source seeking the proposed compliance extension, the permit vehicle used to obtain the extension, and any limitations on

[10] The new proposed regulatory provision at 40 CFR 63.1(c)(6)(i) is subject to the provisions of 40 CFR 63.6(b)(7). Thus, if a source adds a piece of equipment which results in emissions at levels in excess of the major source thresholds, and that equipment meets the definition of a new affected source under the relevant MACT standard, the source is subject to the provisions of 40 CFR 63.6(b)(7) and must meet the requirements for new sources in the relevant major source MACT standard including compliance at startup.

providing extensions.[11] We further solicit comment on the approach of providing a compliance extension in the final rule for certain defined factual scenarios. With regard to this approach, we solicit comment on the nature of the scenario that would warrant such an extension and the amount of additional time that would be needed to comply with the MACT standard and why such a period of time is needed to comply.

The second restriction to the new proposed regulatory provision at 40 CFR 63.1(c)(6) concerns those major sources that take PTE limits to become area sources and thereby become subject to area source standards in 40 CFR part 63. We propose that a major source with affected sources subject to a major source MACT standard that switches to area source status where the EPA has established area source standards for the same affected source would have to comply immediately with those area source standards if the first substantive compliance date has passed or would have to comply by the first substantive compliance date if it has not passed. Because the area source standard is not likely to be more stringent than the major source MACT standard that the source was already meeting, the source likely will not need additional compliance time after the source status change. However, if different emission points are controlled or different controls are necessary to comply with the area source standard or other physical changes are needed to comply with the standard, additional time, not to exceed 3 years, may be granted by the permitting authority if adequate support for the additional time is provided by the source.[12]

Accordingly, EPA is proposing to add 40 CFR 63.1(c)(6)(ii), which provides that a major source that subsequently becomes an area source by limiting its PTE must meet all applicable area source requirements in Part 63 immediately upon the effective date of the permit containing the PTE limits, provided the first compliance date for the area source standard has passed. We further propose that if a source (or a portion thereof) must undergo a physical change or install additional control equipment to meet the applicable area source standard, the source may submit to the relevant permitting authority a request that (i) identifies the specific additional time needed for compliance (i.e., such request cannot exceed three years) with the area source standard, and (ii) explains, in detail, why the additional time is necessary to comply with the standard. The proposed new regulatory provision—40 CFR 63.1(c)(6)(ii)—is delegable. *See generally* 42 U.S.C. 7412(l); 40 CFR Subpart E. A permitting authority may approve, in whole or in part, or deny the request.

The proposed new regulatory provision, 40 CFR 63.1(c)(6)(ii), is analogous to 40 CFR 63.6(c)(5), which is briefly described above. We promulgated 40 CFR 63.6(c)(5) as part of the General Provisions, because we recognized a gap in the statute. Specifically, the statute is silent as to how to address sources that are existing area sources at the time the MACT standard is promulgated and that, at some later date, become major sources subject to the MACT standard. Section 63.6(c)(5) fills this particular gap. Similarly, the statute does not address the scenario where a major source becomes an area source and the compliance date for the area source standard has already passed and modifications to the source are needed to achieve compliance with the standard. EPA today proposes 40 CFR 63.1(c)(6)(ii) to address this situation. Section 112(i)(3) does not directly address either of these identified scenarios. Rather, it directly addresses those sources that are existing affected sources as of the date the emission standard is promulgated. See CAA section 112(i)(3) (''After the effective date of any emission standard * * * promulgated under this section and *applicable to a source*, no person may operate such source in violation of such standard * * * except in the case of an existing source,'' EPA shall provide a compliance date that provides for compliance as expeditiously as practicable, but no later than 3 years *''after the effective date of the standard.''*) (emphasis added). Moreover, the new proposed regulatory provision, 40 CFR 63.1(c)(6)(ii), is consistent with CAA section 112(i)(3), because it requires sources to comply immediately with the area source standard upon the effective date of the permit containing the PTE limit (which is the permit that provides area source status), and authorizes additional time only if the Permitting Authority determines that such time is appropriate based on the facts and circumstances. In any event, any extension of time provided pursuant to proposed 40 CFR 63.1(c)(6)(ii) cannot exceed three years.

Under today's proposed regulations, sources that reduce their emission levels and obtain a PTE HAP limit below major source thresholds must meet that limit and all associated conditions, as specified in the relevant permit, on the effective date of the permit. Prior to the effective date of the permit, the source must continue to comply with the relevant major source MACT standard(s) and other conditions in its title V permit. Of course, permitting authorities may deny a request to adopt area source status where the source has changed its status more than once, if, in the opinion of the permitting authority, these actions are an indication that the restrictions on PTE are, in practice, ineffective.

To the extent an area source standard applies, the compliance date for that standard has passed, and the source needs a compliance extension, the source must apply for and obtain that compliance extension before becoming subject to the area source standard; otherwise, the source will be in violation of the area source standard. We solicit comment on the proposed case-by-case compliance extension date approach, including, for example, the type of information that should be requested from the source seeking the proposed compliance extension, the permit vehicle used to obtain the extension, and whether the limitations proposed above (i.e., the affected source must undergo a physical change or install additional control equipment in order to meet the area source standard) are appropriate. See proposed regulations at 40 CFR 63.1(c)(6)(ii). We also solicit comment generally on the mechanics of obtaining the compliance extension and the appropriate vehicle for requesting the compliance extension. If the area source category is not exempted from the requirements of title V, the request for a compliance extension can be made in the context of the title V permit process. If, however, the area source category at issue is exempt from title V, the source could submit its compliance date extension request to the permitting authority issuing its PTE HAP limitation, provided that the permitting authority is the same State authority that has been

[11] Some major sources that switch to area source status may, as an area source, no longer be subject to title V requirements and therefore apply to their permitting authority to terminate their title V permits and obtain a PTE limit through another permit vehicle. Presumably, such sources would have their title V permit terminated at the same time the non-title V permit limiting their PTE becomes effective. If, however, the area source reverts back to major source status, the source will once again have to obtain a title V permit. The source would also have to terminate the non-title V permit containing its PTE limit to allow it to emit at major source levels. Once the HAP PTE limitation no longer applies to the source, the source must comply with applicable major source MACT standards or have taken appropriate steps to apply for a compliance extension.

[12] The existing regulations do not address the issue of compliance time-frames for sources that switch from major source status to area source status. *See* CAA section 112(i)(3), 40 CFR 63.6(c)(5).

delegated authority to implement the Section 112 program. We further solicit comment on whether the proposed compliance date extension provision in 40 CFR 63.1(c)(6)(ii) should be extended to major sources that become area sources only a few months prior to the compliance date of an applicable area source standard, to the extent the source needs additional time to comply.

We solicit comment on all aspects of the proposed new regulatory provisions at 40 CFR 63.1(c)(6)(i) and (ii). For either of the two situations described above (*i.e.*, where a source switches from major, to area, and back to major source status, and where a source switches from major to area source status), a source must notify the Administrator under § 63.9(b) of any standards to which it becomes subject.

The final restriction relevant to the regulations we are proposing to add to 40 CFR 63.1 relates to an enforcement issue. See proposed regulations at 40 CFR 63.1(c)(6)(iii). Specifically, we do not intend to allow major sources that are subject to enforcement investigations or enforcement actions to avoid the results of such investigations or the consequences of such actions by becoming area sources. Although sources that are the subject of an investigation or enforcement action may still seek area source status for purposes of future applicability, they are not absolved of any previous or pending violations of the CAA that occurred while they were a ''major source,'' and the source must bear the consequences of any enforcement action or remedy imposed upon it, which could include fines or imposition of additional emission reduction requirements. Accordingly a source cannot use its new area source status as a defense to MACT violations that occurred while the source was a major source. Similarly, becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

Finally, we are proposing to amend each of the General Provisions applicability tables contained within most subparts of part 63 to add a reference to new paragraph 63.1(c)(6). In addition, in reviewing several of the MACT standards, we identified one general category of regulatory provisions that may need revision and we solicit comment on whether any revisions are in fact necessary. This category of provisions addresses the date by which a major source can become an area source. The provisions that we have identified to date, however, all include the specific compliance date of the standard, which in all instances has passed. See e.g., 40 CFR 63.787(b)(iv) (''Existing major sources that intend to become area sources by the December 18, 1997 compliance date may choose to * * * ''). Thus, although these regulatory provisions reflect the 1995 OIAI policy that this proposed rule seeks to replace, the provisions themselves have no current effect because the compliance date specified in the regulations has passed. In light of this, we are not proposing regulatory changes to these provisions, but we solicit comment on whether such changes are necessary. We further solicit comment on whether there are any other regulatory provisions in any of the individual subparts that would warrant modification or clarification consistent with today's proposal.

IV. Impacts of the Proposed Amendments

The environmental, economic, and energy impacts of the proposed amendments cannot be quantified without knowing which sources will avail themselves of the regulatory provisions proposed in this rule and what methods of HAP emission reductions will be used. It is unknown how many sources would choose to take permit conditions that would limit their PTE to below major source levels. Within this group it also is not known how many sources may increase their emissions from the major source MACT level (assuming the level is below the major source thresholds). Similarly we cannot identify or quantify the universe of sources that would decrease their HAP emissions to below the level required by the NESHAP to achieve area source status. We believe that many, if not most, sources that could reduce HAP emissions to area source levels prior to the first substantive compliance date of a MACT standard have already done so. We solicit comment on potential impacts, specifically the number of potential and likely sources that may avail themselves of the approach provided for in today's proposal and additional emission reductions that may be achieved or increases that may occur; please provide any analysis in your comment. There is no requirement that sources avail themselves of the approach proposed today, and each source should assess its own situation to determine whether the additional costs associated with achieving additional emission reductions is beneficial to the source, in exchange for becoming an area source and realizing the associated benefits.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

The proposed amendments would impose no information collection requirements. Sources opting to become area sources may experience some reduction in reporting and recordkeeping requirements, as they would no longer be subject to major source MACT requirements. Any changes in reporting or recordkeeping would be done through the permitting mechanisms of the responsible permitting authority. It is not possible to identify how many sources would choose to employ these provisions, nor is it possible to determine what, if any changes, to reporting and recordkeeping would be made. Permitting authorities may, in fact, choose to establish the NESHAP provisions themselves as the PTE limits and change little or nothing.

Furthermore, approval of an ICR is not required in connection with these proposed amendments. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories which have their own ICRs.

The Office of Management and Budget has previously approved the information collection requirements contained in the existing regulations of 40 CFR part 63 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* A copy of the OMB approved Information Collection Request (ICR) for any of the existing regulations may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact on a substantial number of small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Small entities that are subject to MACT standards would not be required to take any action under this proposal; any action a source takes to become reclassified as an area source would be voluntary. In addition, we expect that any sources using these provisions will experience cost savings that will outweigh any additional cost of achieving area source status.

The only mandatory cost that would be incurred by air pollution control agencies would be the cost of reviewing sources' permit applications for area source status and issuing permits. No small governmental jurisdictions operate their own air pollution control agencies, so none would be required to incur costs under the proposal. In addition, any costs associated with application reviews and permit issuance are expected to be offset by reduced agency oversight obligations for sources that no longer must meet major source MACT requirements.

Based on the considerations above, we have concluded that the proposed amendments will relieve regulatory burden for all affected small entities. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Sources subject to MACT standards would not be required to take any action under this proposal, including sources owned or operated by State, local, or tribal governments; the provisions in these proposed amendments are strictly voluntary. In addition, the proposed amendments are expected to result in reduced burden on any source that achieves area source status in accord with them. Under the proposed amendments, a State, local, or tribal air pollution control agency to which we have delegated section 112 authority would be required to review permit applications and make modifications to the permit as necessary. However, most applications would not be lengthy or complicated, and costs would not approach the $100 million annual threshold. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources that no longer must meet major source requirements. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the proposed

amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Although the proposed amendments would require State air pollution control agencies to review and modify permits as appropriate, the burden on States will not be substantial. In addition, we expect that the overall effect of the proposed amendments will be to reduce the burden on State agencies as their oversight obligations become less demanding for sources no longer subject to major source MACT requirements. Thus, Executive Order 13132 does not apply to these proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes."

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Any tribal government that owns or operates a source subject to MACT standards would not be required to take any action under this proposal; the provisions in the proposed amendments would be strictly voluntary. In addition, achieving area source status would result in reduced burden on any source that no longer must meet major source requirements. Under the proposed amendments, a tribal government with an air pollution control agency to which we have delegated section 112 authority would be required to review permit applications and to modify permits as necessary. However, such reviews are not expected to be lengthy or complicated, so the effects will not be substantial. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources no longer required to meet major source requirements. Thus, Executive Order 13175 does not apply to these proposed amendments.

However, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian tribes, EPA specifically solicits comment on the proposed amendments from tribal officials.

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

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

EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These proposed amendments are not subject to Executive Order 13045 because they are not "economically significant" and because all MACT standards governed by the General Provisions are based on technology performance and not on health or safety risks.

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

The proposed amendments are not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the proposed amendments are not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

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

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed amendments, and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in the proposed amendments.

List of Subjects in 40 CFR Part 63

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

Dated: December 21, 2006.

Stephen L. Johnson,

Administrator.

For the reasons cited in the preamble, title 40, chapter 1 of the Code of Federal

Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 63.1 is amended by adding a new paragraph (c)(6) to read as follows:

§ 63.1 Applicability.

* * * * *

(c) * * *

(6) A major source may become an area source at any time by obtaining a permit limiting its potential to emit (PTE) hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in 40 CFR 63.2, subject to the restrictions in paragraphs (c)(6)(i) through (iii) of this section. Until the permit containing the PTE limit becomes effective, the source remains subject to major source requirements. After the permit containing the PTE limit becomes effective, the source is subject to any applicable requirements for area sources.

(i)(A) The owner or operator of a major source subject to standards under this part that subsequently becomes an area source by limiting its PTE to below major source thresholds, and then later again becomes a major source by increasing its emissions to the major source thresholds or above, must comply immediately with the major source requirements of this part upon becoming a major source, notwithstanding § 63.6(c)(5), except as noted in paragraph (i)(B) below. Such major sources must comply with the notification requirements of § 63.9(b).

(B) If, as described in paragraph (i)(A), a source again becomes subject to the standard for major sources, that standard has been revised since the source was last subject to the standard and, in order to comply, the source must undergo a physical change, install additional controls and/or implement new control measures, the source will have up to the same amount of time to comply as the amount of time allowed for existing sources subject to the revised standard.

(ii) A major source that becomes an area source by limiting its PTE must meet all applicable area source requirements promulgated under this part immediately upon the effective date of the permit containing the PTE limits, provided the first substantive compliance date for the area source standard has passed, except that the permitting authority may grant additional time, up to 3 years, if the source must undergo physical changes or install additional control equipment in order for the source (or portion thereof) to comply with the applicable area source standard and the permitting authority determines that such additional time is warranted based on the record. A source seeking additional compliance time must submit a request to the permitting authority that identifies the amount of additional time requested for compliance and provides a detailed justification supporting the requested. Area sources not previously subject to area source standards must comply with the notification requirements of § 63.9(b).

(iii) Becoming an area source does not absolve a source subject to an enforcement action or investigation for major source violations or infractions from the consequences of any actions occurring when the source was major. Becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

* * * * *

3. Section 63.6 is amended by revising the second sentence in paragraph (c)(5) to read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(c) * * *

(5) * * * Except as provided in § 63.1(c)(6)(i) such sources must comply by the date specified in the standards for existing area sources that become major sources. * * *

* * * * *

4. Section 63.9 is amended by adding a sentence to the end of paragraph (b)(1)(ii) to read as follows:

§ 63.9 Notification requirements.

* * * * *

(b) * * *

(1)(i) * * *

(ii) * * * Area sources previously subject to major source requirements that again become major sources are also subject to the notification requirements of this paragraph.

* * * * *

Subpart F—[Amended]

5. Table 3 to subpart F of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 3 TO SUBPART F OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H [A] TO SUBPART F

Reference	Applies to subparts F, G, and H	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not necessarily required.

* * * * *

Subpart N—[Amended]

6. Table 1 to subpart N of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General Provisions Reference	Applies to subpart N	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

Subpart O—[Amended]

7. Table 1 to § 63.360 is amended by adding an entry for § 63.1(c)(6) to read as follows:

§ 63.360 Applicability.

(a) * * *

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O [a]	Applies to sources using 1 to 10 tons in subpart O [a]	Comment
* * * * * * *			
63.1(c)(6)		Yes.	
* * * * * * *			

[a] See definition.

* * * * *

Subpart R—[Amended]

8. Table 1 to subpart R of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

Reference	Applies to subpart R	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

Subpart S—[Amended]

9. Table 1 to subpart S of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART S OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART S[A]

Reference	Applies to subpart S	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

* * * * *

Subpart T—[Amended]

10. Appendix B to subpart T of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix B to Subpart T of Part 63—General Provisions Applicability to Subpart T

Reference	Applies to subpart T		Comments
	BCC	BVI	
* * * * * * *			
63.1(c)(6)	Yes	Yes.	
* * * * * * *			

* * * * *

Subpart U—[Amended]

11. Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation
* * * * * * *		
63.1(c)(6) . . .	Yes.	
* * * * * * *		

* * * * *

Subpart W—[Amended]

12. Table 1 to subpart W of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
* * * * * * *				
§ 63.1(c)(6)	Yes	Yes	Yes.	
* * * * * * *				

Subpart Y—[Amended]

13. Table 1 of § 63.560 is amended by adding an entry for § 63.1(c)(6) to read as follows:

§ 63.560 Applicability and designation of affected sources.

* * * * *

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y

Reference	Applies to affected sources in subpart Y	Comment

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y	Comment
* *	* * * * *	*
63.1(c)(6)	Yes.	
* *	* * * * *	*

Subpart AA—[Amended]

14. Appendix A to subpart AA of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

40 CFR citation	Requirement	Applies to subpart AA	Comment
* *	* * * * *	*	
63.1(c)(6)		Yes.	
* *	* * * * *	*	

Subpart BB—[Amended]

15. Appendix A to subpart BB of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix A to Subpart BB of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart BB

40 CFR citation	Requirement	Applies to subpart BB	Comment
* *	* * * * *	*	
63.1(c)(6)		Yes.	
* *	* * * * *	*	

Subpart CC—[Amended]

16. Table 6 to Appendix of subpart CC of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [A]

Reference	Applies to subpart CC	Comment
* *	* * * * *	*
63.1(c)(6)	Yes.	
* *	* * * * *	*

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

* * * * *

Subpart DD—[Amended]

17. Table 2 to subpart DD of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART DD OF PART 63.—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD

Subpart A reference	Applies to subpart DD	Explanation

TABLE 2 TO SUBPART DD OF PART 63.—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Explanation
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

* * * * *

Subpart EE—[Amended]

18. Table 1 to subpart EE of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

Reference	Applies to subpart EE	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

Subpart GG—[Amended]

19. Table 1 to subpart GG of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

Reference	Applies to affected sources in subpart GG	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

Subpart HH—[Amended]

20. Table 2 of Appendix to subpart HH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix to Subpart HH of Part 63-Tables

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

General provisions reference	Applies to subpart HH	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		

Subpart JJ—[Amended]

21. Table 1 to subpart JJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

Reference	Applies to subpart JJ	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

Subpart KK—[Amended]

22. Table 1 to subpart KK of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

General provisions reference	Applicable to subpart KK	Comment
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		

Subpart MM—[Amended]

23. Table 1 to subpart MM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

Reference	Summary of requirements	Applies to subpart MM	Explanation
* * * * * * *			
63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart DDD—[Amended]

24. Table 1 to subpart DDD of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART DDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD OF PART 63

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
* * * * * * *			
63.1(c)(6)		Yes.	
* * * * * * *			

Subpart GGG—[Amended]

25. Table 1 to subpart GGG of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
* * * * * * *			
63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart HHH—[Amended]

26. Table 2 to subpart HHH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix: Table 2 to Subpart HHH of Part 63—Applicability of 40 CFR Part 63 General Provisions to Subpart HHH

General Provisions Reference	Applies to subpart HHH	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		

Subpart JJJ—[Amended]

27. Table 1 to subpart JJJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		

* * * * *

Subpart LLL—[Amended]

28. Table 1 to subpart LLL of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

Citation	Requirement	Applies to subpart LLL	Explanation
* * * * * * *			
63.1(c)(6)		Yes.	
* * * * * * *			

Subpart MMM—[Amended]

29. Table 1 to subpart MMM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

Reference to subpart A	Applies to subpart MMM	Explanation

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

Reference to subpart A	Applies to subpart MMM	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		

Subpart NNN—[Amended]

30. Table 1 to subpart NNN of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART NNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN

General provisions citation	Requirement	Applies to subpart NNN	Explanation
* * * * * * *			
63.1(c)(6)		Yes.	
* * * * * * *			

Subpart OOO—[Amended]

31. Table 1 to subpart OOO of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART OOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES

Reference	Applies to subpart OOO	Explanation
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

* * * * * **Subpart PPP—[Amended]**

32. Table 1 to subpart PPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART PPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

* * * * * **Subpart RRR—[Amended]**

33. Appendix A to subpart RRR of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

APPENDIX A TO SUBPART RRR OF PART 63. GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
* * * * * * *			
§ 63.1(c)(6)		Yes.	
* * * * * * *			

Subpart VVV—[Amended]

34. Table 1 to subpart VVV of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART VVV OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		

Subpart HHHH—[Amended]

35. Table 2 to subpart HHHH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART HHHH OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

Citation	Requirement	Applies to HHHH	Explanation
* * * * * * *			
§ 63.1(c)(6)		Yes.	
* * * * * * *			

Subpart IIII—[Amended]

36. Table 2 to subpart IIII of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

Citation	Subject	Applicable to subpart IIII	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart JJJJ—[Amended]

37. Table 2 to subpart JJJJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

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

General provisions reference	Applicable to subpart JJJJ	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		

Subpart KKKK—[Amended]

38. Table 5 to subpart KKKK of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

Citation	Subject	Applicable to subpart KKKK	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart MMMM—[Amended]

39. Table 2 to subpart MMMM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63

Citation	Subject	Applicable to subpart III	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart NNNN—[Amended]

40. Table 2 to subpart NNNN of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN

Citation	Subject	Applicable to subpart NNNN	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart OOOO—[Amended]

41. Table 3 to subpart OOOO of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO

Citation	Subject	Applicable to subpart OOOO	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart PPPP—[Amended]

42. Table 2 to subpart PPPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART PPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

Citation	Subject	Applicable to subpart PPPP	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart QQQQ—[Amended]

43. Table 4 to subpart QQQQ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63

Citation	Subject	Applicable to subpart QQQQ	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart RRRR—[Amended]

44. Table 2 to subpart RRRR of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART RRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRR

Citation	Subject	Applicable to subpart	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart SSSS—[Amended]

45. Table 2 to subpart SSSS of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART SSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS

General provisions reference	Applicable to subpart SSSS	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		

Subpart VVVV—[Amended]

46. Table 8 to subpart VVVV of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 8 TO SUBPART VVVV OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO (40 CFR PART 63, SUBPART A) TO SUBPART VVVV

Citation	Requirement	Applies to subpart VVVV	Explanation
* * * * * * *			
§ 63.1(c)(6)		Yes.	
* * * * * * *			

Subpart WWWW—[Amended]

47. Table 15 to subpart WWWW of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart AAAAA—[Amended]

48. Table 8 to subpart AAAAA of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 8 TO SUBPART AAAAA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA

Citation	Summary of requirement	Am I subject to this requirement?	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			

Subpart PPPPP—[Amended]

49. Table 7 to subpart PPPPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP

Citation	Subject	Brief description	Applies to subpart PPPPP
* * * * * * *			
§ 63.1(c)(6)	Applicability	Becoming an area source	Yes.
* * * * * * *			

[FR Doc. E6–22283 Filed 12–29–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 72

RIN 0920–AA03

Interstate Shipment of Etiologic Agents

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice for proposed rulemaking.

SUMMARY: HHS proposes to remove Part 72 of Title 42, Code of Federal Regulations, which governs the interstate shipment of etiologic agents, because the U.S. Department of Transportation (DOT) already has in effect a more comprehensive set of regulations applicable to the transport in commerce of infectious substances. DOT harmonizes its transport requirements with international standards adopted by the United Nations (UN) Committee of Experts on the Transport of Dangerous Goods for the classification, packaging, and transport of infectious substances. Rescinding the rule will eliminate duplication of the more current DOT regulations that cover intrastate and international, as well as interstate, transport. HHS replaced those sections of Part 72 that deal with select biological agents and toxins with a new set of regulations found in Part 73 of Title 42. HHS anticipates that removal of Part 72 will alleviate confusion and reduce the regulatory burden with no adverse impact on public health and safety.

DATES: Written comments must be received on or before March 5, 2007. Written comments on the proposed information collection requirements should also be submitted on or before March 5, 2007. Comments received after March 5, 2007 will be considered to the extent practicable.

ADDRESSES: You may submit written comments to the following address: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Infectious Diseases/OD, ATTN: Interstate Shipment of Etiologic Agents Comments, 1600 Clifton Road, NE (C12), Atlanta, GA 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, NE, Atlanta, GA. Please call Ruenell Massey at 404–639–945 to schedule your visit. Comments also may be viewed at *http://www.cdc.gov/ncidod/agentshipment/index.htm.* You may submit written comments by fax to 404–639–3039, Attention: Dr. Janet Nicholson, or electronically via the Internet at *http://www.regulations.gov.* To download an electronic version of the rule, you may access *http://www.regulations.gov.* You must include the agency name (Centers for Disease Control and Prevention) and Regulatory Information Number (RIN) on all submissions for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Dr. Janet K. Nicholson, National Center for Infectious Diseases/OD, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Rd., NE (MS–C12), Atlanta GA 30333; telephone: 404–639–3945; e-mail *jkn1@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part 72 of Title 42 of the Code of Federal Regulations provides minimal requirements for packaging and shipping materials, including diagnostic specimens and biological products, reasonably believed to contain an etiologic agent. It provides more detailed requirements, including labeling, for materials containing certain etiologic agents, with a list of the biological agents and toxins provided. For agents on the list, the rule requires reporting to HHS/CDC damaged packages and packages not received. The rule also requires sending certain agents on the list by registered mail or an equivalent system.

The rule, as currently promulgated, is out-of-date, and duplicates more current regulations of DOT. Further, the regulation is inconsistent with the procedures of other transport governing bodies, such as the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA), for air, and the U.S. Postal Service for ground.

Section 72.6, a major portion of 42 CFR 72 that dealt with select agents, was superseded by the issuance of an Interim Final Rule for 42 CFR 73 on December 13, 2002 (67 FR 76886). Part 73 implements provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

The continued existence of the remaining provisions of the out-of-date HHS/CDC regulation is confusing to the packaging and transport communities. The provisions serve no useful purpose that merits their retention. HHS/CDC will remain available for consultation on and response to public-health issues and emergencies, in accordance with its normal duties in the interest of public health and safety.

Transition From HHS to DOT Regulations

DOT has the primary statutory authority to regulate the safe and secure transportation of all hazardous materials, including infectious materials, shipped in intrastate, interstate, and foreign commerce. The etiologic agents covered by 42 CFR 72 are considered to be hazardous materials, and, in practice, the DOT regulations, 49 CFR 171–178, have superseded since DOT began including more specific regulations on infectious substances. The earlier versions of the DOT regulations on etiologic agents were based on and virtually identical to the HHS regulations. These regulations have been modified over time, as necessary, to continue to provide protection for persons who handle shipments with as few impediments as possible to quick shipment. In 1990, DOT authorized the term ''infectious substance'' as synonymous with ''etiologic agent.'' In 1991, DOT expanded the definition of ''etiologic agent'' to include agents listed in 42 CFR 72, plus others that cause or could cause severe, disabling or fatal human disease, thereby including agents such as human immunodeficiency virus that were not on the HHS list. DOT also issued expanded packaging

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX—West Virginia

§ 52.2520 [Amended]

■ 2. In § 52.2520, the table in paragraph (c) is amended by:
■ a. Removing the table heading ''[45 CSR] Series 39 Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides'' and the entries ''Section 45–39–1'' through ''Section 45–39–90'';
■ b. Removing the table heading ''[45 CSR] Series 41 Control of Annual Sulfur Dioxides Emissions'' and the entries ''Section 45–41–1'' through ''Section 45–41–90''.

[FR Doc. 2018–02463 Filed 2–7–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–9973–51–OAR]

RIN 2060–AM75

Issuance of Guidance Memorandum, ''Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Issuance and withdrawal of guidance memorandums.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that it has issued the guidance memorandum titled ''Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act''. The EPA is also withdrawing the memorandum titled ''Potential to Emit for MACT Standards—Guidance on Timing Issues.''

DATES: Effective on February 8, 2018.

ADDRESSES: You may view this guidance memorandum electronically at: *https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean.*

FOR FURTHER INFORMATION CONTACT: Ms. Elineth Torres or Ms. Debra Dalcher, Policy and Strategies Group, 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) 541–4347 or (919) 541–2443, respectively; and email address: *torres.elineth@epa.gov* or *dalcher.debra@epa.gov,* respectively.

SUPPLEMENTARY INFORMATION: On January 25, 2018, the EPA issued a guidance memorandum that addresses the question of when a major source subject to a maximum achievable control technology (MACT) standard under CAA section 112 may be reclassified as an area source, and thereby avoid being subject thereafter to major source MACT and other requirements applicable to major sources under CAA section 112. As is explained in the memorandum, the plain language of the definitions of ''major source'' in CAA section 112(a)(1) and of ''area source'' in CAA section 112(a)(2) compels the conclusion that a major source becomes an area source at such time that the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP) below the major source thresholds (*i.e.,* 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP). In such circumstances, a source that was previously classified as major, and which so limits its PTE, will no longer be subject either to the major source MACT or other major source requirements that were applicable to it as a major source under CAA section 112.

A prior EPA guidance memorandum had taken a different position. *See* Potential to Emit for MACT Standards—Guidance on Timing Issues.'' John Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (May 16, 1995) (the ''May 1995 Seitz Memorandum''). The May 1995 Seitz Memorandum set forth a policy, commonly known as ''once in, always in'' (the ''OIAI policy''), under which ''facilities may switch to area source status at any time until the 'first compliance date' of the standard,'' with ''first compliance date'' being defined to mean the ''first date a source must comply with an emission limitation or other substantive regulatory requirement.'' May 1995 Seitz Memorandum at 5. Thereafter, under the OIAI policy, ''facilities that are major sources for HAP on the 'first compliance date' are required to comply permanently with the MACT standard.'' *Id.* at 9.

The guidance signed on January 25, 2018, supersedes that which was contained in the May 1995 Seitz Memorandum.

The EPA anticipates that it will soon publish a **Federal Register** document to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum.

Dated: January 25, 2018.

Panagiotis E. Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2018–02331 Filed 2–7–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 27, 54, 73, 74, and 76

[MB Docket No. 17–105; FCC 18–3]

Deletion of Rules Made Obsolete by the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) eliminates rules that have been made obsolete by the digital television transition.

DATES: These rule revisions are effective on February 8, 2018.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at *Raelynn.Remy@fcc.gov,* or (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order), FCC 18–3, adopted and released on January 24, 2018. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-3A1.docx.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and

CALIFORNIA
STATUTORY PROVISIONS

State of California

HEALTH AND SAFETY CODE

Section 39658

39658. The state board shall establish airborne toxic control measures for toxic air contaminants in accordance with all of the following:

(a) If a substance is identified as a toxic air contaminant pursuant to Article 3 (commencing with Section 39660), the airborne toxic control measure applicable to the toxic air contaminant shall be adopted following the procedures and meeting the requirements of Article 4 (commencing with Section 39665).

(b) If a substance is designated as a toxic air contaminant because it is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)), the state board shall establish the airborne toxic control measure applicable to the substance as follows:

(1) If an emission standard applicable to the hazardous air pollutant has been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412), except as provided in paragraphs (2), (3), and (4), that emission standard adopted pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) for the hazardous air pollutant is also the airborne toxic control measure for the toxic air contaminant. The state board shall implement the relevant emission standard and it shall be the airborne toxic control measure for purposes of this chapter. The implementation of the emission standard is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code or Article 4 (commencing with Section 39665).

(2) If an emission standard applicable to the hazardous air pollutant has been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) and the state board finds that the emission standard does not achieve the purposes set forth in subdivision (b) or (c), as applicable, of Section 39666, the state board shall adopt an airborne toxic control measure for the toxic air contaminant that it finds will achieve those purposes. The state board shall, when it adopts an airborne toxic control measure pursuant to this paragraph, follow the procedures and meet the requirements of Article 4 (commencing with Section 39665).

(3) If the state board implements an airborne toxic control measure applicable to the substance pursuant to paragraph (1) and later finds that the purposes set forth in subdivision (b) or (c), as applicable, of Section 39666 are not achieved by the airborne toxic control measure, the state board may revise the airborne toxic control measure to achieve those purposes. The state board shall, when it revises an airborne toxic control measure pursuant to this paragraph, follow the procedures and meet the requirements of Article 4 (commencing with Section 39665). The state board may

revise an airborne toxic control measure pursuant to this paragraph only if it first finds that the reduction in risk to the public health that will be achieved by the revision justifies the burden that will be imposed on persons who are in compliance with the airborne toxic control measure previously implemented pursuant to paragraph (1).

(4) If an emission standard applicable to the hazardous air pollutant has not been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412), the state board may adopt an airborne toxic control measure applicable to the toxic air contaminant pursuant to Article 4 (commencing with Section 39665).

(Added by Stats. 1992, Ch. 1161, Sec. 3. Effective January 1, 1993.)

State of California

HEALTH AND SAFETY CODE

Section 39660

39660. (a) Upon the request of the state board, the office, in consultation with and with the participation of the state board, shall evaluate the health effects of and prepare recommendations regarding substances, other than pesticides in their pesticidal use, which may be or are emitted into the ambient air of California and that may be determined to be toxic air contaminants.

(b) In conducting this evaluation, the office shall consider all available scientific data, including, but not limited to, relevant data provided by the state board, the State Department of Health Services, the Occupational Safety and Health Division of the Department of Industrial Relations, the Department of Pesticide Regulation, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations. The evaluation shall be performed using current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, human health effects assessment, risk assessment, and toxicity.

(c) (1) The evaluation shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance, and shall, to the extent that information is available, assess all of the following:

(A) Exposure patterns among infants and children that are likely to result in disproportionately high exposure to ambient air pollutants in comparison to the general population.

(B) Special susceptibility of infants and children to ambient air pollutants in comparison to the general population.

(C) The effects on infants and children of exposure to toxic air contaminants and other substances that have a common mechanism of toxicity.

(D) The interaction of multiple air pollutants on infants and children, including the interaction between criteria air pollutants and toxic air contaminants.

(2) The evaluation shall also contain an estimate of the levels of exposure that may cause or contribute to adverse health effects. If it can be established that a threshold of adverse health effects exists, the estimate shall include both of the following factors:

(A) The exposure level below which no adverse health effects are anticipated.

(B) An ample margin of safety that accounts for the variable effects that heterogeneous human populations exposed to the substance under evaluation may experience, the uncertainties associated with the applicability of the data to human beings, and the completeness and quality of the information available on potential

human exposure to the substance. In cases in which there is no threshold of significant adverse health effects, the office shall determine the range of risk to humans resulting from current or anticipated exposure to the substance.

(3) The scientific basis or scientific portion of the method used by the office to assess the factors set forth in this subdivision shall be reviewed in a manner consistent with this chapter by the Scientific Review Panel on Toxic Air Contaminants established pursuant to Article 5 (commencing with Section 39670). Any person may submit any information for consideration by the panel, which may receive oral testimony.

(d) The office shall submit its written evaluation and recommendations to the state board within 90 days after receiving the request of the state board pursuant to subdivision (a). The office may, however, petition the state board for an extension of the deadline, not to exceed 30 days, setting forth its statement of the reasons that prevent the office from completing its evaluation and recommendations within 90 days. Upon receipt of a request for extension of, or noncompliance with, the deadline contained in this section, the state board shall immediately transmit to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline, along with copies of the office's statement of reasons that prevent it from completing its evaluation and recommendations in a timely manner.

(e) (1) The state board or a district may request, and any person shall provide, information on any substance that is or may be under evaluation and that is manufactured, distributed, emitted, or used by the person of whom the request is made, in order to carry out its responsibilities pursuant to this chapter. To the extent practical, the state board or a district may collect the information in aggregate form or in any other manner designed to protect trade secrets.

(2) Any person providing information pursuant to this subdivision may, at the time of submission, identify a portion of the information submitted to the state board or a district as a trade secret and shall support the claim of a trade secret, upon the written request of the state board or district board. Subject to Section 1060 of the Evidence Code, information supplied that is a trade secret, as specified in Section 6254.7 of the Government Code, and that is so marked at the time of submission, shall not be released to any member of the public. This section does not prohibit the exchange of properly designated trade secrets between public agencies when those trade secrets are relevant and necessary to the exercise of their jurisdiction if the public agencies exchanging those trade secrets preserve the protections afforded that information by this paragraph.

(3) Any information not identified as a trade secret shall be available to the public unless exempted from disclosure by other provisions of law. The fact that information is claimed to be a trade secret is public information. Upon receipt of a request for the release of information that has been claimed to be a trade secret, the state board or district shall immediately notify the person who submitted the information, and shall determine whether or not the information claimed to be a trade secret is to be released to the public. The state board or district board, as the case may be, shall make its

determination within 60 days after receiving the request for disclosure, but not before 30 days following the notification of the person who submitted the information. If the state board or district decides to make the information public, it shall provide the person who submitted the information 10 days' notice prior to public disclosure of the information.

(f) The office and the state board shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of, and exposure to, usage of the substance in California, persistence in the atmosphere, and ambient concentrations in the community. In determining the importance of these factors, the office and the state board shall consider all of the following information, to the extent that it is available:

(1) Research and monitoring data collected by the state board and the districts pursuant to Sections 39607, 39617.5, 39701, and 40715, and by the United States Environmental Protection Agency pursuant to paragraph (2) of subsection (k) of Section 112 of the federal act (42 U.S.C. Sec. 7412(k)(2)).

(2) Emissions inventory data reported for substances subject to Part 6 (commencing with Section 44300) and the risk assessments prepared for those substances.

(3) Toxic chemical release data reported to the state emergency response commission pursuant to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. Sec. 11023) and Section 6607 of the Pollution Prevention Act of 1990 (42 U.S.C. Sec. 13106).

(4) Information on estimated actual exposures to substances based on geographic and demographic data and on data derived from analytical methods that measure the dispersion and concentrations of substances in ambient air.

(Amended by Stats. 1999, Ch. 731, Sec. 5. Effective January 1, 2000.)

State of California

HEALTH AND SAFETY CODE

Section 39661

39661. (a) (1) Upon receipt of the evaluation and recommendations prepared pursuant to Section 39660, the state board, in consultation with, and with the participation of, the office, shall prepare a report in a form that may serve as the basis for regulatory action regarding a particular substance pursuant to subdivisions (b) and (c) of Section 39662.

(2) The report shall include and be developed in consideration of the evaluation and recommendations of the office.

(b) The report, together with the scientific data on which the report is based, shall, with the exception of trade secrets, be made available to the public and shall be formally reviewed by the scientific review panel established pursuant to Section 39670. The panel shall review the scientific procedures and methods used to support the data, the data itself, and the conclusions and assessments on which the report is based. Any person may submit any information for consideration by the panel, which may, at its discretion, receive oral testimony. The panel shall submit its written findings to the state board within 45 days after receiving the report. The panel may, however, petition the state board for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is not based upon sound scientific knowledge, methods, or practices, the report shall be returned to the state board, and the state board, in consultation with, and with the participation of, the office, shall prepare revisions to the report, which shall be resubmitted within 30 days following receipt of the panel's determination to the scientific review panel, which shall review the report in conformance with subdivision (b) prior to a formal proposal by the state board pursuant to Section 39662.

(Amended by Stats. 2004, Ch. 183, Sec. 217. Effective January 1, 2005.)

State of California

HEALTH AND SAFETY CODE

Section 39666

39666. (a) Following a noticed public hearing, the state board shall adopt airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources.

(b) For toxic air contaminants for which the state board has determined, pursuant to Section 39662, that there is a threshold exposure level below which no significant adverse health effects are anticipated, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 39665, to reduce emissions sufficiently so that the source will not result in, or contribute to, ambient levels at or in excess of the level which may cause or contribute to adverse health effects as that level is estimated pursuant to subdivision (c) of Section 39660.

(c) For toxic air contaminants for which the state board has not specified a threshold exposure level pursuant to Section 39662, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 39665, to reduce emissions to the lowest level achievable through application of best available control technology or a more effective control method, unless the state board or a district board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health.

(d) Not later than 120 days after the adoption or implementation by the state board of an airborne toxic control measure pursuant to this section or Section 39658, the districts shall implement and enforce the airborne toxic control measure or shall propose regulations enacting airborne toxic control measures on nonvehicular sources within their jurisdiction which meet the requirements of subdivisions (b), (c), and (e), except that a district may, at its option, and after considering the factors specified in subdivision (b) of Section 39665, adopt and enforce equally effective or more stringent airborne toxic control measures than the airborne toxic control measures adopted by the state board. A district shall adopt rules and regulations implementing airborne toxic control measures on nonvehicular sources within its jurisdiction in conformance with subdivisions (b), (c), and (e), not later than six months following the adoption of airborne toxic control measures by the state board.

(e) District new source review rules and regulations shall require new or modified sources to control emissions of toxic air contaminants consistent with subdivisions (b), (c), and (d) and Article 2.5 (commencing with Section 39656).

(f) Where an airborne toxic control measure requires the use of a specified method or methods to reduce, avoid, or eliminate the emissions of a toxic air contaminant, a source may submit to the district an alternative method or methods that will achieve

an equal or greater amount of reduction in emissions of, and risk associated with, that toxic air contaminant. The district shall approve the proposed alternative method or methods if the operator of the source demonstrates that the method is, or the methods are, enforceable, that equal or greater amounts of reduction in emissions and risk will be achieved, and that the reductions will be achieved within the time period required by the applicable airborne toxic control measure. The district shall revoke approval of the alternative method or methods if the source fails to adequately implement the approved alternative method or methods or if subsequent monitoring demonstrates that the alternative method or methods do not reduce emissions and risk as required. The district shall notify the state board of any action it proposes to take pursuant to this subdivision. This subdivision is operative only to the extent it is consistent with the federal act.

(Amended by Stats. 1992, Ch. 1161, Sec. 8. Effective January 1, 1993.)

CALIFORNIA
REGULATORY PROVISIONS

Barclays Official California Code of Regulations Currentness
Title 17. Public Health
Division 3. Air Resources
Chapter 1. Air Resources Board
Subchapter 7. Toxic Air Contaminants

17 CCR § 93000

§ 93000. Substances Identified As Toxic Air Contaminants.

Each substance identified in this section has been determined by the State Board to be a toxic air contaminant as defined in Health and Safety Code section 39655. If the State Board has found there to be a threshold exposure level below which no significant adverse health effects are anticipated from exposure to the identified substance, that level is specified as the threshold determination. If the Board has found there to be no threshold exposure level below which no significant adverse health effects are anticipated from exposure to the identified substance, a determination of "no threshold" is specified. If the Board has found that there is not sufficient available scientific evidence to support the identification of a threshold exposure level, the "Threshold" column specifies "None identified."

Substance	Threshold Determination
Benzene (C_6H_6)	None identified
Ethylene Dibromide ($BrCH_2CH_2Br$; 1,2-dibromoethane)	None identified
Ethylene Dichloride ($ClCH_2CH_2Cl$; 1,2-dichloroethane)	None identified
Hexavalent chromium (Cr (VI))	None identified
Asbestos [asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), tremolite, actinolite, and anthophyllite]	None identified
Dibenzo-p-dioxins and Dibenzofurans chlorinated in the 2,3,7 and 8 positions and containing 4,5,6 or 7 chlorine atoms	None identified
Cadmium (metallic cadmium and cadmium compounds)	None identified
Carbon Tetrachloride	None identified

(CCl_4; tetrachloromethane)	
Ethylene Oxide (1,2-epoxyethane)	None identified
Methylene Chloride	None identified
(CH_2Cl_2; Dichloromethane)	
Trichloroethylene	None identified
(CCl_2CHCl; Trichloroethene)	
Chloroform ($CHCl_3$)	None identified
Vinyl chloride	None identified
(C_2H_3Cl; Chloroethylene)	
Inorganic Arsenic	None identified
Nickel (metallic nickel	None identified
and inorganic nickel compounds)	
Perchloroethylene	None identified
(C_2Cl_4; Tetrachloroethylene)	
Formaldehyde	None identified
(HCHO)	
1,3-Butadiene	None identified
(C_4H_6)	
Inorganic Lead	None identified
Particulate Emissions from Diesel-Fueled Engines	None identified
Environmental Tobacco Smoke	None identified

Note: Authority cited: Sections 39600, 39601 and 39662, Health and Safety Code. Reference: Sections 39650, 39660, 39661 and 39662, Health and Safety Code.

HISTORY

1. New section filed 9-23-85; effective thirtieth day thereafter (Register 85, No. 39). For history of former subchapter 7, see Registers 84, No. 10; 83, No. 2; 81, No. 48; 77, No. 12; and 74, No. 47.

2. Amendment filed 1-14-86; effective thirtieth day thereafter (Register 86, No. 3).

3. Amendment filed 2-10-86; effective thirtieth day thereafter (Register 86, No. 7).

4. Amendment filed 10-9-86; effective thirtieth day thereafter (Register 86, No. 43).

5. Amendment filed 11-25-86; effective thirtieth day thereafter (Register 86, No. 48).

6. Amendment filed 2-23-87; effective thirtieth day thereafter (Register 87, No. 9).

7. Amendment filed 10-8-87; operative 11-7-87 (Register 87, No. 43).

8. Amendment filed 3-15-88; operative 4-14-88 (Register 88, No. 13).

9. Amendment filed 7-22-88; operative 8-21-88 (Register 88, No. 31).

10. Amendment adding Methylene Chloride filed 6-7-90; operative 7-7-90 (Register 90, No. 30).

11. Amendment adding Trichloroethylene filed 2-27-91; operative 3-29-91 (Register 91, No. 13).

12. Amendment adding Vinyl chloride filed 5-10-91; operative 6-9-91 (Register 91, No. 25).

13. Editorial correction, including removal of Inorganic arsenic (Register 91, No. 25).

14. Amendment adding Chloroform filed 5-10-91; operative 6-9-91 (Register 91, No. 25).

15. Amendment adding Inorganic Arsenic filed 6-6-91; operative 7-6-91 (Register 91, No. 26).

16. Change without regulatory effect amending Trichloroethylene and adding Nickel filed 7-14-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).

17. Amendment adding Perchloroethylene filed 10-2-92; operative 11-1-92 (Register 92, No. 40).

18. Amendment adding Formaldehyde filed 3-2-93; operative 4-1-93 (Register 93, No. 10).

19. Amendment adding 1,3-Butadiene filed 4-14-93; operative 5-14-93 (Register 93, No. 16).

20. Editorial correction (Register 98, No. 16).

21. Amendment adding inorganic lead filed 4-14-98; operative 5-14-98 (Register 98, No. 16).

22. Amendment adding “Particulate Emissions from Diesel-Fueled Engines” filed 7-21-99; operative 8-20-99 (Register 99, No. 30).

23. Amendment adding “Environmental Tobacco Smoke” filed 1-9-2007; operative 2-8-2007 (Register 2007, No. 2).

This database is current through 9/14/18 Register 2018, No. 37

17 CCR § 93000, 17 CA ADC § 93000

End of Document