

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

**SERIES 34
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

§45-34-1. General.

1.1. Scope. -- This rule establishes and adopts a program of national emission standards for hazardous air pollutants and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Parts 61, 63 and section 112 of the federal Clean Air Act, as amended. This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR § 61.01(a), or one or more of the substances listed as hazardous air pollutants in section 112(b) of the CAA. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

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

1.3. Filing Date. -- ~~March 22, 2018.~~

1.4. Effective Date. -- ~~June 1, 2018.~~

1.5. Sunset Provision. -- Does not apply.

1.6. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, effective June 1, ~~2017~~ 2018.

§45-34-2. Definitions.

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

2.2. "Clean Air Act" ("CAA") means the federal Clean Air Act, found at 42 U.S.C. § 7401 et seq., as amended.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR § 61.01(a) or § 112(b) of the CAA.

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

2.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Parts 61 and 63. Words and phrases not defined therein shall have the meaning given to them in federal Clean Air Act.

§45-34-3. Requirements.

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

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reconstructed, modified, or operated any source subject to the provisions of 40 CFR Parts 61 and 63 which results or will result in a violation of this rule.

3.2. No person may construct or reconstruct any major source of hazardous air pollutants, unless the Secretary determines that the maximum achievable control technology emission limitation under 40 CFR Part 63 and this rule for new sources will be met.

3.3. The Secretary shall determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to § 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with §§ 112(d) and 112(e) of the CAA.

3.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the owner or operator shall obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 45CSR19, 45CSR30 and this rule.

§45-34-4. Adoption of standards.

4.1. The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61, 63 and 65, effective June 1, ~~2017~~ 2018, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

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

4.1.b. Subpart E of 40 CFR Part 63 and any provision related to § 112(r) of the CAA, notwithstanding any requirements of 45CSR30 shall be excluded;

4.1.c. Subparts DDDDDDD, LLLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWW, ZZZZZ, HHHHHH, BBBBBB, CCCCCC, WWWW, XXXXXX, YYYYYY, ZZZZZZ, BBBBBB, CCCCCC, and DDDDDDD of 40 CFR Part 63 shall be excluded; and

4.1.d. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 shall be excluded.

§45-34-5. Secretary.

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

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

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

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- 5.1.b.5. alternate monitoring methods;
 - 5.1.b.6. waivers/adjustments to recordkeeping and reporting;
 - 5.1.b.7. emissions averaging; or
 - 5.1.b.8. applicability determinations; or
- 5.1.c. where the context of the regulation clearly requires otherwise.

§45-34-6. Permits.

6.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

§45-34-7. Inconsistency between rules.

7.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

the Local Notice to Mariners and marine information broadcasts. If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: February 14, 2018.

M. H. Day,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2018-05607 Filed 3-19-18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2016-0069; FRL-9975-62-OAR]

RIN 2060-AT17

Revisions to Method 301: Field Validation of Pollutant Measurement Methods From Various Waste Media

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is publishing editorial and technical revisions to the EPA's Method 301 "Field Validation of Pollutant Measurement Methods from Various Waste Media" to correct and update the method. In addition, the EPA is clarifying the regulatory applicability of Method 301 as well as its suitability for use with other regulations. The revisions include ruggedness testing for validation of test methods intended for application at multiple sources, determination of the limit of detection for all method validations, incorporating procedures for determining the limit of detection, revising the sampling requirements for the method comparison procedure, adding storage and sampling procedures for sorbent sampling systems, and clarifying acceptable statistical results for candidate test methods. We are also clarifying the applicability of Method 301 to our regulations and adding equations to clarify calculation of the correction factor, standard deviation, estimated variance of a validated test method, standard deviation of differences, and t-statistic for all validation approaches. We have also made minor changes in response to public comments. Changes made to the Method 301 field validation protocol under this action apply only to methods submitted to the EPA for approval after the effective date of this final rule.

DATES: The final rule is effective on March 20, 2018.

ADDRESSES: We have established a docket for this rulemaking under Docket ID Number EPA-HQ-OAR-2016-0069. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Segall, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143-02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541-0893; fax number: (919) 541-0516; email address: segall.rob@epa.gov.

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Method 301 applies to you, under 40 CFR 63.7(f) or 40 CFR 65.158(a)(2)(iii), when you want to use an alternative to a required test method to meet an applicable requirement or when there is no required or validated test method. In addition, the validation procedures of Method 301 may be used as a tool for demonstration of the suitability of alternative test methods under 40 CFR 59.104 and 59.406, 40 CFR 60.8(b), and 40 CFR 61.13(h)(1)(ii). If you have questions regarding the applicability of the changes to Method 301, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to being available in the docket, an electronic copy of the method revisions is available on the Air Emission Measurement Center (EMC) website at <https://www.epa.gov/emc/>. The EMC provides information regarding stationary source air emissions test methods and procedures.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by May 21, 2018. Under CAA section 307(b)(2), the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for the EPA to reconsider the rule "[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration should submit a

Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

The EPA proposed revisions to Method 301 on December 2, 2016 (81 FR 87003). The EPA received one comment letter on the proposed revisions to EPA Method 301, which is addressed in Section IV of this preamble.

The EPA originally published Method 301 (appendix A to 40 CFR part 63, Test Methods) on December 29, 1992 (57 FR 61970), as a field validation protocol method to be used to validate new test methods for hazardous air pollutants (HAP) in support of the Early Reductions Program of part 63 when existing test methods were inapplicable. On March 16, 1994, the EPA incorporated Method 301 into 40 CFR 63.7 (59 FR 12430) to provide procedures for validating a candidate test method as an alternative to a test method specified in a standard or for use where no test method is provided in a standard.

Method 301 specifies procedures for determining and documenting the bias and precision of a test method that is a candidate for use as an alternative to a test method specified in an applicable regulation. Method 301 has also been required for validating test methods to be used in demonstrating compliance with a regulatory standard in the absence of a validated test method. Method 301 is required for these purposes under 40 CFR 63.7(f) and 40 CFR 65.158(a)(2)(iii), and is an appropriate tool for demonstration and validation of alternative methods under 40 CFR 59.104 and 59.406, 40 CFR 60.8(b), and 40 CFR 61.13(h)(1)(ii). The procedures specified in Method 301 are applicable to various media types (*e.g.*, sludge, exhaust gas, wastewater).

Bias (or systemic error) is established by comparing measurements made using a candidate test method against reference values, either reference materials or a validated test method. Where needed, a correction factor for source-specific application of the method is employed to eliminate/minimize bias. This correction factor is established from data obtained during the validation test. Methods that have bias correction factors outside a

specified range are considered unacceptable. Method precision (or random error) must be demonstrated to be as precise as the validated method for acceptance or less than or equal to 20 percent when the candidate method is being evaluated using reference materials.

Neither the Method as originally established on December 29, 1992, nor the subsequent revision on May 18, 2011 (76 FR 28664), have distinguished requirements for single-source applications of a candidate method from those that apply at multiple sources. The revisions promulgated in this action recognize that requirements related to bias and ruggedness testing should differ between single-source and multiple-source application of an alternative method. Additionally, through our reviews of submitted Method 301 data packages and response to questions from industry, technology vendors, and testing organizations seeking to implement the method, we recognized that there was confusion with the specific testing requirements and the statistical calculations associated with each of the three "Sampling Procedures." To improve the readability and application of Method 301, we proposed and are finalizing minor edits throughout the method text to clarify the descriptions and requirements for assessing bias and precision for each "Sampling Procedure" and have added equations to ensure that required calculations and acceptance criteria for each of the three sampling approaches are clear.

III. Summary of Final Amendments

In this section, we discuss the final amendments to Method 301, the changes since proposal, and the rationale for the changes. We are finalizing clarifications to the regulatory applicability of Method 301 and its suitability for use with other regulations, as well as finalizing technical revisions and editorial changes intended to clarify and update the requirements and procedures specified in Method 301.

A. Technical Revisions

1. Applicability of Ruggedness Testing and Limit of Detection Determination

In this action, we are amending sections 3.1 and 14.0 to require ruggedness testing when using Method 301 to validate a candidate test method intended for application to multiple sources. Ruggedness testing is optional for validation of methods intended for single-source applications. We are also amending sections 3.1 and 15.0 to

require determination of the limit of detection (LOD) for validation of all methods (*i.e.*, those intended for both single-source and multi-source application). Additionally, we are clarifying the LOD definition in section 15.1.

Ruggedness testing of a test method is a laboratory study to determine the sensitivity of the method by measuring its capacity to remain unaffected by small, but deliberate variations in method parameters such as sample collection rate and sample recovery temperature to provide an indication of its reliability during normal usage. Requiring ruggedness testing and determination of the LOD for validation of a candidate test method that is intended for use at multiple sources will further inform the EPA's determination of whether the candidate test method is valid across a range of source emission matrices, varying method parameters, and conditions. Additionally, conducting an LOD determination for both single- and multi-source validations will account for the sensitivity of the candidate test method to ensure it meets applicable regulatory requirements.

2. Limit of Detection Procedures

In this action, the EPA is finalizing revisions to the requirements for determining the LOD specified in section 15.2 and Table 301-5 (Procedure I) of Method 301 to reference the procedures for determining the method detection limit (MDL) in 40 CFR part 136, appendix B, as revised on August 28, 2017 (82 FR 40836), which addresses laboratory blank contamination and accounts for intra-laboratory variability. Procedure I of Table 301-5 of Method 301 is used for determining an LOD when an analyte in a sample matrix is collected prior to an analytical measurement or the estimated LOD is no more than twice the calculated LOD. For the purposes of Method 301, LOD will now be equivalent to the calculated MDL determined using the procedures specified in 40 CFR part 136, appendix B.

When EPA proposed revisions to Method 301 (81 FR 87003; December 2, 2016), we noted in the preamble that the Method 301 revisions were referencing *proposed* revisions to the MDL calculation procedures of 40 CFR part 136, appendix B. At that time, we stated, "If the revisions to 40 CFR part 136, appendix B are finalized as proposed prior to a final action on this [Method 301] proposal, we will cross-reference appendix B. If appendix B is finalized before this action and the

revisions do not incorporate the procedures as described above, the EPA intends to incorporate the specific procedures for determining the LOD in the final version of Method 301 consistent with this proposal.” The appendix B provisions of 40 CFR part 136 were recently finalized with the Clean Water Act Methods Update Rule on August 28, 2017 (82 FR 40836). As a result of comments on the proposed Methods Update rule, there were minor clarifications, but “[n]o significant revisions were made to the proposed MDL procedure” of appendix B as stated in Section III.I of the preamble to that rule. Because the Methods Update rule containing the MDL procedure was finalized with no significant changes, and we have determined that the final requirements of appendix B are appropriate for the CAA programs at issue, we are cross-referencing the finalized MDL determination calculation procedure of 40 CFR part 136, appendix B, in section 15.2 and Table 301–5 of Method 301.

3. Storage and Sampling Procedures

In this action, we are finalizing the proposed revisions to sections 9.0 and 11.1.3 and Table 301–1 of Method 301 to require, at a minimum, six sets of quadruplicate samples (a total of 24 samples) for comparison of a candidate method against a validated method rather than four sets of quadruplicate samples or nine sets of paired samples, as currently required. These revisions ensure that the bias and precision requirements are consistent between the various sampling approaches in the method and decreases the amount of uncertainty in the calculations for bias and precision when comparing an alternative or candidate test method with a validated method. Bias and precision (standard deviation and variance) are inversely related to the number of sampling trains (sample results) used to estimate the difference between the alternative test method and the validated method. As the number of trains increases, the uncertainty in the bias and precision estimates decreases. Larger data sets provide better estimates of the standard deviation or variance and the distribution of the data. The revision to collect a total of 24 samples when using the comparison against a validated method approach is also consistent with the number of samples required for both the analyte spiking and the isotopic spiking approaches. The 12 samples collected when conducting the isotopic spiking approach are equivalent to the 24 samples collected using the analyte spiking approach because the isotopic

labelling of the spike allows each of the 12 samples to yield two results (one result for an unspiked sample, and one result for a spiked sample).

For validations conducted by comparing the candidate test method to a validated test method, we are also finalizing the following additions: (1) Storage and sampling procedures for sorbent systems requiring thermal desorption to Table 301–2 of Method 301, and (2) a new Table 301–4 of Method 301 to provide a look-up table of F values for the one-sided confidence level used in assessing the precision of the candidate test method. We also are amending the reference list in section 18.0 to include the source of the F values in Table 301–4.

4. Bias Criteria for Multi-Source Versus Single-Source Validation

In this action, we are finalizing revisions that clarify sections 8.0, 10.3, and 11.1.3 of Method 301 to specify that candidate test methods intended for use at multiple sources must have a bias less than or equal to 10 percent. Candidate test methods with a bias greater than 10 percent, but less than 30 percent, are applicable only at the source at which the validation testing was conducted, and data collected in the future must be adjusted for bias using a source-specific correction factor. A single-source correction factor is not appropriate for use at multiple sources. This change provides flexibility for source-specific Method 301 application while limiting the acceptance criteria for use of the method at multiple sources.

5. Relative Standard Deviation Assessment

In sections 9.0 and 12.2 of Method 301, we are finalizing language regarding the interpretation of the relative standard deviation (RSD) when determining the precision of a candidate test method using the analyte spiking or isotopic spiking procedures. For a test method to be acceptable, we proposed that the RSD of a candidate test method must be less than or equal to 20 percent. Accordingly, we are removing the sampling provisions for cases where the RSD is greater than 20 percent, but less than 50 percent. Poor precision makes it difficult to detect potential bias in a test method. For this reason, we proposed and are now finalizing an acceptance criterion of less than or equal to 20 percent for analyte and isotopic spiking sampling procedures.

6. Applicability of Method 301

Although 40 CFR 65.158(a)(2)(iii) specifically cross-references Method 301, Method 301 formerly did not

reference part 65. For parts 63 and 65, Method 301 must be used for establishing an alternative test method. Thus, in this action, we are finalizing language that clarifies that Method 301 is applicable to both parts 63 and 65 and that Method 301 may be used for validating alternative test methods under the following parts of Title 40 of the CAA:

- Part 59 (National Volatile Organic Compound Emission Standards for Consumer and Commercial Products).
- Part 60 (Standards of Performance for New Stationary Sources).
- Part 61 (National Emission Standards for Hazardous Air Pollutants).

We believe that the Method 301 procedures for determining bias and precision provide a suitable technical approach for assessing candidate or alternative test methods for use under these regulatory parts because the testing provisions are very similar to those under parts 63 and 65. To accommodate the expanded applicability and suitability, we are revising the references in sections 2.0, 3.2, 5.0, 13.0, 14.0, and 16.1 of Method 301 to refer to all five regulatory parts.

7. Equation Additions

In this action, we are clarifying the procedures in Method 301 by adding the following equations:

- Equation 301–8 in section 10.3 for calculating the correction factor.
- Equation 301–11 in section 11.1.1 and Equation 301–19 in section 12.1.1 for calculating the numerical bias.
- Equation 301–12 in section 11.1.2 and Equation 301–20 in section 12.1.2 for determining the standard deviation of differences.
- Equation 301–13 in section 11.1.3 and Equation 301–21 in section 12.1.3 for calculating the t-statistic.
- Equation 301–15 in section 11.2.1 to estimate the variance of the validated test method.
- Equation 301–23 in section 12.2 for calculating the standard deviation.

We also are revising the denominator of Equation 301–22 to use the variable “CS” rather than “VS.” Additionally, we are revising the text of Method 301, where needed, to list and define all variables used in the method equations. These changes are intended to improve the readability of the method and ensure that required calculations and acceptance criteria for each of the three validation approaches in Method 301 are clear.

B. Clarifying and Editorial Changes

In this action, we are applying minor edits throughout the text of Method 301 to clarify the descriptions and

requirements for assessing bias and precision, to ensure consistency when referring to citations within the method, to renumber equations and tables (where necessary), and to remove passive voice.

In addition, we are clarifying several definitions in section 3.2. In the definition of "Paired sampling system," we are modifying the definition to provide that a paired sampling system is collocated with respect to sampling time and location. For the definition of "Quadruplet sampling system," we are replacing the term "Quadruplet" with "Quadruplicate" and adding descriptive text to the definition to provide examples of replicate samples. We are also making companion edits throughout the method text to reflect the change in terminology from "quadruplet" to "quadruplicate." Additionally, we are revising the definition of "surrogate compound" to clarify that a surrogate compound must be distinguishable from other compounds being measured by the candidate method.

We are also replacing the term "alternative test method" with "candidate test method" in section 3.2 and throughout Method 301 to maintain consistency when referring to a test method that is subject to the validation procedures specified in Method 301.

Additionally, the EPA is making the following updates and corrections:

- Updating the address for submitting waivers in section 17.2.
- Correcting the t-value for four degrees of freedom in Table 301-3 "Critical Values of t" as well as expanding the table to include t-values up to 20 degrees of freedom. We originally proposed expanding the table to only 11 degrees of freedom, but recognized that users may occasionally want to use significantly more than the minimum number of test runs and samples.

- Including a Table 301-4 "Upper Critical Values of the F Distribution" and an associated reference in section 18.0 to provide method users with convenient access to the F values needed to perform the required statistical calculations in Method 301. For the same reason that we originally included the Table 301-3 "Critical Values of t" in the 2011 revisions to Method 301, we recognized in finalizing the proposed revisions that we should additionally include a table for the F distribution.

IV. Response to Comment

We received one public comment letter submitted on behalf of the Utility

Air Regulatory Group presenting two comments.

Comment: The commenter notes that section 6.4.1 of Method 301 requires that the probe tips for each of the paired sampling probes be 2.5 centimeters away from each other with a pitot tube on the outside of each probe and claims that the collocation criteria of Method 301 are infeasible for many currently accepted test methods including Method 30B. The commenter states that if the outside diameter of the validated test method probe is 3 inches (as is common for Method 30B probes), it is impossible for a second probe of equal diameter to meet the probe tip location requirement even if the two probes are immediately adjacent. In addition, the commenter claims that if the sample port being used to perform the validation testing has an inside diameter of 4 inches, a common port size, then two paired sampling probes with an outside diameter of 3 inches cannot physically fit into the sample port making collocation impossible. The commenter notes that sections 6.4.1 and 17.1 provide for some latitude for waivers of the probe placement requirements, but believes the waiver language is inadequate and recommends that EPA provide alternative probe placements that are practically achievable.

Response: We recommend that organizations conducting validation testing seek to use 6-inch ports, which are fairly common. Should 6-inch ports not be available at a source where validation testing must be conducted, then they should be installed if practicable. However, we recognize that there still may be instances where the sampling probes requirements are not feasible in a specific situation. Current Method 301 addresses this situation by providing in section 6.4.1 for Administrator approval of a validation request with other paired arrangements for the pitot tube. While we do not agree with the commenter that EPA should provide alternative probe tip and pitot tube placement options within Method 301, we do appreciate that the Administrator approval language provided in the method could confirm additional flexibility with regard to both pitot tube and probe tip placement and we have revised the language of section 6.4.1 and relocated it to section 6.4 to clarify that it is applicable to all aspects of sampling probe/pitot placement.

Comment: The commenter points out that section 8.0 of Method 301 specifies the bias of a candidate method as compared to a reference method be no more than 10 percent. The commenter contends this criterion is inadequate

and unachievable at low concentrations, which are now more frequently occurring, and recommends that the Method 301 bias criterion be modified to include an alternative performance criterion based on an absolute difference rather than a percent of the measurement to address field validation measurements made at low levels.

Response: The EPA disagrees with the commenter that the Method 301 bias criterion should be modified to include an alternative performance criterion based on an absolute difference rather than a percent of the measurement. It is important to understand that the 10 percent bias criterion applies only to candidate methods that will be applied to multiple sources. A candidate method to be applied to a single source is allowed a bias up to 30 percent when coupled with a source-specific bias correction factor if the bias exceeds 10 percent. Though we recognize that emission levels are decreasing, when a candidate method is being validated for broad applicability to multiple sources, there is the opportunity to optimize field validation by conducting testing at sources with relatively higher emissions. As Method 301 is designed for validation of methods for many pollutants emitted from a large range of source categories under many different rules, EPA believes it would, at best, be extremely difficult to specify generic alternative criteria for validation at low levels. Such issues are part of the rationale for the flexibility under section 17.0 of Method 301; with this language EPA maintains the ability to waive some or all the procedures of Method 301 if it can be demonstrated to the Administrator's satisfaction that the bias and precision of a candidate method are suitable for the stated application. To clarify that these provisions apply to all required facets of Method 301, we have revised section 17.2 to include the LOD determination along with bias and precision.

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this

action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. The revisions in this action to Method 301 do not add information collection requirements, but make corrections and updates to existing testing methodology.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The revisions to Method 301 do not impose any requirements on regulated entities beyond those specified in the current regulations and they do not change any emission standard. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. This action corrects and updates the existing procedures specified in Method 301. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51

This action involves technical standards. The agency previously identified ASTM D4855–97 (Standard Practice for Comparing Test Methods) as being potentially applicable in previous revisions of Method 301, but determined that the use of ASTM D4855–97 was impractical (section V in 76 FR 28664, May 18, 2011).

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action makes corrections and updates to an existing protocol for assessing the precision and accuracy of alternative test methods to ensure they are comparable to the methods otherwise required; thus, it does not modify or affect the impacts to human health or the environment of any standards for which it may be used.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Alternative test method, EPA Method 301, Field validation, Hazardous air pollutants.

Dated: March 8, 2018.

E. Scott Pruitt,
Administrator.

For the reasons stated in the preamble, the EPA amends title 40, chapter I of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

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

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

■ 2. Appendix A to part 63 is amended by revising Method 301 to read as follows:

Appendix A to Part 63—Test Methods

Method 301—Field Validation of Pollutant Measurement Methods From Various Waste Media

Sec.

Using Method 301

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Using Method 301

1.0 What is the purpose of Method 301?

Method 301 provides a set of procedures for the owner or operator of an affected source to validate a candidate test method as an alternative to a required test method based on established precision and bias criteria.

These validation procedures are applicable under 40 CFR part 63 or 65 when a test method is proposed as an alternative test method to meet an applicable requirement or in the absence of a validated method. Additionally, the validation procedures of Method 301 are appropriate for demonstration of the suitability of alternative test methods under 40 CFR parts 59, 60, and 61. If, under 40 CFR part 63 or 60, you choose to propose a validation method other than Method 301, you must submit and obtain the Administrator's approval for the candidate validation method.

2.0 What approval must I have to use Method 301?

If you want to use a candidate test method to meet requirements in a subpart of 40 CFR part 59, 60, 61, 63, or 65, you must also request approval to use the candidate test method according to the procedures in Section 16 of this method and the appropriate section of the part (§ 59.104, § 59.406, § 60.8(b), § 61.13(h)(1)(ii), § 63.7(f), or § 65.158(a)(2)(iii)). You must receive the Administrator's written approval to use the candidate test method before you use the candidate test method to meet the applicable federal requirements. In some cases, the Administrator may decide to waive the requirement to use Method 301 for a candidate test method to be used to meet a requirement under 40 CFR part 59, 60, 61, 63, or 65 in absence of a validated test method. Section 17 of this method describes the requirements for obtaining a waiver.

3.0 What does Method 301 include?

3.1 Procedures. Method 301 includes minimum procedures to determine and document systematic error (bias) and random error (precision) of measured concentrations from exhaust gases, wastewater, sludge, and other media. Bias is established by comparing the results of sampling and analysis against a reference value. Bias may be adjusted on a source-specific basis using a correction factor and data obtained during the validation test. Precision may be determined using a paired sampling system or quadruplicate sampling system for isotopic spiking. A quadruplicate sampling system is required when establishing precision for analyte spiking or when comparing a candidate test method to a validated method. If such procedures have not been established and verified for the candidate test method, Method 301 contains procedures for ensuring sample stability by developing sample storage procedures and limitations and then

testing them. Method 301 also includes procedures for ruggedness testing and determining detection limits. The procedures for ruggedness testing and determining detection limits are required for candidate test methods that are to be applied to multiple sources and optional for candidate test methods that are to be applied at a single source.

3.2 Definitions.

Affected source means an affected source as defined in the relevant part and subpart under Title 40 (e.g., 40 CFR parts 59, 60, 61, 63, and 65).

Candidate test method means the sampling and analytical methodology selected for field validation using the procedures described in Method 301. The candidate test method may be an alternative test method under 40 CFR part 59, 60, 61, 63, or 65.

Paired sampling system means a sampling system capable of obtaining two replicate samples that are collected as closely as possible in sampling time and sampling location (collocated).

Quadruplicate sampling system means a sampling system capable of obtaining four replicate samples (e.g., two pairs of measured data, one pair from each method when comparing a candidate test method against a validated test method, or analyte spiking with two spiked and two unspiked samples) that are collected as close as possible in sampling time and sampling location.

Surrogate compound means a compound that serves as a model for the target compound(s) being measured (i.e., similar chemical structure, properties, behavior). The surrogate compound can be distinguished by the candidate test method from the compounds being analyzed.

4.0 How do I perform Method 301?

First, you use a known concentration of an analyte or compare the candidate test method against a validated test method to determine the bias of the candidate test method. Then, you collect multiple, collocated simultaneous samples to determine the precision of the candidate test method. Additional procedures, including validation testing over a broad range of concentrations over an extended time period are used to expand the applicability of a candidate test method to multiple sources. Sections 5.0 through 17.0 of this method describe the procedures in detail.

Reference Materials

5.0 What reference materials must I use?

You must use reference materials (a material or substance with one or more properties that are sufficiently

homogenous to the analyte) that are traceable to a national standards body (e.g., National Institute of Standards and Technology (NIST)) at the level of the applicable emission limitation or standard that the subpart in 40 CFR part 59, 60, 61, 63, or 65 requires. If you want to expand the applicable range of the candidate test method, you must conduct additional test runs using analyte concentrations higher and lower than the applicable emission limitation or the anticipated level of the target analyte. You must obtain information about your analyte according to the procedures in Sections 5.1 through 5.4 of this method.

5.1 Exhaust Gas Test Concentration.

You must obtain a known concentration of each analyte from an independent source such as a specialty gas manufacturer, specialty chemical company, or chemical laboratory. You must also obtain the manufacturer's certification of traceability, uncertainty, and stability for the analyte concentration.

5.2 Tests for Other Waste Media.

You must obtain the pure liquid components of each analyte from an independent manufacturer. The manufacturer must certify the purity, traceability, uncertainty, and shelf life of the pure liquid components. You must dilute the pure liquid components in the same type medium or matrix as the waste from the affected source.

5.3 Surrogate Analytes. If you demonstrate to the Administrator's satisfaction that a surrogate compound behaves as the analyte does, then you may use surrogate compounds for highly toxic or reactive compounds. A surrogate may be an isotope or compound that contains a unique element (e.g., chlorine) that is not present in the source or a derivation of the toxic or reactive compound if the derivative formation is part of the method's procedure. You may use laboratory experiments or literature data to show behavioral acceptability.

5.4 Isotopically-Labeled Materials.

Isotope mixtures may contain the isotope and the natural analyte. The concentration of the isotopically-labeled analyte must be more than five times the concentration of the naturally-occurring analyte.

Sampling Procedures

6.0 What sampling procedures must I use?

You must determine bias and precision by comparison against a validated test method using isotopic spiking or using analyte spiking (or the equivalent). Isotopic spiking can only be

used with candidate test methods capable of measuring multiple isotopes simultaneously such as test methods using mass spectrometry or radiological procedures. You must collect samples according to the requirements specified in Table 301–1 of this method. You must perform the sampling according to the procedures in Sections 6.1 through 6.4 of this method.

6.1 Isotopic Spiking. Spike all 12 samples with isotopically-labelled analyte at an analyte mass or concentration level equivalent to the emission limitation or standard specified in the applicable regulation. If there is no applicable emission limitation or standard, spike the analyte at the expected level of the samples. Follow the applicable spiking procedures in Section 6.3 of this method.

6.2 Analyte Spiking. In each quadruplicate set, spike half of the samples (two out of the four samples) with the analyte according to the applicable procedure in Section 6.3 of this method. You should spike at an analyte mass or concentration level equivalent to the emission limitation or standard specified in the applicable regulation. If there is no applicable emission limitation or standard, spike the analyte at the expected level of the samples. Follow the applicable spiking procedures in Section 6.3 of this method.

6.3 Spiking Procedure.

6.3.1 Gaseous Analyte with Sorbent or Impinger Sampling Train. Sample the analyte being spiked (in the laboratory or preferably in the field) at a mass or concentration that is approximately equivalent to the applicable emission limitation or standard (or the expected sample concentration or mass where there is no standard) for the time required by the candidate test method, and then sample the stack gas stream for an equal amount of time. The time for sampling both the analyte and stack gas stream should be equal; however, you must adjust the sampling time to avoid sorbent breakthrough. You may sample the stack gas and the gaseous analyte at the same time. You must introduce the analyte as close to the tip of the sampling probe as possible.

6.3.2 Gaseous Analyte with Sample Container (Bag or Canister). Spike the sample containers after completion of each test run with an analyte mass or concentration to yield a concentration approximately equivalent to the applicable emission limitation or standard (or the expected sample concentration or mass where there is no standard). Thus, the final concentration of the analyte in the sample container

would be approximately equal to the analyte concentration in the stack gas plus the equivalent of the applicable emission standard (corrected for spike volume). The volume amount of spiked gas must be less than 10 percent of the sample volume of the container.

6.3.3 Liquid or Solid Analyte with Sorbent or Impinger Trains. Spike the sampling trains with an amount approximately equivalent to the mass or concentration in the applicable emission limitation or standard (or the expected sample concentration or mass where there is no standard) before sampling the stack gas. If possible, do the spiking in the field. If it is not possible to do the spiking in the field, you must spike the sampling trains in the laboratory.

6.3.4 Liquid and Solid Analyte with Sample Container (Bag or Canister). Spike the containers at the completion of each test run with an analyte mass or concentration approximately equivalent to the applicable emission limitation or standard in the subpart (or the expected sample concentration or mass where there is no standard).

6.4 Probe Placement and Arrangement for Stationary Source Stack or Duct Sampling. To sample a stationary source, you must place the paired or quadruplicate probes according to the procedures in this subsection. You must place the probe tips in the same horizontal plane. Section 17.1 of Method 301 describes conditions for waivers. For example, the Administrator may approve a validation request where other paired arrangements for the probe tips or pitot tubes (where required) are used.

6.4.1 Paired Sampling Probes. For paired sampling probes, the first probe tip should be 2.5 centimeters (cm) from the outside edge of the second probe tip, with a pitot tube on the outside of each probe.

6.4.2 Quadruplicate Sampling Probes. For quadruplicate sampling probes, the tips should be in a 6.0 cm × 6.0 cm square area measured from the center line of the opening of the probe tip with a single pitot tube, where required, in the center of the probe tips or two pitot tubes, where required, with their location on either side of the probe tip configuration. Section 17.1 of Method 301 describes conditions for waivers. For example, you must propose an alternative arrangement whenever the cross-sectional area of the probe tip configuration is approximately five percent or more of the stack or duct cross-sectional area.

7.0 How do I ensure sample stability?

7.1 Developing Sample Storage and Threshold Procedures. If the candidate test method includes well-established procedures supported by experimental data for sample storage and the time within which the collected samples must be analyzed, you must store the samples according to the procedures in the candidate test method and you are not required to conduct the procedures specified in Section 7.2 or 7.3 of this method. If the candidate test method does not include such procedures, your candidate method must include procedures for storing and analyzing samples to ensure sample stability. At a minimum, your proposed procedures must meet the requirements in Section 7.2 or 7.3 of this method. The minimum duration between sample collection and storage must be as soon as possible, but no longer than 72 hours after collection of the sample. The maximum storage duration must not be longer than 2 weeks.

7.2 Storage and Sampling Procedures for Stack Test Emissions. You must store and analyze samples of stack test emissions according to Table 301–2 of this method. You may reanalyze the same sample at both the minimum and maximum storage durations for: (1) Samples collected in containers such as bags or canisters that are not subject to dilution or other preparation steps, or (2) impinger samples not subjected to preparation steps that would affect stability of the sample such as extraction or digestion. For candidate test method samples that do not meet either of these criteria, you must analyze one of a pair of replicate samples at the minimum storage duration and the other replicate at the proposed storage duration but no later than 2 weeks of the initial analysis to identify the effect of storage duration on analyte samples. If you are using the isotopic spiking procedure, then you must analyze each sample for the spiked analyte and the native analyte.

7.3 Storage and Sampling Procedures for Testing Other Waste Media (e.g., Soil/Sediment, Solid Waste, Water/Liquid). You must analyze one of each pair of replicate samples (half the total samples) at the minimum storage duration and the other replicate (other half of samples) at the maximum storage duration or within 2 weeks of the initial analysis to identify the effect of storage duration on analyte samples. The minimum time period between collection and storage should be as soon as possible, but no longer than 72 hours after collection of the sample.

7.4 Sample Stability. After you have conducted sampling and analysis

according to Section 7.2 or 7.3 of this method, compare the results at the minimum and maximum storage

durations. Calculate the difference in the results using Equation 301-1.

$$d_i = R_{\text{mini}} - R_{\text{maxi}} \quad (\text{Eq. 301-1})$$

Where:

d_i = Difference between the results of the i^{th} replicate pair of samples.

R_{mini} = Results from the i^{th} replicate sample pair at the minimum storage duration.

R_{maxi} = Results from the i^{th} replicate sample pair at the maximum storage duration.

For single samples that can be reanalyzed for sample stability assessment (e.g., bag or canister samples and impinger samples that do not require digestion or extraction), the values for R_{mini} and R_{maxi} will be

obtained from the same sample rather than replicate samples.

7.4.1 Standard Deviation. Determine the standard deviation of the paired samples using Equation 301-2.

$$SD_d = \sqrt{\frac{\sum_i^n (d_i - d_m)^2}{n-1}}$$

(Eq. 301-2)

Where:

SD_d = Standard deviation of the differences of the paired samples.

d_i = Difference between the results of the i^{th} replicate pair of samples.

d_m = Mean of the paired sample differences.

n = Total number of paired samples.

7.4.2 T Test. Test the difference in the results for statistical significance by calculating the t-statistic and determining if the mean of the differences between the results at the

minimum storage duration and the results after the maximum storage duration is significant at the 95 percent confidence level and $n-1$ degrees of freedom. Calculate the value of the t-statistic using Equation 301-3.

$$t = \frac{|d_m|}{\left(\frac{SD_d}{\sqrt{n}}\right)}$$

(Eq. 301-3)

Where:

t = t-statistic.

d_m = The mean of the paired sample differences.

SD_d = Standard deviation of the differences of the paired samples.

n = Total number of paired samples.

Compare the calculated t-statistic with the critical value of the t-statistic from Table 301-3 of this method. If the calculated t-value is less than the critical value, the difference is not statistically significant. Therefore, the sampling, analysis, and sample storage procedures ensure stability, and you may submit a request for validation of the candidate test method. If the calculated t-value is greater than the critical value, the difference is statistically significant, and you must repeat the procedures in Section 7.2 or 7.3 of this method with new samples using a shorter proposed maximum storage duration or improved handling and storage procedures.

Determination of Bias and Precision

8.0 What are the requirements for bias?

You must determine bias by comparing the results of sampling and analysis using the candidate test method against a reference value. The bias must be no more than ± 10 percent for the candidate test method to be considered for application to multiple sources. A candidate test method with a bias greater than ± 10 percent and less than or equal to ± 30 percent can only be applied on a source-specific basis at the facility at which the validation testing was conducted. In this case, you must use a correction factor for all data collected in the future using the candidate test method. If the bias is more than ± 30 percent, the candidate test method is unacceptable.

9.0 What are the requirements for precision?

You may use a paired sampling system or a quadruplicate sampling system to establish precision for isotopic spiking. You must use a quadruplicate sampling system to

establish precision for analyte spiking or when comparing a candidate test method to a validated method. If you are using analyte spiking or isotopic spiking, the precision, expressed as the relative standard deviation (RSD) of the candidate test method, must be less than or equal to 20 percent. If you are comparing the candidate test method to a validated test method, the candidate test method must be at least as precise as the validated method as determined by an F test (see Section 11.2.2 of this method).

10.0 What calculations must I perform for isotopic spiking?

You must analyze the bias, RSD, precision, and data acceptance for isotopic spiking tests according to the provisions in Sections 10.1 through 10.4 of this method.

10.1 Numerical Bias. Calculate the numerical value of the bias using the results from the analysis of the isotopic spike in the field samples and the calculated value of the spike according to Equation 301-4.

$$B = S_m - CS \quad (\text{Eq. 301-4})$$

Where:

B = Bias at the spike level.

S_m = Mean of the measured values of the isotopically-labeled analyte in the samples.

CS = Calculated value of the isotopically-labeled spike level.

10.2 *Standard Deviation*. Calculate the standard deviation of the S_i values according to Equation 301-5.

$$SD = \sqrt{\frac{\sum_i^n (S_i - S_m)^2}{(n-1)}} \quad (\text{Eq. 301-5})$$

Where:

SD = Standard deviation of the candidate test method.

S_i = Measured value of the isotopically-labeled analyte in the i^{th} field sample.

S_m = Mean of the measured values of the isotopically-labeled analyte in the samples.

n = Number of isotopically-spiked samples.

10.3 *T Test*. Test the bias for statistical significance by calculating the

t-statistic using Equation 301-6. Use the standard deviation determined in Section 10.2 of this method and the numerical bias determined in Section 10.1 of this method.

$$t = \frac{|B|}{\left(\frac{SD}{\sqrt{n}}\right)} \quad (\text{Eq. 301-6})$$

Where:

t = Calculated t-statistic.

B = Bias at the spike level.

SD = Standard deviation of the candidate test method.

n = Number of isotopically spike samples.

Compare the calculated t-value with the critical value of the two-sided t-distribution at the 95 percent

confidence level and $n-1$ degrees of freedom (see Table 301-3 of this method). When you conduct isotopic spiking according to the procedures specified in Sections 6.1 and 6.3 of this method as required, this critical value is 2.201 for 11 degrees of freedom. If the calculated t-value is less than or equal

to the critical value, the bias is not statistically significant, and the bias of the candidate test method is acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant, and you must evaluate the relative magnitude of the bias using Equation 301-7.

$$B_R = \left| \frac{B}{CS} \right| \times 100\% \quad (\text{Eq. 301-7})$$

Where:

B_R = Relative bias.

B = Bias at the spike level.

CS = Calculated value of the spike level.

If the relative bias is less than or equal to 10 percent, the bias of the candidate test method is acceptable for use at multiple sources. If the relative bias is

greater than 10 percent but less than or equal to 30 percent, and if you correct all data collected with the candidate test method in the future for bias using the source-specific correction factor determined in Equation 301-8, the candidate test method is acceptable only for application to the source at which

the validation testing was conducted and may not be applied to any other sites. If either of the preceding two cases applies, you may continue to evaluate the candidate test method by calculating its precision. If not, the candidate test method does not meet the requirements of Method 301.

$$CF = \left(\frac{1}{1 + \frac{B}{CS}} \right) \quad (\text{Eq. 301-8})$$

Where:

CF = Source-specific bias correction factor.

B = Bias at the spike level.

CS = Calculated value of the spike level.

If the CF is outside the range of 0.70 to 1.30, the data and method are considered unacceptable.

10.4 *Precision*. Calculate the RSD according to Equation 301-9.

$$RSD = \left(\frac{SD}{S_m} \right) \times 100 \tag{Eq. 301-9}$$

Where:

RSD = Relative standard deviation of the candidate test method.

SD = Standard deviation of the candidate test method calculated in Equation 301-5.

S_m = Mean of the measured values of the spike samples.

The data and candidate test method are unacceptable if the RSD is greater than 20 percent.

11.0 What calculations must I perform for comparison with a validated method?

If you are comparing a candidate test method to a validated method, then you must analyze the data according to the provisions in this section. If the data from the candidate test method fail either the bias or precision test, the data and the candidate test method are unacceptable. If the Administrator determines that the affected source has highly variable emission rates, the

Administrator may require additional precision checks.

11.1 *Bias Analysis.* Test the bias for statistical significance at the 95 percent confidence level by calculating the t-statistic.

11.1.1 *Bias.* Determine the bias, which is defined as the mean of the differences between the candidate test method and the validated method (d_m). Calculate d_i according to Equation 301-10.

$$d_i = \frac{(V_{1i} + V_{2i})}{2} - \frac{(P_{1i} + P_{2i})}{2} \tag{Eq. 301-10}$$

Where:

d_i = Difference in measured value between the candidate test method and the validated method for each quadruplicate sampling train.

V_{1i} = First measured value with the validated method in the ith quadruplicate sampling train.

V_{2i} = Second measured value with the validated method in the ith quadruplicate sampling train.

P_{1i} = First measured value with the candidate test method in the ith quadruplicate sampling train.

P_{2i} = Second measured value with the candidate test method in the ith quadruplicate sampling train.

Calculate the numerical value of the bias using Equation 301-11.

$$B = \frac{\sum_i^n d_i}{n} \tag{Eq. 301-11}$$

Where:

B = Numerical bias.

d_i = Difference between the candidate test method and the validated method for the ith quadruplicate sampling train.
n = Number of quadruplicate sampling trains.

11.1.2 *Standard Deviation of the Differences.* Calculate the standard deviation of the differences, SD_d, using Equation 301-12.

$$SD_d = \sqrt{\frac{\sum_i^n (d_i - d_m)^2}{(n - 1)}} \tag{Eq. 301-12}$$

Where:

SD_d = Standard deviation of the differences between the candidate test method and the validated method.

d_i = Difference in measured value between the candidate test method and the

validated method for each quadruplicate sampling train.

d_m = Mean of the differences, d_i, between the candidate test method and the validated method.

n = Number of quadruplicate sampling trains.

11.1.3 *T Test.* Calculate the t-statistic using Equation 301-13.

$$t = \frac{|d_m|}{\left(\frac{SD}{\sqrt{n}} \right)} \tag{Eq. 301-13}$$

Where:

t = Calculated t-statistic.

d_m = The mean of the differences, d_i, between the candidate test method and the validated method.

SD_d = Standard deviation of the differences between the candidate test method and the validated method.
n = Number of quadruplicate sampling trains.

For the procedure comparing a candidate test method to a validated test method listed in Table 301–1 of this method, n equals six. Compare the calculated t -statistic with the critical value of the t -statistic, and determine if the bias is significant at the 95 percent

confidence level (see Table 301–3 of this method). When six runs are conducted, as specified in Table 301–1 of this method, the critical value of the t -statistic is 2.571 for five degrees of freedom. If the calculated t -value is less than or equal to the critical value, the

bias is not statistically significant and the data are acceptable. If the calculated t -value is greater than the critical value, the bias is statistically significant, and you must evaluate the magnitude of the relative bias using Equation 301–14.

$$B_R = \left| \frac{B}{VS} \right| \times 100\% \quad (\text{Eq. 301-14})$$

Where:

B_R = Relative bias.

B = Bias as calculated in Equation 301–11.

VS = Mean of measured values from the validated method.

If the relative bias is less than or equal to 10 percent, the bias of the candidate test method is acceptable. On a source-specific basis, if the relative bias is greater than 10 percent but less than or equal to 30 percent, and if you correct all data collected in the future with the candidate test method for the bias using

the correction factor, CF , determined in Equation 301–8 (using VS for CS), the bias of the candidate test method is acceptable for application to the source at which the validation testing was conducted. If either of the preceding two cases applies, you may continue to evaluate the candidate test method by calculating its precision. If not, the candidate test method does not meet the requirements of Method 301.

11.2 *Precision*. Compare the estimated variance (or standard deviation) of the candidate test method

to that of the validated test method according to Sections 11.2.1 and 11.2.2 of this method. If a significant difference is determined using the F test, the candidate test method and the results are rejected. If the F test does not show a significant difference, then the candidate test method has acceptable precision.

11.2.1 *Candidate Test Method Variance*. Calculate the estimated variance of the candidate test method according to Equation 301–15.

$$S_p^2 = \frac{\sum_i^n d_i^2}{2n} \quad (\text{Eq. 301-15})$$

Where:

S_p^2 = Estimated variance of the candidate test method.

d_i = The difference between the i^{th} pair of samples collected with the candidate test method in a single quadruplicate train.
 n = Total number of paired samples (quadruplicate trains).

Calculate the estimated variance of the validated test method according to Equation 301–16.

$$S_v^2 = \frac{\sum_i^n d_i^2}{2n} \quad (\text{Eq. 301-16})$$

Where:

S_v^2 = Estimated variance of the validated test method.

d_i = The difference between the i^{th} pair of samples collected with the validated test method in a single quadruplicate train.
 n = Total number of paired samples (quadruplicate trains).

11.2.2 *The F test*. Determine if the estimated variance of the candidate test method is greater than that of the validated method by calculating the F -value using Equation 301–17.

$$F = \frac{S_p^2}{S_v^2} \quad (\text{Eq. 301-17})$$

Where:

F = Calculated F value.

S_p^2 = The estimated variance of the candidate test method.

S_v^2 = The estimated variance of the validated method.

Compare the calculated F value with the one-sided confidence level for F from Table 301–4 of this method. The

upper one-sided confidence level of 95 percent for $F_{(6,6)}$ is 4.28 when the procedure specified in Table 301–1 of this method for quadruplicate sampling trains is followed. If the calculated F value is greater than the critical F value, the difference in precision is significant, and the data and the candidate test method are unacceptable.

12.0 What calculations must I perform for analyte spiking?

You must analyze the data for analyte spike testing according to this section.

12.1 *Bias Analysis*. Test the bias for statistical significance at the 95 percent confidence level by calculating the t -statistic.

12.1.1 *Bias*. Determine the bias, which is defined as the mean of the

differences between the spiked samples and the unspiked samples in each

quadruplicate sampling train minus the spiked amount, using Equation 301-18.

$$d_i = \frac{(S_{1i} + S_{2i})}{2} - \frac{(M_{1i} + M_{2i})}{2} - CS \tag{Eq. 301-18}$$

Where:

d_i = Difference between the spiked samples and unspiked samples in each quadruplicate sampling train minus the spiked amount.

S_{1i} = Measured value of the first spiked sample in the i^{th} quadruplicate sampling train.

S_{2i} = Measured value of the second spiked sample in the i^{th} quadruplicate sampling train.

M_{1i} = Measured value of the first unspiked sample in the i^{th} quadruplicate sampling train.

M_{2i} = Measured value of the second unspiked sample in the i^{th} quadruplicate sampling train.

CS = Calculated value of the spike level.

Calculate the numerical value of the bias using Equation 301-19.

$$B = \frac{\sum_i^n d_i}{n} \tag{Eq. 301-19}$$

Where:

B = Numerical value of the bias.

d_i = Difference between the spiked samples and unspiked samples in each

quadruplicate sampling train minus the spiked amount.

n = Number of quadruplicate sampling trains.

12.1.2 *Standard Deviation of the Differences*. Calculate the standard deviation of the differences using Equation 301-20.

$$SD_d = \sqrt{\frac{\sum_i^n (d_i - d_m)^2}{n - 1}} \tag{Eq. 301-20}$$

Where:

SD_d = Standard deviation of the differences of paired samples.

d_i = Difference between the spiked samples and unspiked samples in each

quadruplicate sampling train minus the spiked amount.

d_m = The mean of the differences, d_i , between the spiked samples and unspiked samples.

n = Total number of quadruplicate sampling trains.

12.1.3 *T Test*. Calculate the t-statistic using Equation 301-21, where n is the total number of test sample differences (d_i). For the quadruplicate sampling system procedure in Table 301-1 of this method, n equals six.

$$t = \frac{|d_m|}{\left(\frac{SD_d}{\sqrt{n}}\right)} \tag{Eq. 301-21}$$

Where:

t = Calculated t-statistic.

d_m = Mean of the difference, d_i , between the spiked samples and unspiked samples.

SD_d = Standard deviation of the differences of paired samples.

n = Number of quadruplicate sampling trains.

Compare the calculated t-statistic with the critical value of the t-statistic, and determine if the bias is significant at the 95 percent confidence level.

When six quadruplicate runs are conducted, as specified in Table 301-1 of this method, the 2-sided confidence level critical value is 2.571 for the five

degrees of freedom. If the calculated t-value is less than the critical value, the bias is not statistically significant and the data are acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant and you must evaluate the magnitude of the relative bias using Equation 301-22.

$$B_R = \left| \frac{B}{CS} \right| \times 100\% \tag{Eq. 301-22}$$

Where:

B_R = Relative bias.

B = Bias at the spike level from Equation 301-19.

CS = Calculated value at the spike level.

If the relative bias is less than or equal to 10 percent, the bias of the candidate test method is acceptable. On a source-

specific basis, if the relative bias is greater than 10 percent but less than or equal to 30 percent, and if you correct all data collected with the candidate test method in the future for the magnitude

$$SD = \sqrt{\frac{\sum_i^n (S_i - S_m)^2}{(n-1)}}$$

Where:

SD = Standard deviation of the candidate test method.

S_i = Measured value of the analyte in the i^{th} spiked sample.

S_m = Mean of the measured values of the analyte in all the spiked samples.

n = Number of spiked samples.

Calculate the RSD of the candidate test method using Equation 301–9, where SD and S_m are the values from Equation 301–23. The data and candidate test method are unacceptable if the RSD is greater than 20 percent.

13.0 How do I conduct tests at similar sources?

If the Administrator has approved the use of an alternative test method to a test method required in 40 CFR part 59, 60, 61, 63, or 65 for an affected source, and you would like to apply the alternative test method to a similar source, then you must petition the Administrator as described in Section 17.1.1 of this method.

Optional Requirements

14.0 How do I use and conduct ruggedness testing?

Ruggedness testing is an optional requirement for validation of a candidate test method that is intended for the source where the validation testing was conducted. Ruggedness testing is required for validation of a candidate test method intended to be used at multiple sources. If you want to use a validated test method at a concentration that is different from the concentration in the applicable emission limitation under 40 CFR part 59, 60, 61, 63, or 65, or for a source category that is different from the source category that the test method specifies, then you must conduct ruggedness testing according to the procedures in Reference 18.16 of Section 18.0 of this method and submit a request for a waiver for conducting Method 301 at that different source category according to Section 17.1.1 of this method.

Ruggedness testing is a study that can be conducted in the laboratory or the field to determine the sensitivity of a

method to parameters such as analyte concentration, sample collection rate, interferent concentration, collection medium temperature, and sample recovery temperature. You conduct ruggedness testing by changing several variables simultaneously instead of changing one variable at a time. For example, you can determine the effect of seven variables in only eight experiments. (W.J. Youden, *Statistical Manual of the Association of Official Analytical Chemists*, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36).

of the bias using Equation 301–8, the bias of the candidate test method is acceptable for application to the tested source at which the validation testing was conducted. Proceed to evaluate precision of the candidate test method.

15.0 How do I determine the Limit of Detection for the candidate test method?

Determination of the Limit of Detection (LOD) as specified in Sections 15.1 and 15.2 of this method is required for source-specific method validation and validation of a candidate test method intended to be used for multiple sources.

15.1 *Limit of Detection.* The LOD is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero. For this protocol, the LOD is defined as three times the standard deviation, S_0 , at the blank level.

15.2 *Purpose.* The LOD establishes the lower detection limit of the candidate test method. You must calculate the LOD using the applicable procedures found in Table 301–5 of this method. For candidate test methods that collect the analyte in a sample matrix prior to an analytical measurement, you must determine the LOD using Procedure I in Table 301–5 of this method by calculating a method detection limit (MDL) as described in 40 CFR part 136, appendix B. For the purposes of this section, the LOD is equivalent to the calculated MDL. For radiochemical methods, use the Multi-Agency Radiological Laboratory Analytical Protocols (MARLAP) Manual (*i.e.*, use the minimum detectable concentration (MDC) and not the LOD) available at <https://www.epa.gov/>

was conducted. Proceed to evaluate precision of the candidate test method.

12.2 *Precision.* Calculate the standard deviation using Equation 301–23.

(Eq. 301-23)

radiation/marlap-manual-and-supporting-documents.

Other Requirements and Information

16.0 How do I apply for approval to use a candidate test method?

16.1 *Submitting Requests.* You must request to use a candidate test method according to the procedures in § 63.7(f) or similar sections of 40 CFR parts 59, 60, 61, and 65 (§ 59.104, § 59.406, § 60.8(b), § 61.13(h)(1)(ii), or § 65.158(a)(2)(iii)). You cannot use a candidate test method to meet any requirement under these parts until the Administrator has approved your request. The request must include a field validation report containing the information in Section 16.2 of this method. You must submit the request to the Group Leader, Measurement Technology Group, U.S. Environmental Protection Agency, E143–02, Research Triangle Park, NC 27711.

16.2 *Field Validation Report.* The field validation report must contain the information in Sections 16.2.1 through 16.2.8 of this method.

16.2.1 *Regulatory objectives for the testing, including a description of the reasons for the test, applicable emission limits, and a description of the source.*

16.2.2 *Summary of the results and calculations shown in Sections 6.0 through 16.0 of this method, as applicable.*

16.2.3 *Reference material certification and value(s).*

16.2.4 *Discussion of laboratory evaluations.*

16.2.5 *Discussion of field sampling.*

16.2.6 *Discussion of sample preparation and analysis.*

16.2.7 *Storage times of samples (and extracts, if applicable).*

16.2.8 *Reasons for eliminating any results.*

17.0 How do I request a waiver?

17.1 *Conditions for Waivers.* If you meet one of the criteria in Section 17.1.1 or 17.1.2 of this method, the Administrator may waive the requirement to use the procedures in this method to validate an alternative or

other candidate test method. In addition, if the EPA currently recognizes an appropriate test method or considers the candidate test method to be satisfactory for a particular source, the Administrator may waive the use of this protocol or may specify a less rigorous validation procedure.

17.1.1 Similar Sources. If the alternative or other candidate test method that you want to use was validated for source-specific application at another source and you can demonstrate to the Administrator's satisfaction that your affected source is similar to that validated source, then the Administrator may waive the requirement for you to validate the alternative or other candidate test method. One procedure you may use to demonstrate the applicability of the method to your affected source is to conduct a ruggedness test as described in Section 14.0 of this method.

17.1.2 Documented Methods. If the bias, precision, LOD, or ruggedness of the alternative or other candidate test method that you are proposing have been demonstrated through laboratory tests or protocols different from this method, and you can demonstrate to the Administrator's satisfaction that the bias, precision, LOD, or ruggedness apply to your application, then the Administrator may waive the requirement to use this method or to use part of this method.

17.2 Submitting Applications for Waivers. You must sign and submit each request for a waiver from the requirements in this method in writing. The request must be submitted to the Group Leader, Measurement Technology Group, U.S. Environmental Protection Agency, E143-02, Research Triangle Park, NC 27711.

17.3 Information Application for Waiver. The request for a waiver must contain a thorough description of the candidate test method, the intended application, and results of any validation or other supporting documents. The request for a waiver must contain, at a minimum, the information in Sections 17.3.1 through 17.3.4 of this method. The Administrator may request additional information if necessary to determine whether this method can be waived for a particular application.

17.3.1 A Clearly Written Test Method. The candidate test method should be written preferably in the format of 40 CFR part 60, appendix A, Test Methods. Additionally, the candidate test must include an applicability statement, concentration range, precision, bias (accuracy), and

minimum and maximum storage durations in which samples must be analyzed.

17.3.2 Summaries of Previous Validation Tests or Other Supporting Documents. If you use a different procedure from that described in this method, you must submit documents substantiating the bias and precision values to the Administrator's satisfaction.

17.3.3 Ruggedness Testing Results. You must submit results of ruggedness testing conducted according to Section 14.0 of this method, sample stability conducted according to Section 7.0 of this method, and detection limits conducted according to Section 15.0 of this method, as applicable. For example, you would not need to submit ruggedness testing results if you will be using the method at the same affected source and level at which it was validated.

17.3.4 Applicability Statement and Basis for Waiver Approval. Discussion of the applicability statement and basis for approval of the waiver. This discussion should address as applicable the following: applicable regulation, emission standards, effluent characteristics, and process operations.

18.0 Where can I find additional information?

You can find additional information in the references in Sections 18.1 through 18.18 of this method.

- 18.1 Albritton, J.R., G.B. Howe, S.B. Tompkins, R.K.M. Jayanty, and C.E. Decker. 1989. Stability of Parts-Per-Million Organic Cylinder Gases and Results of Source Test Analysis Audits, Status Report No. 11. Environmental Protection Agency Contract 68-02-4125. Research Triangle Institute, Research Triangle Park, NC. September.
- 18.2 ASTM Standard E 1169-89 (current version), "Standard Guide for Conducting Ruggedness Tests," available from ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428.
- 18.3 DeWees, W.G., P.M. Grohse, K.K. Luk, and F.E. Butler. 1989. Laboratory and Field Evaluation of a Methodology for Speciating Nickel Emissions from Stationary Sources. EPA Contract 68-02-4442. Prepared for Atmospheric Research and Environmental Assessment Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. January.
- 18.4 International Conference on Harmonization of Technical Requirements for the Registration of Pharmaceuticals for Human Use, ICH-Q2A, "Text on Validation of Analytical Procedures," 60 FR 11260 (March 1995).
- 18.5 International Conference on Harmonization of Technical Requirements for the Registration of Pharmaceuticals for Human Use, ICH-Q2b, "Validation of Analytical Procedures: Methodology," 62 FR 27464 (May 1997).
- 18.6 Keith, L.H., W. Crummer, J. Deegan Jr., R.A. Libby, J.K. Taylor, and G. Wentler. 1983. Principles of Environmental Analysis. American Chemical Society, Washington, DC.
- 18.7 Maxwell, E.A. 1974. Estimating variances from one or two measurements on each sample. *Amer. Statistician* 28:96-97.
- 18.8 Midgett, M.R. 1977. How EPA Validates NSPS Methodology. *Environ. Sci. & Technol.* 11(7):655-659.
- 18.9 Mitchell, W.J., and M.R. Midgett. 1976. Means to evaluate performance of stationary source test methods. *Environ. Sci. & Technol.* 10:85-88.
- 18.10 Plackett, R.L., and J.P. Burman. 1946. The design of optimum multifactorial experiments. *Biometrika*, 33:305.
- 18.11 Taylor, J.K. 1987. Quality Assurance of Chemical Measurements. Lewis Publishers, Inc., pp. 79-81.
- 18.12 U.S. Environmental Protection Agency. 1978. Quality Assurance Handbook for Air Pollution Measurement Systems: Volume III. Stationary Source Specific Methods. Publication No. EPA-600/4-77-027b. Office of Research and Development Publications, 26 West St. Clair St., Cincinnati, OH 45268.
- 18.13 U.S. Environmental Protection Agency. 1981. A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials. Publication No. EPA-600/7-81-010. Available from the U.S. EPA, Quality Assurance Division (MD-77), Research Triangle Park, NC 27711.
- 18.14 U.S. Environmental Protection Agency. 1991. Protocol for The Field Validation of Emission Concentrations from Stationary Sources. Publication No. 450/4-90-015. Available from the U.S. EPA, Emission Measurement Technical Information Center, Technical Support Division (MD-14), Research Triangle Park, NC 27711.
- 18.15 Wernimont, G.T., "Use of Statistics to Develop and Evaluate Analytical Methods," AOAC, 1111 North 19th Street, Suite 210, Arlington, VA 22209, USA, 78-82 (1987).
- 18.16 Youden, W.J. Statistical techniques for collaborative tests. In: Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33-36.
- 18.17 NIST/SEMATECH (current version), "e-Handbook of Statistical Methods," available from NIST, <http://www.itl.nist.gov/div898/handbook/>.
- 18.18 Statistical Table, http://www.math.usask.ca/~szafron/Stats244/f_table_0_05.pdf.

19.0 Tables.

TABLE 301–1—SAMPLING PROCEDURES

If you are . . .	You must collect . . .
Comparing the candidate test method against a validated method	A total of 24 samples using a quadruplicate sampling system (a total of six sets of replicate samples). In each quadruplicate sample set, you must use the validated test method to collect and analyze half of the samples.
Using isotopic spiking (can only be used with methods capable of measurement of multiple isotopes simultaneously).	A total of 12 samples, all of which are spiked with isotopically-labeled analyte. You may collect the samples either by obtaining six sets of paired samples or three sets of quadruplicate samples.
Using analyte spiking	A total of 24 samples using the quadruplicate sampling system (a total of six sets of replicate samples—two spiked and two unspiked).

TABLE 301–2—STORAGE AND SAMPLING PROCEDURES FOR STACK TEST EMISSIONS

If you are . . .	With . . .	Then you must . . .
Using isotopic or analyte spiking procedures.	Sample container (bag or canister) or impinger sampling systems that are not subject to dilution or other preparation steps. Sorbent and impinger sampling systems that require extraction or digestion.	Analyze six of the samples within 7 days and then analyze the same six samples at the proposed maximum storage duration or 2 weeks after the initial analysis. Extract or digest six of the samples within 7 days and extract or digest six other samples at the proposed maximum storage duration or 2 weeks after the first extraction or digestion. Analyze an aliquot of the first six extracts (digestates) within 7 days and proposed maximum storage duration or 2 weeks after the initial analysis. This will allow analysis of extract storage impacts.
Comparing a candidate test method against a validated test method.	Sorbent sampling systems that require thermal desorption. Sample container (bag or canister) or impinger sampling systems that are not subject to dilution or other preparation steps. Sorbent and impinger sampling systems that require extraction or digestion. Sorbent systems that require thermal desorption.	Analyze six samples within 7 days. Analyze another set of six samples at the proposed maximum storage time or within 2 weeks of the initial analysis. Analyze at least six of the candidate test method samples within 7 days and then analyze the same six samples at the proposed maximum storage duration or within 2 weeks of the initial analysis. Extract or digest six of the candidate test method samples within 7 days and extract or digest six other samples at the proposed maximum storage duration or within 2 weeks of the first extraction or digestion. Analyze an aliquot of the first six extracts (digestates) within 7 days and an aliquot at the proposed maximum storage durations or within 2 weeks of the initial analysis. This will allow analysis of extract storage impacts. Analyze six samples within 7 days. Analyze another set of six samples at the proposed maximum storage duration or within 2 weeks of the initial analysis.

TABLE 301–3—CRITICAL VALUES OF t FOR THE TWO-TAILED 95 PERCENT CONFIDENCE LIMIT ¹

Degrees of freedom	t ₉₅
1	12.706
2	4.303
3	3.182
4	2.776
5	2.571
6	2.447
7	2.365
8	2.306
9	2.262
10	2.228
11	2.201
12	2.179
13	2.160
14	2.145
15	2.131
16	2.120
17	2.110
18	2.101
19	2.093
20	2.086

¹ Adapted from Reference 18.17 in section 18.0.

TABLE 301-4—UPPER CRITICAL VALUES OF THE F DISTRIBUTION FOR THE 95 PERCENT CONFIDENCE LIMIT ¹

Numerator (k ₁) and denominator (k ₂) degrees of freedom	F{F>F _{.05} (k ₁ ,k ₂)}
1,1	161.40
2,2	19.00
3,3	9.28
4,4	6.39
5,5	5.05
6,6	4.28
7,7	3.79
8,8	3.44
9,9	3.18
10,10	2.98
11,11	2.82
12,12	2.69
13,13	2.58
14,14	2.48
15,15	2.40
16,16	2.33
17,17	2.27
18,18	2.22
19,19	2.17
20,20	2.12

¹ Adapted from References 18.17 and 18.18 in section 18.0.

TABLE 301-5—PROCEDURES FOR ESTIMATING S₀

<p>If the estimated LOD (LOD₁, expected approximate LOD concentration level) is no more than twice the calculated LOD or an analyte in a sample matrix was collected prior to an analytical measurement, use Procedure I as follows.</p> <p><i>Procedure I:</i> Determine the LOD by calculating a method detection limit (MDL) as described in 40 CFR part 136, appendix B.</p>	<p>If the estimated LOD (LOD₁, expected approximate LOD concentration level) is greater than twice the calculated LOD, use Procedure II as follows.</p> <p><i>Procedure II:</i> Prepare two additional standards (LOD₂ and LOD₃) at concentration levels lower than the standard used in Procedure I (LOD₁). Sample and analyze each of these standards (LOD₂ and LOD₃) at least seven times. Calculate the standard deviation (S₂ and S₃) for each concentration level. Plot the standard deviations of the three test standards (S₁, S₂ and S₃) as a function of concentration. Draw a best-fit straight line through the data points and extrapolate to zero concentration. The standard deviation at zero concentration is S₀. Calculate the LOD₀ (referred to as the calculated LOD) as 3 times S₀.</p>
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[FR Doc. 2018-05400 Filed 3-19-18; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180202117-8117-01]

RIN 0648-BH58

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is implementing this interim final rule to establish regulations for 2018 Pacific halibut catch limits in the following International Pacific Halibut Commission (IPHC) Regulatory Areas: Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into five areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska). This interim final rule revises a catch sharing plan (CSP) for guided sport (charter) and commercial individual fishing quota (IFQ) halibut fisheries in Area 2C and Area 3A, revises regulations applicable to the charter halibut fisheries in Area 2C and Area 3A, and revises a CSP for the commercial IFQ and Western Alaska

Community Development Quota (CDQ) halibut fisheries in Areas 4C, 4D, and 4E. This action is necessary because the IPHC, at its annual meeting, did not recommend new catch limits or specific CSP allocations and charter management measures for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E for 2018, and the 2017 IPHC regulations are in effect until superseded. This interim final rule is necessary because immediate action is needed to ensure that halibut catch limits, charter halibut fishery management measures, and CSP allocations are in place at the start of the commercial IFQ and CDQ halibut fishery on March 24, 2018, that better protect the declining Pacific halibut resource. This action is intended to enhance the conservation of Pacific halibut and is within the authority of the Secretary of Commerce (Secretary) to establish additional regulations

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 30, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland’s 2008 8-hour ozone NAAQS Certification SIP revision for NNSR may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 11, 2018.

Cosmo Servidio,
Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry “2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements” at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *
(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* 2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements.	* The Baltimore Area (includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Philadelphia-Wilmington-Atlantic City Area (includes Cecil County in Maryland), and the Washington, DC Area (includes Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties in Maryland).	* 5/8/2017	* 1/29/2018, [insert Federal Register citation].	*

[FR Doc. 2018–01518 Filed 1–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2012–0360; FRL–9972–89–OAR]

RIN 2060–AT48

National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of final action on reconsideration.

SUMMARY: This action finalizes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations (OSWRO). The final amendments address continuous monitoring on pressure relief devices (PRDs) on containers. This issue was raised in a petition for reconsideration of the 2015 amendments to the OSWRO NESHAP, which were based on the residual risk and technology review (RTR). Among other things, the 2015 amendments established additional monitoring requirements for all PRDs, including PRDs on containers. For PRDs on containers, these monitoring

requirements were in addition to the inspection and monitoring requirements for containers and their closure devices already required by the OSWRO NESHAP. This final action removes the additional monitoring requirements for PRDs on containers that resulted from the 2015 amendments because we have determined that they are not necessary. This action does not substantially change the level of environmental protection provided under the OSWRO NESHAP, but reduces burden to this industry compared to the current rule by \$28 million in capital costs related to compliance, and \$4.2 million per year in total annualized costs under a 7 percent interest rate. Over 15 years at a 7-percent discount rate, this constitutes an estimated reduction of \$39 million in

the present value, or \$4.3 million per year in equivalent annualized cost savings.

DATES: This final action is effective on January 29, 2018.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2012-0360. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet, and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov>, or in hard copy at the EPA Docket Center, (EPA/DC), EPA WJC West Building, Room Number 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 EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, please contact Ms. Angie Carey, Sector Policies and Programs Division (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2187; fax number: (919) 541-0246; email address: carey.angela@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Ms. Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, Mail Code 2227A, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-7042; fax number: (202) 564-0050; and email address: mia.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. A number of acronyms and abbreviations are used in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined:

ACC American Chemistry Council
 CAA Clean Air Act
 CBI Confidential Business Information
 CFR Code of Federal Regulations
 DOT Department of Transportation
 EPA Environmental Protection Agency
 ETC Environmental Technology Council

FR Federal Register
 HAP Hazardous air pollutants
 NESHAP National emission standards for hazardous air pollutants
 OMB Office of Management and Budget
 OSWRO Off-site waste and recovery operations
 PRD Pressure relief device
 RCRA Resource Conservation and Recovery Act
 RTR Residual risk and technology review
 TSDF Treatment, storage and disposal facilities

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

- I. General Information
 - A. What is the source of authority for the reconsideration action?
 - B. Does this action apply to me?
 - C. Where can I get a copy of this document and other related information?
 - D. Judicial Review and Administrative Reconsideration
- II. Background Information
- III. Summary of Final Action on Issues Reconsidered
 - A. What is the history of OSWRO monitoring requirements for PRDs on containers?
 - B. How does this final rule differ from the August 7, 2017, proposal?
 - C. What comments were received on the August 7, 2017, proposed revised container PRD monitoring requirements?
 - D. What is the rationale for our final decisions regarding the container PRD monitoring requirements?
- IV. Summary of Cost, Environmental and Economic Impacts, and Additional Analyses Conducted
 - A. What are the affected sources?
 - B. What are the air quality impacts?
 - C. What are the cost impacts?
 - D. What are the economic impacts?
 - E. What are the benefits?
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)
 - K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

L. Congressional Review Act (CRA)

I. General Information

A. What is the source of authority for the reconsideration action?

The statutory authority for this action is provided by sections 112, 301 and 307(d)(7)(B) of the Clean Air Act (CAA) (42 U.S.C. 7412, 7601 and 7607(d)(7)(B)).

B. Does this action apply to me?

Categories and entities potentially regulated by this action include, but are not limited to, businesses or government agencies that operate any of the following: Hazardous waste treatment, treatment storage and disposal facilities (TSDF); Resource Conservation and Recovery Act (RCRA) exempt hazardous wastewater treatment facilities; nonhazardous wastewater treatment facilities other than publicly-owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; and used oil refineries.

To determine whether your facility is affected, you should examine the applicability criteria in 40 Code of Federal Regulations (CFR) 63.680 of subpart DD. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

The docket number for this final action regarding the NESHAP for the OSWRO source category is Docket ID No. EPA-HQ-OAR-2012-0360.

In addition to being available in the docket, an electronic copy of this document will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at <https://www.epa.gov/stationary-sources-air-pollution/site-waste-and-recovery-operations-oswro-national-emission>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same website.

D. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by March 30, 2018. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with

reasonable specificity during the period for public comment can be raised during judicial review. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

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

II. Background Information

On March 18, 2015, the EPA promulgated a final rule amending the OSWRO NESHAP based on the RTR conducted for the OSWRO source category (80 FR 14248). In that final rule, the EPA also amended the OSWRO NESHAP to revise provisions related to emissions during periods of startup, shutdown, and malfunction; to add requirements for electronic reporting of performance testing; to add monitoring requirements for PRDs; to revise routine maintenance provisions; to clarify provisions for open-ended valves and lines and for some performance test methods and procedures; and to make several minor clarifications and corrections. After publication of the final rule, the EPA received a petition for reconsideration submitted jointly by Eastman Chemical Company and the American Chemical Council (ACC) (dated May 18, 2015). This petition sought reconsideration of two of the amended provisions of the OSWRO NESHAP: (1) The equipment leak provisions for connectors, and (2) the requirement to continuously monitor PRDs on containers.

The EPA considered the petition and granted reconsideration of the PRD monitoring requirement in letters to the

petitioners dated February 8, 2016. In separate letters to the petitioners dated May 5, 2016, the Administrator denied reconsideration of the equipment leak provisions for connectors and explained the reasons for the denial in these letters. These letters are available in the OSWRO NESHAP amendment rulemaking docket. The EPA also published a **Federal Register** notice on May 16, 2016 (81 FR 30182), informing the public of these responses to the petition.

On May 18, 2015, ACC filed a petition for judicial review of the OSWRO NESHAP RTR challenging numerous provisions in the final rule, including the issues identified in the petition for administrative reconsideration. *American Chemistry Council v. EPA*, U.S. Court of Appeals for the DC Circuit, Case No. 15–1146. In 2016, the EPA and ACC reached an agreement to resolve that case. Specifically, the parties agreed to a settlement under which ACC agrees it will dismiss its petition for review of the 2015 final rule if the EPA reconsiders certain PRD provisions and signs a proposed and final rule in accordance with an agreed-upon schedule. The settlement agreement was finalized on June 15, 2017.

As a result of our reconsideration, the Agency proposed and requested comment on revised monitoring requirements for PRDs on containers in a notice of proposed rule reconsideration published in the **Federal Register** on August 7, 2017 (82 FR 36713). We received public comments from seven parties. Copies of all comments submitted are available at the EPA Docket Center Public Reading Room. Comments are also available electronically through <http://www.regulations.gov> by searching Docket ID No. EPA–HQ–OAR–2012–0360.

In this document, the EPA is finalizing the revised monitoring requirements, as proposed in the August 7, 2017 (82 FR 36713), document. In addition, in this document we are making one clerical correction and we are clarifying the information needed to meet the reporting requirements in the event a PRD on a container releases hazardous air pollutants (HAP) to the atmosphere. Section III of this preamble summarizes the history of OSWRO monitoring requirements for PRDs on containers, explains how the proposed and final regulatory language differs, summarizes key public comments received on the proposed notice of reconsideration, presents the EPA’s responses to these comments, and explains our rationale for the rule revisions published here. Additional

comments and EPA’s responses to those comments are included in the Summary of Public Comments and Responses on Proposed Rule, in the docket for this rulemaking (Docket No. EPA–HQ–OAR–2012–0360).

III. Summary of Final Action on Issues Reconsidered

This action finalizes the EPA’s reconsideration and amendment of the continuous monitoring requirements that apply to PRDs on containers. This issue is discussed in detail in the following sections of this preamble.

A. What is the history of OSWRO monitoring requirements for PRDs on containers?

In the March 18, 2015, amendments to 40 CFR part 63, subpart DD, the EPA changed the compliance monitoring requirement for PRDs. Since the rule does not distinguish between PRDs on stationary process equipment and those on containers, the monitoring requirements applied to all PRDs. These revised compliance monitoring provisions included requirements to conduct additional PRD monitoring continuously to identify a pressure release, to record the time and duration of each pressure release and to notify operators immediately when a pressure release occurs. The EPA received a petition objecting to these additional continuous monitoring requirements for PRDs on containers and requesting reconsideration. In 40 CFR part 63, subpart DD, containers are, by definition, portable units that hold material. The petitioners’ concern was that because containers are portable, frequently moved around OSWRO facilities, and are received from many different off-site locations, it would be difficult, if not impossible, to design and implement a monitoring system for containers that would meet the 2015 rule requirements. When the OSWRO NESHAP were finalized in 2015, the EPA was not aware of equipment meeting the definition of a PRD on containers in the OSWRO industry, and any potential issues associated with the PRD monitoring requirements were not considered for this equipment.

In response to the petition, the EPA reevaluated the PRD monitoring requirements in the 2015 rule as they pertain to containers, considering the other requirements that apply to containers and their PRDs, and the PRD data submitted to the EPA by ACC and the Environmental Technology Council (ETC). Following this evaluation, on August 7, 2017, we proposed to revise the monitoring requirements to exclude PRDs on OSWRO containers from the

continuous monitoring and related requirements of 40 CFR 63.691(c)(3)(i). This proposed revision was based on our determination that the PRD inspection and monitoring requirements already included in the OSWRO NESHAP are effective and sufficient. Our review of information provided by ACC and ETC showed that the emissions potential from PRDs on containers at OSWRO facilities is low. Additionally, continuous monitoring of these PRDs, as contemplated by 40 CFR 63.691(c)(3)(i), would be both costly and difficult.

B. How does this final rule differ from the August 7, 2017, proposal?

In this action, the EPA is finalizing the revised container PRD monitoring requirements as proposed on August 7, 2017. We are also correcting a clerical error in the proposed regulatory text of 40 CFR 63.691(c)(3) to refer to § 63.680(e)(1)(i) through (iii). In addition, we are revising the regulatory text in CFR 63.691(c)(3)(ii) to clarify that monitoring data are not required to be used in the calculation of HAP emitted during a pressure release event for containers.

The proposed language of 40 CFR 63.691(c)(3)(ii) states that if there is a PRD release to the atmosphere, the owner or operator must calculate and report the HAP emitted, and the calculation may be based on “data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge.” We acknowledged at proposal that it would be difficult, if not impossible, to design and implement a monitoring system for containers that would meet the 2015 rule requirements (82 FR at 36715). In recognition of this, we examined whether it would be appropriate to require calculating and reporting of HAP emitted during a PRD pressure release event, and we determined that facility owners/operators would still be able to provide this information through knowledge of the container contents and the weight or volume of the contents before and after the event. It was not our intention to require monitoring data in addition to such process knowledge. Therefore, we have revised the regulatory language of 40 CFR 63.691(c)(3)(ii) accordingly to clarify that monitoring data are not required to be used in the calculation of HAP emitted during a pressure release event for containers.

C. What comments were received on the August 7, 2017, proposed revised container PRD monitoring requirements?

The following is a summary of the key comments received in response to our August 2017 proposal and our responses to these comments. Additional comments and our responses can be found in the comment summary and response document available in the docket for this action (EPA-HQ-OAR-2012-0360).

Comment: Three commenters expressed support for the proposed removal of the continuous monitoring requirements added to the OSWRO NESHAP in 2015 for PRDs on containers. These commenters noted that data in the record indicate container releases are extremely rare and do not justify imposing additional regulatory burdens. Two of these commenters also stated that with the additional container data gathered by the Agency, the EPA has correctly concluded that it would be “difficult if not impossible, to design and implement a monitoring system for containers that would meet the 2015 rule requirements.” One of the commenters added that the significant cost burdens associated with the monitoring requirements to address the small likelihood of a container PRD release is unsupported.

In contrast, one commenter stated that the EPA cannot remove monitoring requirements (*i.e.*, the continuous monitoring requirements of the 2015 rule) that are needed to assure compliance with the prohibition on releases from container PRDs. The commenter stated that the proposed monitoring exemption is equivalent to an unlawful malfunction exemption from the standards. The commenter also stated that the EPA has not shown, or supported with evidence, that visual inspections will catch problems with PRDs on containers. The commenter further stated that the EPA did not provide evidence that it is not possible to design a monitoring system for container PRDs and suggests that some other continuous monitoring, such as fenceline monitoring, could be done if monitoring is not possible for individual PRDs.

Response: We are finalizing, as proposed, provisions providing that PRDs on containers are not subject to the continuous monitoring requirements at 40 CFR 63.691(c)(3)(i), and we have not added any other container inspection or monitoring requirements. We have determined that the PRD inspection and monitoring requirements

in 40 CFR part 63, subpart PP that apply to containers at OSWRO facilities and are already incorporated into the requirements of the OSWRO NESHAP are effective and sufficient. Depending on the size of the container, the vapor pressure of the container contents, and how the container is used (*i.e.*, temporary storage and/or transport of the material versus waste stabilization), the rule requires the OSWRO owners or operators to follow the requirements for either Container Level 1, 2, or 3 control requirements, as specified in the Container NESHAP at 40 CFR part 63, subpart pp. Each control level specifies requirements to ensure the integrity of the container and its ability to contain its contents (*e.g.*, requirements, to meet U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation, or vapor tightness as determined by EPA Method 21, or no detectable leaks as determined by EPA Method 27); requirements for covers and closure devices (which include pressure relief valves as that term is defined in the Container NESHAP at 40 CFR 63.921); and inspection and monitoring requirements for containers and their covers and closure devices pursuant to the Container NESHAP at 40 CFR 63.926. The inspection and monitoring requirements for containers at 40 CFR 63.926, which are already incorporated into the OSWRO NESHAP by 40 CFR 63.688, require that unless the container is emptied within 24 hours of its receipt at the OSWRO facility, the OSWRO owner/operator is required on or before they sign the shipping manifest accepting a container to visually inspect the container and its cover and closure devices (which include PRDs). If a defect of the container, cover, or closure device is identified, the Container NESHAP specify the time period within which the container must be either emptied or repaired. The Container NESHAP require subsequent annual inspections of the container, its cover, and closure devices in the case where a container remains at the facility and has been unopened for a period of 1 year or more. Therefore, the PRD continuous monitoring requirements in the 2015 OSWRO NESHAP at 40 CFR 63.691(c)(3)(i) are in addition to the requirements to inspect and monitor container PRDs (as closure devices) already in the OSWRO NESHAP per the requirements of the subpart PP Container NESHAP at 40 CFR 63.688.

In addition to the NESHAP requirements, nearly all OSWRO containers are subject to DOT regulatory requirements to ensure their safe design,

construction, and operation while in transport, and which also limit the potential for air emissions due to leaks, spills, explosions, etc. The DOT regulations at 49 CFR part 178, Specifications for Packagings or 49 CFR part 179, Specifications for Tank Cars, prescribe specific design, manufacturing, and testing requirements for containers that will be transported by motor vehicles. Additionally, 49 CFR part 180, Continuing Qualification and Maintenance of Packagings, includes requirements for periodic inspections, testing, and repair of containers, which would minimize the chance of an atmospheric release from a PRD. All containers that bring RCRA hazardous waste on-site are subject to these DOT requirements, and any PRDs on those containers would similarly be subject to these requirements. Most OSWRO facilities are also subject to weekly RCRA inspection requirements in § 264.15(b)(4) and § 265.15(b)(4), as well as daily RCRA inspection requirements in § 264.174 and § 265.174. These RCRA inspection requirements apply to owners or operators of all hazardous waste facilities. Therefore, including comparable requirements in the OSWRO NESHAP would substantially overlap with existing requirements.

The data provided by ACC and ETC indicated that almost every facility reported that they unload their containers daily, so if a release from such a PRD on a container were to occur, the facility would likely detect it during the unloading that happens on a daily basis. We understand, based on our review of PRD data provided by ACC and ETC, that PRD releases from containers are rare, the emissions potential from these container PRDs is low, and the additional monitoring requirements for PRDs on the containers that would be required under the 2015 OSWRO NESHAP would be difficult and costly relative to the low emissions potential. In addition, alternative forms of continuous monitoring for container PRDs, such as fence-line monitoring or similar static systems, would not be appropriate for measuring emissions specifically from PRDs on containers, because the inventory of container units at the facilities is dynamic and the units are moved around the facilities' property.

Removing the continuous monitoring requirements from PRDs on containers is not equivalent to an unlawful malfunction exemption. This action does not alter the OSWRO NESHAP's prohibition on releases to the atmosphere from all PRDs at 40 CFR 63.691(c)(3). Therefore, malfunctions that cause PRD releases are not exempt

from regulation. Additionally, the EPA determined that the monitoring is sufficient after considering the monitoring and inspection requirements already applicable to these containers, including the inspection requirements in 40 CFR part 63, subpart PP, as described above, while also evaluating other monitoring options and the low risk of release from these units.

Comment: Several commenters provided responses to the EPA's requests for comments related to imposing additional inspection requirements for containers. These requests included whether the EPA should impose more frequent inspections for any filled or partially-filled OSWRO container that remains on-site longer than 60 days; whether any additional inspection requirements should apply to all containers or only apply to larger containers; and whether to also incorporate into the OSWRO NESHAP the inspection requirements of Air Emission Standards for Equipment Leaks in 40 CFR part 264, subpart BB, and 40 CFR part 265, subpart BB, and RCRA and Air Emission Standards for Tanks, Surface Impoundments, and Containers in 40 CFR part 264, subpart CC, and 40 CFR part 265, subpart CC. Three commenters stated that they do not believe additional inspections of container PRDs are necessary for any containers. The commenters noted that facilities are already required to meet the inspection and monitoring requirements of 40 CFR part 63, subpart PP, and most are also subject to the inspection requirements of 40 CFR parts 264 and 265, subparts BB and CC. For larger containers, such as tank cars and rail cars, one of these commenters pointed out that DOT or Federal Railroad Administration inspection, testing and repair requirements would apply. These commenters also noted that most facilities subject to the OSWRO NESHAP are already subject to the RCRA subparts BB and CC inspections requirements. The commenters stated that any of the additional inspection requirements contemplated by the EPA would only overlap with the requirements of existing rules and would not provide any additional benefits.

Response: Considering the responses to our requests for comment regarding including additional inspection requirements for containers, we are not adding any other container inspection or monitoring requirements to the OSWRO NESHAP. As noted above, in the proposal we explained the basis for our proposed conclusion that the container PRD inspection and monitoring requirements already

incorporated into the OSWRO NESHAP would be effective and sufficient to ensure compliance with the proposed container PRD requirements. No new information has been provided to suggest that additional inspection or monitoring requirements are needed.

D. What is the rationale for our final decisions regarding the container PRD monitoring requirements?

For the reasons provided above, as well as in the preamble for the proposed rule and in the comment summary and response document available in the docket, we are finalizing our proposal that PRDs on OSWRO containers will not be subject to the continuous monitoring requirements at 40 CFR 63.691(c)(3)(i). For the reasons provided above, we are making the correction and clarification noted in section III.B in the final rule.

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

A. What are the affected sources?

We estimate that 49 existing sources will be affected by the revised monitoring requirements being finalized in this action.

B. What are the air quality impacts?

We are finalizing revised requirements for PRD monitoring on containers on the basis that the inspection and monitoring requirements in 40 CFR part 63, subpart PP incorporated into the OSWRO NESHAP are effective and sufficient. We project that the final standard will not result in any change in emissions compared to the 2015 OSWRO NESHAP.

C. What are the cost impacts?

When the OSWRO NESHAP were finalized in 2015, the EPA was not aware of equipment meeting the definition of a PRD on containers in the OSWRO industry, and costs associated with the PRD release event prohibition and continuous monitoring requirements were not estimated for this equipment. Therefore, the capital and annualized costs in the 2015 final rule were underestimated, as these costs were not included. To determine the impacts of the 2015 final rule, considering the continuous monitoring requirements for PRDs on containers based on the data now available to the EPA from ACC and ETC, we estimated costs and potential emission reductions associated with wireless PRD monitors for containers. Using vendor estimates for wireless PRD monitor costs, we estimate the average per facility capital costs of continuous wireless container

PRDs monitoring to be approximately \$570,000, and the estimated industry (49 facilities) capital costs of continuous wireless container PRD monitoring would be approximately \$28 million. The total annualized costs of continuous wireless container PRD monitoring per facility (assuming a 15-year equipment life and a 7-percent interest rate) are estimated to be approximately \$85,000 and approximately \$4.2 million for the industry. Therefore, by removing the requirement to monitor PRDs on containers continuously, we estimate the impact of this final rule to be an annual reduction of \$4.2 million. Cost information, including wireless PRD monitor costs, is available in the docket for this action.

D. What are the economic impacts?

We performed a national economic impact analysis for the 49 OSWRO facilities affected by this revised rule. The national costs under this final rule, accounting for the data provided by ACC and the ETC, are \$1.3 million in capital costs in 2018, or \$200,000 in total annualized costs.¹ Over 15 years, this is an estimated present value of total costs of \$1.9 million, or equivalent annualized costs of \$200,000 per year.² These costs constitute a \$28 million reduction in the capital cost or a \$4.2 million reduction in total annualized costs compared to the revised baseline costs of the requirements as written in the 2015 rule, which include costs of continuous PRD monitoring.³ Over 15 years, the present value of cost savings are estimated at \$39 million, or \$4.3 million per year in equivalent annualized cost savings, compared to the revised baseline.⁴ More information and details of this analysis are provided in the technical document, “Final Economic Impact Analysis for the Reconsideration of the 2015 NESHAP: Off-Site Waste and Recovery Operations,” which is available in the docket for this action.

¹ We assume affected facilities will start incurring costs in 2018. This total annualized cost assumes an interest rate of 7-percent. Total annualized costs under a 3-percent interest rate are \$170,000 per year.

² These costs assume a 7-percent discount rate. Under a 3-percent discount rate, the present value of costs is estimated to be \$2.0 million, and the equivalent annualized costs are estimated to be \$170,000 per year.

³ This reduction in total annualized costs assumes a 7-percent interest rate. Annualized cost reductions are \$3.4 million assuming a 3-percent interest rate.

⁴ These cost savings assume a 7-percent discount rate. Under a 3-percent discount rate, the present value of cost savings is \$42 million, and the equivalent annualized value of cost savings is \$3.5 million per year.

E. What are the benefits?

We project that this final standard will not result in any change in emissions compared to the existing OSWRO NESHAP.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the EPA’s analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 63, subpart DD, under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 1717.11. The final amendments removed continuous monitoring requirements for PRDs on containers, and these final amendments do not affect the estimated information collection burden of the existing rule. You can find a copy of the Information Collection Request in the docket at Docket ID No. EPA-HQ-OAR-2012-0360 for this rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This rule relieves regulatory burden by reducing

compliance costs associated with monitoring PRDs on containers. The Agency has determined that of the 28 firms that own the 49 facilities in the OSWRO source category, two firms, or 7 percent, can be classified as small firms. The cost to sales ratio of the reconsidered cost of the monitoring requirements for these two firms is significantly less than 1 percent. In addition, this action constitutes a burden reduction compared to the re-estimated costs of the 2015 rule as promulgated. We have, therefore, concluded that this action does not have a significant impact on a substantial number of small entities. For more information, see the “Final Economic Impact Analysis for the Reconsideration of the 2015 NESHAP: Off-Site Waste and Recovery Operations” which is available in the rulemaking docket.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

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

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this

action present a disproportionate risk to children. The EPA's risk assessments for the 2015 final rule (Docket ID No. EPA-HQ-OAR-2012-0360) demonstrate that the current regulations are associated with an acceptable level of risk and provide an ample margin of safety to protect public health and prevent adverse environmental effects. This final action does not alter those conclusions.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). In the 2015 final rule, the EPA determined that the current health risks posed by emissions from this source category are acceptable and provide an ample margin of safety to protect public health and prevent adverse environmental effects. To gain a better understanding of the source category and near source populations, the EPA conducted a proximity analysis for OSWRO facilities prior to proposal in 2014 to identify any overrepresentation of minority, low income, or indigenous populations. This analysis gave an indication of the prevalence of subpopulations that might be exposed to air pollution from the sources. We revised this analysis to include four additional OSWRO facilities that the EPA learned about after proposal for the 2015 rule. The EPA determined that the final rule would not have disproportionately high and adverse human health or environmental effects on minority, low income, or indigenous populations. The revised proximity analysis results and the details concerning its development are presented in the memorandum titled, Updated Environmental Justice Review: Off-Site Waste and Recovery Operations RTR, available in the docket for this

action (Docket Document ID No. EPA-HQ-OAR-2012-0360-0109). This final action does not alter the conclusions made in the 2015 final rule regarding this analysis.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: January 18, 2018.

E. Scott Pruitt,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency (EPA) is amending title 40, chapter I, of the Code of Federal Regulations (CFR) as follows:

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

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

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

Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

- 2. Section 63.691 is amended by revising paragraph (c)(3) introductory text and paragraph (c)(3)(ii) to read as follows:

§ 63.691 Standards: Equipment leaks.

* * * * *

(c) * * *

(3) *Pressure release management.*

Except as provided in paragraph (c)(4) of this section, emissions of HAP listed in Table 1 of this subpart may not be discharged directly to the atmosphere from pressure relief devices in off-site material service, and according to the date an affected source commenced construction or reconstruction and the date an affected source receives off-site material for the first time, as established in § 63.680(e)(1)(i) through (iii), the owner or operator must comply with the requirements specified in paragraphs (c)(3)(i) and (ii) of this section for all pressure relief devices in off-site material service, except that containers

are not subject to the obligations in paragraph (c)(3)(i) of this section.

* * * * *

(ii) If any pressure relief device in off-site material service releases directly to the atmosphere as a result of a pressure release event, the owner or operator must calculate the quantity of HAP listed in Table 1 of this subpart released during each pressure release event and report this quantity as required in § 63.697(b)(5). Calculations may be based on data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge. For containers, the calculations may be based on process knowledge and information alone.

* * * * *

[FR Doc. 2018-01512 Filed 1-26-18; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[LLWO310000 L13100000 PP0000 18X]

RIN 1004-AE51

Onshore Oil and Gas Operations—Annual Civil Penalties Inflation Adjustments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance. The adjustments made by this final rule constitute the 2018 annual inflation adjustments, accounting for one year of inflation spanning the period from October 2016 through October 2017.

DATES: This rule is effective on January 29, 2018.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Division Chief, Fluid Minerals Division, 202-912-7143, for information regarding the BLM's Fluid Minerals Program. For questions relating to regulatory process issues, please contact Jennifer Noe, Division of Regulatory Affairs, at 202-912-7442. Persons who use a telecommunications

action is being taken under sections 129 and 111(d) of the CAA.

DATES: The direct final rule published at 82 FR 51350 on November 6, 2017 is withdrawn effective December 26, 2017.

ADDRESSES: EPA has established docket number EPA-R03-OAR-2017-0484 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Emily Linn, (215) 814-5273, or by email at linn.emily@epa.gov.

SUPPLEMENTARY INFORMATION: On May 10, 2016, the State of Maryland submitted a formal revision (MD Submittal #16-05) to its CAA section 111(d)/129 State Plan for MWCs. The revisions contain Maryland's amendments to COMAR 26.11.08, "Requirements for an Existing Large MWC with a Capacity Greater Than 250 Tons Per Day." These amendments update the MWC references to opacity compliance previously made by the Maryland Department of the Environment. The Maryland state submittal is available in the docket for this rulemaking and available online at www.regulations.gov.

Please see additional information provided in the direct final action published in the **Federal Register** on November 6, 2017 (82 FR 51350) and in the companion proposed rule which was also published on November 6, 2017 (82 FR 51380). In the DFR, we stated that if we received adverse comment by December 6, 2017, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. As a result of the comment received, EPA is withdrawing the DFR approving the revisions submitted by the State of Maryland to their CAA section 111(d)/129 State Plan for MWCs. EPA will address the comment received in a subsequent final action based upon the proposed action also published on November 6, 2017. EPA will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 15, 2017.

Cosmo Servidio,

Regional Administrator, Region III.

■ Accordingly, the amendments to 40 CFR 62.5110 and 40 CFR 62.5112, published on November 6, 2017 (82 FR 51350), are withdrawn effective December 26, 2017.

[FR Doc. 2017-27796 Filed 12-22-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2010-1042; FRL-9972-44-OAR]

RIN 2060-AT13

National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing; Rotary Spin Lines Technology Review and Revision of Flame Attenuation Lines Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action completes the final residual risk and technology reviews (RTR) that the Environmental Protection Agency (EPA) conducted for the Wool Fiberglass Manufacturing source category regulated under the national emission standards for hazardous air pollutants (NESHAP). In this action, the EPA is readopting the existing emission limits for formaldehyde, establishing emission limits for methanol, and a work practice standard for phenol emissions from bonded rotary spin (RS) lines at wool fiberglass manufacturing facilities. In addition, the EPA is revising the emission standards promulgated on July 29, 2015, for flame attenuation (FA) lines at wool fiberglass manufacturing facilities by creating three subcategories of FA lines and establishing emission limits for formaldehyde and methanol emissions, and either emission limits or work practice standards for phenol emissions for each subcategory of FA lines.

DATES: This final rule is effective on December 26, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-1042. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information

(CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov>, or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Brian Storey, Sector Policies and Programs Division (D243-04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1103; fax number: (919) 541-4991; and email address: storey.brian@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Ms. Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (312) 353-6266; and email address: ayres.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

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

BDL below the detection limit
 CAA Clean Air Act
 CBI confidential business information
 CD-ROM Compact Disc Read-Only Memory
 CDX Central Data Exchange
 CFR Code of Federal Regulations
 EPA Environmental Protection Agency
 ERT Electronic Reporting Tool
 FA flame attenuation
 FR Federal Register
 HAP hazardous air pollutant(s)
 ICR information collection request
 lbs/ton pounds per ton
 MACT maximum achievable control technology
 NESHAP national emission standards for hazardous air pollutants
 NTTAA National Technology Transfer and Advancement Act
 OMB Office of Management and Budget
 PF phenol-formaldehyde
 ppmv parts per million by volume

PRA Paperwork Reduction Act
 RFA Regulatory Flexibility Act
 RS rotary spin
 RTR Risk and Technology Review
 tpy tons per year
 TTN Technology Transfer Network
 UMRA Unfunded Mandates Reform Act
 UPL upper prediction limit

Background information. On August 29, 2017, the EPA proposed revisions to the Wool Fiberglass Manufacturing NESHAP based on our technology review of the source category's bonded RS lines. In addition, the proposal included certain revisions to the July 29, 2015, emission standards for the bonded FA lines. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the document titled, *National Emissions Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing (40 CFR part 63, subpart NNN)—Technology Review, Final Amendments: Response to Public Comments on August 29, 2017 Proposal*, which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2010-1042). A "track changes" version of the regulatory language that incorporates the changes in this action is also available in the docket.

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

- I. General Information
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 - C. Judicial Review and Administrative Reconsideration
- II. Background
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 - B. What is the Wool Fiberglass Manufacturing source category and how does the NESHAP regulate HAP emissions from the source category?
 - C. What changes did we propose for the Wool Fiberglass Manufacturing source category in our August 29, 2017, notice?
- III. What is included in this final rule?
 - A. What are the final rule amendments for formaldehyde emissions from RS lines based on the technology review for the Wool Fiberglass Manufacturing source category?
 - B. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for RS lines in the Wool Fiberglass Manufacturing source category?
 - C. What are the final rule amendments pursuant to CAA section 112(h) for RS lines in the Wool Fiberglass Manufacturing source category?

- D. What other changes have been made to the NESHAP?
 - E. What are the effective and compliance dates of the standards?
 - F. What are the requirements for submission of performance test data to the EPA?
- IV. What is the rationale for our final decisions and amendments for the Wool Fiberglass Manufacturing source category?
- A. Technology Review for the Wool Fiberglass Manufacturing Source Category
 - B. Amendments Pursuant to CAA Sections 112(d)(2) and (3) for the Wool Fiberglass Manufacturing Source Category
 - C. Amendments Pursuant to CAA Section 112(h) for the Wool Fiberglass Manufacturing Source Category
 - D. Amendments for FA Lines in the Wool Fiberglass Manufacturing Source Category
 - E. Other Amendments to the Wool Fiberglass Manufacturing NESHAP
- V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
- A. What are the affected facilities?
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 - C. What are the cost impacts?
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 - G. What analysis of children's environmental health did we conduct?
- VI. Statutory and Executive Order Reviews
- A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)
 - K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Table 1 includes the categories and entities potentially regulated by this action.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS ¹ code
Wool Fiberglass Manufacturing	327993

¹ North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: <https://www.epa.gov/stationary-sources-air-pollution/wool-fiberglass-manufacturing-national-emissions-standards>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

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

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 26, 2018. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised

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

II. Background

A. What is the statutory authority for this action?

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

practice, or operational standards; or any combination of the above.

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

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them “as necessary (taking into account developments in practices, processes, and control technologies)” no less frequently than every 8 years, pursuant to CAA section 112(d)(6). In conducting this review, the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC) v. EPA*, 529 F.3d 1077, 1084 (DC Cir. 2008). *Association of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667 (DC Cir. 2013). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section

112(f).¹ Additionally, CAA section 112(h) allows the agency to adopt a work practice standard in lieu of a numerical emission standard only 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.” This phrase is defined as applying where “the Administrator determines that the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.” CAA section 112(h)(1) and (2).

In this action, the EPA is finalizing the technology review for RS lines in accordance with section 112(d)(6) of the CAA. In addition, the EPA is amending certain emission standards promulgated on July 29, 2015, for FA lines at wool fiberglass manufacturing facilities.

B. What is the Wool Fiberglass Manufacturing source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Wool Fiberglass Manufacturing NESHAP on June 14, 1999 (62 FR 31695). The standards are codified at 40 CFR part 63, subpart NNN. The Wool Fiberglass Manufacturing source category consists of facilities that produce wool fiberglass from sand, feldspar, sodium sulfate, anhydrous borax, boric acid, or any other materials. This source category currently comprises three wool fiberglass manufacturing facilities operating bonded RS lines, and two facilities operating bonded FA lines. The EPA is not currently aware of any planned or potential new or reconstructed bonded RS or FA lines.

On July 29, 2015, we published the final rule amendments to the Wool Fiberglass Manufacturing NESHAP resulting from our completion of certain aspects of the CAA section 112(f)(2) residual risk review and the CAA section 112(d)(6) technology review for that NESHAP RTR. 80 FR 45280. Specifically, the July 29, 2015, final rule:

- Established a chromium emission limit for gas-fired, glass-melting furnaces under CAA section 112(f)(2);
- Revised the particulate matter emission limit for gas-fired, glass-

¹ The U.S. Court of Appeals for the District of Columbia Circuit has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC v. EPA*, 529 F.3d 1077, 1083 (DC Cir. 2008) (“If EPA determines that the existing technology-based standards provide an ‘ample margin of safety,’ then the Agency is free to readopt those standards during the residual risk rulemaking.”).

melting furnaces at major sources under CAA section 112(d)(6);

- Established work practice standards for hydrogen chloride and hydrogen fluoride emissions from glass-melting furnaces at wool fiberglass manufacturing facilities under CAA section 112(h);

- Eliminated the use of formaldehyde as a surrogate and established revised limits for formaldehyde and first-time limits for methanol and phenol emitted from FA lines under CAA sections 112(d)(2) and (d)(3);

- Eliminated FA line subcategories;
- Removed the exemption for startup and shutdown periods and established work practice standards that apply during startup and shutdown periods; and

- Established chromium emission limits for both new and existing gas-fired, glass-melting furnaces at area sources in the Wool Fiberglass Manufacturing source category under CAA section 112(d)(5).

In the July 2015 rule, we did not finalize proposed emission limits for formaldehyde, methanol, and phenol emissions from forming, cooling, and collection processes on bonded RS lines under CAA sections 112(d)(2) and (3). We explained that this decision was based on comments we received on our various proposals indicating that the proposed limits likely relied on incorrect data. We explained that we had issued an Information Collection Request (ICR) under CAA section 114 for purposes of obtaining the requisite data. 80 FR 45293.

C. What changes did we propose for the Wool Fiberglass Manufacturing source category in our August 29, 2017, notice?

On August 29, 2017, the EPA published a proposed rule in the **Federal Register** for the Wool Fiberglass Manufacturing NESHAP, 40 CFR part 63, subpart NNN, that took into consideration the new data received in response to the ICR. We also explained that since our July 29, 2015, final rule, we had received new information and data from a facility that operates FA lines that cast doubts on information and data that the agency relied on in promulgating the July 2015 final rule emission limits for FA lines. In the August 29, 2017, **Federal Register**, we proposed the following:

- Readopting the formaldehyde emission limits for bonded RS lines that were in the original 1999 NESHAP under CAA section 112(d)(6);
- Establishing new emission limits for methanol from bonded RS lines under CAA section 112(d)(2) and (3);

- Establishing work practice standards for phenol from bonded RS lines under CAA section 112(h);

- Amending the incinerator operating limits to include cooling emissions from both RS and FA limits under CAA section 112(d)(2) and (3);

- Establishing new subcategories of FA lines under CAA section 112(d)(1), defined as: (1) Aerospace, Air Filtration, and Pipe Products; (2) Heating, Ventilation, and Air Conditioning (HVAC); and (3) Original Equipment Manufacturer (OEM);

- Establishing new emission limits for formaldehyde, methanol, and phenol from most of the newly proposed FA line subcategories under CAA section 112(d)(2) and (3); and

- Setting work practice standards for phenol from one newly proposed FA line subcategory under CAA section 112(h).

III. What is included in this final rule?

This action finalizes the EPA's determinations, as proposed, pursuant to the CAA section 112(d)(6) review for the Wool Fiberglass Manufacturing source category and amends the Wool Fiberglass Manufacturing NESHAP based on those determinations. This action also finalizes, with minor revisions to our proposals, other changes to the NESHAP, including establishing first-time limits for methanol emissions from forming, cooling, and collection processes on new and existing bonded RS lines at wool fiberglass manufacturing facilities under CAA sections 112(d)(2) and (3), and establishing work practices standards for phenol emissions from forming, cooling, and collection processes on new and existing bonded RS lines at wool fiberglass manufacturing facilities under CAA section 112(h).

Additionally, consistent with our proposal, this action finalizes our decision to create three subcategories of FA lines at wool fiberglass manufacturing facilities based on the type of product that is manufactured. This action also finalizes, as proposed, emission limits for formaldehyde, methanol, and phenol emissions under CAA section 112(d)(2) and (3) for two of these subcategories, and finalizes emission limits for formaldehyde and methanol under CAA section 112(d)(2) and (3), and work practices standards for phenol emissions under CAA section 112(h), for the third subcategory.

A. What are the final rule amendments for formaldehyde emissions from RS lines based on the technology review for the Wool Fiberglass Manufacturing source category?

We are readopting the current emissions standards for formaldehyde from forming, cooling, and collection processes on existing, new, and reconstructed bonded RS lines at wool fiberglass manufacturing facilities under CAA section 112(d)(6) as the result of our technology review.

B. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for RS lines in the Wool Fiberglass Manufacturing source category?

Under CAA sections 112(d)(2) and (d)(3), we are establishing emission limits for methanol from forming, cooling, and collection processes on existing, new, and reconstructed bonded RS lines at wool fiberglass manufacturing facilities.

C. What are the final rule amendments pursuant to CAA section 112(h) for RS lines in the Wool Fiberglass Manufacturing source category?

We are establishing work practice standards for phenol emissions from combined fiber/collection, curing, and cooling processes on existing, new, and reconstructed bonded RS lines at wool fiberglass manufacturing facilities under CAA section 112(h).

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

Other changes to the NESHAP include:

- Finalizing the proposed subcategories for FA lines and their associated emissions standards for existing, new, and reconstructed bonded FA lines at wool fiberglass manufacturing facilities;
- Adding an annual operating requirement for designating the appropriate subcategory for FA lines;
- Clarifying that the Aerospace subcategory includes pipe products;
- Establishing the compliance period for both RS and FA lines; and
- Revising the recordkeeping requirement for free-formaldehyde and free-phenol content of binders.

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

The revisions to the MACT standards being promulgated in this action are effective on December 26, 2017. The compliance date for existing RS and FA manufacturing lines is December 26, 2020. New sources must comply with all of the standards immediately upon the effective date of the standard,

December 26, 2017, or upon startup, whichever is later.

CAA section 112(i)(3) requires that existing sources must comply as expeditiously as practicable, but no later than 3 years after promulgation of standards under CAA section 112(d). (“Section 112(i)(3)’s three-year maximum compliance period applies generally to any emissions standard . . . promulgated under CAA [section 112].” *Ass’n of Battery Recyclers v. EPA*, 716 F.3d 667, 672 (DC Cir. 2013)). Additionally, we may not reset compliance deadlines for revisions that are unaccompanied by changes to a MACT standard. *NRDC v. EPA*, 489 F.3d 1364, 1374 (DC Cir. 2007) (EPA may not revise compliance deadlines “for compliance with Section 112 standards anytime it adjusts reporting terms.”). This final action reflects our conclusion that sources will need the 3-year period to comply with the various final rule requirements, which are not just reporting requirements. For instance, with regard to FA lines, subcategories have been newly created, and numerical emission limits for formaldehyde and methanol emissions are being promulgated. Thus, owners or operators of affected sources will need to conduct performance tests in order to demonstrate initial compliance with these final standards. Additionally, as explained at proposal, the work practice standards for phenol emisions from both RS and FA lines call for vendor specifications, which will likely require vendor bids and selections, and the likely institution of new practices to address the final recordkeeping requirements.

F. What are the requirements for submission of performance test data to the EPA?

As we proposed, the EPA is taking steps to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is finalizing the requirement for owners or operators of wool fiberglass manufacturing facilities to submit electronic copies of certain required performance test reports.

Data will be collected by direct computer-to-computer electronic transfer using EPA-provided software. This EPA-provided software is an electronic performance test report tool called the Electronic Reporting Tool (ERT). The ERT will generate an electronic report package which will be submitted to the Compliance and Emissions Data Reporting Interface (CEDRI) and then archived to the EPA’s Central Data Exchange (CDX). A description of the ERT and instructions for using ERT can be found at [http://](http://www3.epa.gov/ttn/chief/ert/index.html)

www3.epa.gov/ttn/chief/ert/index.html. CEDRI can be accessed through the CDX website (<http://www.epa.gov/cdx>). Once submitted, a performance test report will be available to the public through the EPA WebFIRE database (<https://cfpub.epa.gov/webfire/>).

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the ERT website. With electronic reporting, industry will save time in the performance test submittal process. Additionally, this rulemaking benefits industry by reducing recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be kept in hard copy.

State, local, and tribal air agencies may benefit from more streamlined and accurate review of performance test data that will become available to the public through WebFIRE. Having such data publicly available enhances transparency and accountability. For a more thorough discussion of electronic reporting of performance tests using direct computer-to-computer electronic transfer and using EPA-provided software, see the discussion in the preamble of the proposal.

In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, state, local, and tribal air agencies, and the EPA significant time, money, and effort.

IV. What is the rationale for our final decisions and amendments for the Wool Fiberglass Manufacturing source category?

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

A. Technology Review for the Wool Fiberglass Manufacturing Source Category

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

In the August 29, 2017, action (82 FR 40970), we proposed readopting the current NESHAP emission limits for formaldehyde from forming, cooling, and collection processes on existing, new, and reconstructed bonded RS lines at wool fiberglass manufacturing facilities under CAA section 112(d)(6).

2. How did the technology review change for the Wool Fiberglass Manufacturing source category?

We are not changing our technology review findings from the August 29, 2017, proposal.

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

One commenter disagreed with our proposal to readopt the current formaldehyde emission limits for existing and new sources. The commenter stated that the EPA’s refusal to increase protections against formaldehyde emissions from RS lines is unlawful and irrational and is not consistent with 42 U.S.C. 7412(d)(6), which is intended to drive pollution reductions. The commenter said that the EPA’s proposal to retain the current NESHAP emission limits for formaldehyde from RS lines, even though the EPA identified developments in practices, processes, and control technologies under the technology review, does not meet the requirements of 42 U.S.C. 7412(d)(6) which requires the EPA to “account” for such developments consistent with the CAA. The commenter asserted that failing to strengthen the emission limits will allow sources to emit at higher levels without consequence, and will remove a strong incentive for the industry to complete the transition to non-phenol formaldehyde (PF) binders.

We disagree with the commenter. As explained in the August 29, 2017, action (82 FR 40975), we considered mandating the use of non-PF binders for lines currently using PF binders, and/or mandating the use of non-PF binders for all bonded lines as part of the required CAA section 112(d)(6) technology review. We did not propose this option, however, and, instead, we proposed to readopt the current limits because the source category has already achieved approximately 95-percent reduction in formaldehyde emissions due to the

replacement of the PF binders with non-PF binders. We explained that this industry trend would likely continue given industry indications that non-PF binders are less expensive than PF binders and, as also explained at proposal, that cost considerations will move the industry in the direction of complete elimination of PF binders in the absence of regulation. However, as also noted at proposal, the remaining sources that continue to operate RS lines using PF binders manufacture products for customers with specifications that preclude the use of any currently available non-PF binders and, therefore, if PF binders were banned, these facilities would likely no longer be able to produce these products. Furthermore, we noted that mandating non-PF binders would likely be viewed as penalizing sources that continued to utilize PF binders. Therefore, we continue to conclude that it would be inappropriate to ban PF binders at this time. We also explained that our review of the 2015 ICR indicated that all bonded RS lines are equipped with air pollution control devices for formaldehyde emissions as compared to the time of promulgation of the 1999 MACT standards. Specifically, we found that formaldehyde emissions were significantly below the 1999 MACT and we attributed these reductions to both control technologies in use and the phase out of PF binders. We expressed our belief that sources would maintain these control technologies and, thus, that the lower emissions remain somewhat assured, even without our lowering of the existing MACT standards. We continue to believe that sources will maintain control technologies that address formaldehyde emissions from the various processes on RS lines post promulgation of standards that they are already meeting, partly because most (or potentially all) of these sources would likely not be able to comply with the current formaldehyde limits or the new methanol limits without these controls. We also note that because we were confident of the continued use of existing control technologies that achieve formaldehyde emissions reductions that are well below the existing MACT, we also did not propose requiring initial compliance demonstration, but rather proposed to allow sources to use test reports submitted in response to the 2015 ICR as a means of demonstrating initial compliance with the proposed emission limits, when finalized (82 FR 40976). This final rule contains this requirement, as proposed. Additionally,

these existing MACT limits are reflected in operating permits for these sources and, thus, remain enforceable until otherwise revised.

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

As noted in the proposal preamble (82 FR 40974), this source category has already achieved approximately 95-percent reduction in formaldehyde emissions due to the replacement of PF binders with non-PF binders. We conclude that the industry will continue this trend without the need for tighter regulation due to cost considerations (*i.e.*, non-PF binders are less expensive than PF binders). Additionally, as explained above, facilities are currently using PF binders because of customers' specifications for certain products and, thus, would be unable to manufacture such products if we mandate the use of non-PF binders. Therefore, we are finalizing our proposal to readopt the current NESHAP formaldehyde emission limits for existing, new, and reconstructed bonded RS lines at wool fiberglass manufacturing facilities.

B. Amendments Pursuant to CAA Sections 112(d)(2) and (3) for the Wool Fiberglass Manufacturing Source Category

1. What did we propose pursuant to CAA sections 112(d)(2) and (3) for the Wool Fiberglass Manufacturing source category?

In the August 29, 2017, action (82 FR 40970), we proposed first-time standards for methanol emitted from forming, cooling, and collection processes on existing, new, and reconstructed bonded RS lines at wool fiberglass manufacturing facilities. We established the MACT floor for methanol emissions based on application of the upper prediction limit (UPL) method to the best-performing five sources in the test data collected under Part 2 of the 2015 ICR. We considered beyond-the-floor options for methanol for all combined collection and curing operation designs as required by CAA section 112(d)(2); however, we did not propose any limits based on the beyond-the-floor analyses because of the potential adverse impacts of additional controls, including the cost of control devices, non-air environmental impacts, and energy implications associated with use of these additional controls.

2. How did our findings pursuant to CAA sections 112(d)(2) and (3) review change for the Wool Fiberglass Manufacturing source category?

In this final action, we are revising the methanol emission limits for new and existing bonded RS lines by reflecting just two significant figures, based on comments received on the August 29, 2017, proposal. This is consistent with current bonded RS line emission limits.

3. What key comments did we receive on our findings pursuant to CAA sections 112(d)(2) and (3), and what are our responses?

One commenter stated that the EPA's proposal illegally and arbitrarily relied on the UPL, instead of following the CAA's requirement to set an emission limitation that is not less stringent than the "average emission limitation achieved" by the relevant best-performing sources. The commenter also argued that there was ample support in the record for proposal and adoption of beyond-the-floor limits such as material switching.

We disagree with the commenter. Section 112(d)(3) of the CAA requires the EPA to promulgate standards for major sources of HAP that are based on MACT performance. For existing sources, MACT standards must be at least as stringent as the average emission limitation achieved by the best-performing 12 percent of existing sources (for which the Administrator has emissions information) or the best-performing five sources for source categories with less than 30 sources. For new sources, the MACT standards must be at least as stringent as the control level achieved in practice by the best-controlled similar source. MACT standards also have to be continuously achievable as specified by CAA section 302(k).

Although CAA section 112(d) includes language such as "existing source," "best performing," and "achieved in practice" in referring to source operations, the CAA language does not address whether sources' emission levels should be evaluated over time or be based on a single test result. In fact, the D.C. Circuit has long recognized the ambiguity in the term "average emission limitation." See *NACWA v. EPA*, 734 F.3d at 1131 (noting that the court has accorded Chevron deference to the EPA's interpretation of CAA sections 129 MACT floor requirement) and 112 ("the phrase 'average emission limitation achieved by the best performing 12 percent of units' could be interpreted several different ways, with several

different variations of what the MACT floor is supposed to represent”). The phrase “average emission limitation achieved by the best performing 12 percent of units” does not specify the methodology that the EPA should use to determine the emissions levels achieved by the best-performing sources. Therefore, the EPA has discretion to interpret the phrase “average emission limitation achieved” by the best performing source or sources. Further, the D.C. Circuit has held repeatedly that the EPA may take the variability of best-performing sources into account in establishing MACT floors. *Sierra Club v. EPA*, 479 F.3d 875, 881–882 (D.C. Cir. 2007). See also, *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 861, 865 (D.C. Cir. 2001); *National Lime Ass’n v. EPA*, 627 F.2d 416, 431 n.46, 443 (D.C. Cir. 1980). Consequently, we apply the UPL approach in developing numeric emission standards when using short-term test data, rather than calculating a straight average of test runs which does not address the performance of a source over time. The UPL is a statistical method to compensate for limited data and account for variability in emissions in determining what emission limitations have been achieved by the best-performing sources. The EPA’s use of the UPL has been upheld based on explanations previously provided in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 632–637 (D.C. Cir. 2016). “We believe that the EPA has carried its burden of demonstrating that the UPL reflect[s] a reasonable estimate of the emissions achieved in practice by the best performing sources.” *Id.*, at 635 (Internal citations omitted).

With regard to the comment that we should have set beyond-the-floor limits in light of evidence of material switching, as explained at proposal, there are potential adverse impacts of additional controls for methanol, such as control devices costs, non-air quality health impacts, and energy implications (82 FR 40976). Additionally, as also previously explained, customer specifications preclude the use of products with any currently available non-PF binders and, therefore, requiring non-PF binders as a beyond-the-floor measure would result in these products likely no longer being produced. (“Nothing in section 7429(a)(2) requires the agency to impose a cost so disproportionate to the expected gains.” *Id.*, at 640).

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

We based the final methanol emission limits for the forming, cooling, and

collection processes on existing, new, and reconstructed RS lines at wool fiberglass manufacturing facilities on data collected under Part 2 of the 2015 ICR. We conclude that, based on the UPL for the best-performing five sources, these limits represent the MACT level of control for methanol emissions currently being achieved on RS line processes by using add-on control devices (e.g., gas scrubbers, thermal oxidizers). In response to the proposed rule, we did not receive any additional emissions and process data for consideration.

C. Amendments Pursuant to CAA Section 112(h) for the Wool Fiberglass Manufacturing Source Category

1. What did we propose pursuant to CAA sections 112(h) for the Wool Fiberglass Manufacturing source category?

In the August 29, 2017, action (82 FR 40970), we proposed establishing work practice standards under CAA section 112(h) that represent MACT for phenol emissions from forming, cooling, and collection processes on bonded RS lines. We concluded that it was not feasible to prescribe or enforce an emission limit for these processes due to the prevalence of emission test values reported as below the detection limit (BDL) of the test method.

2. How did our findings pursuant to CAA section 112(h) change for the Wool Fiberglass Manufacturing source category?

We did not change our proposal to establish work practice standards for phenol emissions under CAA section 112(h) for RS lines. However, based on our evaluation of public comments, we concluded that methods for determining the free-formaldehyde and free-phenol content of binder formulations does not exist. We have, therefore, removed the proposed requirement for facilities to record the free-formaldehyde and free-phenol content of binder formulations, and instead revised the proposed requirement for facilities to record and maintain records of the free-formaldehyde and free-phenol content of the resin purchased. In addition, facilities are required to record and maintain records of the formaldehyde and phenol content of the product binder formulations.

3. What key comments did we receive on our findings pursuant to CAA section 112(h), and what are our responses?

One commenter noted that the proposed rule requires owners or operators to record the free-

formaldehyde and free-phenol content of binder, but did not specify the method for determining these values. The proposed rule did not specify the procedures for determining the binder free-formaldehyde and free-phenol content because we were unaware of a published method for conducting the measurement. Based on discussions with the commenter, the industry does not have methods for assessing these parameters in binder formulations. Consequently, we are removing the requirement in the final rule to record the free-formaldehyde and free-phenol content of binder formulations. We have revised the rule to require facilities to record and maintain records of the free-formaldehyde and free-phenol content of the resin purchased.

One commenter said that the EPA failed to meet the required tests for setting only work practice standards instead of numerical emission limits. The commenter noted that the EPA may promulgate work practice standards instead of numerical standards “only if measuring emission levels is technologically or economically impracticable” (*Sierra Club v. EPA*, 479 F.3d 875, 883–84 (D.C. Cir. 2007)) and only if doing so “is consistent with the provisions of subsection (d) or (f).” 42 U.S.C. 7412(h)(1). The commenter stated that the presence of BDL values in the test data does not provide an excuse for the EPA to evade the requirement to set numeric standards.

We disagree with the commenter that numerical standards are appropriate for phenol emissions from RS lines. Sections 112(h)(1) and (h)(2)(B) of the CAA provide the EPA with the discretion to adopt a work practice standard, rather than a numeric standard, when “the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.” The “application of measurement methodologies” (described in CAA section 112(h)(2)(B)) means not only conducting a measurement, but also that a measurement has some reasonable relation to what the source is emitting (i.e., that the measurement yields a meaningful value). That is not the case here. Therefore, as proposed, we concluded that it is not feasible to establish a numerical standard for phenol emissions from RS lines. Moreover, a numerical limit established at some level greater than the detection limit (which would be a necessity since any numeric standard would have to be measurable) could authorize and allow more emissions of these HAP than would otherwise be the case.

4. What is the rationale for our final approach pursuant to CAA section 112(h)?

As explained in the proposal preamble, approximately 60 percent of the phenol concentration values were reported as BDL values. Under these circumstances, it is not technologically and economically feasible to measure reliably phenol emissions from RS lines. This is also consistent with our approach in previous rulemakings (e.g., NESHAP for Coal- and Oil-Fired Electric Utility Steam Generating Units, NESHAP for Primary Aluminum Reduction Plants) where test results were predominantly found to be BDL (e.g., more than 55 percent of the test run results). In these instances, the EPA established work practice standards for the pollutants in question from the subject sources because we concluded that emissions of the pollutants are too low to reliably measure and quantify. Similarly, we are finalizing work

practice standards for phenol emissions from FA lines.

D. Amendments for FA Lines in the Wool Fiberglass Manufacturing Source Category

1. What amendments did we propose for FA lines in the Wool Fiberglass Manufacturing source category?

In the August 29, 2017, action (82 FR 40976), we proposed three subcategories for FA lines under CAA section 112(d)(1) based on recent information indicating that there are technical or design differences that distinguish FA lines that manufacture different wool fiberglass products: (1) Aerospace and Air Filtration; (2) HVAC; and (3) OEM. (See also proposed 40 CFR 63.1381.) We also proposed revisions to the formaldehyde, methanol, and phenol emission limits for FA lines promulgated on July 29, 2015 (80 FR 45280), to reflect these new subcategories and proposed a 1-year

compliance period. In a separate action on July 6, 2017 (82 FR 34858), we proposed extending the compliance period for the July 29, 2015, final rule requirements for existing FA lines to 3 years in order to allow the EPA time to review corrected data provided by the industry.

2. How did our findings regarding the FA line proposal change for the Wool Fiberglass Manufacturing source category?

Consistent with our August 29, 2017, proposal, we revised the formaldehyde, methanol, and phenol limits for FA lines to incorporate updated production data received from the industry. We also revised the definition of the Aerospace subcategory to include FA lines that manufacture pipe products to reflect comments we received on our proposal. Table 2 shows the final emission limits for the FA line subcategories.

TABLE 2—FINAL EMISSION LIMITS FOR FA LINE SUBCATEGORIES
[lb/ton]

Subcategory	Pollutant	Existing sources	New and reconstructed sources
Aerospace, Air Filtration, and Pipe Products	Formaldehyde	27	18.0
	Methanol	8.9	4.0
HVAC	Formaldehyde	2.8	2.4
	Methanol	7.3	1.5
	Phenol	0.4	0.4
OEM	Formaldehyde	5.0	2.9
	Methanol	5.7	1.1
	Phenol	31	22

3. What key comments did we receive regarding the FA line proposal?

One commenter noted that we did not use the correct production rate values in calculating the test run values (expressed in terms of pounds of pollutant per ton of glass pulled) that we used in the UPL analysis. We acknowledge the error in the industry data, and the emission limits for FA lines in the final rule, reflects the updated production values.

One commenter noted that the Aerospace and Air Filtration Products subcategory should include pipe products because the same base resin is used in manufacturing these products. We agree with the commenter that it is appropriate for pipe products and the Aerospace and Air Filtration Products subcategory to meet the same emission limits; therefore, we revised the Table 2 to 40 CFR part 63, subpart NNN in the final rule.

Another commenter stated that the EPA’s proposal to subcategorize FA

lines so that each individual source is its own subcategory is irrational and unlawful and does not meet the statutory test for subcategorization specified in CAA section 112(d)(1), which is based on the “classes, types, and sizes” of sources. The commenter said that the EPA failed to provide the necessary determination to subcategorize, including a demonstration of: (1) Why these different products make the different lines somehow appropriate to divide into subcategories; (2) why the different products require the use of different binders, some with greater amounts of pollutants; or (3) why the EPA is changing its prior proposal not to subcategorize FA lines. The commenter also stated that there was no support for the work practice standard for phenol emissions from the Aerospace, Air Filtration, and Pipe Products subcategory.

We disagree with the commenter. In the April 15, 2013, proposal (78 FR

22387), we proposed to eliminate the heavy density and pipe subcategories of FA manufacturing lines because we no longer believe that a technical basis exists to distinguish these subcategories, and, in the July 29, 2015, action, we finalized emission limits for FA lines that apply to all types of products. However, as noted in the August 29, 2017, proposal (82 FR 40977), the data (that we used to determine that FA line emission limits) contained errors in the analytical results for formaldehyde, methanol, and phenol. In fact, the data used to set the 2015 emission limits did not represent every product manufactured by the source category. Our review of the corrected FA line data received from the industry identified that the phenol emission from certain FA production lines were 1- to 2-orders of magnitude higher than other FA lines. In addition, we found that some FA lines, due to their lower pull rates, were never represented in the data used to set the 2015 emission limits for FA

lines. Based on discussions with Johns Manville (the only company currently operating FA lines), we were able to attribute the differences in phenol emissions to the use of different binder formulations in the manufacture of different wool fiberglass products for specific customer demands and end uses. We had also explained that PF binder application varies with the result that phenol emissions are either higher or lower depending on the product being manufactured (82 FR 40977). Additionally, proposed 40 CFR 63.1381 presented the proposed subcategories. Based on our proposal, we conclude that the different products manufactured, and their represented manufacturing processes are an acceptable basis that Congress intended for distinguishing between classes or types of sources. We also note that “type” is “undefined and unrestricted” in CAA section 112(d)(1). *U.S. Sugar Corp.*, 830 F.3d at 656.

One commenter noted that the final rule should include criteria for designating the appropriate subcategory for individual FA lines and suggested that the subcategory be assigned based on the type of product manufactured for 75 percent of the FA line’s operating hours. We agree with the commenter. Therefore, we have revised the subcategory definitions in the final rule to include the percent-operating time criteria.

One commenter objected to the EPA’s proposal to extend the compliance date for FA lines because the EPA’s action violates: (1) The clear compliance deadline requirements for air toxics standards provided in 40 U.S.C. 7412(i)(3); (2) the prohibition on a delay of effectiveness of more than 3 months for the purpose of reconsideration according to 40 U.S.C. 7607(d)(7)(B); and (3) the core public notice-and-comment requirements of the CAA and reasoned decision-making because the EPA did not provide any information, data, or documents related to the erroneous data in the public docket. The commenter also asserted that the EPA’s proposed action is arbitrary and capricious because it is unsupported by evidence in the record and it conflicts with evidence in the record. The commenter argued that the EPA is changing its prior determination of the 2-year compliance date without the required acknowledgment and a reasoned explanation, including a justification for disregarding the facts previously found. The commenter also said EPA has given no indication that the concern it raised applies to more than one facility or a sufficient number of facilities to justify considering a new

compliance date for all sources, as opposed to evaluating a request for a single compliance date extension of 1 year under the statutory mechanism for that purpose. In addition, the EPA has failed to consider or address in any way the health and environmental effects of the compliance delay it proposes.

We disagree with the commenter. The direct final action did not stay the effectiveness of the July 29, 2015, final rule but rather extended the compliance date for FA lines by one year. (82 FR 34858). Moreover, because the EPA received adverse comments, the direct final notice was subsequently withdrawn and did not go into effect. Additionally, in a separate action, of August 29, 2017, the EPA proposed a different approach that was based on new data and information provided by Johns Manville, which can be found in the docket for this rulemaking. In this document, the EPA is taking action to finalize the approach presented in the August 29, 2017, that includes the creation of subcategories for FA lines. As such, assertions that the approach presented in the direct final and parallel proposal were insufficiently supported by the record are not relevant to this action. The final action is consistent with the statutory mandate and fully supported by the rulemaking record. As previously explained, CAA section 112(i)(3)(A) specifies that the compliance date for existing sources must provide for compliance as expeditiously as practicable, no later than 3 years after the effective date of the standard. The compliance deadline in this final rule does not exceed the 3-year period allowed under CAA section 112(i)(3)(A). As also previously explained, it reflects the period the EPA believes sources need to comply with these revised standards and conduct the necessary compliance tests (refer to section III.E of this action).

We also disagree that the 3-month period for staying the effectiveness of a rule is relevant. The compliance extension contained within this action does not stay the effectiveness of a rule by altering the effective date. Instead, it simply extends the compliance date—an action which has its own effective date. Moreover, the CAA requirements at 40 U.S.C. 7607(d)(7)(B) specify the conditions for submitting and the requirements for responding to a petition for reconsideration. As we explained in the July 2017 action, we extended the compliance date on our own initiative because we discovered that the data on which the July 2015 final rule was based contained errors. We were not proceeding in response to a petition for reconsideration of the rule.

As previously discussed regarding the response to comments on our proposed work practice standards for phenol emissions from RS lines, in section IV.C of this preamble, we disagree with the commenter that numerical standards are appropriate for phenol emissions from FA lines. For the reasons provided in section IV.C, we conclude that it is not feasible to establish a numerical standard for phenol emissions from FA lines manufacturing aerospace, air filtration, and pipe products.

4. What is the rationale for our final approach for FA lines?

Based on the corrected phenol emissions data and the different binder formulations used, we conclude it is appropriate to establish the Aerospace, HVAC, and OEM subcategories and their associated emission standards for FA lines in this final rule. We are providing a period of 3 years to allow owners and operators of FA lines sufficient time to plan and conduct compliance tests, submit notifications and compliance status reports, and to evaluate current control technology conditions, if needed.

E. Other Amendments to the Wool Fiberglass Manufacturing NESHAP

1. What other amendments did we propose to the Wool Fiberglass Manufacturing NESHAP?

In the August 29, 2017, action we proposed amendments to the incinerator operating limits specified in 40 CFR 63.1382(c)(6) to clearly indicate that the subsection applies to total RS or FA line emissions. In addition, we proposed revisions to 40 CFR 63.1383(g)(1) to include this clarification as it relates to monitoring requirements.

In the August 29, 2017, proposed rule, we revised 40 CFR 63.1382(c)(8)(i) to include corrective action requirements as they apply to the new RS line emission limits, and the revised FA line emission limits. Similarly, we proposed revisions to 40 CFR 63.1383(h) to reflect monitoring requirements applicable to the new RS line emission limits, and the revised FA line emission limits. In addition, we revised 40 CFR 63.1383(i)(1) to address owner or operators who use process modifications to control both formaldehyde and methanol emissions.

The August 29, 2017, proposed rule included clarification for performance test requirements, as included in 40 CFR 63.1384(a)(3), and revised 40 CFR 63.1384(a)(9) to require the requirement to monitor and record the free-phenol content of the binder formulation.

Lastly, we proposed to allow owners or operators that conducted emissions tests in 2016 in response to the EPA's ICR to submit those performance test results to demonstrate initial compliance with the new methanol emission limits for RS lines, rather than conducting additional tests.

2. How did our findings change for the Wool Fiberglass Manufacturing NESHAP?

Based on comments received, we reiterate in this final action that the incinerator operating limits of 40 CFR 63.1382(c)(6) apply to total emissions from forming, cooling, and collection for RS lines and to total emissions from forming, cooling, and collection for FA lines.

3. What key comments did we receive regarding the Wool Fiberglass Manufacturing NESHAP in general?

One commenter noted that in the August 29, 2017, proposed rule preamble the EPA stated that "We are also proposing amendments to the incinerator operating limits specified in 40 CFR 63.1382(c)(6) to clearly indicate that the subsection applies to cooling emissions. Incinerators would be required to control the final formaldehyde, methanol, and, where applicable, phenol emissions from forming, curing, and cooling processes for both FA and bonded RS lines." 82 FR 40976. The commenter suggested that the EPA should make clear that an owner or operator must meet the incinerator requirements *in the event* the cooling section on a particular line uses incineration as a means of control. The commenter indicated that the rule text revision was acceptable, but the preamble language was contradictory.

We have finalized 40 CFR 63.1382(c)(g) as proposed, but have provided clarification in this preamble to indicate that the incinerator operating limit applies to the total emissions from the production line, and does not apply to individual incinerators used for each of the processes within the production line.

As noted in section IV.C.2 of this preamble, one commenter noted that the proposed rule requires owners or operators to record the free-phenol content of binder, but did not specify the method for determining free-phenol content of the binders. Based on discussions with the commenter, the industry does not have a method for assessing this parameter in binder formulations. We have, therefore, revised 40 CFR 63.1384(a)(9) to require facilities to record and maintain records of the free-phenol content of the resin

purchased. In addition, the facilities are required to maintain records of the formaldehyde and phenol content of the binder formulations used in the products.

4. What is the rationale for our final approach for the additional amendments to the Wool Fiberglass Manufacturing NESHAP?

We have revised the requirement for monitoring and recording the free-phenol content to specify that facilities must monitor and record the free-phenol content of the resin purchased, and not of the binder formulation. All other proposed rule revisions are finalized as proposed. We provide clarification in this preamble the intent of the incinerator operating limits included in the final rule, and indicate they are applicable to the RS and FA lines at wool fiberglass manufacturing facilities.

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

A. What are the affected facilities?

Currently, only three wool fiberglass manufacturing facilities continue to use RS lines to manufacture a bonded product. These three facilities operate six bonded RS lines that would be affected by the revised emission limits. Additionally, two facilities continue to use FA lines to manufacture a bonded product. The EPA is not currently aware of any planned or potential new or reconstructed bonded RS or FA lines.

B. What are the air quality impacts?

Based on the test data received in response to the 2015 ICR, the three facilities with bonded RS lines currently meet the final emission limits for formaldehyde and methanol. Furthermore, based on available information, we expect the two facilities with bonded FA lines will be able to meet the emission limits for formaldehyde, methanol and phenol without additional controls. Therefore, the emission limits for formaldehyde, methanol and phenol will likely not result in further HAP emissions reductions. Also, we do not anticipate secondary environmental impacts from the final amendments to the Wool Fiberglass Manufacturing NESHAP because we expect that owners or operators will not need to install additional control devices to meet any of the standards.

C. What are the cost impacts?

Because the existing facilities will not need to install add-on control devices or implement process modifications to

comply with the final emissions standards, and because the EPA is allowing facilities to use the test reports submitted in response to Part 2 of the ICR to demonstrate initial compliance with the final emission limits for RS lines, the five facilities that are subject to the final emission standards will not incur increased costs for installing or upgrading emissions control systems. However, the facilities that are subject to this final action will each incur costs related to the testing and notifications requirements related to emission limits, and additional monitoring and recordkeeping activities related to work practice standards. The total annual cost of this final action is approximately \$13,131/year (2016 dollars).

D. What are the economic impacts?

Economic impact analyses evaluate changes in market prices and output levels. If changes in market prices and output levels in the directly affected markets are significant, impacts on other markets are also examined. Both the magnitude of costs needed to comply with the rule and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a rule.

The final standards for RS lines at wool fiberglass manufacturing facilities do not impose control costs or additional testing costs on affected facilities. However, affected facilities will have reporting requirements (*i.e.*, an initial notification and a notification of compliance status) associated with the final formaldehyde and methanol emission limits and monitoring and recordkeeping requirements associated with the phenol work practice standard. We estimate that the total annual cost of this final action is approximately \$13,131/year (2016 dollars). The economic impacts associated with the costs of this final action are quite low; each affected firm is estimated to experience an impact of less than 0.01 percent of their revenues.

E. What are the benefits?

Based on the data collected under Part 2 of the ICR, the actual formaldehyde emissions from all bonded RS lines are lower than the level allowed under the 1999 NESHAP. Although the final standards for formaldehyde from RS lines do not achieve further emissions reductions, the final emission limits for methanol and the work practice standards for phenol ensure that the emissions reductions that have been achieved since the 1999 NESHAP will persist into the future and that emissions will not increase.

F. What analysis of environmental justice did we conduct?

This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), and it does not establish an environmental health or safety standard.

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

This final action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 1160.10. This action does not change the information collection requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. None of the five entities affected by this action are small entities, using the Small Business Administration definition of small business for the affected NAICS code (327993), which is 1,500 employees for the ultimate parent company.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. This action readopts the existing emission limit for formaldehyde and establishes new emission limits for methanol and a work practice standard for phenol emissions for RS lines. This action also includes revisions to the standards for FA lines. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. Therefore, the EPA conducted searches for the Wool Fiberglass Manufacturing Area Source NESHAP through the Enhanced National Standards Systems Network

(NSSN) Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases.

As discussed in the November 2014 supplemental proposal (79 FR 68029), under 40 CFR part 63, subpart NNN, we conducted searches for EPA Methods 5, 318, 320, 29, and 0061 of 40 CFR part 60, Appendix A. These searches did not identify any VCS that were potentially applicable for this rule in lieu of EPA reference methods.

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

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

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Wool fiberglass manufacturing.

Dated: December 15, 2017.

E. Scott Pruitt,
Administrator.

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

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

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

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

Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

■ 2. Section 63.1381 is amended by adding the definitions, in alphabetical order, for “Aerospace and air filtration

products”; “Heating, ventilation, and air conditioning (HVAC) products”; and “Original equipment manufacturer (OEM) products” and revising the definition of “Pipe product” to read as follows:

§ 63.1381 Definitions.

* * * * *
Aerospace and air filtration products means bonded wool fiberglass insulation manufactured for the thermal and acoustical insulation of aircraft and/or the air filtration markets. For the purposes of this subpart, a production line that manufactures these types of products for 75 percent or more of the line’s annual operating hours is considered to be an aerospace and air filtration products line.
 * * * * *

Heating, ventilation, and air conditioning (HVAC) products means bonded wool fiberglass insulation manufactured for use in HVAC systems for the distribution of air or for thermal and acoustical insulation of HVAC distribution lines. For the purposes of this subpart, a production line that manufactures these types of products for 75 percent or more of the line’s annual operating hours is considered to be an HVAC products line.
 * * * * *

Original equipment manufacturer (OEM) products means bonded wool fiberglass insulation manufactured for OEM entities that fabricate the insulation into parts used as thermal or acoustical insulation in products including, but not limited to, appliances, refrigeration units, and office interior equipment. For the purposes of this subpart, a production line that manufactures these types of products for 75 percent or more of the line’s annual operating hours is considered to be an OEM products line.

Pipe product means bonded wool fiberglass insulation manufactured on a flame attenuation manufacturing line and having a loss on ignition of 8 to 14 percent and a density of 48 to 96 kg/m³ (3 to 6 lb/ft³). For the purposes of this subpart, a production line that manufactures these types of products for 75 percent or more of the line’s annual operating hours is considered to be a pipe product line.
 * * * * *

■ 3. Section 63.1382 is amended by revising paragraphs (c)(6), (c)(8)(i), and (c)(9) to read as follows:

§ 63.1382 Emission standards.

* * * * *
 (c) * * *
 (6) The owner or operator must operate each incinerator used to comply

with the emission limits for rotary spin or flame attenuation lines specified in Table 2 to this subpart such that any 3-hour block average temperature in the firebox does not fall below the average established during the performance test as specified in § 63.1384.
 * * * * *

(8)(i) The owner or operator must initiate corrective action within 1 hour when the monitored process parameter level(s) is outside the limit(s) established during the performance test as specified in § 63.1384 for the process modification(s) used to comply with the emission limits for rotary spin or flame attenuation lines specified in Table 2 to this subpart, and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.
 * * * * *

(9) The owner or operator must use a resin in the formulation of binder such that the free-formaldehyde and free-phenol contents of the resin used do not exceed the respective ranges contained in the specification for the resin used during the performance test as specified in § 63.1384.
 * * * * *

■ 4. Section 63.1383 is amended by revising paragraphs (g)(1), (h), (i)(1), and (j) to read as follows:

§ 63.1383 Monitoring requirements.

* * * * *
 (g)(1) The owner or operator who uses an incinerator to comply with the emission limits for rotary spin or flame attenuation lines specified in Table 2 to this subpart must install, calibrate, maintain, and operate a monitoring device that continuously measures and records the operating temperature in the firebox of each incinerator.
 * * * * *

(h) The owner or operator who uses a wet scrubbing control device to comply with the emission limits for rotary spin or flame attenuation lines specified in Table 2 to this subpart must install, calibrate, maintain, and operate monitoring devices that continuously monitor and record the gas pressure drop across each scrubber and the scrubbing liquid flow rate to each scrubber according to the procedures in the operations, maintenance, and monitoring plan. The pressure drop monitor must be certified by its manufacturer to be accurate within ±250 pascals (±1 inch water gauge) over its operating range, and the flow rate monitor must be certified by its manufacturer to be accurate within ±5 percent over its operating range. The owner or operator must also

continuously monitor and record the feed rate of any chemical(s) added to the scrubbing liquid.

(i)(1) The owner or operator who uses process modifications to comply with the emission limits for rotary spin or flame attenuation lines specified in Table 2 to this subpart must establish a correlation between formaldehyde, methanol, and phenol emissions, as appropriate, and the process parameter(s) to be monitored.
 * * * * *

(j) The owner or operator must monitor and record the free-formaldehyde and free-phenol content of each resin shipment received and of each resin used in the formulation of binder.
 * * * * *

■ 5. Section 63.1384 is amended by revising paragraphs (a) introductory text, (a)(3), (a)(9), and (c) introductory text to read as follows:

§ 63.1384 Performance test requirements.

(a) The owner or operator subject to the provisions of this subpart shall conduct a performance test to demonstrate compliance with the applicable emission limits in § 63.1382. Compliance is demonstrated when the emission rate of the pollutant is equal to or less than each of the applicable emission limits in § 63.1382. The owner or operator shall conduct the performance test according to the procedures in 40 CFR part 63, subpart A and in this section. If the owner or operator conducted an emissions test in 2016 according to the procedures specified in § 63.1384(a)(9) and § 63.1385 in response to the EPA’s Information Collection Request, the owner or operator can use the results of the emissions test to demonstrate initial compliance with the emission limits for rotary spin lines specified in Table 2 to this subpart.
 * * * * *

(3) During each performance test, the owner or operator must monitor and record the glass pull rate for each glass-melting furnace and, if different, the glass pull rate for each rotary spin manufacturing line and flame attenuation manufacturing line. Record the glass pull rate every 15 minutes during any performance test required by this subpart and determine the arithmetic average of the recorded measurements for each test run and calculate the average of the three test runs. If a rotary spin or flame attenuation line shares one or more emissions points with another rotary spin or flame attenuation line(s), owners or operators can conduct the

performance test while each of the process lines with the shared emissions point(s) is operating as specified in paragraph (a)(8) of this section, rather than testing each of the shared lines separately. In these cases, owners or operators must use the combined glass pull rate for the process lines with the shared emissions point(s) to demonstrate compliance with the emission limits specified in Table 2 to this subpart.

* * * * *

(9) The owner or operator of each rotary spin manufacturing line and flame attenuation manufacturing line regulated by this subpart must conduct performance tests using the resin with the highest free-formaldehyde content. During the performance test of each rotary spin manufacturing line and flame attenuation manufacturing line regulated by this subpart, the owner or operator shall monitor and record the free-formaldehyde and free-phenol contents of the resin, the binder formulation used, and the product LOI and density.

* * * * *

(c) To determine compliance with the emission limits specified in Table 2 to this subpart, for formaldehyde and methanol for rotary spin manufacturing lines; formaldehyde, phenol, and methanol for flame attenuation manufacturing lines; and chromium compounds for gas-fired glass-melting furnaces, use the following equation:

* * * * *

■ 6. Section 63.1385 is amended by revising paragraph (a)(8) to read as follows:

§ 63.1385 Test methods and procedures

(a) * * *

(8) Method contained in appendix B of this subpart for the determination of the free-formaldehyde content of resin. The owner or operator shall use vendor specifications to determine the free-phenol content of resin.

* * * * *

■ 7. Section 63.1386 is amended by revising paragraph (d)(2)(v) to read as follows:

§ 63.1386 Notification, recordkeeping, and reporting requirements

* * * * *

(d) * * *

(2) * * *

(v) The formulation of each binder batch and the LOI and density for each product manufactured on a rotary spin manufacturing line or flame attenuation manufacturing line subject to the provisions of this subpart, and the free-formaldehyde and free-phenol contents of each resin shipment received and of each resin used in the binder formulation;

* * * * *

■ 8. Table 2 to subpart NNN of part 63 is amended by:

- a. Revising entries 7 and 8;
- b. Redesignating entries 9 through 13 as entries 11 through 15;
- c. Adding new entries 9 and 10;
- d. Revising newly redesignated entries 11 through 15;
- e. Adding entries 16 through 19; and
- f. Adding footnote 5.

The revisions and additions read as follows:

TABLE 2 TO SUBPART NNN OF PART 63—EMISSION LIMITS AND COMPLIANCE DATES

If your source is a:	And you commenced construction:	Your emission limits are: ¹	And you must comply by: ²
7. Rotary spin manufacturing line	On or before March 31, 1997.	1.2 lb formaldehyde per ton of glass pulled ⁵ .	June 14, 2002.
8. Rotary spin manufacturing line	After March 31, 1997	0.8 lb formaldehyde per ton of glass pulled ⁵ .	June 14, 1999.
9. Rotary spin manufacturing line	On or before November 25, 2011.	1.2 lb formaldehyde per ton of glass pulled 1.1 lb methanol per ton of glass pulled.	December 26, 2020.
10. Rotary spin manufacturing line	After November 25, 2011 ...	0.8 lb formaldehyde per ton of glass pulled 0.65 lb methanol per ton of glass pulled.	December 26, 2017. ⁴
11. Flame-attenuation line manufacturing a heavy-density product.	After March 31, 1997, but on or before November 25, 2011.	7.8 lb formaldehyde per ton of glass pulled ⁵ .	June 14, 1999.
12. Flame-attenuation line manufacturing a pipe product.	On or before March 31, 1997.	6.8 lb formaldehyde per ton of glass pulled ⁵ .	June 14, 2002.
13. Flame-attenuation line manufacturing a pipe product.	After March 31, 1997, but before November 25, 2011.	6.8 lb formaldehyde per ton of glass pulled ⁵ .	June 14, 1999.
14. Flame-attenuation line manufacturing an aerospace, air filtration, or pipe product.	On or before November 25, 2011.	27 lb formaldehyde per ton of glass pulled 8.9 lb methanol per ton of glass pulled.	December 26, 2020.
15. Flame-attenuation line manufacturing an aerospace, air filtration, or pipe product.	After November 25, 2011 ...	18.0 lb formaldehyde per ton of glass pulled 4.0 lb methanol per ton of glass pulled.	December 26, 2017. ⁴
16. Flame-attenuation line manufacturing an HVAC product.	On or before November 25, 2011.	2.8 lb formaldehyde per ton of glass pulled 7.3 lb methanol per ton of glass pulled 0.4 lb phenol per ton of glass pulled.	December 26, 2020.
17. Flame-attenuation line manufacturing an HVAC product.	After November 25, 2011 ...	2.4 lb formaldehyde per ton of glass pulled 1.5 lb methanol per ton of glass pulled 0.4 lb phenol per ton of glass pulled.	December 26, 2017. ⁴

TABLE 2 TO SUBPART NNN OF PART 63—EMISSION LIMITS AND COMPLIANCE DATES—Continued

If your source is a:	And you commenced construction:	Your emission limits are: ¹	And you must comply by: ²
18. Flame-attenuation line manufacturing an OEM product.	On or before November 25, 2011.	5.0 lb formaldehyde per ton of glass pulled 5.7 lb methanol per ton of glass pulled 31 lb phenol per ton of glass pulled.	December 26, 2020.
19. Flame-attenuation line manufacturing an OEM product.	After November 25, 2011 ...	2.9 lb formaldehyde per ton of glass pulled 1.1 lb methanol per ton of glass pulled 22 lb phenol per ton of glass pulled.	December 26, 2017. ⁴

¹ The numeric limits do not apply during startup and shutdown.

² Existing sources must demonstrate compliance by the compliance dates specified in this table. New sources have 180 days after the applicable compliance date to demonstrate compliance.

⁴ Or initial startup, whichever is later.

⁵ This limit does not apply after December 26, 2020.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2016-0683; FRL-9971-92-OAR]

RIN 2060-AT61

Approval of Louisiana’s Request To Relax the Federal Reid Vapor Pressure (RVP) Gasoline Volatility Standard for Several Parishes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve an April 10, 2017 request from the Louisiana Department of Environmental Quality (LDEQ) to relax the Federal Reid Vapor Pressure (RVP) standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year for the following parishes: Beauregard, Calcasieu, Jefferson, Lafayette, Lafourche, Orleans, Pointe Coupee, St. Bernard, St. Charles, St. James, and St. Mary. Specifically, EPA is approving

amendments to the regulations to allow the gasoline RVP standard for these 11 parishes to rise from 7.8 pounds per square inch (psi) to 9.0 psi. EPA has determined that this change to the Federal gasoline RVP volatility regulation is consistent with the applicable provisions of the Clean Air Act (CAA). LDEQ has also requested that EPA relax gasoline volatility requirements for the 5-parish Baton Rouge area, and EPA will address that request in a separate rulemaking in the future.

DATES: This final rule is effective on January 25, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0683. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT: Dave Sosnowski, Office of

Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: (734) 214-4823; fax number: (734) 214-4052; email address: sosnowski.dave@epa.gov. You may also contact Rudolph Kapichak at the same address; telephone number: (734) 214-4574; fax number: (734) 214-4052; email address: kapichak.rudolph@epa.gov.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. General Information
- II. Action Being Taken
- III. History of the Gasoline Volatility Requirement
- IV. EPA’s Policy Regarding Relaxation of Gasoline Volatility Standards in Ozone Nonattainment Areas That Are Redesignated as Attainment Areas
- V. Louisiana’s Request to Relax the Federal Gasoline RVP Requirement for Several Parishes
- VI. Response to Comments
- VII. Final Action
- VIII. Statutory and Executive Order Reviews
- IX. Legal Authority and Statutory Provisions

I. General Information

A. Does this action apply to me?

Entities potentially affected by this rule are fuel producers and distributors who do business in Louisiana.

Examples of potentially regulated entities	NAICS ¹ Codes
Petroleum refineries	324110, 424710
Gasoline Marketers and Distributors	424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220, 484230

¹ North American Industry Classification System.

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The table lists

the types of entities of which EPA is aware that could be affected by this rule. Other types of entities not listed on the table could also be affected. To

determine whether your organization may be affected by this rule, you should carefully examine the regulations in 40 CFR 80.27. If you have questions

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2016-0490; FRL-9969-95-OAR]

RIN 2060-AS85

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works Residual Risk and Technology Review**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Publicly Owned Treatment Works (POTW) source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action addressing revised names and definitions of the subcategories, revisions to the applicability criteria, revised regulatory provisions pertaining to emissions during periods of startup, shutdown, and malfunction (SSM), initial notification requirements for existing Group 1 and Group 2 POTW, revisions to the requirements for new Group 1 POTW, requirements for electronic reporting, and other miscellaneous edits and technical corrections. While we do not anticipate any emission reductions as a result of these revisions, the changes should provide clarity for sources determining applicability and ensuring compliance.

DATES: This final rule is effective on October 26, 2017.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0490. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov>, or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time

(EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Katie Hanks, Sector Policies and Programs Division (E143-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-2159; fax number: (919) 541-0516; and email address: hanks.katie@epa.gov. For specific information regarding the risk modeling methodology, contact Terri Hollingsworth, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5623; fax number: (919) 541-0840; and email address: hollingsworth.terri@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois 60604; telephone number: (312) 353-6266; and email address: ayres.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

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

CAA Clean Air Act
 CBI confidential business information
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting Interface
 ERT Electronic Reporting Tool
 HAP hazardous air pollutants(s)
 HQ hazard quotient
 H₂S hydrogen sulfide
 ICR Information Collection Request
 MACT maximum achievable control technology
 MGD million gallons per day
 MIR maximum individual risk
 NESHAP national emission standards for hazardous air pollutants
 NPDES National Pollutant Discharge Elimination System
 NTTAA National Technology Transfer and Advancement Act
 PB-HAP Hazardous air pollutants known to be persistent and bio-accumulative in the environment
 POTW Publicly Owned Treatment Works
 RFA Regulatory Flexibility Act

RIN Regulatory Information Number
 RTR Risk and Technology Review
 SSM startup, shutdown and malfunction
 TOSHI Target Organ Specific Hazard Index
 UMRA Unfunded Mandates Reform Act

Background information. On December 27, 2016, the EPA proposed revisions to the POTW NESHAP based on our RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in *Response to Public Comments on the EPA's Residual Risk and Technology Review for the Publicly Owned Treatment Works Source Category* in Docket ID No. EPA-HQ-OAR-2016-0490. A "track changes" version of the regulatory language that incorporates the changes in this action is available in the docket.

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

- I. General Information
 - A. Does this action apply to me?
 - B. Where can I get a copy of this document and other related information?
 - C. Judicial Review and Administrative Reconsideration
- II. Background
 - A. What is the statutory authority for this action?
 - B. What is the POTW source category and how does the NESHAP regulate HAP emissions from the source category?
 - C. What changes did we propose for the POTW source category in our December 27, 2016, RTR proposal?
- III. What is included in this final rule?
 - A. What are the final rule amendments based on the risk review for the POTW source category?
 - B. What are the final rule amendments based on the technology review for the POTW source category?
 - C. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?
 - D. What other changes have been made to the NESHAP?
 - E. What are the effective and compliance dates of the standards?
 - F. What are the requirements for submission of performance test data to the EPA?
- IV. What is the rationale for our final decisions and amendments for the POTW source category?
 - A. Residual Risk Review for the POTW Source Category
 - B. Technology Review for the POTW Source Category
 - C. Applicability Criteria
 - D. Emissions From Collection Systems
 - E. Pretreatment Requirements

- F. HAP Fraction Emitted for Existing Group 1 and Group 2 Sources
- G. New and Existing Group 1 POTW
- V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
 - A. What are the affected facilities?
 - B. What are the air quality impacts?
 - C. What are the cost impacts?
 - D. What are the economic impacts?
 - E. What are the benefits?
 - F. What analysis of environmental justice did we conduct?
 - G. What analysis of children’s environmental health did we conduct?
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)
 - K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NESHAP	NAICS ¹ code
Sewage Treatment Facilities.	Subpart VVV	221320

¹ North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. The standards are directly applicable to the affected sources. Federal, state, local, and tribal governments are affected as discussed below. By definition, a POTW is owned by a municipality, state,

intermunicipal or interstate agency, or any department, agency, or instrumentality of the federal government (see 40 CFR 63.1595 of subpart VVV). To determine whether your facility is affected, you should examine the applicability criteria in the POTW NESHAP. Specifically, if a POTW is a Group 2 POTW¹ that is a major source of hazardous air pollutant (HAP) emissions or a Group 1 POTW regardless of the HAP emissions, and the POTW meets the criteria for development and implementation of a pretreatment program according to 40 CFR 403.8, then the POTW is affected by these standards. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at <http://www.epa.gov/stationary-sources-air-pollution/publicly-owned-treatment-works-potw-national-emission-standards>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same Web site.

Additional information is available on the RTR Web site at <http://www.epa.gov/ttn/atw/rrisk/rtrpg.html>. This information includes an overview of the RTR program, links to project Web sites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 26, 2017. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings

¹ As discussed below in section III.D of this preamble, the terms “Group 1 POTW” and “Group 2 POTW” are replacing the previous terms “industrial POTW” and “nonindustrial POTW. The “Group 1” and “Group 2” subcategories are described in the regulatory text at 40 CFR 63.1581.

brought by the EPA to enforce the requirements.

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

II. Background

A. What is the statutory authority for this action?

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

processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

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

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them “as necessary (taking into account developments in practices, processes, and control technologies)” no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant

to CAA section 112(f).² For more information on the statutory authority for this rule, see the proposed rule published on December 27, 2016 (81 FR 95352).

B. What is the POTW source category and how does the NESHAP regulate HAP emissions from the source category?

1. Definition of the POTW Source Category and the Affected Source

The EPA promulgated the NESHAP for the POTW source category (henceforth referred to as the “POTW NESHAP”) on October 26, 1999 (64 FR 57572). The standards are codified at 40 CFR part 63, subpart VVV. The POTW NESHAP was amended on October 21, 2002 (67 FR 64742). As amended in 2002, the POTW source category consists of new and existing POTW treatment plants that are located at a POTW that is a major source of HAP emissions and that meets the criteria for development and implementation of a pretreatment program as defined by 40 CFR 403.8 under the Clean Water Act (CWA). Additional information about the National Pretreatment Program can be found in the December 27, 2016, RTR proposal (81 FR 95374). The source category covered by this MACT standard currently includes thirteen facilities.

As used in this regulation, the term POTW refers to both any POTW that is owned by a state, municipality, or intermunicipal or interstate agency and, therefore, eligible to receive grant assistance under the Subchapter II of the CWA, and any federally owned treatment works as that term is described in section 3023 of the Solid Waste Disposal Act. For more information see the December 27, 2016, RTR proposal (81 FR 95352). The source category includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources.

2. Applicability of the 2002 POTW NESHAP

The 2002 POTW NESHAP is subcategorized based on whether the POTW is providing treatment for wastewaters received from an industrial

user as the means by which that industrial user complies with another NESHAP. The 2002 POTW NESHAP defined an “industrial POTW” as “a POTW that accepts a waste stream regulated by another NESHAP and provides treatment and controls as an agent for the industrial discharger. The industrial discharger complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP.” An “industrial POTW” is subject to the 2002 POTW NESHAP regardless of the HAP emissions (*i.e.*, the POTW does not have to be a major source). In contrast, a “non-industrial POTW” was defined in the 2002 POTW NESHAP as “a POTW that does not meet the definition of an industrial POTW as defined above.” A “non-industrial POTW” must be a major source to be subject to the 2002 POTW NESHAP. For more information, see the December 27, 2016, RTR proposal (81 FR 95357).

3. HAP Emitted and HAP Emission Points

The amount and type of HAP emitted from a POTW is dependent on the composition of the wastewater streams discharged to a POTW by industrial users. The primary HAP emitted from the POTW that were identified as subject to the POTW NESHAP include acetaldehyde, acetonitrile, chloroform, ethylene glycol, formaldehyde, methanol, methylene chloride, tetrachloroethylene, toluene, and xylenes. The HAP present in the wastewater entering a POTW can biodegrade, adhere to sewage sludge, volatilize to the air, or pass through (remain in the wastewater discharge) to receiving waters. Emissions can occur at any point at the POTW, including collection systems and wastewater treatment units located at the POTW treatment plant.

4. Regulation of HAP Emissions in the 2002 POTW NESHAP

The POTW NESHAP specifies requirements for the industrial and non-industrial POTW subcategories. Under the 2002 POTW NESHAP, an existing “industrial POTW” must meet the requirements of the industrial user’s NESHAP. A new or reconstructed “industrial POTW” must meet the requirements of the industrial user’s

² The U.S. Court of Appeals for the District of Columbia Circuit has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) (“If EPA determines that the existing technology-based standards provide an ‘ample margin of safety,’ then the Agency is free to readopt those standards during the residual risk rulemaking.”).

NESHAP or the requirements for new or reconstructed non-industrial POTW, whichever is more stringent.

There are no control requirements in the 2002 POTW NESHAP for existing "non-industrial POTW." However, new or reconstructed "non-industrial POTW" must equip each treatment unit up to, but not including, the secondary influent pumping station, with a cover. In addition, all covered units, except the primary clarifier, must route the air in the headspace above the surface of the wastewater to a control device that meets the requirements for closed-vent systems and control devices found in the NESHAP from Off-Site Waste and Recovery Operations (40 CFR part 63, subpart DD). As an alternative, a new or reconstructed "non-industrial POTW" can demonstrate that all units up to, but not including, the secondary influent pumping station emit a HAP fraction of 0.014 or less. The HAP fraction emitted is the fraction of HAP in the wastewater entering the POTW that is emitted to the atmosphere. For additional information, see the December 27, 2016, RTR proposal (81 FR 95357).

C. What changes did we propose for the POTW source category in our December 27, 2016, RTR proposal?

On December 27, 2016, the EPA published a proposed rule in the **Federal Register** for the POTW NESHAP, 40 CFR part 63, subpart VVV, that took into consideration the RTR analyses. In the proposed rule, we proposed that the risks are acceptable and the current standards provide an ample margin of safety to protect public health. Additionally, we did not identify any developments in practices, processes, and control technologies for the POTW source category as part of the technology review. During this rulemaking, we evaluated other revisions to the 2002 POTW NESHAP outside of the RTR. We proposed to revise the names and definitions of the industrial and non-industrial subcategories to be called Group 1 and Group 2 POTW. We also proposed to include requirements to limit emissions from collection systems and the POTW treatment plant; requirements for existing, new, or reconstructed Group 1 POTW to comply with both the requirements in the POTW NESHAP and those in the applicable NESHAP for which the POTW acts as a control agent; and HAP emission limits for existing Group 2 POTW. In addition, we proposed to clarify the applicability criteria; require initial notification for existing Group 1 and Group 2 POTW; revise regulatory provisions pertaining to emissions during periods of SSM; add

requirements for electronic reporting; and make other miscellaneous edits and technical corrections.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the POTW source category. This action also finalizes other changes to the NESHAP, including revised names and definitions of the subcategories, clarified applicability criteria, revised regulatory provisions pertaining to emissions during periods or SSM, initial notification requirements for existing Group 1 and Group 2 POTW, requirements for new or reconstructed Group 1 POTW to comply with both the requirements in the POTW NESHAP and those in the applicable NESHAP for which the POTW acts as a control agent, requirements for electronic reporting, and other miscellaneous edits and technical corrections. As explained in section IV of this preamble, we are not taking final action at this time on several provisions that were proposed, including standards for pretreatment, the inclusion of collection systems in the major source determination, and the HAP fraction emission limit for existing Group 1 and Group 2 POTW.

A. What are the final rule amendments based on the risk review for the POTW source category?

We determined that risks resulting from emissions from the POTW source category are acceptable. Specifically, the maximum individual cancer risk (MIR) is 2-in-1 million based on allowable emissions and 1-in-1 million based on actual emissions, well below the presumptive limit of acceptability (100-in-1 million), and other health information indicates there is no appreciable risk of adverse chronic or acute non-cancer health effects due to HAP emissions from the source category. Additionally, emissions of 2-methylnaphthalene, the only HAP emitted from the POTW source category that is known to be persistent and bio-accumulative in the environment (PB-HAP), did not exceed the worst-case Tier I screening emission rate or any ecological benchmarks. Therefore, revisions to the standards are not necessary to reduce risk to an acceptable level or to prevent an adverse environmental effect. Further, considering risk and non-risk factors, we determined that the 2002 POTW NESHAP requirements provide an ample margin of safety to protect public health. Therefore, we are not finalizing revisions to the standards under CAA section 112(f)(2).

B. What are the final rule amendments based on the technology review for the POTW source category?

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

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

Consistent with *Sierra Club v. EPA*, 552 F.3d 1019 (D.C. Cir. 2008), the EPA has established standards in this rule that apply at all times. We have revised Table 1 to Subpart VVV of Part 63 (the General Provisions applicability table) in several respects to eliminate the incorporation of those General Provisions that stated or were tied to the SSM exemption. These revisions to Table 1 are explained in detail in the proposed rule preamble at 81 FR 95780–95782. Further, in conjunction with the elimination of the incorporation of these General Provisions requirements, we have (1) added a general duty to minimize emissions in 40 CFR 63.1582(e) and 63.1586(e), see 81 FR at 95380 (col. 2–3); (2) incorporated performance testing requirements for control devices in 40 CFR 63.694, see 81 FR at 95781 (col. 1); (3) added language to Table 1 related to monitoring that is identical to 40 CFR 63.8(d)(3) (which is no longer incorporated) but with certain revisions to reflect the ending of the SSM plan requirement, see 81 FR at 95381 (col. 2); (4) made the recordkeeping requirements in 40 CFR 63.696(h) and 63.1589(d) applicable to periods that were previously covered by SSM-related provisions, see 81 FR 95381 (col. 2–3); and (5) amended the reporting requirements in 40 CFR 63.1590 which, in conjunction with the existing reporting requirements in 40 CFR 63.693 and 63.1590(a), will adequately provide for reporting that was previously governed by SSM-related provisions, see 81 FR at 95382.

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

1. Applicability Criteria

The EPA is not revising the applicability of 40 CFR part 63, subpart VVV as proposed on December 27, 2016. Instead, the EPA is finalizing minor clarifying changes to the applicability criteria that are in the 2002 POTW NESHAP. The renaming of the subcategories (from "industrial" to "Group 1" and from "non-industrial" to "Group 2) and the definitions of Group

1 and Group 2 POTW are being finalized as proposed, and as discussed below. However, for clarification, the EPA has removed the statements regarding ownership and operation of POTW in regards to which POTW are required to develop and implement a pretreatment program as defined by 40 CFR 403.8. This change clarifies that any Group 1 POTW (regardless of HAP emissions) or Group 2 POTW that is a major source of HAP is subject to the POTW NESHAP if the POTW also meets the criteria for development and implementation of a pretreatment program, regardless of whether the POTW, state, or other entity implements the pretreatment program.

2. Names and Definitions of the Subcategories

As proposed, the EPA is revising the names and definitions for the subcategories identified in the POTW NESHAP. The EPA is renaming an “industrial POTW treatment plant” as a “Group 1” POTW treatment plant and a “non-industrial POTW treatment plant” as a “Group 2” POTW treatment plant. The EPA expects that this clarification will address any confusion that could have been caused by the previous subcategory names “industrial POTW treatment plant” and “non-industrial treatment plant” because POTW in both subcategories treat wastewater from industrial users. The key difference between Group 1 and Group 2 is that a Group 1 POTW acts as an agent for an industrial user by accepting and controlling the industrial user’s waste stream regulated under another NESHAP. By contrast, a Group 2 POTW may treat the waste stream from an industrial user, but does not act as the industrial user’s agent to comply with another NESHAP.

3. Initial Notification Requirements for Existing Group 1 and Group 2 POTW

In the final rule (40 CFR 63.1586(a)), existing Group 1 and Group 2 POTW treatment plants must comply with the initial notification requirements in 40 CFR 63.1591(a) of subpart VVV. This notification requirement was not required for these existing sources in the 2002 POTW NESHAP, but was proposed in the December 27, 2016, proposal, and is consistent with notification requirements that were applicable to new or reconstructed Group 2 sources under the 2002 POTW NESHAP.

4. Requirements for New Group 1 POTW

The EPA is finalizing, as proposed, the requirement that new Group 1 POTW comply with both the requirements of the other NESHAP for

which they act as an agent of control for an industrial user and the requirements for new Group 2 POTW in this final rule. The requirements for new Group 2 POTW are unchanged from the 2002 POTW NESHAP and provide the option of complying with either (a) cover all primary treatment units and route emissions through a closed vent system to a control device or (b) meet a HAP fraction emission limit of 0.014 for emissions from all primary treatment units.

5. Requirements for Electronic Reporting

The EPA is finalizing electronic reporting requirements for new POTW consistent with the proposed rule. Specifically, new POTW must electronically submit all annual reports and certain performance test reports. The EPA believes that the electronic submittal of these reports will increase the usefulness of data contained in those reports, is in keeping with current trends in data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community.

6. Other Miscellaneous Edits and Technical Corrections

The EPA is finalizing the following technical corrections as proposed:

- Revising all references to “new or reconstructed POTW” to refer to “new POTW” because the definition of “new” includes reconstructed POTW.
- Combining text from 40 CFR 63.1581 and 63.1582 because the language was redundant and confusing. This includes revising 40 CFR 63.1581 to include all combined text and revising 40 CFR 63.1583(c) to include the text from the current 40 CR 63.1582(c).
- Revising 40 CFR 63.1586(b)(1) to require covers “designed and operated to prevent exposure of the wastewater to the atmosphere” instead of “designed and operated to minimize exposure of the wastewater to the atmosphere.” This clarification has also been made to the definition of “cover” in 40 CFR 63.1595.
- Revising 40 CFR 63.1587 to include compliance requirements that are currently found in 40 CFR 64.1584 and 63.1587, and deleting 40 CFR 63.1584.
- Clarifying the method for calculating the HAP fraction emitted and moving the detailed instructions for calculating the HAP fraction emitted from 40 CFR 63.1588(c)(4) to 40 CFR 63.1588(c)(3). The requirements remaining in 40 CFR 63.1588(c)(4) address monitoring for continuous compliance.

- Revising 40 CFR 63.1588(a)(3) to clarify that a cover defect must be repaired within 45 “calendar” days; currently the paragraph says “45 days.”
- Adding definitions of existing source/POTW and new source/POTW to 40 CFR 63.1595 to clarify the date that determines whether a POTW is existing or new.
- Renaming the title of 40 CFR 63.1588 to “How do Group 1 and Group 2 POTW treatment plants demonstrate compliance?” from “What inspections must I conduct?” The new title better reflects the contents of this section.
- Removing the details on how to calculate the HAP fraction emitted from the definition of HAP fraction emitted. The procedure for how to calculate the HAP fraction emitted is provided within the text of the rule. Having a summarized version of this procedure in the definition could cause confusion.
- Revising two references to dates to insert the actual dates. The phrase “six months after October 26, 1999” was replaced with “April 26, 2000”; and the phrase “60 days after October 26, 1999” was replaced with “December 27, 1999.” These changes do not result in a change in the date, but only clarify the specific dates being referenced.
- Clarifying that the reports required in 40 CFR 63.1589(b)(1) include the records associated with the HAP loading and not just the records associated with the HAP emissions determination.
- Removing the definition of “Reconstruction” in 40 CFR 63.1595 as “Reconstruction” is already defined in the General Provisions of 40 CFR 63.2.

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

The revisions to the MACT standards being promulgated in this action are effective on October 26, 2017.

The compliance date for existing Group 1 POTW is found in the applicable NESHAP for which the industrial user is subject to wastewater requirements. The compliance date for existing Group 2 POTW constructed or reconstructed on or before December 1, 1998, remains April 26, 2000. While we do not expect any additional existing Group 1 or Group 2 POTW beyond the 13 identified, we have chosen to include an additional compliance date of October 26, 2018 for existing Group 1 and Group 2 sources to submit their initial notification. We understand from public comments that POTW are evaluating their potential emissions and additional POTW may find they are subject to the rule. These POTW are only required to submit a notification that they are subject to the rule, and the additional time given for compliance of

this notification submittal will provide time for completion of the necessary emission calculations. The 13 existing sources that are subject to the rule and were previously identified have already met this notification requirement and do not need to resubmit a notification. New sources constructed or reconstructed after December 27, 2016, must comply with all of the standards immediately upon the effective date of the standard, October 26, 2017, or upon startup, whichever is later. While we did not identify any new sources that are subject to the rule since the original rule was published in 1999, we are including a transition period until October 26, 2020 for any new sources constructed or reconstructed between December 1, 1998, and December 27, 2016, to comply with the revisions in this rule.

F. What are the requirements for submission of annual reports and performance test data to the EPA?

As we proposed, the EPA is finalizing the requirement for owners and operators of POTW to submit electronic copies of certain required performance test reports and annual reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

The EPA Web site that stores the submitted electronic data, WebFIRE, is easily accessible and provides a user-friendly interface. By making records, data, and reports addressed in this rulemaking readily available, the EPA, the regulated community, and the public will benefit when the EPA conducts its CAA-required technology reviews. As a result of having reports readily accessible, our ability to carry

out comprehensive reviews will increase and be achieved within a shorter period of time.

We anticipate fewer or less substantial Information Collection Requests (ICRs) in conjunction with prospective CAA-required technology reviews may be needed, which results in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing requirements would be a cost savings to industry. The EPA should also be able to conduct these required reviews more quickly. While the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the agency's ability to provide these required reviews more quickly, resulting in increased public health and environmental protection.

Air agencies, as well as the EPA, can benefit from more streamlined and automated review of the electronically submitted data. Standardizing report formats allows air agencies to review reports and data more quickly. Having reports and associated data in electronic format facilitates review through the use of software "search" options, as well as the downloading and analyzing of data in spreadsheet format. Additionally, air agencies and the EPA can access reports wherever and whenever they want or need, as long as they have access to the Internet. The ability to access and review reports electronically assists air agencies in determining compliance with applicable regulations more quickly and accurately, potentially allowing a faster response to violations, which could minimize harmful air emissions. This benefits both air agencies and the general public.

For a more thorough discussion of electronic reporting required by this rule, see the discussion in the preamble of the proposal. In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, air agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations and enhancing the public's access to this important information.

IV. What is the rationale for our final decisions and amendments for the POTW source category?

For each decision or amendment, this section provides a description of what we proposed and what we are finalizing,

the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. Comments not discussed in this preamble, comment summaries, and the EPA's responses can be found in the comment summary and response document available in the docket (Docket ID No. EPA-HQ-OAR-2016-0490).

A. Residual Risk Review for the POTW Source Category

Pursuant to CAA section 112(f), we conducted a residual risk review and presented the results of the review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the December 27, 2016, RTR proposal (81 FR 95372). The residual risk review for the POTW source category included assessment of cancer risk, chronic non-cancer risk, and acute non-cancer risk due to inhalation exposure, as well as multipathway exposure risk and environmental risk. The results of the risk assessment are presented briefly in this preamble and in more detail in the residual risk document, *Residual Risk Assessment for Publicly Owned Treatment Works Source Category in Support of the October 2017 Risk and Technology Review Final Rule*,³ which is available in the docket for this rulemaking.

The results indicated that maximum inhalation cancer risk to the individual most exposed is 2-in-1 million based on allowable emissions and 1-in-1 million based on actual emissions, which is well below the presumptive limit of acceptability (*i.e.*, 100-in-1 million). In addition, the maximum chronic noncancer target organ specific hazard index (TOSHI) due to inhalation exposures is less than 1. The evaluation of acute noncancer risk, which was conservative, showed a hazard quotient at or below 1 for all but one POTW. Based on the results of the screening analyses for human multipathway exposure to, and environmental impacts from, PB-HAP, we also concluded that the cancer risk to the individual most exposed through ingestion is below the level of concern and no ecological benchmarks are exceeded. The facility-wide cancer and noncancer risks were estimated based on the actual emissions from all sources at the identified POTW (both MACT and non-MACT sources). The results indicated the cancer risk to

³ This report is an update to the residual risk report provided at proposal, *Residual Risk Assessment for Publicly Owned Treatment Works Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule*, available in the docket.

the individual most exposed is no greater than 10-in-1 million and the noncancer TOSHI is less than 1. Considering the above information, as well as other relevant non-health factors under the Benzene NESHAP analysis codified in CAA 112(f)(2)(B), we proposed that the risk is acceptable and the requirements in the 2002 POTW NESHAP provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

The risk assessment conducted for the POTW proposal estimated cancer, chronic noncancer, and acute noncancer risk for six of the 13 facilities in the source category and is summarized and referenced above. We confirmed the existence of seven additional POTW subject to the rule that were identified through public comments. For these seven POTW, we conducted a facility-wide risk assessment of potential cancer and chronic noncancer health effects. The results of this assessment indicate that all seven POTW have a facility-wide noncancer TOSHI less than 1, four of the POTW have a facility-wide cancer risk estimated less than 1-in-1 million, and three of the POTW have a facility-wide cancer risk estimated at or above 10-in-1 million. The highest facility-wide MIR was 60-in-1 million driven by formaldehyde from internal combustion engines which are covered under the NESHAP for the Stationary Reciprocating Internal Combustion Engines source category. For this POTW with the highest facility-wide MIR, the facility-wide emissions of formaldehyde are 22 tpy while the source category emissions of formaldehyde are 0.0026 tpy, which indicates that almost 100 percent of the estimated cancer risk is from emissions sources that are not part of the POTW source category. This ratio of source category emissions relative to facility-wide emissions of formaldehyde is the same for the other two POTW with facility-wide cancer risk estimated at or above 10-in-1 million. Therefore, it is reasonable to conclude that all 13 POTW have estimated cancer risk close to or below 1-in-1 million from source category emissions and we retain our proposed determination that risk is acceptable. Further, as discussed in the December 27, 2016, RTR proposal (81 FR 95373), we retain our determination that, considering the costs, economic impacts and technological feasibility of additional standards to reduce risk further, the 2002 POTW NESHAP provides an ample margin of safety to protect public health and prevents an adverse environmental effect. Details of this risk assessment are described in the

Residual Risk Assessment for the Publicly Owned Treatment Works Source Category in Support of the October 2017 Risk and Technology Review Final Rule found in the docket for this rulemaking.

Most of the commenters on the proposed risk review supported our risk acceptability and ample margin of safety determinations for the POTW NESHAP. Some commenters requested that we make changes to our residual risk review approach. However, we evaluated the comments and determined that no changes to our risk assessment methods or conclusions are warranted. A summary of these comments and responses are in the comment summary and response document, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2016-0490).

Since proposal, our risk assessment has been broadened to include additional POTW; however, the conclusions of our risk assessment and our determinations regarding risk acceptability, ample margin of safety, and adverse environmental effects have not changed. For the reasons explained in the proposed rule and discussed above, we determined that the risks from the POTW source category are acceptable, and that the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

B. Technology Review for the POTW Source Category

As described in the December 27, 2016, RTR proposal (81 FR 95373), and as provided by CAA section 112(d)(6), our technology review focused on identifying developments in the practices, processes, and control technologies for the POTW source category. We concluded that there are two different control options that may be used at a POTW to reduce HAP emissions: pretreatment programs and add-on controls (*i.e.*, covers or covers vented to a control device). While we proposed specific revisions to the standards, none of those revisions were the result of any identified developments in practices, processes, or control technologies beyond the programs and controls already in use at the time of the promulgation of the original 40 CFR part 63, subpart VVV rulemaking.

Comment: We received various comments related to the information evaluated for the proposal. Two commenters stated that there is no technical basis that requires the EPA to revise the standards since there have

been no technology advances since 1998 that warrant a change in the original MACT analysis. Several commenters provided additional information on specific control technologies, including biofilters, caustic scrubbers, and carbon absorbers. One of these commenters stated that biofilters are not reliable control devices in the context of a POTW because they are designed for stable operating conditions. In contrast, another commenter provided information that biofilters might have the ability to reduce HAP in addition to hydrogen sulfide (H₂S) and volatile organic compounds (VOC). Additional comments on the technology review can be found in section 3 of the response to comments document in the docket for this rule (EPA-HQ-OAR-2016-0490).

Response: The EPA conducted a literature review and evaluated available studies and publications on the use of add-on controls and process modifications that are used to reduce emissions from POTW wastewater collection and treatment operations. As noted by the commenters, these technologies include biotrickling filters, the use of covers and ducting of the headspace vent stream to caustic scrubbers and carbon adsorbers, and biofiltration/biofilters. These types of technologies have been used historically at POTW where they provide a relatively high degree of H₂S control for the purpose of preventing odor. As documented in the technology review memorandum and reflected in the comments received on the proposed rule, the efficacy of these technologies to reduce HAP emissions is highly variable and dependent on site-specific operating parameters. Our conclusion is that the experience with biofilters for controlling organics at POTW is at the experimental and pilot scale and that this technology has not been demonstrated to be commercially available and effective for controlling the range of HAP emitted by POTW. Thus, we do not consider this technology to be a development in practices, processes, or control technologies for purposes of this technology review. Scrubbers are generally not used to control emissions of organic constituents, and while carbon adsorbers may be effective at HAP control in certain applications, as used in POTW, they are generally not designed for HAP control. Nevertheless, 40 CFR part 63, subpart VVV allows flexibility for POTW to develop site-specific control strategies to meet any applicable requirements, and such strategies could include the use of biologic filters and carbon adsorbers

that can achieve the required control levels.

As stated in section III.B of this preamble, we did not identify any developments in practices, processes, or control technology with respect to programs and controls already in use when the 2002 POTW NESHAP was promulgated that warrant revisions to the standards as part of the technology review of the POTW NESHAP.

C. Applicability Criteria

The 2002 POTW NESHAP established three criteria (40 CFR 63.1580(a)(1), (2), and (3)) for determining what POTW are subject to the rule. Specifically, the following criteria must all be true: (1) You own or operate a POTW that includes a POTW treatment plant; (2) the POTW is a major source of HAP emissions, or an industrial POTW regardless of the HAP emissions; and (3) the POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8. The EPA proposed to revise the applicability criteria in order to clarify the original intent of the rule. Specifically, we proposed to revise the first and second criteria in 40 CFR 63.1580(a)(1) and (2) to state that your POTW is subject to the POTW NESHAP if “(1) You own or operate a POTW that is a major source of HAP emissions; or (2) you own or operate a Group 1 POTW regardless of whether or not it is a major source of HAP.” As stated in the proposal, we proposed this revision because we found several instances where a POTW might not realize they are subject to the standards, or where the applicability criteria could be misinterpreted to exclude facilities that are covered by the rule. See 81 FR 95377.

The third applicability criterion in the 2002 POTW NESHAP states that “(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 (for a POTW owned or operated by a municipality, state, or intermunicipal or interstate agency), or your POTW would meet the general criteria for development and implementation of a pretreatment program (for a POTW owned or operated by a department, agency, or instrumentality of the Federal government).” We proposed revising the third criterion in 40 CFR 63.1580(a)(3) to state “You are subject to this subpart if your POTW has a design capacity to treat at least 5 million gallons of wastewater per day (MGD) and treats wastewater from an industrial user, and either paragraph (a)(1) or (a)(2) is true.” This proposed revision removed the requirement that a POTW must already have a pretreatment program in place in

order to be subject to the rule. The proposed revisions were intended to clarify the intent of the rule, which was to limit applicability to POTW that treat at least 5 MGD and wastewater from industrial users.

Comment: We received numerous comments that raised specific concerns related to these proposed changes. First, commenters disagreed that the proposed changes were necessary and stated that the proposed changes created confusion and changed the scope of affected sources. One commenter stated that the applicability of 40 CFR part 63, subpart VVV has been well-defined for over 17 years, and if sources are confused, the EPA has methods to correct any confusion without making rule changes.

Several commenters specifically objected to the proposed change that removed pretreatment from the third applicability criterion and made it a requirement of the rule. These commenters stated that removing pretreatment as an applicability criterion and making it a requirement changes the source category that the EPA intended to control. One state commented that this proposed change would cause an additional 12 POTW in their state to become subject to the rule. The commenter explained that because the state (not the POTW) implements the National Pollutant Discharge Elimination System (NPDES) pretreatment program, the original rule does not apply to any POTW in that state.

Response: As stated in the proposal, the EPA did not intend to expand the applicability criteria from the 2002 POTW NESHAP. After consideration of the comments received, we agree that implementing the proposed changes to rule applicability could have caused confusion among the regulated community without a demonstrable environmental benefit. Therefore, at this time, we are not making any substantive change to the 2002 POTW NESHAP third applicability criterion and are not adopting the proposed applicability criterion of 5 MGD. However, it is important to note that the requirements in the National Pretreatment Program do establish a 5 MGD threshold for applicability.

In response to the apparent potential for misinterpretation of the regulatory text that is reflected in the state’s comment, we are making one minor change to clarify our interpretation and the intent of 40 CFR 63.1580(a)(3). In developing the 2002 POTW NESHAP, we wrote the rule to apply to POTW that receive a significant amount of HAP-containing waste from industrial or commercial facilities. In developing the

rule language, we sought to define such POTW by using a regulatory criterion that was already established and well understood in the industry. We selected the criterion that the POTW be subject to a pretreatment program under the NPDES program because this criterion would encompass industrial and commercial wastes with HAP that pass through the POTW untreated and that could present a safety or health concern to POTW workers. In adopting this criterion, we did not limit applicability based on the entity that administers the program. In other words, the criterion encompasses every POTW that receives a waste stream that is subject to pretreatment standards, regardless of whether the standards are prescribed by the POTW itself or by a state or federal regulatory body. Thus, to make sure that the regulatory text is properly read, we have revised 40 CFR 63.1581(a)(3) to make clear that a POTW is subject to this rule if either (1) the POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8, or (2) the POTW meets the general criteria for development and implementation of a pretreatment program, even if does not develop and implement the pretreatment program itself. Specifically, we have removed the parenthetical text in 40 CFR 63.1580(a)(3) that limited the first part of the third criterion to POTW owned or operated by a municipality, state, or intermunicipal or interstate agency and limited the second part of the third criterion to POTW owned or operated by a department, agency, or instrumentality of the federal government.

D. Emissions From Collection Systems

In the 2016 proposal, we stated that HAP emissions from collection systems should be included when determining whether the POTW is a major source, and therefore, subject to the rule. Specifically, we stated that the 2002 applicability criteria in 40 CFR 63.1580(a)(2) provided that emissions from the entire POTW source category must be considered when determining whether the POTW is a major source of HAP emissions, and not just the emissions from the POTW treatment plant (*i.e.*, the portion of the POTW designed to provide treatment of municipal sewage or industrial waste).

Comment: Several commenters opposed including emissions from collection systems in the determination of whether a POTW is a major source. The commenters stated that collection systems/sewers may include hundreds or thousands of miles of sewers and other equipment, are not always under

the jurisdiction of the POTW, and are typically owned by another entity.

We also received comments that stated the inclusion of emissions from collection systems for major source determination is inconsistent with the federal definition of a major source. One commenter stated that expansion of the major source definition to include collection sewers as part of the affected source is not authorized under section 112 of the CAA. The commenter also stated that the equipment that collect and convey wastewater to a POTW treatment plant do not reasonably constitute a "building, structure, facility, or installation" as specified in the definition of a stationary source in section 112(a)(3) of the CAA, are clearly not within a contiguous area under common control, and should not be considered a single source. Commenters noted that the determination of a major source of HAP emissions should be limited to emission sources within the fence line of each treatment plant, which would be consistent with the fact that the emission fraction requirement of the proposed POTW NESHAP is limited to emissions within the treatment plant. Further, one commenter contended that excluding collection system emissions in POTW major source determinations is also supported by *Alabama Power Co. v. Costle* and EPA's response to that decision.

Commenters also noted that the emission data reviewed by the EPA in developing the proposed rule represented the HAP emissions from the POTW treatment plant only. One commenter noted that the risk assessment did not include emissions from collection systems. Several commenters disagreed with the EPA's statement in the preamble to the proposed rule that collection systems may have significant HAP emissions. Some commenters suggested that emissions from collection systems are insignificant and in some cases collection systems are operated under a vacuum to control odors. However, none of the commenters provided data to demonstrate the level of HAP emissions from collection systems.

Response: Considering these comments, the EPA is not taking final action at this time on any changes to the emission sources that must be considered when determining if a POTW is a major source of HAP emissions. Specifically, the EPA is not taking action on whether emissions from collection systems should be included in the total HAP emissions from a POTW. The determination of source boundaries is a site-specific and

often a complex determination. Facilities work with their permitting authority to consider factors such as whether activities and equipment are in a contiguous area and whether they are under common control. In contemplating the comments, the EPA has decided that we do not have enough information on individual POTW, including information on the jurisdiction of the control of collection system equipment or information on whether this equipment should be considered contiguous with the POTW treatment plant. Also, data on HAP emissions from collection systems are not well understood, and we are not aware of accepted methods for measuring or calculating emissions from collection systems at this time. In addition, we understand that these source boundary determinations have already been made for the approximately 16,000 POTW through Title V applicability assessment. For these reasons, we are not taking final action at this time to change these determinations. We may take action in the future if we obtain additional information on source boundary issues (*i.e.*, common control, contiguous area), HAP emissions, and other information related to the issues described above.

With respect to new sources, we expect new sources to consult their permitting authorities on these matters as they plan for new construction. The EPA considers these determinations on source boundaries to be appropriately under the jurisdiction of the permitting authority. Accordingly, to avoid regulatory disruption, this final rule takes no action to change the definition of POTW. The definition of POTW remains the same as originally promulgated and continues to include ". . . any intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment." Likewise, we are not taking final action at this time to revise the originally promulgated definition of the affected source. The definition of affected source continues to mean the "group of all equipment that comprise the POTW treatment plant."

E. Pretreatment Requirements

As stated in section IV.C of this preamble, the EPA proposed removing pretreatment from the applicability criteria and making it a control requirement for new and existing sources. We proposed adding pretreatment requirements in the rule because pretreatment would reduce HAP emissions from the entire source category (*i.e.*, collection systems and the treatment plant) by limiting the quantity

of HAP in the wastewater before it is discharged to the collection system. The intent of this requirement was to reduce the pollutant loading into the POTW in order to reduce emissions throughout all stages of treatment.

Comment: Several commenters objected to the EPA requiring a pretreatment program for HAP emissions. Commenters disagreed with the EPA's contention that a pretreatment program will reduce emissions of HAP by reducing the presence of toxic gases. Specifically, commenters noted that a "pretreatment program under CAA Section 112 is not the same as a pretreatment program under the Clean Water Act (CWA)", as 40 CFR 403 authorizes POTW to set pretreatment requirements for air contaminants for worker and plant safety, and to prevent interference and pass through. One commenter contended that the proposed rule expands the CAA regulatory framework into the CWA National Pretreatment Program without a legal basis.

Additionally, several commenters opposed requiring POTW to develop local limits and expressed concerns about the way in which local limits should be determined. Instead, commenters suggested that the EPA establish wastewater concentration limits for HAP to identify pollutants that may need local limits. One commenter stated that the EPA should either "regulate industrial users directly for HAP or provide technically-based wastewater concentrations for HAP that POTW could use for screening (where analytical methods exist under 40 CFR part 136)" to determine the need for establishing local limits.

Commenters also expressed concerns about the costs related to requiring pretreatment programs wherein POTW evaluate and set local limits for volatile organic HAP. The commenters stated that developing local limits to identify pollutants of concern, as well as identify potential pretreatment controls, would require significant time and that the significant costs these requirements would impose on POTW have not been quantified or justified. In contrast, one commenter stated that categorical limits set by the EPA pursuant to the CWA for certain industries could merit consideration, but additional analysis is required.

Response: In response to these comments, we are not taking final action at this time to require pretreatment as a control requirement for the revised NESHAP. As explained in section IV.C of this preamble, we are not changing the applicability criteria for 40 CFR part 63, subpart VVV. The existence of a

pretreatment program under the CWA will continue to be one of the three rule applicability criteria.

The EPA Office of Water is responsible for administering the pretreatment program and updates the requirements of the pretreatment program based on the best available technology and taking into account cost effectiveness. As the pretreatment requirements are modified through future updates, additional HAP reductions may occur. Because all of the POTW that are subject to the rule already have pretreatment programs, specifically requiring pretreatment under the NESHAP would not reduce HAP emissions further, but could cause confusion and increase compliance costs. Thus, we are not finalizing any revisions at this time to impose additional pretreatment requirements prior to discharging a wastewater stream to a receiving POTW. Pretreatment will continue to be handled under the authority of the CWA. By retaining the existing regulatory structure of the NESHAP, the EPA avoids redundancy and confusion in having pretreatment requirements included in both air and water permits.

F. HAP Fraction Emitted for Existing Group 1 and Group 2 Sources

In the 2016 proposal, we proposed that existing Group 1 and Group 2 POTW operate with an annual rolling average HAP fraction emitted from primary treatment units of 0.08 or less. As stated in the proposal, we believed that the existing POTW we knew about could meet this standard without the need for additional control.

Comment: We received numerous comments that opposed the proposed HAP fraction emission limit, and we received additional data to suggest the proposed 0.08 HAP fraction limit was not appropriate and did not accurately account for variability in HAP loading at individual POTW.

Several commenters objected that merely doubling the single largest HAP fractions from the two available sources was not a scientifically or statistically valid method for setting the emission limit and stated that the EPA had provided no support for using the 2x factor to account for variability of emissions. For example, the commenters collectively pointed out that the two POTW on which the proposed standard was based were operating at half capacity, that the available data represent merely a snapshot in time, that other potentially regulated POTW might emit higher HAP fractions, and that the specific combination of HAP measured by the

two POTW might not be representative of HAP emitted by other POTW. One commenter suggested that due to the uncertainty associated with such a small data set, the EPA should use a larger multiplier for setting a standard.

Additionally, commenters stated that the EPA had underestimated the cost of achieving compliance with the 0.08 HAP fraction emitted standard. Specifically, commenters stated that in order to comply, they would incur capital and operating costs, in addition to the recordkeeping and reporting costs that the EPA accounted for in the proposal. One commenter stated that they would potentially need to install covers and controls in order to meet the HAP fraction emitted limit, which would be an expense of \$20 to \$30 million with negligible emission reductions. Two commenters argued that the compliance cost for the proposed standard was not warranted given the low public health risk that the EPA estimated. Commenters further recommended that the EPA gather more complete data from the universe of affected sources, conduct statistical analysis of those data, and determine a suitable standard based on an acceptable level of risk and variability of the data.

Response: After reviewing public comments and re-evaluating our analysis, we are not taking final action to adopt the 0.08 HAP fraction emitted limit for existing Group 1 and Group 2 POTW at this time. The proposed HAP fraction emitted limit did not reflect the performance or application of a specific control technology. At proposal, we envisioned this limit as an enforceable numerical limit that would ensure performance consistent with that being achieved by existing sources. However, after consideration of the information provided in public comment, we now recognize that we do not have the comprehensive data on existing POTW that are necessary to conduct a sufficiently robust analysis. The HAP fraction emitted by different POTW is influenced by individual HAP vapor pressures, pollutant loadings, HAP concentrations, sample measurement and analytical techniques, and ambient conditions, which differ from POTW to POTW. Testing of influent loadings is limited by applicable test methods, by compounds identified by dischargers, and by the HAP for which air permits require sampling. Without sufficient data, we cannot determine an appropriate HAP fraction emitted limit, considering the variability in operating conditions that is likely to occur across even well-operated POTW. Moreover, at this time, we are unable to analyze the

control costs for all affected sources or the emissions reductions that might be achieved. For all of these reasons, we are not taking final action on the proposed 0.08 HAP fraction at this time, but we may in the future consider promulgating a limit if we obtain further information on the issues discussed above.

G. New and Existing Group 1 POTW

In addition to proposing a HAP fraction for existing Group 1 POTW, we also proposed other changes to the requirements for Group 1 POTW.

The 2002 POTW NESHAP required existing Group 1 POTW to comply only with the requirements of the other NESHAP for which they are acting as an agent of control for the industrial user. We proposed that existing Group 1 POTW must meet both the requirements of the other NESHAP for which they are acting as an agent of control for an industrial user and the proposed requirements for existing Group 2 POTW in the POTW NESHAP (*i.e.*, the proposed 0.08 HAP fraction emitted limit discussed in IV.F, above).

The 2002 POTW NESHAP required new and reconstructed (which we are now referring to as “new”) Group 1 POTW to comply with the more stringent of the following: (1) The requirements of the other NESHAP for which they are acting as an agent of control for the industrial user; or (2) the requirements applicable to new Group 2 POTW, which allowed the POTW to choose to meet either a requirement to (a) cover all equipment and route emissions through a closed vent system to a control device; or (b) meet a HAP fraction emission limit of 0.014 for emissions from all primary treatment units. We proposed that new Group 1 POTW comply with the other NESHAP for which they are acting as an agent of control for an industrial user and the requirements for new Group 2 POTW in the 2002 POTW NESHAP. (Note that we did not propose, and are not finalizing, any revisions to the requirements for new Group 2 POTW.)

1. Existing Group 1 POTW

Comment: We received comments from one of the existing Group 1 POTW that expressed concern that by imposing the HAP fraction emitted limit on the existing Group 1 POTW with no alternative compliance option, the EPA had ignored existing POTW with covers and controls already in place. The commenter stated that new Group 1 POTW have the option of either installing covers or complying with the HAP fraction limit. However, the EPA did not provide that flexibility to

existing Group 1 POTW, thereby imposing an additional HAP fraction limit without a cover option and more onerous recordkeeping and reporting requirements. The commenter stated that the EPA should provide existing Group 1 POTW that already use covers the option of adding controls in lieu of complying with a HAP fraction limit.

Response: The EPA is not taking final action on the proposed changes for existing Group 1 sources at this time. As explained in section IV.F of this preamble, we are not setting a HAP fraction limit for existing Group 1 or Group 2 POTW at this time; therefore, no additional requirements are being added for existing Group 1 POTW in the POTW NESHAP. Thus, as required by the 2002 POTW NESHAP, an existing Group 1 POTW must comply with the control requirements as specified in the appropriate NESHAP for the industrial user(s).

2. New Group 1 POTW

We did not receive any comment on our proposed revision to the requirements for new Group 1 POTW. We proposed, and are finalizing, that new Group 1 POTW must (1) meet the requirements of the other NESHAP for which they act as an agent of control for an industrial user and (2) either (a) cover all equipment and route emissions through a closed vent system to a control device or (b) meet a HAP fraction emission limit of 0.014 for emissions from all primary treatment units. See 81 FR 95375 for our rationale for this change. Because we received no adverse comment on our proposal, we are finalizing these requirements as proposed.

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

A. What are the affected facilities?

The EPA estimates, based on the responses to the 2015 ICR, the 2011 and 2014 National Emissions Inventory (NEI), and public comments received, that there are 13 POTW that are engaged in treatment of industrial wastewater and are currently subject to the POTW NESHAP. Two of these facilities are considered Group 1 POTW, while the remaining eleven are considered Group 2 POTW. All 13 currently subject to the POTW NESHAP have already met the notification requirements for existing Group 1 and Group 2 POTW. The EPA is not currently aware of any planned new Group 1 or Group 2 POTW that will be constructed or any existing Group 1 or Group 2 POTW that will be reconstructed.

B. What are the air quality impacts?

The EPA estimates that annual organic HAP emissions from the 13 POTW subject to the rule are approximately 35 tpy. We expect no emissions of inorganic HAP from this category. The EPA does not anticipate any additional emission reductions from the final changes to the rule, and there are no anticipated new or reconstructed facilities.

C. What are the cost impacts?

The 13 entities subject to this proposal will incur only minimal costs related to familiarizing themselves with this rule—estimated to be a one-time total cost of \$790 for all 13 entities. For further information on the requirements of this rule, see section IV of this preamble. For further information on the costs associated with the requirements of this rule, see the document titled *Economic Impact Analysis for the National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works Risk and Technology Review*, in the docket. The memorandum titled *Technology Review Memorandum for the Publicly Owned Treatment Works Source Category*, in the docket for this action, presents costs estimated associated with the regulatory options that were not selected for inclusion in this final rule (Docket ID No. EPA-HQ-OAR-2016-0490).

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. For this rule, the EPA estimated the annual cost of recordkeeping and reporting as a percentage of reported sewage fees received by the affected POTW. For the revisions promulgated in this final rule, costs are expected to be less than 0.001 percent of collected sewage fees, based on publicly available financial reports from the fiscal year ending in 2015 for the affected entities.

In addition, the EPA performed a screening analysis for impacts on small businesses by comparing estimated population served by the affected entities to the population limit set forth by the U.S. Small Business Administration. The screening analysis found that the population served for all affected entities is greater than the limit qualifying a public entity as a small business.

More information and details of the EPA's analysis of the economic impacts, including the conclusions stated above, are provided in the technical document,

Final Economic Impact Analysis for the Publicly Owned Treatment Works National Emissions Standards for Hazardous Air Pollutants Risk and Technology Review, which is available in the docket for this final rule (Docket ID No. EPA-HQ-OAR-2016-0490).

E. What are the benefits?

We do not anticipate any significant reductions in HAP emissions as a result of these final amendments. However, we think that the amendments will help to enhance the clarity of the rule, which can improve compliance and minimize emissions.

F. What analysis of environmental justice did we conduct?

We examined the potential for any environmental justice concerns that might be associated with this source category by performing a demographic analysis of the population close to the six POTW that were modeled for source category risk.⁴ In this analysis, we evaluated the distribution of HAP-related cancer and non-cancer risks from the POTW source category across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks. The methodology and the results of the demographic analyses are included in a technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near POTW Facilities*, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2016-0490). The results for various demographic groups are based on the estimated risks from actual emissions levels for the population living within 50 kilometers (km) of the facilities.

The results of the POTW source category demographic analysis indicate that actual emissions from the source category expose no person to a cancer risk at or above 1-in-1 million or to a chronic non-cancer TOSHI greater than 1. Therefore, we conclude that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. However, this final rule may provide additional benefits to these demographic groups by improving the compliance and implementation of the NESHAP. The demographics of the population living within 50 km of POTW can be found in Table 2 of the document titled *Risk and Technology*

⁴ See section IV.A of this preamble for an explanation of the residual risk assessment.

Review—Analysis of Socio-Economic Factors for Populations Living Near Publicly Owned Treatment Works, available in the docket for this final rule (Docket ID No. EPA–HQ–OAR–2016–0490).

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The results of the POTW source category demographic analysis indicate that actual emissions from the source category expose no person to a cancer risk at or above 1-in-1 million or to a chronic non-cancer TOSHI greater than 1. Therefore, the analysis shows that actual emissions from the POTW source category are not expected to have an adverse human health effect on children.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1891.08. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information to be collected includes the initial notification that the POTW is subject to the rule. However, as stated in this preamble, the 13 sources that we already know about

have already met this initial notification requirement and are not required to submit an additional notification. The information will be used to identify sources subject to the standards.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners and operators of POTW. The NAICS code for the respondents affected by the standard is 221320 (Sewage Treatment Facilities), which corresponds to the United States Standard Industrial Classification code 4952 (Sewerage Systems).

Respondent's obligation to respond: Respondents are obligated to respond in accordance with the notification requirements under 40 CFR 63.1591(a).

Estimated number of respondents: Zero.

Frequency of response: One response.

Total estimated burden: 0 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$0 (per year), includes \$0 annualized capital or operation and maintenance costs.

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

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities affected in this regulated industry. See the technical document, *Final Economic Impact Analysis for the National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works Risk and Technology Review*, which is available in the docket for this final rule (Docket ID No. EPA–HQ–OAR–2016–0490) for more detail.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. As discussed in section II.B.1 of this preamble, we have identified only 13 POTW that are subject to this final rule and none of those POTW are owned or operated by tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

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

The documentation for this decision is contained in section III.A.6 of this preamble and in the corresponding

technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Publicly Owned Treatment Works*, available in the docket for this action. The proximity results indicate, for eight of the 11 demographic categories, that the population percentages within 5 km and 50 km of source category emissions are greater than the corresponding national percentage for those same demographics. However, the results of the risk analysis presented in section III.A.6 of this preamble and in the corresponding technical report indicate that actual emissions from the source category expose no person to a cancer risk at or above 1-in-1 million or to a chronic non-cancer TOSHI greater than 1.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: October 16, 2017.

E. Scott Pruitt,
Administrator.

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

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

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

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

■ 2. Part 63 is amended by revising subpart VVV to read as follows:

Subpart VVV—National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

Applicability

Sec.

63.1580 Am I subject to this subpart?

63.1581 Does the subpart distinguish between different types of POTW treatment plants?

Requirements for Group 1 POTW Treatment Plants

63.1582 [Reserved]

63.1583 What are the emission points and control requirements for a Group 1 POTW treatment plant?

63.1584 [Reserved]

63.1585 How does a Group 1 POTW treatment plant demonstrate compliance?

Requirements for Group 1 and Group 2 POTW Treatment Plants

63.1586 What are the emission points and control requirements for a Group 1 or Group 2 POTW?

63.1587 When do I have to comply?

63.1588 How do Group 1 and Group 2 POTW treatment plants demonstrate compliance?

63.1589 What records must I keep?

63.1590 What reports must I submit?

63.1591 What are my notification requirements?

63.1592 Which General Provisions apply to my POTW treatment plant?

63.1593 [Reserved]

63.1594 Who enforces this subpart?

63.1595 List of definitions.

Table 1 to Subpart VVV of Part 63—
Applicability of 40 CFR part 63 General Provisions to Subpart VVV

Table 2 to Subpart VVV of Part 63—
Compliance Dates and Requirements

Subpart VVV—National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

Applicability

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if the following are all true:

(1) You own or operate a publicly owned treatment works (POTW) that includes an affected source (§ 63.1595);

(2) The affected source is located at a Group 2 POTW which is a major source of HAP emissions, or at any Group 1 POTW regardless of whether or not it is a major source of HAP; and

(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8, or your POTW meets the general criteria for development and implementation of a pretreatment program.

(b) If your existing POTW treatment plant is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW treatment plant would be considered an existing source.

Note to paragraph (b): See § 63.2 of the National Emission Standards for Hazardous Air Pollutants (NESHAP) General Provisions in subpart A of this part for the definitions of major source and area source.

(c) If you commence construction or reconstruction of your POTW treatment plant after December 1, 1998, then the requirements for a new POTW apply.

§ 63.1581 Does the subpart distinguish between different types of POTW treatment plants?

Yes, POTW treatment plants are divided into two subcategories: Group 1 POTW treatment plants and Group 2 POTW treatment plants, as described in paragraphs (a) through (c) of this section.

(a) Your POTW is a Group 1 POTW treatment plant if an industrial user complies with its NESHAP by using the treatment and controls located at your POTW treatment plant. Your POTW treatment plant accepts the regulated waste stream and provides treatment and controls as an agent for the industrial user. Group 1 POTW treatment plant is defined in § 63.1595.

(b) Your POTW is a Group 2 POTW treatment plant if your POTW treats wastewater that is not subject to control by another NESHAP or the industrial user does not comply with its NESHAP by using the treatment and controls located at your POTW treatment plant. “Group 2 POTW treatment plant” is defined in § 63.1595.

(c) If, in the future, an industrial user complies with its NESHAP by using the treatment and controls located at your POTW treatment plant, then your Group 2 POTW treatment plant becomes a Group 1 POTW treatment plant on the date your POTW begins treating that regulated industrial wastewater stream.

Requirements for Group 1 POTW Treatment Plants

§ 63.1582 [Reserved]

§ 63.1583 What are the emission points and control requirements for a Group 1 POTW treatment plant?

(a) The emission points and control requirements for an existing Group 1 POTW treatment plant are specified in the appropriate NESHAP for the industrial user(s).

(b) The emission points and control requirements for a new Group 1 POTW treatment plant are both those specified by the appropriate NESHAP which apply to the industrial user(s) who discharge their waste for treatment to the POTW, and those emission points and control requirements set forth in § 63.1586(b) or (c), as applicable.

(c) If your existing or new Group 1 POTW treatment plant accepts one or more specific regulated industrial waste streams as part of compliance with one or more other NESHAP, then you are subject to all the requirements of each appropriate NESHAP for each waste stream.

(d) At all times, the POTW must operate and maintain any affected source, including associated air

pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the POTW to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.1584 [Reserved]

§ 63.1585 How does a Group 1 POTW treatment plant demonstrate compliance?

(a) An existing Group 1 POTW treatment plant demonstrates compliance by operating treatment and control devices which meet all requirements specified in the appropriate NESHAP. Requirements may include performance tests, routine monitoring, recordkeeping, and reporting.

(b) A new Group 1 POTW treatment plant demonstrates compliance by operating treatment and control devices which meet all requirements specified in the appropriate NESHAP and by meeting the requirements specified in § 63.1586, as applicable, as well as the applicable requirements in §§ 63.1588 through 63.1595.

Requirements for Group 1 and Group 2 POTW Treatment Plants

§ 63.1586 What are the emission points and control requirements for a Group 1 or Group 2 POTW?

(a) An existing Group 1 or Group 2 POTW treatment plant must comply with the initial notification requirements in § 63.1591(a).

(b) *Cover and control standard.* Except as provided in paragraph (c) of this section, new Group 1 and Group 2 POTW treatment plants must install covers on the emission points up to, but not including, the secondary influent pumping station or the secondary treatment units. These emission points are treatment units that include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations. In addition, all covered units, except

primary clarifiers, must have the air in the headspace underneath the cover ducted to a control device in accordance with the standards for closed-vent systems and control devices in § 63.693 of subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-site Waste and Recovery Operations of this part, except you may substitute visual inspections for leak detection rather than Method 21 of appendix A-7 of part 60 of this chapter. Covers must meet the following requirements:

(1) Covers must be tightly fitted and designed and operated to prevent exposure of the wastewater to the atmosphere. This includes, but is not limited to, the absence of visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) If wastewater is in a treatment unit, each opening in the cover must be maintained in a closed, sealed position, unless plant personnel are present and conducting wastewater or sludge sampling, or equipment inspection, maintenance, or repair.

(c) *HAP fraction emitted standard.* As an alternative to the requirements in paragraph (b) of this section, a new Group 1 and Group 2 POTW treatment plant may comply by demonstrating, for all emission points up to, but not including, the secondary influent pumping station or the secondary treatment units, that the annual rolling average HAP fraction emitted (calculated as specified in § 63.1588(c)(3)) does not exceed 0.014. You must demonstrate that for your POTW treatment plant, the sum of all HAP emissions from these units divided by the sum of all HAP mass loadings to the POTW treatment plant results in an annual rolling average of the HAP fraction emitted of no greater than 0.014. You may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard.

(d) At all times, the POTW must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the POTW to make any further efforts to reduce emissions if the requirements of the applicable standard have been met. Determination of whether a source is

operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.1587 When do I have to comply?

Sources subject to this subpart are required to achieve compliance on or before the dates specified in table 2 of this subpart.

§ 63.1588 How do Group 1 and Group 2 POTW treatment plants demonstrate compliance?

(a) If you are complying with § 63.1586(b) by using covers, you must conduct the following inspections:

(1) You must visually check the cover and its closure devices for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) You must perform an initial visual inspection within 60 calendar days of becoming subject to this NESHAP and perform follow-up inspections at least once per year, thereafter.

(3) In the event that you find a defect on a cover on a treatment unit in use, you must repair the defect within 45 calendar days. If you cannot repair within 45 calendar days, you must notify the EPA or the delegated authority immediately and report the reason for the delay and the date you expect to complete the repair. If you find a defect on a cover on a treatment unit that is not in service, you must repair the defect prior to putting the treatment unit back in wastewater service.

(b) If you own or operate a control device used to meet the requirements for § 63.1586(b), you must comply with the inspection and monitoring requirements of § 63.695(c) of subpart DD of this part.

(c) To comply with the HAP fraction emitted standard specified in § 63.1586(c), you must develop, to the satisfaction of the Administrator, an Inspection and Monitoring Plan. This Inspection and Monitoring Plan must include, at a minimum, the following:

(1) A method to determine the influent HAP mass loading, *i.e.*, the annual mass quantity for each HAP entering the wastewater treatment plant.

(2) A method to determine your POTW treatment plant's annual HAP emissions for all units up to, but not including, the secondary influent pumping station or the secondary treatment units. The method you use to determine your HAP emissions, such as modeling or direct source measurement, must:

(i) Be approved by the Administrator for use at your POTW;

(ii) Account for all factors affecting emissions from your POTW treatment plant including, but not limited to, emissions from wastewater treatment units; emissions resulting from inspection, maintenance, and repair activities; fluctuations (*e.g.*, daily, monthly, annual, seasonal) in your influent wastewater HAP concentrations; annual industrial loading; performance of control devices; or any other factors that could affect your annual HAP emissions; and

(iii) Include documentation that the values and sources of all data, operating conditions, assumptions, etc., used in your method result in an accurate estimation of annual emissions from your POTW treatment plant.

(3) A method to demonstrate that your POTW treatment plant meets the HAP fraction emitted standard specified in § 63.1586(c), *i.e.*, the sum of all HAP emissions from paragraph (c)(2) of this section divided by the sum of all HAP mass loadings from paragraph (c)(1) of this section results in a fraction emitted of 0.014 or less to demonstrate compliance with § 63.1586(c). The Inspection and Monitoring Plan must require, at a minimum, that you perform the calculations shown in paragraphs (c)(3)(i) through (viii) of this section within 90 days of the end of each month. This calculation shall demonstrate that your annual rolling average of the HAP fraction emitted is 0.014 or less when demonstrating compliance with § 63.1586(c).

(i) Determine the average daily flow in million gallons per day (MGD) of the wastewater entering your POTW treatment plant for the month;

(ii) Determine the flow-weighted monthly concentration of each HAP listed in Table 1 to subpart DD of this part that is reasonably anticipated to be present in your influent;

(iii) Using the information in paragraphs (c)(3)(i) and (ii) of this section, determine a total annual flow-weighted loading in pounds per day (lbs/day) of each HAP entering your POTW treatment plant;

(iv) Sum up the values for each individual HAP loading in paragraph (c)(3)(iii) of this section and determine a total annual flow-weighted loading

value (lbs/day) for all HAP entering your POTW treatment plant for the current month;

(v) Based on the current month's information in paragraph (c)(3)(iii) of this section along with source testing and emission modeling, for each HAP, determine the annual emissions (lbs/day) from all wastewater units up to, but not including, secondary treatment units;

(vi) Sum up the values in paragraph (c)(3)(v) of this section and calculate the total annual emissions value for the month for all HAP from all wastewater treatment units up to, but not including, secondary treatment units;

(vii) Calculate the HAP fraction emitted value for the month, using Equation 1 of this section as follows:

$$f_{\text{cmonthly}} = \sum E / \sum L \text{ (Eq. 1)}$$

Where:

f_{cmonthly} = HAP fraction emitted for the previous month

$\sum E$ = Total HAP emissions value from paragraph (c)(3)(v) of this section

$\sum L$ = Total annual loading from paragraph (c)(3)(iv) of this section

(viii) Average the HAP fraction emitted value for the month determined in paragraph (c)(3)(vii) of this section, with the values determined for the previous 11 months, to calculate an annual rolling average of the HAP fraction emitted.

(4) A method to demonstrate, to the satisfaction of the Administrator, that your POTW treatment plant is in continuous compliance with the requirements of § 63.1586(c). Continuous compliance means that your emissions, when averaged over the course of a year, do not exceed the level of emissions that allows your POTW to comply with § 63.1586(c). For example, you may identify a parameter(s) that you can monitor that assures your emissions, when averaged over the entire year, will meet the requirements in § 63.1586(c). Some example parameters that may be considered for monitoring include your wastewater influent HAP concentration and flow, industrial loading from your permitted industrial users, and your control device performance criteria. Where emission reductions are due to proper operation of equipment, work practices, or other operational procedures, your demonstration must specify the frequency of inspections and the number of days to completion of repairs.

(d) Prior to receiving approval on the Inspection and Monitoring Plan, you must follow the plan submitted to the Administrator as specified in § 63.1590(f).

§ 63.1589 What records must I keep?

(a) To comply with the cover and control standard specified in § 63.1586(b), you must prepare and maintain the records required in paragraphs (a)(1) through (4) of this section:

(1) A record for each treatment unit inspection required by § 63.1588(a). You must include a treatment unit identification number (or other unique identification description as selected by you) and the date of inspection.

(2) For each defect detected during inspections required by § 63.1588(a), you must record the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and the date the repair to correct the defect is completed.

(3) If repair of the defect is delayed as described in § 63.1588(a)(3), you must also record the reason for the delay and the date you expect to complete the repair.

(4) If you own or operate a control device used to meet the requirements for § 63.1586(b), you must comply with the recordkeeping requirements of § 63.696(a), (b), (g), and (h).

(b) To comply with the HAP fraction emitted standard specified in § 63.1586(c), you must prepare and maintain the records required in paragraphs (b)(1) through (3) of this section:

(1) A record of the methods and data used to determine your POTW treatment plant's annual HAP loading and HAP emissions as determined in § 63.1588(c)(1) and (2) as part of your Inspection and Monitoring Plan;

(2) A record of the methods and data used to determine that your POTW treatment plant meets the HAP fraction emitted standard of 0.014 or less, as determined in § 63.1588(c)(3) as part of your Inspection and Monitoring Plan; and

(3) A record of the methods and data that demonstrates that your POTW treatment plant is in continuous compliance with the requirements of § 63.1588(c)(4) to calculate annual emissions as specified in your Inspection and Monitoring Plan.

(c) The POTW must record the malfunction information specified in paragraphs (c)(1) through (3) of this section.

(1) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure, record the date, time, and duration of the failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment,

an estimate of the tons per year of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.1583(d) or § 63.1586(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(d) Any records required to be maintained by this part that are submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

§ 63.1590 What reports must I submit?

(a) An existing Group 1 POTW must meet the reporting requirements specified in the appropriate NESHAP for the industrial user(s).

(b) A new Group 1 or Group 2 POTW must submit annual reports containing the information specified in paragraphs (b)(1) through (4) of this section, if applicable. You must submit annual reports following the procedure specified in paragraph (b)(5) of this section. For new units, the initial annual report is due 15 months after your POTW becomes subject to the requirements in this subpart and must cover the first 12 months of operation after your POTW becomes subject to the requirements of this subpart. Subsequent annual reports are due by the same date each year as the initial annual report and must contain information for the 12-month period following the 12-month period included in the previous annual report.

(1) The general information specified in paragraphs (b)(1)(i) and (ii) of this section must be included in all reports.

(i) The company name, POTW treatment plant name, and POTW treatment plant address, including county where the POTW is located; and
(ii) Beginning and ending dates of the reporting period.

(2) If you use covers to comply with the requirements of § 63.1586(b), you must submit the following:

(i) The dates of each visual inspection conducted;

(ii) The defects found during each visual inspection; and

(iii) For each defect found during a visual inspection, how the defects were repaired, whether the repair has been completed, and either the date each

repair was completed or the date each repair is expected to be completed.

(3) If you comply with the HAP fraction emitted standard in § 63.1586(c), you must submit each value of the annual rolling average HAP fraction emitted as calculated in § 63.1588(c)(3)(vii) for the period covered by the annual report. Identify each value by the final month included in the calculation.

(4) If a source fails to meet an applicable standard, report such events in the annual report. Report the number of failures to meet an applicable standard. For each instance, report the start date, start time, and duration of each failure, as well as a list of the affected sources or equipment. If you comply with the cover and control standard in § 63.1586(b), for each failure, the report must include the percent control achieved. If you comply with the HAP fraction emitted standard in § 63.1586(c), for each failure, the report must include the HAP fraction emitted. You must include an estimate of the tons per year of each regulated pollutant emitted over the emission limit and a description of the method used to estimate the emissions in the report.

(5) You must submit the report to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method. Beginning on October 28, 2019 or once the reporting form has been available in CEDRI for 1 year, whichever is later, you must submit subsequent annual reports to the EPA via CEDRI. (CEDRI can be accessed through the EPA's Central Data Exchange (CDX)(<https://cdx.epa.gov/>)). You must use the appropriate electronic report template on the CEDRI Web site for this subpart or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the CEDRI Web site (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>). The date report templates become available in CEDRI will be listed on the CEDRI Web site. The reports must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. If you claim that some of the information required to be submitted via CEDRI is confidential business information (CBI), you shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI Web site, including information claimed to

be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(c) If you own or operate a control device used to meet the cover and control standard in § 63.1586(b), you must submit the notifications and reports required by § 63.697(b), including a notification of performance tests; a performance test report; a malfunction report; and a summary report. These notifications and reports must be submitted to the Administrator, except for performance test reports. Within 60 calendar days after the date of completing each performance test (as defined in § 63.2) required by subpart DD of this part, you must submit the results of the performance test following the procedure specified in paragraphs (c)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test, you must submit the results of the performance test to the EPA via CEDRI. Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the XML schema listed on the EPA's ERT Web site.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13 of subpart A of this part, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (b)(1) of this section is CBI, you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/

OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (c)(1) of this section.

(d) You must comply with the delay of repair reporting required in § 63.1588(a)(3).

(e) You may apply to the Administrator for a waiver of recordkeeping and reporting requirements by complying with the requirements of § 63.10(f). Electronic reporting to the EPA cannot be waived.

(f) To comply with the HAP fraction emitted standard specified in § 63.1586(c), you must submit, for approval by the Administrator, an Inspection and Monitoring Plan explaining your compliance approach 90 calendar days prior to beginning operation of your new POTW or by April 24, 2018, whichever is later.

(g) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering

effects from such an event within the period of time beginning five business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

§ 63.1591 What are my notification requirements?

(a) You must submit an initial notification that your POTW treatment plant is subject to these standards as specified in paragraphs (a)(1) and (2) of this section.

(1) If you have an existing Group 1 or Group 2 POTW treatment plant, you must submit an initial notification by October 26, 2018.

(2) If you have a new Group 1 or Group 2 POTW treatment plant, you must submit an initial notification upon startup.

(b) The initial notification must include the information included in paragraphs (b)(1) through (4) of this section.

(1) Your name and address;

(2) The address (i.e., physical location) of your POTW treatment plant;

(3) An identification of these standards as the basis of the notification and your POTW treatment plant's compliance date; and

(4) A brief description of the nature, size, design, and method of operation of your POTW treatment plant, 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.

(c) You must submit a notification of compliance status as required in § 63.9(h), as specified below:

(1) If you comply with § 63.1586(b) and use covers on the emission points and route air in the headspace underneath the cover to a control device, you must submit a notification of compliance status as specified in § 63.9(h) that includes a description of the POTW treatment units and installed covers, as well as the information required for control devices including the performance test results.

(2) If you comply with § 63.1586(c) by meeting the HAP fraction emitted standard, submission of the Inspection and Monitoring Plan as required in § 63.1588(c) and § 63.1590(f) meets the requirement for submitting a notification of compliance status report in § 63.9(h).

(d) You must notify the Administrator, within 30 calendar days of discovering that you are out of compliance with an applicable requirement of this subpart, including the following:

(1) The requirement to route the air in the headspace underneath the cover of all units equipped with covers, except primary clarifiers, to a control device as specified in § 63.1586(b).

(2) The HAP fraction emitted standard as specified in § 63.1586(c).

(3) The requirement to operate and maintain the affected source as specified in § 63.1586(d).

(4) The requirement to inspect covers annually and repair defects as specified in § 63.1588(a).

(5) The requirement to comply with the inspection and monitoring requirements of § 63.695(c) as specified in § 63.1588(b).

(6) The procedures specified in an Inspection and Monitoring Plan prepared as specified in § 63.1588(c).

(7) The requirements specified in an appropriate NESHAP for which the Group 1 POTW treatment plan treats regulated industrial waste as specified in § 63.1583(a) or (b), as applicable.

§ 63.1592 Which General Provisions apply to my POTW treatment plant?

(a) Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which do and do not apply to POTW treatment plants.

(b) Unless a permit is otherwise required by law, the owner or operator of a Group 1 POTW treatment plant which is not a major source is exempt from the permitting requirements established by 40 CFR part 70.

§ 63.1593 [Reserved]

§ 63.1594 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable state, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a state, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the Administrator of U.S. EPA and cannot be delegated to the state, local, or tribal agency.

(1) Approval of alternatives to the requirements in §§ 63.1580, 63.1583, and 63.1586 through 63.1588.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

§ 63.1595 List of definitions.

As used in this subpart:

Affected source means the group of all equipment that comprise the POTW treatment plant.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the waste material managed in a treatment unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the treatment unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the treatment unit, or a cover may be formed by structural features permanently integrated into the design of the treatment unit. The cover and its closure devices must be made of suitable materials that will prevent exposure of the waste material to the atmosphere and will maintain the integrity of the cover and its closure devices throughout its intended service life.

Existing source or existing POTW means a POTW that commenced construction on or before December 1, 1998, and has not been reconstructed after December 1, 1998.

Fraction emitted means the fraction of the mass of HAP entering the POTW wastewater treatment plant which is emitted prior to secondary treatment.

Group 1 POTW means a POTW that accepts a waste stream regulated by another NESHAP and provides treatment and controls as an agent for the industrial user. The industrial user complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, subpart FF—National Emission Standard for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP.

Group 2 POTW means a POTW that does not meet the definition of a Group 1 POTW. A Group 2 POTW can treat a waste stream that is either:

(1) Not specifically regulated by another NESHAP, or

(2) From an industrial user that complies with the specific wastewater requirements in their applicable

NESHAP prior to discharging the waste stream to the POTW.

Industrial user means a nondomestic source introducing any pollutant or combination of pollutants into a POTW. Industrial users can be commercial or industrial facilities whose wastes enter local sewers.

New source or new POTW means any POTW that commenced construction or reconstruction after December 1, 1998.

Publicly owned treatment works (POTW) means a treatment works, as that term is defined by section 112(e)(5) of the Clean Air Act, which is owned by a municipality (as defined by section 502(4) of the Clean Water Act), a state, an intermunicipal or interstate agency, or any department, agency, or instrumentality of the federal government. This definition includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources. As used in this subpart, the term POTW refers to both any publicly owned treatment works which is owned by a state, municipality, or intermunicipal or interstate agency and, therefore, eligible to receive grant assistance under the Subchapter II of the Clean Water Act, and any federally owned treatment works as that term is described in section 3023 of the Solid Waste Disposal Act.

POTW treatment plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

Secondary treatment means treatment processes, typically biological, designed to reduce the concentrations of dissolved and colloidal organic matter in wastewater.

Waste and wastewater means a material, or spent or used water or waste, generated from residential, industrial, commercial, mining, or agricultural operations or from community activities that contain dissolved or suspended matter, and that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated in a publicly owned treatment works.

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 .....	.....	Applicability.
§ 63.1(a)(1)	Yes	Terms defined in the Clean Air Act.
§ 63.1(a)(2)	Yes	General applicability explanation.
§ 63.1(a)(3)	Yes	Cannot diminish a stricter NESHAP.

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—
Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.1(a)(4)	Yes	Not repetitive. Doesn't apply to section 112(r).
§ 63.1(a)(5)	Yes	Section reserved.
§ 63.1(a)(6)–(8)	Yes	Contacts and authorities.
§ 63.1(a)(9)	Yes	Section reserved.
§ 63.1(a)(10)	Yes	Time period definition.
§ 63.1(a)(11)	Yes	Postmark explanation.
§ 63.1(a)(12)–(14)	Yes	Time period changes. Regulation conflict. Force and effect of subpart A.
§ 63.1(b)(1)	Yes	Initial applicability determination of subpart A.
§ 63.1(b)(2)	Yes	Section reserved.
§ 63.1(b)(3)	No	Subpart VVV specifies recordkeeping of records of applicability determination.
§ 63.1(c)(1)	Yes	Requires compliance with both subparts A and subpart VVV.
§ 63.1(c)(2)(i)	No	State options regarding title V permit. Unless required by the State, area sources subject to subpart VVV are exempted from permitting requirements.
§ 63.1(c)(2)(ii)–(iii)	No	State options regarding title V permit.
§ 63.1(c)(3)	Yes	Section reserved.
§ 63.1(c)(4)	Yes	Extension of compliance.
§ 63.1(c)(5)	No	Subpart VVV addresses area sources becoming major due to increase in emissions.
§ 63.1(d)	Yes	Section reserved.
§ 63.1(e)	Yes	Title V permit before a relevant standard is established.
§ 63.2	Yes	Definitions.
§ 63.3	Yes	Units and abbreviations.
§ 63.4 .....	.....	Prohibited activities and circumvention.
§ 63.4(a)(1)–(3)	Yes	Prohibits operation in violation of subpart A.
§ 63.4(a)(4)	Yes	Section reserved.
§ 63.4(a)(5)	Yes	Compliance dates.
§ 63.4(b)	Yes	Circumvention.
§ 63.4(c)	Yes	Severability.
§ 63.5 .....	.....	Preconstruction review and notification requirements.
§ 63.5(a)(1)	Yes	Construction and reconstruction.
§ 63.5(a)(2)	Yes	New source—effective dates.
§ 63.5(b)(1)	Yes	New sources subject to relevant standards.
§ 63.5(b)(2)	Yes	Section reserved.
§ 63.5(b)(3)	Yes	No new major sources without Administrator approval.
§ 63.5(b)(4)	Yes	New major source notification.
§ 63.5(b)(5)	Yes	New major sources must comply.
§ 63.5(b)(6)	Yes	New equipment added considered part of major source.
§ 63.5(c)	Yes	Section reserved.
§ 63.5(d)(1)	Yes	Implementation of section 112(l)(2)—application of approval of new source construction.
§ 63.5(d)(2)	Yes	Application for approval of construction for new sources listing and describing planned air pollution control system.
§ 63.5(d)(3)	Yes	Application for reconstruction.
§ 63.5(d)(4)	Yes	Administrator may request additional information.
§ 63.5(e)	Yes	Approval of reconstruction.
§ 63.5(f)(1)	Yes	Approval based on State review.
§ 63.5(f)(2)	Yes	Application deadline.
§ 63.6 .....	.....	Compliance with standards and maintenance requirements.
§ 63.6(a)	Yes	Applicability of compliance with standards and maintenance requirements.
§ 63.6(b)	Yes	Compliance dates for new and reconstructed sources.
§ 63.6(c)	Yes	Compliance dates for existing sources apply to existing Group 1 POTW treatment plants.
§ 63.6(d)	Yes	Section reserved.
§ 63.6(e)	Yes, except as noted below ...	Operation and maintenance requirements apply to new sources.
§ 63.6(e)(1)(i)	No	General duty; See § 63.1583(d) and § 63.1586(d) for general duty requirements.
§ 63.6(e)(1)(ii)	No	Requirement to correct malfunctions.
§ 63.6(e)(3)	No	SSM plans are not required for POTW.
§ 63.6(f)	Yes, except as noted below ...	Compliance with non-opacity emission standards applies to new sources.
§ 63.6(f)(1)	No	The POTW standards apply at all times.
§ 63.6(g)	Yes	Use of alternative non-opacity emission standards applies to new sources.
§ 63.6(h)	No	POTW treatment plants do not typically have visible emissions.
§ 63.6(i)	Yes	Extension of compliance with emission standards applies to new sources.
§ 63.6(j)	Yes	Presidential exemption from compliance with emission standards.
§ 63.7 .....	.....	Performance testing requirements.
§ 63.7(a)	Yes	Performance testing is required for new sources.
§ 63.7(b)	Yes	New sources must notify the Administrator of intention to conduct performance testing.
§ 63.7(c)	Yes	New sources must comply with quality assurance program requirements.
§ 63.7(d)	Yes	New sources must provide performance testing facilities at the request of the Administrator.
§ 63.7(e)	Yes, except as noted below ...	Requirements for conducting performance tests apply to new sources.
§ 63.7(e)(1)	No	The performance testing provisions of § 63.694 for control devices are incorporated by reference into subpart DD of this part.

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.7(f)	Yes	New sources may use an alternative test method.
§ 63.7(g)	Yes	Requirements for data analysis, recordkeeping, and reporting associated with performance testing apply to new sources.
§ 63.7(h)	Yes	New sources may request a waiver of performance tests.
§ 63.8	Yes	Monitoring requirements.
§ 63.8(a)	Yes	Applicability of monitoring requirements.
§ 63.8(b)	Yes	Monitoring shall be conducted by new sources.
§ 63.8(c)	Yes, except as noted below ...	New sources shall operate and maintain continuous monitoring systems (CMS).
§ 63.8(c)(1)(i)	No	See § 63.1583(d) for general duty requirement with respect to minimizing emissions and continuous monitoring requirements.
§ 63.8(c)(1)(iii)	No	See the applicable CMS quality control requirements under § 63.8(c) and (d).
§ 63.8(d)	Yes, except as noted below ...	New sources must develop and implement a CMS quality control program.
§ 63.8(d)(3)	No	The owner or operator must keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, and make them available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator must keep previous (<i>i.e.</i> , 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 of the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).
§ 63.8(e)	Yes	New sources may be required to conduct a performance evaluation of CMS.
§ 63.8(f)	Yes	New sources may use an alternative monitoring method.
§ 63.8(g)	Yes	Requirements for reduction of monitoring data.
§ 63.9	Yes	Notification requirements.
§ 63.9(a)	Yes	Applicability of notification requirements.
§ 63.9(b)	Yes, except as noted below ...	Initial notification due February 23, 2000 or 60 days after becoming subject to this subpart.
§ 63.9(c)	Yes	Request for extension of compliance with subpart VVV.
§ 63.9(d)	Yes	Notification that source is subject to special compliance requirements as specified in § 63.6(b)(3) and (4).
§ 63.9(e)	Yes	Notification of performance test.
§ 63.9(f)	No	POTW treatment plants do not typically have visible emissions.
§ 63.9(g)	Yes	Additional notification requirements for sources with continuous emission monitoring systems.
§ 63.9(h)	Yes, except as noted	Notification of compliance status when the source becomes subject to subpart VVV. See exceptions in § 63.1591(b).
§ 63.9(i)	Yes	Adjustments to time periods or postmark deadlines or submittal and review of required communications.
§ 63.9(j)	Yes	Change of information already provided to the Administrator.
§ 63.10	Yes	Recordkeeping and reporting requirements.
§ 63.10(a)	Yes	Applicability of notification and reporting requirements.
§ 63.10(b)(1)–(2)	Yes, except as noted below ...	General recordkeeping requirements.
§ 63.10(b)(2)(i)	No	Recordkeeping for occurrence and duration of startup and shutdown.
§ 63.10(b)(2)(ii)	No	Recordkeeping for failure to meet a standard, see § 63.696.
§ 63.10(b)(2)(iii)	Yes	Maintenance records.
§ 63.10(b)(2)(iv)	No	Actions taken to minimize emissions during SSM.
§ 63.10(b)(2)(v)	No	Action taken to minimize emissions during SSM.
§ 63.10(b)(2)(vi)	Yes	Recordkeeping for CMS malfunctions.
§ 63.10(b)(2)(vii)–(ix)	Yes	Other CMS requirements.
§ 63.10(b)(3)	No	Recording requirement for applicability determination.
§ 63.10(c)	Yes, except as noted below ...	Additional recordkeeping requirements for sources with continuous monitoring systems.
§ 63.10(c)(7)	No	See § 63.696(h) for recordkeeping of (1) date, time, and duration; (2) listing of affected source or equipment, and an estimate of the tons per year of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(c)(8)	No	See § 63.696(h) for recordkeeping of (1) date, time, and duration; (2) listing of affected source or equipment, and an estimate of the tons per year of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(c)(15)	No	Use of SSM plan.
§ 63.10(d)	Yes, except as noted below ...	General reporting requirements.
§ 63.10(d)(5)	No	See § 63.697(b) for malfunction reporting requirements.
§ 63.10(e)	Yes	Additional reporting requirements for sources with continuous monitoring systems.
§ 63.10(f)	Yes, except as noted	Waiver of recordkeeping and reporting requirements. Electronic reporting to the EPA cannot be waived.
§ 63.11	Yes	Control device and equipment leak work practice requirements.
§ 63.11(a) and (b)	Yes	If a new source uses flares to comply with the requirements of subpart VVV, the requirements of § 63.11 apply.
§ 63.11(c), (d) and (e)	Yes	Alternative work practice for equipment leaks.

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.12	Yes	State authority and designation.
§ 63.13	Yes	Addresses of State air pollution control agencies and EPA Regional Offices.
§ 63.14	Yes	Incorporation by reference.
§ 63.15	Yes	Availability of information and confidentiality.

TABLE 2 TO SUBPART VVV OF PART 63—COMPLIANCE DATES AND REQUIREMENTS

If the construction/reconstruction date is	Then the owner or operator must comply with	And the owner or operator must achieve compliance
Group 1 POTW: (1) After December 27, 2016	(i) New source requirements in §§ 63.1583(b); 63.1586(b) or (c); and 63.1588 through 63.1591.	Upon initial startup.
(2) After December 1, 1998 but on or before December 27, 2016.	(i) New source requirements in § 63.1583(b) but instead of complying with both requirements (industrial user(s) NESHAP and the POTW standards in §§ 63.1586(b) or (c)), you must comply with the most stringent requirement ¹ . (ii) New source requirements in §§ 63.1586(b) or (c); and 63.1588 through 63.1591.	Upon initial startup through October 26, 2020. On or before October 26, 2020.
(3) On or before December 1, 1998	(i) Existing source requirements in §§ 63.1583(a) (ii) Existing source requirements in §§ 63.1588 through 63.1591	By the compliance date specified in the other applicable NESHAP. On or before October 26, 2018.
Group 2 POTW: (4) After December 27, 2016	(i) New source requirements in §§ 63.1586(b) or (c); and 63.1588 through 63.1591.	Upon initial startup.
(5) After December 1, 1998 but on or before December 27, 2016.	(i) New source requirements in § 63.1586(b) or (c) ¹ (ii) New source requirements in §§ 63.1586(b) or (c); and 63.1588 through 63.1591.	Upon initial startup through October 26, 2020. On or before October 26, 2020.
(6) On or before December 1, 1998	(i) Existing source requirements in §§ 63.1586(a); and 63.1591(a)	On or before October 26, 2018.

¹ Note: This represents the new source requirements in the original 1999 NESHAP, which are applicable until October 26, 2020. Between October 26, 2017 and October 26, 2020, you must transition to the new requirements in Table 2 (2)(ii) and (5)(ii) for Group 1 and Group 2 POTW, respectively.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R06-RCRA-2017-0153; SW-FRL-9969-73-Region 6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by ExxonMobil Oil Corporation Beaumont Refinery (ExxonMobil) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by ExxonMobil to have the secondary impoundment basin (SIB) solids excluded, or delisted from the definition of a hazardous waste. The SIB solids are

listed as F037 (primary oil/water/solids separation sludge); and F038 (secondary oil/water/solids separation sludge).

After careful analysis and evaluation of comments submitted by the public, the EPA has concluded that the petitioned wastes are not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to the surface impoundment solids generated at ExxonMobil's Beaumont, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

DATES: Effective October 26, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-RCRA-2017-0153. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For technical information regarding the ExxonMobil Beaumont Refinery petition, contact Michelle Peace at 214-665-7430 or by email at peace.michelle@epa.gov.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

- I. Overview Information
 - A. What action is EPA finalizing?
 - B. Why is EPA approving this delisting?
 - C. What are the limits of this exclusion?
 - D. How will Beaumont Refinery manage the waste if it is delisted?
 - E. When is the final delisting exclusion effective?
 - F. How does this final rule affect states?
- II. Background
 - A. What is a "delisting"?
 - B. What regulations allow facilities to delist a waste?
 - C. What information must the generator supply?

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 63

[EPA-HQ-OAR-2015-0730; FRL-9969-08-OAR]

RIN 2060-AS93

**National Emission Standards for
Hazardous Air Pollutants: Nutritional
Yeast Manufacturing Residual Risk
and Technology Review**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Manufacturing of Nutritional Yeast source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are finalizing other amendments, including revisions to the form of the volatile organic compounds (VOC) standards for fermenters, removal of the option to monitor brew ethanol, inclusion of ongoing relative accuracy test audit (RATA), and revisions to other monitoring, reporting, and recordkeeping requirements.

DATES: This final rule is effective on October 16, 2017. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of October 16, 2017.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2015-0730. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov>, or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Allison Costa, Sector Policies and Programs Division (Mail Code E143-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1322; fax number: (919) 541-0516; and email address: costa.allison@epa.gov. For specific information regarding the risk modeling methodology, contact Chris Sarsony, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4843; and email address: sarsony.chris@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building (Mail Code 2227A), 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (919) 564-1395; and email address: cox.john@epa.gov.

SUPPLEMENTARY INFORMATION:

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

BAE Batch-average concentration of brew ethanol in fermenter liquid
 BAVOC Batch-average concentration of volatile organic compounds in fermenter exhaust
 CAA Clean Air Act
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting Interface
 CEMS Continuous emission monitoring system
 CFR Code of Federal Regulations
 CPMS Continuous parameter monitoring system
 CRA Congressional Review Act
 EPA Environmental Protection Agency
 ERT Electronic Reporting Tool
 FID Flame ionization detector
 GC Gas chromatograph
 HAP Hazardous air pollutant(s)
 HQ Hazard quotient
 ICR Information Collection Request
 MACT Maximum achievable control technology
 NEI National Emissions Inventory
 NESHAP National emission standards for hazardous air pollutants
 NTTAA National Technology Transfer and Advancement Act
 OMB Office of Management and Budget
 ppmv Parts per million by volume
 PRA Paperwork Reduction Act

RATA Relative accuracy test audit
 REL Recommended exposure limit
 RFA Regulatory Flexibility Act
 RfC Reference concentration
 RIN Regulatory Information Number
 RTO Regenerative thermal oxidizer
 RTR Risk and technology review
 SSM Startup, shutdown, and malfunction
 THC Total hydrocarbons
 TOSHI Target organ-specific hazard index
 UMRA Unfunded Mandates Reform Act
 URE Unit risk estimate
 VOC Volatile organic compound

Background information. On December 28, 2016, the EPA issued a proposed rulemaking presenting the results of the RTR of the Manufacturing of Nutritional Yeast NESHAP, as well as proposing additional revisions to the NESHAP. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the document titled, "Nutritional Yeast Manufacturing Risk and Technology Review: Summary of Public Comments and Responses," which is in the docket for this action (Docket ID No. EPA-HQ-OAR-2015-0730). A "track changes" version of the regulatory language that incorporates the changes in this action is also available in the docket.

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

- I. General Information
 - A. Does this action apply to me?
 - B. Where can I get a copy of this document and other related information?
 - C. Judicial Review and Administrative Reconsideration
- II. Background
 - A. What is the statutory authority for this action?
 - B. What is the Manufacturing of Nutritional Yeast source category and how does the NESHAP regulate HAP emissions from this source category?
 - C. What changes did we propose for the Manufacturing of Nutritional Yeast source category in our December 28, 2016, proposal?
- III. What is included in this final rule?
 - A. What are the final rule amendments based on the risk review for the Manufacturing of Nutritional Yeast source category?
 - B. What are the final rule amendments based on the technology review for the Manufacturing of Nutritional Yeast source category?
 - C. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?
 - D. What other changes have been made to the NESHAP?
 - E. What are the effective and compliance dates of the standards?

- F. What are the requirements for submission of performance test data to the EPA?
- IV. What is the rationale for our final decisions and amendments for the Manufacturing of Nutritional Yeast source category?
- A. Residual Risk Review for the Manufacturing of Nutritional Yeast Source Category
- B. Technology Review for the Manufacturing of Nutritional Yeast Source Category
- C. Revised Form of the Fermenter VOC Standard
- D. Removal of the Option To Monitor Brew Ethanol
- E. Requirement To Conduct RATA
- F. Requirement To Collect All Valid CEMS Data
- G. Compliance Dates for the Amendments
- V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
- A. What are the affected facilities?
- B. What are the air quality impacts?
- C. What are the cost impacts?
- D. What are the economic impacts?
- E. What are the benefits?
- F. What analysis of environmental justice did we conduct?
- G. What analysis of children's environmental health did we conduct?
- VI. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
- C. Paperwork Reduction Act (PRA)
- D. Regulatory Flexibility Act (RFA)
- E. Unfunded Mandates Reform Act (UMRA)
- F. Executive Order 13132: Federalism
- G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
- K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and Source Category	NAICS ¹ Code
Manufacturing of Nutritional Yeast	311999

¹North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the final Manufacturing of Nutritional Yeast NESHAP (40 CFR part 63, subpart CCCC). If you have any questions regarding the applicability of any aspect of this NESHAP, which we refer to as "subpart CCCC" in this preamble, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: <https://www.epa.gov/stationary-sources-air-pollution/manufacturing-nutritional-yeast-national-emission-standards>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same Web site.

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

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia by December 15, 2017. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

II. Background

A. What is the statutory authority for this action?

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

treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

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

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).¹ For more

information on the statutory authority for this rule, see the proposal published on December 28, 2016 (81 FR 95810).

B. What is the Manufacturing of Nutritional Yeast source category and how does the NESHAP regulate HAP emissions from this source category?

The EPA promulgated the Manufacturing of Nutritional Yeast NESHAP on May 21, 2001 (66 FR 27876). The standards are codified at 40 CFR part 63, subpart CCCC. The manufacturing of nutritional yeast industry consists of facilities that manufacture yeast for the purpose of becoming an ingredient in dough for bread or any other yeast-raised baked product, or for becoming a nutritional food additive intended for consumption by humans. Facilities that manufacture nutritional yeast intended for consumption by animals, such as an additive for livestock feed, are not included in the description of sources covered by this subpart in 40 CFR 63.2131. In addition, subpart CCCC clarifies that fermenters are not subject to emission limitations during the production of specialty yeast (e.g., yeast for use in wine, champagne, whiskey, or beer) in 40 CFR 63.2132. The source category was originally defined as Baker's Yeast Manufacturing in 1992, but was renamed Manufacturing of Nutritional Yeast in 1998 to clarify the scope of the source category. See the preamble for the proposed rule for additional background (81 FR 95814, December 28, 2016). The source category covered by subpart CCCC currently includes four facilities.

The affected sources at nutritional yeast manufacturing facilities are the collection of equipment used to manufacture *Saccharomyces cerevisiae* yeast, including fermenters. The subpart CCCC emission limitations apply to the final three stages of the fermentation process, which are often referred to as stock (third-to-last stage), first generation (second-to-last stage), and trade (last stage) fermentation.

Currently, the fermenters are subject to batch-average VOC (BAVOC) emission limitations that differ for each fermentation stage, and which must be met for 98 percent of all batches in each fermentation stage on a rolling 12-month basis. The measurement of VOC is used as a surrogate for the HAP of interest, acetaldehyde. The BAVOC limits are 300 parts per million by

volume (ppmv) for stock fermenters (third-to-last stage), 200 ppmv for first generation fermenters (second-to-last stage), and 100 ppmv for trade fermenters (last stage).

In the original subpart CCCC requirements, facilities can continuously monitor either the VOC concentration in the fermenter exhaust or the brew ethanol concentration in the fermenter liquid to determine compliance with the emission limitations. If a facility monitors brew ethanol concentration, it must conduct an annual performance test to determine the correlation between the brew ethanol concentration in the fermenter liquid and the VOC concentration in the fermenter exhaust gas.

C. What changes did we propose for the Manufacturing of Nutritional Yeast source category in our December 28, 2016, proposal?

On December 28, 2016, the EPA published a proposed rule in the **Federal Register** for subpart CCCC, that address the results of the RTR analyses and proposed other amendments. In the action, we proposed finding that the risks from the Manufacturing of Nutritional Yeast source category are acceptable; that additional emissions controls for the source category are not necessary to provide an ample margin of safety; and that there have been no developments in practices, processes, and control technologies that warrant changes to the fermenter emission limitations. Additionally, we proposed several changes to the existing rule (apart from the RTR process) that were intended to promote consistency with relevant statutory requirements and goals. These changes included revising the form of the VOC standards for fermenters; removing the option to monitor brew ethanol; including requirements to conduct annual RATA; removing gas chromatograph (GC) continuous emission monitoring system (CEMS) as an option to monitor VOC concentration; collecting CEMS data at all times during the batch monitoring period; using Procedure 1 of Appendix F to part 60 for VOC CEMS; requiring electronic reporting; and revising startup, shutdown, and malfunction (SSM) provisions.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Manufacturing of Nutritional Yeast source category. This action also finalizes other changes to subpart CCCC, including: Revising the form of the VOC standards for fermenters; removing the

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

¹ The U.S. Court of Appeals for the District of Columbia Circuit has affirmed this approach of

option to monitor brew ethanol; including requirements to conduct ongoing RATA; using Procedure 1 of Appendix F to part 60 for VOC CEMS; removing GC CEMS as an option to monitor VOC concentration; collecting CEMS data at all times during the batch monitoring period; requiring electronic reporting; and revising SSM provisions.

A. What are the final rule amendments based on the risk review for the Manufacturing of Nutritional Yeast source category?

The EPA proposed no changes to subpart CCCC based on the risk review conducted pursuant to CAA section 112(f). Specifically, as we proposed, we are finalizing our determination that risks from the nutritional yeast manufacturing facilities are acceptable, and that the standards provide an ample margin of safety to protect public health. The EPA received no new data or other information during the public comment period that changed that determination. Therefore, we are not requiring additional controls under CAA section 112(f)(2).

B. What are the final rule amendments based on the technology review for the Manufacturing of Nutritional Yeast source category?

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. The EPA proposed no changes to subpart CCCC based on the technology review conducted pursuant to CAA section 112(d)(6). The EPA received no new data or other information during the public comment period that affected the technology review determination. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

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

In its 2008 decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemptions contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standard apply continuously.

Consistent with *Sierra Club v. EPA*, the EPA has established standards in this rule that apply at all times. We have eliminated the malfunction exemption in this rule, in addition to making other changes to ensure that the rule's emission limitations apply continuously (the latter changes are addressed in sections III.D and IV.C of this preamble). While, for simplicity, we refer throughout this section to the SSM exemption and the associated SSM plan requirements, only the malfunction exemption and its removal are relevant to this action because periods of startup and shutdown were never exempt from emissions standards in this subpart. We have revised Table 6 to subpart CCCC (the General Provisions applicability table) in several respects as is explained in more detail below. For example, we have eliminated the incorporation of the General Provisions' requirement that the source develops an SSM plan. We have also eliminated and revised certain recordkeeping and reporting that is related to the SSM exemption as described in detail in the proposed rule and summarized again here.

In establishing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not established alternate standards for those periods. Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. In this NESHAP, owners or operators of nutritional yeast manufacturing facilities employ process controls to limit emissions. These process controls are employed from the time a fermenter starts production of a batch of yeast and continue until the fermenter is emptied of yeast. Additionally, emissions are averaged over the entire duration of each batch in order to determine compliance with emission limitations, so there was no need to set separate limits for periods of startup and shutdown in this rule.

Malfunctions, in contrast, are neither predictable nor routine. Instead they are by definition sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. 40 CFR 63.2 (definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the D.C. Circuit. *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (2016). Instead, under CAA section 112, emissions standards for new sources must be no less stringent than the level “achieved”

by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation “achieved” by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level “achieved” by the best performing sources when setting emission standards. As the D.C. Circuit has recognized, the phrase “average emissions limitation achieved by the best performing 12 percent of” sources “says nothing about how the performance of the best units is to be calculated.” *Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a “normal or usual manner” and no statutory language compels the EPA to consider such events in setting CAA section 112 standards. As the D.C. Circuit recognized in *U.S. Sugar Corp.*, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 (“the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.”) As such, the performance of units that are malfunctioning is not “reasonably” foreseeable. See, e.g., *Sierra Club v. EPA*, 167 F.3d 658, 662 (D.C. Cir. 1999) (“The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ‘invest the resources to conduct the perfect study.’”) See also, *Weyerhaeuser v. Costle*, 590 F.2d 1011, 1058 (D.C. Cir. 1978) (“In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of

regulatory limits caused by ‘uncontrollable acts of third parties,’ such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.”). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source’s emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA’s approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In subpart CCCC, it is unlikely that a malfunction would result in a violation of the standards for fermenters. The rule provides an option for owners or operators to determine the average VOC concentration for all batches within each fermentation stage using data from 12-month periods. This option limits the effect of malfunctions on the ability of a facility to meet the emission limitations because the averaging effectively minimizes “spikes” in emissions. Additionally, many of the common malfunctions reported during EPA site visits by owners or operators of nutritional yeast manufacturing facilities were malfunctions of the emissions monitoring equipment. While the equipment is unable to record accurate data during periods of malfunction, it does not impact actual emissions because process controls could still be used to limit emissions. In the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good

faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source’s failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable and not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (D.C. Cir. 2016).

1. 40 CFR 63.2150 General Duty

We are revising the General Provisions table (Table 6 to subpart CCCC) entry for 40 CFR 63.6(e)(1)(i) to specify that 40 CFR 63.6(e)(1)(i) does not apply to subpart CCCC. Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM; with the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, we are adding instead general duty regulatory text at 40 CFR 63.2150(d) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption.

We are also revising the General Provisions table (Table 6 to subpart CCCC) entry for 40 CFR 63.6(e)(1)(ii) to specify that 40 CFR 63.6(e)(1)(ii) does not apply to subpart CCCC. Section

63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.2150.

2. SSM Plan

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.6(e)(3) does not apply to subpart CCCC. Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is removing the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

3. Compliance With Standards

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.6(f)(1) does not apply to subpart CCCC. The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club*, the EPA is revising standards in this rule to apply at all times.

4. 40 CFR 63.2161 Performance Testing

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.7(e)(1) does not apply to subpart CCCC. Section 63.7(e)(1) describes performance testing requirements. The EPA is instead adding a performance testing requirement at 40 CFR 63.2161(b). The performance testing requirements we are adding differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered “representative” for purposes of performance testing. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal

operating conditions. The EPA is adding language in 63.2161(b) that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available to the Administrator such records "as may be necessary to determine the condition of the performance test" available to the Administrator upon request, but does not specifically require the information to be recorded. The regulatory text the EPA is adding to subpart CCCC builds on that requirement and makes explicit the requirement to record the information.

5. Monitoring

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.8(c)(1)(i) and (iii) do not apply to subpart CCCC. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.8(d)(3) does not apply to subpart CCCC. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is adding to the rule at 40 CFR 63.2182(c)(3) and 63.2183(e) text that contains the same requirements as 40 CFR 63.8(d)(3), except that we are requiring the program of corrective action for a malfunctioning monitoring system to be included in the quality control program for a CEMS (as described in 40 CFR 63.8(d)(2)) instead of in the SSM plan.

6. 40 CFR 63.2182 Recordkeeping

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.10(b)(2)(ii) does not apply to subpart CCCC. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is adding such requirements to 40 CFR 63.2182(a)(2) and (c)(5). The regulatory text we are adding differs from the text in the General Provisions in that the creation and retention of a record of the occurrence and duration of each

malfunction of process, air pollution control, and monitoring equipment. The EPA is now applying the recordkeeping requirement to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the "occurrence." The EPA is also adding to 40 CFR 63.2182(a)(2) and (c)(5) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is requiring that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.10(b)(2)(iv) does not apply to subpart CCCC. When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now specified at 40 CFR 63.2182(a)(2) and (c)(5).

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.10(b)(2)(v) does not apply to subpart CCCC. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.10(c)(15) does not apply to subpart CCCC. The provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan to also satisfy the requirements of

40 CFR 63.10(c)(10) through (12) concerning additional recordkeeping requirements for sources with continuous monitoring systems. The EPA is eliminating this requirement because SSM plans will no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

7. 40 CFR 63.2181 Reporting

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.10(d)(5) does not apply to subpart CCCC. Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is adding reporting requirements to 40 CFR 63.2181(c)(5) and (7). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as stand-alone reports. We are promulgating language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semiannual compliance report already required under this rule in 40 CFR 63.2181. We are requiring that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limitation, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is promulgating this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans will no longer be required. The final amendments, therefore, eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary

because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are revising the General Provisions table (Table 6 to subpart CCCC) to specify that 40 CFR 63.10(d)(5)(ii) does not apply to subpart CCCC. Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard, but did not follow the SSM plan. We will no longer require owners or operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because such plans will no longer be required.

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

This rule finalizes revisions to several other Manufacturing of Nutritional Yeast NESHAP requirements. We describe the revisions in the following paragraphs.

We are finalizing the proposed amendments to revise the form of the fermenter VOC limits that require facilities to demonstrate compliance using either the Average Option or Batch Option. In response to comments, we are allowing facilities up to 1 year to demonstrate compliance with the revised form of the emission limitations. The EPA originally proposed that facilities would have to demonstrate compliance immediately upon promulgation of the final rule.

We are also finalizing the proposed amendments to several testing, monitoring, recordkeeping, and reporting provisions. First, we are finalizing amendments to require all facilities to monitor VOC emissions using VOC CEMS and to remove the option to monitor brew ethanol in the fermenter liquid and determine an annual correlation to VOC concentration in the fermenter exhaust in order to demonstrate compliance with fermenter VOC emission limitations. In response to comments, we are allowing the affected facility up to 3 years to comply with these requirements. The EPA originally proposed that the affected facility would have 1 year to comply with these requirements. We are also finalizing the related revisions to the rule text that corrected references to "brew ethanol monitors" that had erroneously referred to CEMS.

Second, we are finalizing the proposed amendments to remove the option to use GC CEMS to monitor VOC emissions. The use of GC CEMS requires facilities to identify specific VOC species to monitor and no facilities are currently using this method.

Third, we are finalizing the proposed amendments to require the collection of all valid CEMS data during batch monitoring periods and the reporting of missing data as deviations. In response to comments, we have added clarifying language in the rule specifying a minimum CEMS cycle time of 15 minutes and allowing a minimum of two data points (representing 15-minute periods) to constitute a valid hour of data collection during periods of calibration, quality assurance, or maintenance activities; and modified the recordkeeping requirements accordingly (as stated in the General Provisions).

Fourth, we are finalizing the proposed amendments to require facilities to conduct regular RATA using Procedure 1 of Appendix F to part 60 to evaluate the ongoing performance of CEMS. In response to comments, we are requiring RATA to be conducted once every 3 years, instead of annually as proposed. We are also adding language to the rule to clarify that cylinder gas audits or relative accuracy audits must be conducted in the quarters that RATA are not conducted, consistent with the requirements of Procedure 1 of Appendix F to part 60.

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing, as proposed, a requirement that owners or operators of nutritional yeast manufacturing facilities submit electronic copies of certain required performance test or evaluation reports through the EPA's Central Data Exchange (CDX) Web site using the Electronic Reporting Tool (ERT). This requirement to submit performance test data or performance evaluation information electronically to the EPA applies only to those performance tests or evaluations conducted using test methods or evaluations that are supported by the ERT.

Lastly, we are finalizing the proposed minor language changes throughout subpart CCCC that clarify the existing requirements and restate the requirements in active voice. These amendments do not change any existing requirements, but are intended to improve the readability of subpart CCCC.

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

The revisions to the MACT standards being promulgated in this action are effective on October 16, 2017.

The compliance date for the removal of GC CEMS, collection of all valid CEMS data from the entire batch monitoring period, requirement to

conduct RATA, use of Procedure 1 of Appendix F to part 60 for VOC CEMS, revised SSM requirements, and the electronic reporting requirements for nutritional yeast manufacturing facilities is October 16, 2017.

Existing facilities must comply with the revised form of the fermenter VOC emission limitations by October 16, 2018. Until October 16, 2018, facilities must continue to demonstrate compliance, either using the existing form of the fermenter VOC emission limitations or the revised form of the fermenter VOC limits, in their semiannual compliance reports. As discussed in section IV.G of this preamble, this timeframe was revised from immediate compliance in the proposed rule, based on public comments, in order to allow facilities time to train staff and update the necessary recordkeeping and reporting procedures.

Facilities that currently demonstrate compliance by monitoring brew ethanol concentration in the fermenter liquid must install CEMS by October 16, 2020. Until October 16, 2020, emissions data must be collected for each batch, either using the existing compliance method (monitoring brew ethanol concentration) or with CEMS, for use in the semiannual compliance reports with the applicable emission limitations. As discussed in section IV.G of this preamble, this was revised from the proposed 1-year compliance period, based on public comments, to allow facilities adequate time to procure equipment; train staff; and update operations and maintenance, recordkeeping, and reporting procedures.

Sources that are constructed or reconstructed after promulgation of the rule revisions must comply with the emission limitations and compliance requirements upon the effective date of the rule, October 16, 2017, or upon startup of the affected source, whichever is later.

F. What are the requirements for submission of performance test data to the EPA?

The EPA is requiring owners or operators of manufacturing of nutritional yeast facilities to submit electronic copies of certain required performance test reports and performance evaluation reports (e.g., RATAs that are supported by the EPA's ERT) at the time of the evaluation, through the EPA's CDX using the Compliance and Emissions Data Reporting Interface (CEDRI). The electronic submittal will increase the usefulness of the data contained in those reports, is in keeping with current

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

The EPA Web site that stores the submitted electronic data, WebFIRE, provides a user-friendly interface accessible to all stakeholders. By making the records, data, and reports addressed in this rulemaking readily available, the EPA, the regulated community, and the public will benefit when the EPA conducts its CAA-required technology and risk-based reviews. As a result of having reports readily accessible, our ability to carry out comprehensive reviews will be increased and achieved within a shorter period of time.

We anticipate fewer or less substantial Information Collection Requests (ICRs) in conjunction with prospective CAA-required technology and risk-based reviews may be needed as a result of electronic reporting, which results in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing

requirements would be a cost savings to industry. The EPA should also be able to conduct these required reviews more quickly. Although the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the Agency's ability to provide these required reviews more quickly, resulting in increased public health and environmental protection.

Air agencies, as well as the EPA, can benefit from more streamlined and automated review of the electronically submitted data. Standardizing report formats allows air agencies to review reports and data more quickly. Having reports and associated data in electronic format will facilitate review through the use of software "search" options, as well as the downloading and analyzing of data in spreadsheet format. Additionally, air agencies and the EPA can access reports wherever and whenever they want or need, as long as they have access to the Internet. The ability to access and review reports electronically assists air agencies in determining compliance with applicable regulations more quickly and accurately, potentially allowing a faster response to violations which could minimize harmful air emissions. This benefits both air agencies and the general public.

For a more thorough discussion of electronic reporting required by this rule, see the discussion in the preamble of the proposal (81 FR 95829, December 28, 2016). In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, air agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations,

and enhancing the public's access to this important information.

IV. What is the rationale for our final decisions and amendments for the Manufacturing of Nutritional Yeast source category?

For each issue, this section provides a description of what we proposed and what we are finalizing, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket for this rulemaking (EPA-HQ-OAR-2015-0730).

A. Residual Risk Review for the Manufacturing of Nutritional Yeast Source Category

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

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the December 28, 2016, proposed rule for subpart CCCC (81 FR 95825). The results of the risk assessment for the proposal are presented briefly below in Table 2 of this preamble, and in more detail in the proposal residual risk document, "Residual Risk Assessment for the Manufacturing of Nutritional Yeast Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule," which is available in the docket for this rulemaking.

TABLE 2—NUTRITIONAL YEAST MANUFACTURING INHALATION RISK ASSESSMENT RESULTS

Number of facilities ¹	Maximum individual cancer risk (in 1 million) ²		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic non-cancer TOSHI ³		Maximum screening acute non-cancer HQ ⁴	
	Based on actual emissions level ²	Based on allowable emissions level	Based on actual emissions level ²	Based on allowable emissions level	Based on actual emissions level ²	Based on allowable emissions level	Based on actual emissions level ²	Based on allowable emissions level	Based on actual emissions level ²	Based on allowable emissions level
4	2	2	750	750	0.0009	0.0009	0.08	0.08	HQ _{REL} = 0.2	HQ _{REL} = 0.2.

¹ Number of facilities evaluated in the risk analysis.
² Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
³ Maximum target organ-specific hazard index (TOSHI). The target organ with the highest TOSHI for the Manufacturing of Nutritional Yeast source category is the respiratory system.
⁴ The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. HQ values shown use the lowest available acute threshold value, which in most cases is the recommended exposure limit (REL). When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value. See section III.A.3 of the proposal preamble (81 FR 95816, December 28, 2016) for explanation of acute dose-response values.

Based on both actual and allowable emissions for the Manufacturing of Nutritional Yeast source category, the maximum lifetime individual cancer risk was estimated to be up to 2-in-1 million, the maximum chronic non-cancer TOSHI value was estimated to be up to 0.08, and the maximum off-facility site acute HQ value was estimated to be up to 0.2. The total estimated national cancer incidence from these facilities was 0.0009 excess cancer cases per year or 1 case in every 1,100 years.

There are no persistent and bioaccumulative HAP emitted by facilities in this source category. Therefore, we did not consider any human health multi-pathway risks as a result of emissions from this source category.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination, and proposed that the residual risks from the Manufacturing of Nutritional Yeast source category are acceptable (section IV.B. of proposal preamble, 81 FR 95825, December 28, 2016).

We then considered whether subpart CCCC provides an ample margin of safety to protect public health and prevents, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. Two control options were evaluated for further reducing acetaldehyde emissions from fermenters at nutritional yeast facilities: thermal oxidizers and wet (packed bed) scrubbers. Due to the additional environmental impacts (increased energy use and emissions of approximately 89 tpy of nitrogen oxides that would be imposed by the control options and the low level of current human health risk), along with the substantial costs associated with these control options, we proposed that additional emissions controls for this source category are not necessary to provide an ample margin of safety (section IV.B.2 of proposal preamble, 81 FR 95825, December 28, 2016).

In addition, none of the seven pollutants identified by the EPA as “environmental HAP” (cadmium, dioxins/furans, polycyclic organic matter, mercury, lead compounds,

hydrogen chloride, and hydrogen fluoride), which are known to cause adverse environmental effects, are emitted; therefore, we did not conduct a separate environmental risk analysis for this source category (see section III.A.6 of the proposal preamble (81 FR 95819, December 28, 2016)).

2. How did the risk review change for the Manufacturing of Nutritional Yeast source category?

During the public comment period, the EPA received information that the acetaldehyde emissions rate was tested at the AB Mauri facility in 2017 and was approximately 50 percent lower than the rate used to estimate the total annual emissions included in the residual risk analysis. The residual risk analysis performed for the proposed rule was based on data reported in the 2011 National Emissions Inventory (NEI) from all facilities. The new emissions rate cannot be used to change previously reported data from a facility because there is no clear evidence or test history to establish when the emission rate decreased. Complete 2017 emissions data is not yet available for AB Mauri, so the EPA could not repeat the risk analysis using newer data for this facility. Importantly, the risk review had already found that the risks are acceptable and the standards provide an ample margin of safety using the higher 2011 NEI emissions data for this facility, so it is possible that the residual risk from the Manufacturing of Nutritional Yeast source category has decreased even farther. Since the EPA concluded it was reasonable to not update the risk review following proposal, we have finalized the risk assessment report and re-submitted it to the docket as “Residual Risk Assessment for the Manufacturing of Nutritional Yeast Source Category in Support of the October, 2017 Risk and Technology Review Final Rule.”

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

We received comments in support of and against the proposed residual risk review and our determination that no revisions were warranted under CAA section 112(f)(2). Generally, the comments that were not supportive of the determination from the risk review suggested changes to the underlying risk assessment methodology. After review of these comments, we determined that no changes were necessary. The comments and our specific responses can be found in the document, “Nutritional Yeast Manufacturing Risk and Technology Review: Summary of

Public Comments and Responses,” which is available in the docket for this action.

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

For the reasons explained in the proposed rule, we determined that the risks from the Manufacturing of Nutritional Yeast source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. Therefore, we are not revising subpart CCCC to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review and are readopting the existing standards under CAA section 112(f)(2).

B. Technology Review for the Manufacturing of Nutritional Yeast Source Category

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

Pursuant to CAA section 112(d)(6), the EPA conducted a technology review and summarized the results of the review in the proposed rule for subpart CCCC (81 FR 95825, December 28, 2016). The results of the technology review are briefly discussed below, and in more detail in the memorandum, “Technology Review for the Manufacturing of Nutritional Yeast Source Category,” which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2015-0730-0016).

The technology review focused on identifying and evaluating developments in practices, processes, and control technologies for the Manufacturing of Nutritional Yeast source category. We identified two control technologies for further evaluation that were technically feasible for further reducing acetaldehyde emissions from nutritional yeast fermenters: thermal oxidizers, and wet (packed bed) scrubbers. After identifying the control technologies that were technically feasible, we then evaluated the costs and emissions reductions associated with installing regenerative thermal oxidizers (RTOs) and packed bed scrubbers at each of the four existing nutritional yeast facilities. Considering the high cost per ton of acetaldehyde reduced and potential adverse environmental impacts

associated with the installation of RTOs or packed bed scrubbers, we did not consider these technologies to be cost effective for further reducing acetaldehyde emissions from fermenters at nutritional yeast manufacturing facilities. In light of the results of the technology review, we proposed to conclude that changes to the fermenter emission limitations were not warranted pursuant to CAA section 112(d)(6) (81 FR 95825, December 28, 2016).

2. How did the technology review change for the Manufacturing of Nutritional Yeast source category?

The technology review for the Manufacturing of Nutritional Yeast source category has not changed since proposal. As proposed, the EPA is not making changes to the standards pursuant to CAA section 112(d)(6).

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

We received comments in support of the proposed determination from the technology review that no revisions were warranted under CAA section 112(d)(6). We also received one comment that asserted that cost effectiveness should not be a consideration when examining standards under CAA section 112(d)(6). We evaluated the comments and determined that no changes regarding our determination were needed. These comments and our specific responses to those comments can be found in the comment summary and response document titled, "Nutritional Yeast Manufacturing Risk and Technology Review: Summary of Public Comments and Responses," which is available in the docket for this action.

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

For the reasons explained in the preamble to the proposed rule, we determined there were no new developments in practices or processes, nor were cost-effective control technologies available to further reduce acetaldehyde emissions from fermenters at nutritional yeast manufacturing facilities (81 FR 95825, December 28, 2016). Since proposal, neither the technology review nor our determination as a result of the technology review has changed, and we are not revising subpart CCCC pursuant to CAA section 112(d)(6).

C. Revised Form of the Fermenter VOC Standard

1. What did we propose?

At proposal, the EPA explained that the current form of the standards for VOC limits on fermenters was in direct conflict with the statutory requirement that emission standards limit emissions on a continuous basis, *i.e.*, that some emission limitation applies at all times, and, therefore, proposed to establish a revised form of the standards ("Batch Option") as well as an alternate standard for compliance ("Average Option") in Table 1 to subpart CCCC (81 FR 95826, December 28, 2016). Under the proposed Batch Option, each individual batch manufactured must meet the existing VOC emission limits (300 ppmv for stock fermentation, 200 ppmv for first generation fermentation, and 100 ppmv for trade fermentation). Under the proposed Average Option, all batch average VOC concentration data for each fermentation stage in a 12-month period must be averaged together and not exceed certain VOC emission limits, which are 5 percent lower than the VOC emission limits established for individual batches in 2001 for subpart CCCC (285 ppmv for stock fermentation, 190 ppmv for first generation fermentation, and 95 ppmv for trade fermentation). We referred to this reduction as a "discount factor," consistent with our use of the term in other MACT standards that allow averaging of emissions data for compliance.

Additionally, the proposed revisions to the general compliance requirements in 40 CFR 63.2150(a) and (c) that remove the exemption for compliance with emission limits during periods of malfunction will also impact the determination of compliance with emission limits. The practical effect of this change is that emissions from batches of yeast produced during periods of malfunction, other than monitoring system malfunctions, must now be included in calculations for compliance purposes.

2. How did the requirements change since proposal?

The EPA has not changed either the form or the level of emission reductions that would be required under either the Batch or Average Option. We have, however, revised our characterization of which option represents the updated form of the original MACT standard and which can be used as the alternative compliance method, as described in section IV.C.3 of this preamble.

3. What key comments did we receive and what are our responses?

Comment: Two commenters stated that the EPA improperly assumed a need to change the fermenter VOC standards based on the *Sierra Club v. EPA* SSM policy ruling that standards must apply at all times. One commenter asserted that the EPA is confusing the concept of continuous compliance as opposed to relief from compliance. Both commenters remarked that the existing fermenter VOC standards apply at all times and the facility must be in continuous compliance with the standard, meaning that VOC concentration must be continuously monitored to ensure that 98 percent of all batches do not exceed the VOC standards. A commenter also stated that yeast manufacturers do continuously comply with the existing fermenter VOC standards, as calculated under the statistical averaging approach set out in the standard. The commenter continued that the *Sierra Club v. EPA* SSM ruling did not say that calculations embedded into MACT standards must be invalidated under the logic the Court used to invalidate the EPA's general SSM policy.

The commenter stated that other Court decisions addressing the EPA's SSM policy similarly have no bearing on the Nutritional Yeast rule. For example, the commenter remarked that in *NRDC v. EPA*, the Court invalidated the affirmative defense provision of the Cement Kiln NESHAP that excused Portland cement manufacturers if they experienced a process malfunction. The commenter stated the Nutritional Yeast rule does not provide any affirmative defense for non-compliance.

Response: We disagree that the changes to the form of the standard are unwarranted and that the *Sierra Club v. EPA* decision is inapplicable in this context because we disagree with the commenters' characterization of the existing form of the standard as an emission limitation that applies at all times. A standard that allows up to 2 percent of batches to be produced without any applicable limitation on emissions does not provide continuous emission reductions within the meanings of CAA sections 112 and 302(k).

The existing form of the standard is inconsistent with the D.C. Circuit's holding that CAA sections 112 and 302(k), when read together, require that emission standards apply on a continuous basis, and we are remedying that inconsistency here. See *Sierra Club v. EPA*, 551 F.3d at 1027. While the Court was specifically addressing SSM

requirements in that case, its analysis was based on CAA section 302(k)'s requirement that emission standards, including those required under CAA section 112(d)(2) and (3), "assure continuous emission reduction." *Id.* The Court discussed the legislative history of CAA section 302(k), noting that "the committee has made clear that constant or continuous means of reducing emissions must be used to meet these requirements. By the same token, intermittent or supplemental controls or other temporary, periodic, or limited systems of control would not be permitted as a final means of compliance." *Id.* (quoting H.R. Rep. 95-294, at 92 (1977)). The Court's disposition of the SSM issue was based on its determination that CAA section 302(k) does not allow the EPA "to relax emission standards on a temporal basis." *Id.* at 1028 (citing *NRDC v. EPA*, 489 F.3d at 1364, 1374 (D.C. Cir. 2007)). That same analysis—that some emission standard must provide emission reductions at all times—is directly applicable to the emission standard at issue here. The existing MACT standard for yeast manufacturing allows up to 2 percent of batches to be produced without any kind of emission reduction requirement, which is in direct conflict with CAA section 302(k) and *Sierra Club v. EPA*.

We disagree with the commenter's overly narrow interpretation of *Sierra Club v. EPA* as applying only to SSM exemptions, as it ignores the underlying determination that such exemptions are illegal because they are inconsistent with the requirement that emission reductions must be continuous. The existing form of the standard for yeast manufacturing creates a limited or intermittent system of control. The fact that this exemption was originally built into the standard does not excuse its fundamental inconsistency with the statutory requirements. We also disagree that we are confusing continuous compliance with relief from compliance; again, the issue is broader than just whether sources must comply continuously with a standard—it is also, according to the D.C. Circuit's analysis, whether that standard provides continuous emission reductions.

The EPA acknowledges and understands that, in the current standard, nutritional yeast facilities continuously monitor VOC concentration during each batch. This is done both to monitor emissions for compliance purposes and also because facilities use the data for process control. However, continuous monitoring is not equivalent to having a continuous emission standard when

the continuous monitoring is not accompanied by an emission reduction requirement. Critically, facilities may currently exceed the VOC standards for up to 2 percent of batches and these batches are allowed to emit an unlimited amount of HAP and VOC emissions. The revised forms of the standards, be it the Batch or Average Option, require that all monitored batch data are included to determine compliance, which ensures that the standards do not provide allowances for some batches of yeast to emit an unlimited amount of HAP and VOC emissions.

The EPA also notes that nutritional yeast facilities make hundreds to thousands of batches of yeast within a 12-month period; therefore, the 2-percent exemption allows a significant number of batches to exceed the limits. For example, if there are 1,000 batches during a 12-month period, up to 20 batches may operate without emission limits. Again, there is no cap on their emissions and no penalty for these exceedances, regardless of how much they exceed the emission limit or the cause of the excursion. This "time out" from application of the emission standard is inconsistent with the requirement that such standards provide for continuous emission reductions.

Relatedly, we further clarify that, separate from updating the form of the standard so that an emission limitation applies to all batches (*i.e.*, continuously), we are also removing cross-references to sections of the General Provisions that allow for exemptions from compliance during periods of malfunction. These are two separate issues in the context of this rulemaking, both of which were precipitated by the *Sierra Club v. EPA* decision, as explained above. While removal of the malfunction exemption means that owners or operators of nutritional yeast manufacturing facilities must include data from every batch when determining whether they have complied with the standard, this does not preclude the EPA from appropriately addressing noncompliance when it results from emissions that occur during periods of malfunction as defined in 40 CFR 63.2, which is discussed in section III.C of this preamble.

We did not include affirmative defense language in the nutritional yeast proposal and did not consider it for the rule revisions. Thus, we agree that the *NRDC v. EPA* decision is not relevant to the revisions to the form of the standards.

Comment: Two commenters stated that allowing up to 2 percent of batches

to exceed the fermenter VOC emission limits is inherent in the standards to account for the natural variability of the yeast manufacturing process. One commenter remarked that changing the fermenter VOC standards would be to reject the EPA's prior determination that the standards needed to reflect the actual functioning of the yeast fermentation process.

Response: The EPA disagrees that an exemption from emission limitations is the only option to address variability within a standard. There are other options for addressing variability besides raising the level of the standard. One such option is to express the emission limitation as the average of emissions from all batches. Our proposed Average Option, where a facility may average BAVOC emissions from all batches within a given fermentation stage together within a 12-month period, provides flexibility for individual batches to emit both below and above the prescribed numerical limits. Therefore, we disagree that changing the form of the standard rejects the EPA's prior determination that the standards needed to reflect the actual functioning of the yeast fermentation process.

Comment: Two commenters stated that the Average Option could be adopted if no discount factor were applied because the Average Option accounts for variability within the yeast manufacturing process. One of the commenters does not support the 5-percent discount factor that is part of the Average Option and suggested the EPA would be required to re-open the MACT standard and revisit the administrative record that it established in 2001 in order to justify such a change.

Response: To address the requirement that the emission standards must provide for continuous emission reductions, the EPA proposed to change the current emissions standards in subpart CCCC that allow 2 percent of the batches to be exempted from the otherwise applicable emission limitation. The EPA proposed that the "Batch Option" would be the updated form of the MACT standard and would set emission limits for different fermentation stages by simply eliminating the exemption from the otherwise applicable emission limitation for up to 2 percent of batches. However, we now recognize that requiring 100 percent of batches to meet the original emission limitations, as opposed to 98 percent, is not what we determined to be MACT in the 2001 rulemaking. That rulemaking acknowledged that there is a degree of

natural variance in the yeast fermentation process, such that the maximum degree of emissions reduction achievable is the level represented by 98 percent of batches meeting the applicable emission limits (66 FR 27880, May 21, 2001). Therefore, while we are retaining the Batch Option as an alternative compliance option, it does not represent MACT.

The EPA also proposed the Average Option for determining compliance with the applicable emission limitations. Because we formulated this option to reflect the level of emission reductions represented by the original MACT standard, including the allowance for variability built into that standard, we are now determining that it is the Average Option that actually represents MACT. As the commenters acknowledge, assessing compliance based on a 12-month rolling average of batch emissions serves the same purpose of addressing batch variability as the 2-percent exemption. We applied a discount factor specifically because averaging multiple batches inherently provides more flexibility to emit above such limits. We have also used discount factors in conjunction with annual average emission limitations in the Boiler MACT, where a 10-percent discount was applied for emissions averaging. Allowing annual average BAVOC emissions to meet the original VOC concentration limits established as MACT in 2001 (*i.e.*, applying a 0-percent discount factor) would actually relax the standard, both due to the inherent flexibility of an averaging method and by potentially allowing more than 2 percent of batches to exceed the emission limitations set for each fermentation stage. To ensure that the annual averaging method will maintain the level of emission reductions represented by MACT, the EPA is finalizing a 5-percent discount factor in the VOC emission limit for each fermentation stage, as described in detail in the memorandum titled, "Average Option Analysis for the Manufacturing of Nutritional Yeast Source Category," available in the docket for this rulemaking. The EPA believes that it is necessary to include both components of the Average Option, as the 12-month rolling average provides for a degree of flexibility to account for the natural variance in the manufacturing process, while the 5-percent discount factor maintains the level of emission reductions consistent with the MACT determination, which is the level of emission reductions that protect public health and prevent adverse effects on the environment.

As discussed previously in this section, the changes to the form of the standard were precipitated by the D.C. Circuit's 2008 ruling in *Sierra Club v. EPA* that some emission standard must apply at all times. 551 F.3d 1019, 1027–28 (D.C. Cir. 2008). We did not re-open the MACT calculation in this rulemaking; the revised form must continue to reflect the emission reductions achieved by the best performers as determined in the 2001 rule. The Average Option as finalized meets these requirements.

Comment: One commenter stated the EPA did not offer sufficient technical support to justify that the proposed fermenter VOC emission limits are merely a change in the "form of the standards" and not a change in the standards themselves. The commenter contended that the revised fermenter VOC standards are not equivalent to the existing standards and there is no legal or technical basis for any changes to the existing fermenter VOC standards. In addition, the commenter maintained the proposed revisions fundamentally alter the standards, and their stringency, by changing the formula used to assess whether facilities are in compliance.

Response: The EPA disagrees that there is no legal basis for changing the form of the standard and that our revision to the form of the standard fundamentally alters the standard itself. As discussed previously in this section, we have not recalculated the MACT floor or revisited the MACT determination; however, we have revised the current form of the standard consistent with the D.C. Circuit's *Sierra Club v. EPA* decision. It is not possible, strictly speaking, to demonstrate that the revised form of the standard is "equivalent to" the existing form of the standard because changing the form necessarily makes a direct comparison between the current standard and the revised standard infeasible. However, when revising the form, we have taken a reasonable approach to make the MACT standard apply continuously and to ensure that the revised form remains consistent with the level of emission reductions we originally determined to represent the MACT standard. That is, we have attempted to ensure, to the extent possible, that changing the form of the standard does not fundamentally alter the MACT standard that was finalized in 2001.

The Average Option was developed to maintain flexibility for the sources subject to the rule and is expected to maintain the level of emission reductions represented by the existing MACT standard. To support an alternate form of emission limitations that would

allow for emissions averaging and would also represent the existing MACT standard, we considered information from the development of the original MACT standard and analyzed more recent emissions data from the facilities currently subject to this rule. Multiple years of individual BAVOC emissions data were available for two facilities. Summary BAVOC data were available for three facilities. A detailed description of the analysis of the Average Option is available in the memorandum, "Average Option Analysis for the Manufacturing of Nutritional Yeast Source Category," which is available in the docket for this rulemaking.

With the revision of the form of the MACT standard, we retained certain characteristics of the 2001 standard (*e.g.*, rolling 12-month calculation periods) to reduce the changes to ongoing operations and reporting and recordkeeping procedures for affected sources. We determined that an annual averaging method was the most appropriate form to maintain the flexibility established in the 2001 MACT standard to account for the variability in emissions and retain elements of the reporting and recordkeeping provisions. We concluded, based on available data, that we could use a normal (bell-curve) distribution to simulate emissions from the yeast manufacturing process for the purposes of establishing annual average emission limits.

The 2001 MACT standard did not set the annual mean for the distribution of BAVOC concentrations at 300 ppmv, 200 ppmv, and 100 ppmv for each of the last three fermentation stages, respectively. Rather, it established an upper threshold that no more than 2 percent of individual batches could exceed. As described in greater in the memorandum, the emission limitations established under the annual averaging compliance method will necessarily be lower than the upper threshold established for the 98 percent of batches with individual batch emission limitations under the 2001 MACT standard because the limitations established under the annual averaging method represent the mean of a normal distribution instead of an upper threshold.

The simulated distribution depends on two parameters—mean and standard deviation. Because the mean and discount factor are directly related, we utilized the standard deviation as the key parameter for determining the discount factor that would maintain both flexibility for process variability and the level of emission reduction

established in the 2001 MACT standard. To do this we used the available BAVOC data from two facilities to calculate the standard deviation for 12-month rolling averages (65 total for each fermentation stage). The lowest observed standard deviations for each fermentation stage were 7 ppmv for the third-to-last stage, 5 ppmv for the second-to-last stage, and 3 ppmv for the last stage of yeast manufacturing. Utilizing the least-variable 12-month period to determine the average emission limitation results in the lowest discount factor and gives facilities the ability to operate at the highest annual average emission limit. Applying these standard deviations results in discount factors of 5 percent for the third-to-last and second-to-last stage, and 6 percent for the last stage. Instead of selecting different discount factors for each stage, we determined that a 5-percent discount factor was appropriate to apply to the 2001 VOC concentration limitations to express the existing MACT standard in a new form.

In summary, the Average Option uses an annual averaging methodology to achieve the flexibility originally accomplished by allowing 2 percent of batches to exceed the established emission limits (300 ppmv, 200 ppmv, 100 ppmv). The revised form of the standard sets annual average emission limitations that are 5 percent lower than the 2001 upper threshold emission limitations for individual batches to maintain the level of emission reductions represented by the original form of the MACT standard.

Comment: Two commenters asserted the EPA determined that only 98 percent of batches could reasonably be expected to meet the emission limits and, thus, this was the MACT floor (66 FR 27880, May 21, 2001). One of the commenters also contended that if the 2001 fermenter VOC standards had been computed based on all batches, rather than 98 percent of the batches, the standards would necessarily have been set higher to accommodate process variability or some type of emissions averaging.

Response: We agree that in setting the MACT floor in 2001, the EPA concluded that MACT is the control of 98 percent of the batches to either at or below the VOC concentration limits. However, we disagree that changing the form of the standard rejects our acknowledgment of the actual functioning of the yeast fermentation process or, as discussed previously in this section, the EPA's prior MACT floor determination. The updated form of the standard, as expressed in the "Average Option," maintains the level of emission

reductions represented by MACT. This is a change from the proposal, which presented the "Batch Option" as the updated form of MACT. For further discussion of the determination of the Average Option as MACT, see the prior response in this section.

The EPA disagrees that if the 2-percent exemption were not included in the original MACT limits, the standards would necessarily have been set higher. The numerical emission limits included in the MACT standard were not set based on the actual emissions levels achieved by 98 percent of the batches produced; rather they relied on the existing concentration-based limits included in two state rules, the state of Wisconsin and the state of Maryland, that were based on reasonably available control technology (RACT) and that were in place at the time (66 FR 27879, May 21, 2001). However, some states applied discretion concerning the number of exceedances of those emission limits that could occur before finding a facility in violation of the standards. For example, the state of Maryland's continuous emissions monitoring policy allowed for one VOC concentration limit exceedance per facility per quarter. Consistent with this policy, the EPA calculated the average number of exceedances as a percent of the total number of batches manufactured at the five facilities subject to RACT or RACT-derived limitations during 1998 and calculated the overall average exceedances (based on dividing the average number of exceedances for the facilities by the average number of runs (where a run is a fermentation of any stage) for the facilities) to be 1.3 percent, noting that one of the facilities reported an unusually high number of exceedances due to "shakedown" (testing) of a new fermenter. Notably, one of the five yeast manufacturing facilities analyzed exceeded no concentration limits (66 FR 27880, May 21, 2001). Given that one of the facilities did not exceed the limits, that Maryland only allowed four batches to exceed the limits each year, and that the average number of exceedances calculated using data from a facility with an "unusually high number of exceedances" was only 1.3 percent; as well as the statements from a commenter during promulgation of the MACT floor that "most batches display BAVOC below the . . . limits" (66 FR 27880, May 21, 2001), we disagree that the limits would "necessarily have been set higher" as the commenter contends.

Comment: One commenter stated the Batch Option would never be preferred from a compliance standpoint to the Average Option, and, thus, considered

the inclusion of the Batch Option as an alternative to be illusory.

Response: We acknowledge the comment. However, the EPA does not support or prefer one option over another (*i.e.*, the Batch Option versus the Average Option). As explained above, while the EPA considered the Batch Option to be the revised form of the MACT standard at proposal, in light of comments received, we have determined that the Average Option is the revised form of the MACT standard. In recognition of information gathered from the development of the original rule and during the site visits conducted for the RTR that some facilities may be able to meet the current emission limits for all batches manufactured during a year, we have retained the Batch Option as an alternative compliance option that offers a more streamlined approach to determining and reporting compliance.

4. What is the rationale for our final approach?

For the reasons explained in the preamble to the proposed rule (81 FR 95826, December 28, 2016) and in our comment responses in section IV.C.3 of this preamble, we are finalizing revisions to the form of the fermenter VOC standards in Tables 1 and 7 to subpart CCCC. As noted above, since proposal, the EPA's determination of which option, the Batch Option or the Average Option, is the revised form of the original MACT standard has changed, and we now find that the Average Option represents MACT. However, we are finalizing both of the revised forms of the standard with no changes to the standards themselves, and are also finalizing the requirement that all sources must comply with one of the two revised forms with the changes related to frequency described in section IV.C.2 of this preamble. Additionally, we are finalizing revisions to 40 CFR 63.2150 to remove the emission limitation exemption during periods of malfunction, with the result that emissions from batches produced during periods of malfunction, other than monitoring system malfunctions, must now be included in calculations for compliance purposes.

D. Removal of the Option To Monitor Brew Ethanol

1. What did we propose?

The EPA proposed to remove one of two options for demonstrating ongoing compliance in the 2001 rule, which allowed facilities to monitor brew ethanol concentration in the fermenter liquid. Specifically, we proposed to revise the requirements of 40 CFR

63.2166 and 63.2171, and Tables 3 and 4 to subpart CCCC to remove the option to monitor brew ethanol as a means of demonstrating compliance. The method for monitoring brew ethanol requires facilities to develop an annual correlation of brew ethanol concentration to VOC concentration in the fermenter exhaust and use the correlation to determine compliance with the emission limitations. This method does not account for batch-specific characteristics affecting emissions and we subsequently determined it to be an unreliable indicator of a facility's compliance with the standard. A detailed discussion is available in the preamble to the proposed rule (81 FR 95827, December 28, 2016) and the supporting analysis is presented in the memorandum, "Brew Ethanol Correlation Review for the Manufacturing of Nutritional Yeast Source Category Memo Correction," which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2015-0730-0181). We proposed to require facilities that monitor brew ethanol to adopt the remaining compliance demonstration option, which involves the installation and use of CEMS to monitor VOC emissions directly in the fermenter exhaust.

2. How did the requirements change since proposal?

The EPA is making no changes to the removal of the option to demonstrate compliance by monitoring brew ethanol in the fermenter liquid and is finalizing this amendment as proposed. However, as explained in section IV.G of this preamble, in response to public comments, the EPA has allowed 2 additional years for facilities to comply with this amendment in addition to the 1 year that was proposed.

3. What key comments did we receive and what are our responses?

Comment: One commenter challenged the EPA's technical analysis supporting the proposed removal of the option to monitor brew ethanol as a method to demonstrate compliance with emission limitations, and claimed that the analysis was fundamentally flawed and misleading. The commenter disagreed with the EPA's finding that brew ethanol monitoring resulted in a high level of inconsistency in the amount of VOC emissions estimated for a particular brew ethanol concentration and requested that brew ethanol monitoring be retained as a valid parametric CEMS. The commenter also suggested that the EPA erred by using "hypothetical" VOC concentrations instead of the actual batch-average

concentration values of brew ethanol in the fermenter liquid (BAE) from one of the performance tests to demonstrate the potential for emission limitation exceedances.

The commenter provided a report that analyzed brew ethanol correlation performance tests from 2007 through 2016 (see EPA-HQ-OAR-2015-0730-0191-A2). The report presented the conclusion that the combined 10 years (2007-2016) of performance test data demonstrated that when using the actual BAE and maximum BAE results for each fermentation stage over the 10-year period and applying the results to each year's linear regression analysis, there was not a single year where the facility would have exceeded the prescribed VOC emission limitations for the tested batches. Furthermore, the commenter stated that even when using the highest BAE observed during one of the performance tests over the last 10 years and applying the most unfavorable linear regression analysis from those 10 years, there was no potential for the facility to have exceeded the corresponding VOC emission limitations.

Response: The commenter has provided no evidence to dispute the EPA's central conclusion that the calculated brew ethanol linear regression equations demonstrate an unacceptable level of variability. The EPA's decision to disallow the brew ethanol monitoring option rests on this conclusion. The analysis of "higher end" brew ethanol concentrations, which the EPA believes remains reasonable (as discussed below), was utilized to illustrate the effect of relying on the highly variable brew ethanol linear regressions on compliance, and is not the primary support for the EPA's decision to discontinue the brew ethanol monitoring option.

The core point of the EPA's analysis is that the level of VOCs emitted for a given percentage of brew ethanol measured in a fermenter is different for every batch that was tested in a given fermentation stage between 2012 and 2016. The additional data submitted by the commenter for the years 2007 through 2011 further support this finding. Depending on which of the 10 performance test batches is evaluated, the BAVOC value that would be calculated for a BAE value of 0.14 from a batch manufactured in the third-to-last stage ranged from as low as 76 ppmv to as high as 207 ppmv. Similar results were reported for the second-to-last and last fermentation stages. Our analysis of the variability is provided in the memorandum titled, "Brew Ethanol Correlation Review for the

Manufacturing of Nutritional Yeast Source Category—Final Rule," which has been updated with the additional data submitted by the commenter and is available in the docket for this rulemaking.

For many batches produced over the course of a year, the variability between annual correlation equations will not affect the facility's compliance status because the batches are well under the established emission limitations for each of the correlation equations. However, for those batches with higher brew ethanol concentrations, the variability may have a significant impact on the resulting BAVOC value calculated for those batches and the overall compliance status of the yeast manufacturing facility, depending on the overall percentage of batches with higher BAE values.

For the purposes of estimating emissions, the current method does not provide reliable information about the thousands of batches that are not tested, other than showing whether emissions are rising or falling. In order for the existing correlation method to be useful for compliance purposes, it is necessary that the relationship between BAE and BAVOC be relatively constant between batches for a given fermentation stage, regardless of the point-in-time in which they were tested. The manufacturing of yeast is a biological process and some degree of variation is expected.

However, emissions are also determined by a few key process parameters, including the amount of available oxygen and the composition and amount of the sugar and nutrient mixture fed to the yeast in each batch. The review of the data in the memorandum titled, "Brew Ethanol Correlation Review for the Manufacturing of Nutritional Yeast Source Category—Final Rule," which is available in the docket for this rulemaking, shows that the relationship between brew ethanol concentration and VOC emissions is affected by some combination of these or other process parameters since the correlation is not constant for each tested batch and each fermentation stage. The inconsistent correlations suggest that the brew-to-exhaust correlation method does not yield reliable emissions information for batches of yeast other than those specific batches used for the annual performance tests.

The EPA disagrees that the use of sample VOC concentrations other than the BAE values measured during a performance test with the corresponding correlation equation to assess the brew ethanol correlation method is misleading. Rather, this is the process

laid out in the rule for the facility to determine compliance with the emission limitations. Each year, the facility is required to test only three individual batches (one from each fermentation stage) out of the thousands of batches that are manufactured during the year. The facility then estimates BAVOC values for the thousands of other batches using the correlations obtained during the performance tests that year. The EPA analyzed 5 years of actual BAVOC values recorded by the facility and used the corresponding year's correlation equations to calculate a BAE value for every batch manufactured during those 5 years. The "higher end" values used in the memorandum, "Brew Ethanol Correlation Review for the Manufacturing of Nutritional Yeast Source Category—Final Rule" were all within the ranges of actual BAE values measured during the corresponding years by the facility. The commenter also stated that none of the 30 individual batches that were used for an annual performance test between 2007 and 2016 exceeded the prescribed VOC emission limitations. The EPA agrees; in fact, the linear regression must be calculated from a batch that does not exceed the emission limitations, as required by 40 CFR 63.2161(d)(3). If the commenter does not agree that the correlation equation should be applied to any BAE values other than those directly tested, the commenter would seem to be suggesting that a performance test must be conducted on each individual batch manufactured by a facility, which would be cost-prohibitive and is not feasible for a facility. To clarify, the EPA never stated that the facility exceeded the NESHAP emission limitations for any of the batches monitored during a performance test between 2011 and 2016. Rather, we demonstrated that the relationship between the concentration of VOC in the fermenter exhaust and the percent of brew ethanol in the fermenter liquid is not consistent between batches. Therefore, the use of the relationship between VOC concentration and percent of brew ethanol from one batch to calculate emissions from all other batches in the same fermentation stage over an arbitrary period of time is unreliable. While this could mean that the facility under-reports emissions from some batches, it also means that the facility could over-report emissions from some batches. This potential for over-reporting is best illustrated with the use of "higher end" BAE values. If a particular correlation was established one year for a batch that had an

unusually high relationship between VOC concentration and brew ethanol percentage, the continued use of that correlation for the period of that year could conceivably cause the facility to calculate BAVOC values over the emission limitations for enough batches that the facility would appear to be out of compliance; such a circumstance would cause the facility to incur significant compliance costs, regardless of what the actual emissions were since actual emissions are not tested.

As a point of clarification, the commenter refers to brew ethanol monitoring as a "parametric CEMS." The commenter is combining two elements together that have different regulatory meanings. A continuous monitoring system can be a continuous parameter monitoring system (CPMS) or a CEMS, but a CPMS is not a CEMS. CPMS and CEMS are defined separately at 40 CFR 63.2, such that a CPMS is "used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters" and a CEMS is "used to sample, condition (if applicable), analyze, and provide a record of emissions". The EPA revised the rule language to use "brew ethanol monitor" instead of "CEMS" because a brew ethanol monitor does not record VOC emissions and, thus, is not a CEMS. A brew ethanol monitor is used to measure the brew ethanol concentration in the fermenter liquid, which is then used to estimate VOC emissions via the brew ethanol correlation. The change in terminology did not result in any changes to the existing requirements. Rather it ensured the existing language was technically correct.

Comment: One commenter indicated that multiple facilities use brew ethanol monitoring to calculate VOC emissions and, thus, brew ethanol monitoring should not be eliminated as an acceptable option. The commenter described that one facility uses brew ethanol monitoring as well as CEMS to develop VOC emissions data, with the brew ethanol monitoring serving as a quality assurance step.

Response: Only one facility currently uses brew ethanol monitoring to demonstrate compliance; the other facilities all utilize CEMS VOC data to demonstrate compliance with the standard. Use of brew ethanol monitoring for quality assurance does not prove its capability to provide accurate and reliable data for a compliance demonstration. The final rule does not prohibit the use of other methods of quality assurance for process control in addition to the systems

necessary to meet the requirements of the rule.

Comment: Two commenters argued that requiring facilities to install flame ionization detection (FID) CEMS to replace brew ethanol monitoring would not provide emissions data that is more reliable or less variable and that the EPA has not shown that CEMS would result in meaningful improvement to compliance or regulatory outcomes. One commenter cited a letter (see EPA-HQ-OAR-2015-0730-0191-A54) that commented on the accuracy of FID CEMS; the letter stated that the presence of oxygen, moisture, and hydrocarbons in fermenter emissions have the potential to interfere with FID CEMS technology and cause variability in any data collected using FID CEMS.

Response: The EPA disagrees that the use of brew ethanol monitoring is comparable to the use of FID CEMS to monitor emissions from the manufacturing of nutritional yeast. As explained previously in this section and the memorandum, "Brew Ethanol Correlation Review for the Manufacturing of Nutritional Yeast Source Category—Final Rule," which is available in the docket for this rulemaking, the brew ethanol method does not account for batch-specific variables affecting emissions. An FID CEMS, on the other hand, does indicate batch-specific emissions, which increases confidence that reported emissions are reliable. Additionally, such data can help a facility avoid the potential for erroneously determining that it is out of compliance compared to the scenario of using a batch with an unusually high ratio of VOC emissions to brew ethanol content for the annual performance test and the subsequent correlation calculation.

While it is true that the accuracy of an FID CEMS can be affected by factors such as moisture, the commenter does not acknowledge the common procedures in place to minimize these effects (such as the use of heated sample lines) or the difference between monitoring system malfunctions and day-to-day reliability of these systems. Similarly, the letter discusses technical issues with response factors. Response factors are needed to establish the relationships of different gases to the one used as the calibration standard for a measurement instrument. Since the standard is expressed in terms of VOC as propane and the FID CEMS are calibrated with propane (as required by 40 CFR 63.2163 (d)), response factors are not used and the commenter's argument is irrelevant.

4. What is the rationale for our final approach?

For the reasons explained in the preamble to the proposed rule (81 FR 95827, December 28, 2016), in the comment responses in section IV.D.3 of this preamble, and in the memorandum, “Brew Ethanol Correlation Review for the Manufacturing of Nutritional Yeast Source Category—Final Rule,” which is available in the docket for this rulemaking, we are finalizing the removal of the option to demonstrate compliance by monitoring brew ethanol in the fermenter liquid as proposed, with the changes related to frequency described in section IV.D.2 of this preamble.

We finalized requirements at 40 CFR 63.2150(b) and 63.2166, and Tables 3, 4, and 8 to subpart CCCC to remove the option to monitor brew ethanol.

E. Requirement To Conduct RATA

1. What did we propose?

The EPA proposed a requirement in 40 CFR 63.2163 to conduct annual RATA for all VOC CEMS, which were previously exempt from this quality assurance requirement. This proposed requirement specified the use of Procedure 1 of appendix F to part 60 to evaluate the performance of the installed VOC CEMS over an extended period of time (81 FR 95829, December 28, 2016). The EPA also proposed to replace an outdated reference with the current version of the EPA’s traceability protocol for use in quality assurance procedures for CEMS.

2. How did the requirements change since proposal?

The EPA has maintained the proposed requirement to conduct ongoing RATA; however, in response to public comments, we are revising the frequency of the RATA. We are finalizing a requirement for facilities to conduct RATA for each CEMS at least once every 3 years, instead of annually. The EPA also corrected the proposed rule language (see 40 CFR 63.2163(b)(3)) to clarify that the current version of the EPA’s traceability protocol (EPA/600/R-12/531) replaces citation 2 of Procedure 1 of appendix F to 40 CFR part 60; at proposal, the EPA incorrectly cited reference 2 of Performance Specification 8 of appendix B to 40 CFR part 60.

3. What key comments did we receive and what are our responses?

Comment: A commenter did not support the proposed requirement to require annual RATA for all CEMS and stated that it was a costly procedure that would not enhance process control or

achieve any valid regulatory goal. If RATA are required, the commenter suggested that RATA be conducted on a 3- to 5-year cycle, rather than annually. The commenter also requested the final rule clarify that RATA are not required every time a CEMS is repaired or replaced.

One commenter stated the more stringent monitoring requirements were not justified because it would not lead to a reduction in emissions and would unnecessarily increase cost.

Response: During the site visits conducted for this rulemaking, it was noted that many of the malfunctions recorded by the facilities subject to this rule were due to malfunctions of the compliance monitoring systems. Regular RATA ensure the CEMS continue to produce valid data, which is necessary for the owner or operator, as well as the EPA, to ensure compliance. A RATA assesses both the instrument accuracy in measuring the target analyte in the emission matrix (which daily calibrations and audits using reference gases do not) as well as the representativeness of the CEMS sampling location.

It is routine for the EPA to require annual RATA of CEMS. While the original rule did not require annual RATA for FID CEMS, the EPA has finalized revisions to require ongoing quality assurance procedures (including RATA) in many rules since 2001. For example, ongoing quality assurance procedures were included in the Metal Coil Surface Coating, Miscellaneous Coating Manufacturing, Plywood and Composite Wood Products, and Portland Cement Manufacturing MACT standards, promulgated on June 10, 2002; December 11, 2003; July 30, 2004; and February 12, 2013, respectively. The addition of RATA procedures to the Nutritional Yeast rule helps complete this missing, but necessary, quality-assurance component.

However, to reduce burden, the EPA is finalizing a requirement to conduct RATA at least once every 3 years, instead of annually, as proposed.

The EPA is not revising the rule language to state that RATA are not required in certain instances. In fact, the replacement of a CEMS would require a RATA to ensure accuracy of the measured data.

4. What is the rationale for our final approach?

For the reasons explained in the preamble to the proposed rule (81 FR 95829, December 28, 2016) and in the comment responses in section IV.E.3 of this preamble, we are finalizing requirements in 40 CFR 63.2163 to

conduct RATA, as proposed, with the changes related to frequency and the traceability protocol citation described in section IV.E.2 of this preamble.

F. Requirement To Collect All Valid CEMS Data

1. What did we propose?

The EPA proposed a requirement to collect CEMS data at all times during each batch monitoring period, except for periods of monitoring system malfunctions, required monitoring system quality assurance or quality control activities, and any scheduled maintenance (81 FR 95829, December 28, 2016). The requirements were proposed at 40 CFR 63.2163, 63.2170, 63.2181(c)(8), and 63.2182(b)(9).

2. How did the requirements change since proposal?

The EPA is finalizing, as proposed, the requirement to collect all valid CEMS data. In response to comments, we have also finalized clarifications to the rule text to reinstate 40 CFR 63.8(c)(4)(ii), (c)(7), and (g)(2) of the General Provisions that specify the minimum operation requirements for CEMS (at least one cycle every 15 minutes), the definition and requirements for “out of control” CEMS, and the procedures for the reduction of CEMS data to hourly averages.

3. What key comments did we receive and what are our responses?

Comment: A commenter stated that collecting CEMS data at all times, instead of for 75 percent of the batch hours, is an impossible bar that is not achievable in practice. The commenter stated that collecting data from 75 percent of batch hours is a reasonable accommodation of the fact that monitoring equipment cannot operate perfectly or be calibrated 100 percent of the time in an industrial plant. The commenter suggested a monitoring requirement of total CEMS uptime of 75 percent of fermentation time during rolling 12-month periods. The commenter also requested the EPA clarify that “at all times” means logging data once every 15 minutes.

The commenter stated that nothing in the record supports the theory that more stringent monitoring will add precision to the measurement and that any such precision would not be meaningful from an operation or compliance standpoint. The commenter noted the existing monitoring requirements are sufficient to determine the average VOC concentration in a fermenter batch and across numbers of batches. The commenter was concerned that

requiring more stringent monitoring could subject facilities to enforcement actions and citizen suits.

The commenter recommended three alternative monitoring methods for periods that CEMS are not available. The commenter also requested the EPA define expressly the procedures for monitoring system out-of-calibration, downtime, or missing data in the rule language, rather than using cross references to other EPA technical procedures.

Response: We emphasize that the proposed amendments specified that data must be collected “at all times during each batch monitoring period, except for periods of monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance.” We disagree that a requirement to collect CEMS data at all other times is an impossible bar that is not achievable in practice. As far back as 1994, the EPA’s Office of Water reported that total hydrocarbon (THC) CEMS, which are a subset of VOC CEMS, along with other analyzers necessary to correct values to standard moisture and oxygen content, were “. . . able to demonstrate a data capture rate of 100 percent, based on four measurements per minute.”² Electronically submitted data from Portland cement source owners or operators currently using VOC CEMS as a compliance method also refutes the commenter’s assertion. As shown from a quick search of submissions to the EPA’s ERT,³ at least five separate facilities⁴ report greater than 90-percent uptime for their THC CEMS.⁵ Moreover, none of the facilities reported an inability to collect monitoring data at all times that their units were operating

and the commenter did not provide any examples of the inability to collect data other than monitor malfunctions or quality assurance/quality control activities.

We find that the commenter misinterprets the requirement to collect data at all times. The proposed rule does not require the VOC CEMS to be operating perfectly or calibrated for 100 percent of the time. In fact, the rule specifically prohibits data collection during periods of monitoring system malfunction or of required monitoring system quality assurance or control activities—such as calibrations and scheduled maintenance (see 40 CFR 63.2170(b)). Moreover, the rule allows owners or operators to establish and follow their own CEMS quality control programs with site-specific performance evaluation plans that cover items such as initial and subsequent calibrations, calibration drift specifications, preventive maintenance, accuracy audit procedures, and CEMS corrective action procedures (see 40 CFR 63.8(d)(2)), as referenced by Table 6 of the rule. The commenter’s concern for practicality regarding 100-percent data collection is misplaced; while the rule requires complete data collection from certain periods, it does not require 100-percent data collection. Moreover, in the event that data are not collected as required during certain periods, the occurrences are specified as deviations, rather than automatic violations, of the rule; such deviations are to be reported by owners or operators to regulatory authorities who would take appropriate corrective action as necessary (see 40 CFR 63.2170(d)). Finally, source owners or operators are able to use the aforementioned site-specific monitoring plans to obtain approval from regulatory authorities for replacement emissions monitoring capabilities through approaches such as redundant or independent temporary systems prior to their use. While we reasoned that a facility may achieve enhanced process control from the amendments to the rule, this potential enhancement was not the basis for requiring the collection of CEMS data at all times. Given the variability in emissions throughout the process of manufacturing a batch of yeast, it is necessary to collect data at all times the CEMS are operational (given the exemptions noted above) to calculate accurate BAVOC values. The goal of the revision is to ensure the values collected and reported are suitable for demonstrating compliance with the rule. The enhanced monitoring data will allow us, owners or operators, and the public to have greater

confidence in compliance determinations based on those measurements, and, therefore, greater confidence that the expected health benefits of the rule are achieved.

We disagree with the commenter’s view that the monitoring is more stringent or could subject facilities to an increased number of enforcement actions or citizen suits, as the rule requires compliance with the emission limitations at all times. Monitoring itself does not affect a facility’s actual compliance status and, as stated above, monitoring downtime is characterized as a deviation from, rather than violation of, emission standards. Regarding enforcement discretion, we rely on our regulatory partners to assess the individual, case-specific facts and to take appropriate action when necessary to correct problems. Owners or operators can take steps under their own control to reduce or eliminate any compliance concerns through activities such as increased attention to emissions-causing processes; and development, acceptance, and use of redundant monitoring systems.

We agree with the commenter’s suggestion to clarify in the rule a minimum CEMS cycle time of 15 minutes, in which a value would be collected and recorded. This clarification was included by reinstating the applicability of 40 CFR 63.8(c)(4)(ii) of the General Provisions in Table 6. Furthermore, we have reinstated the applicability of 40 CFR 63.8(g)(2) of the General Provisions in Table 6 that allows a minimum of two data points (each representing 15-minute periods) or an arithmetic or integrated 1-hour average of CEMS data to constitute a valid hour of data collection during periods of calibration, quality assurance, or maintenance activities. These two sections of the General Provisions were not applicable to the 2001 Manufacturing of Nutritional Yeast, because alternate definitions were included in the rule. Now that the CEMS requirements have been updated, there is no need for separate requirements for this source category and the requirements from the General Provisions can be applied.

We do not agree with suggestions to write out monitoring system procedures when those procedures already exist in other applicable rules. Where relevant procedures already exist in other rules, our policy is to cross-reference those procedures; cross-referencing eliminates duplicative portions of rules and ensures consistency. While we do not see the need for alternative monitoring methods for periods when VOC CEMS are unavailable, since the

² Available at <https://cfpub.epa.gov/webfire/index.cfm?action=fire.searchERTSubmission>.

³ Available at <https://cfpub.epa.gov/webfire/index.cfm?action=fire.searchERTSubmission>.

⁴ The facilities and periods over which THC monitoring was reported include: Ash Grove Cement in Durkee, Oregon, from July through December 2016; Signal Mountain Cement Company in Chattanooga, Tennessee, from September 2015 through December 2016; Cemex Construction Materials Atlantic in Knoxville, Tennessee, from February through December 2016; Holcim (US) in Theodore, Alabama, from January through December 2016; and Lehigh Ready Mix Cement in Leeds, Alabama, from July through December 2016.

⁵ While the Portland cement manufacturing emission reports only require CEMS downtime greater than or equal to 90 percent to be reported [see 40 CFR 63.1354(b)(10)], subject facilities—just like as proposed for nutritional yeast manufacturers—are required to conduct all monitoring in continuous operation at all times that the units are operating [see 40 CFR 63.1350(i) and (m)(2)].

aforementioned data on the use of CEMS in other source categories from the EPA's ERT showed no periods of VOC CEMS unavailability, the rule does not prohibit owners or operators from proposing—and from regulatory authorities accepting—alternate means for assessing emissions as part of corrective action procedures for a malfunctioning VOC CEMS as part of the source's quality control program. Given the high level of variability in emissions between batches that was demonstrated by the data used to analyze the brew ethanol monitoring option, we would recommend owners or operators seek other means—perhaps redundant VOC CEMS—as better alternatives for determining compliance during periods when the primary VOC CEMS is malfunctioning. Of course, even with approval of other means for assessing emissions, failure to provide VOC CEMS data as required would remain a deviation and constitute monitor downtime, which must be reported according to rule requirements in 40 CFR 63.2181.

4. What is the rationale for our final approach?

For the reasons explained in the preamble to the proposed rule (81 FR 95829, December 28, 2016) and in the comment responses in section IV.F.3 of this preamble, we are finalizing requirements to collect all valid CEMS data, as proposed, with the additional clarifications described in section IV.F.2 of this preamble. The final requirements are specified at 40 CFR 63.2163, 63.2170, 63.2181(c)(8), and 63.2182(c)(5), and in Table 6 to subpart CCCC.

G. Compliance Dates for the Amendments

1. What did we propose?

The EPA proposed that currently operating facilities must immediately comply with one of the two revised forms of the fermenter VOC standards upon the effective date of the final rule, and that facilities that currently demonstrate compliance by monitoring brew ethanol in the fermenter have up to 1 year to install CEMS. The EPA proposed that currently operating facilities must immediately comply with the additional testing, monitoring, reporting, and recordkeeping requirements (*i.e.*, the removal of GC CEMS, collection of all valid CEMS data from the entire batch monitoring period, requirement to conduct RATA, use of Procedure 1 of Appendix F to part 60 for VOC CEMS, and the electronic reporting requirements), as well as with the

revised SSM requirements. The EPA also proposed that sources that are constructed or reconstructed after promulgation of the rule revisions must comply with all amendments upon startup of the affected source (81 FR 95834, December 28, 2016).

2. How did the requirements change since proposal?

Based on public comments, the EPA has changed the compliance date for existing sources to comply with the revised form of the fermenter VOC standards from immediate compliance upon promulgation of the rule to 1 year after the effective date of this rule. The EPA has clarified language in 40 CFR 63.2181(c)(4) through (7) describing facilities' reporting obligations under each of the three options for demonstrating compliance. The language, as finalized, allows facilities transitioning between compliance demonstration using the 98-Percent Option and the Average Option to report compliance in a semi-annual compliance report under different approaches for different 12-month calculation periods, as appropriate. This allows existing facilities the ability to continue to demonstrate compliance using the 98-Percent Option for all 12-month calculation periods that end before or on the compliance date for this amendment. For example, if the effective date of this final rule is October 31, 2017, then the compliance date for this amendment would be October 31, 2018. If an existing facility was scheduled to submit a semiannual compliance report by January 31, 2019, for the reporting period covering July 1, 2018, through December 31, 2018; the facility could demonstrate compliance for the 12-month calculation periods ending on July 31, 2018, August 31, 2018, September 30, 2018, and October 31, 2018, using the 98-Percent Option and for the 12-month calculation periods ending on November 30, 2018, and December 31, 2018, using the Average Option. Facilities may voluntarily choose to demonstrate compliance using the revised form of the emission limitations earlier, so that all of the 12-month calculation periods ending within the semiannual compliance report demonstrate compliance using the same form of the emission limitations. Facilities that choose to use the Batch Option to demonstrate compliance with the emission limitations must apply the demonstration to all batches within a semiannual reporting period; that is, facilities cannot transition to demonstrating compliance under the Batch Option in the middle of a

reporting period. Therefore, unless an existing facility that is transitioning from the 98-Percent Option to the Batch Option is due to begin a new semiannual reporting period in the month following the compliance date for this amendment, the facility has two interim options for demonstrating compliance. Assuming, for example purposes, a reporting period of July 1, 2018, through December 31, 2018, and a compliance date for the final rule on October 31, 2018; the facility could demonstrate compliance for the entire reporting period using the Batch Option. Alternately, the facility could demonstrate compliance using the 98-Percent Option for 12-month calculation periods ending on July 31, August 31, September 30, and October 31, and demonstrate compliance for 12-month calculation periods ending on November 30 and December 31, 2018, using the Average Option. The facility could then begin demonstrating compliance for the January 1, 2019, through June 30, 2019, reporting period using the Batch Option. A new table, Table 7, has been added to the rule to summarize when existing and new affected sources must comply with the different requirements for the form of the emission limitations.

Facilities that currently demonstrate compliance by monitoring brew ethanol have up to 3 years after the effective date of the rule to install CEMS, instead of the proposed 1 year. A new table, Table 8, has been added to the rule to summarize when existing and new affected sources must comply with the different requirements for emissions monitoring equipment.

3. What key comments did we receive and what are our responses?

Comment: One commenter does not support complying with the revised form of the fermenter standards immediately upon promulgation of the rule, and requested a minimum of 2 years to demonstrate compliance. The commenter stated it would take time for facilities to convert to any new methodology, especially as it relates to recordkeeping and reporting. The commenter remarked that immediate compliance upon issuance of a final rule is impracticable and unduly burdensome; facilities will not know when the EPA plans to issue the final rule and will have no understanding in advance of what the final rule will require.

Response: We disagree that immediate compliance would be impracticable for certain reasons the commenter noted; specifically, the commenter knows the final rule will be issued by October 1,

2017, due to the court-ordered deadline for this rulemaking. Furthermore, it is not accurate to say the commenter will have “no understanding” of what the final rule will require, given the nature of notice-and-comment rulemaking. The EPA notes that the emission limitations are simply expressed in a revised format and are not expected to result in any changes in compliance status. However, it is also reasonable to provide additional time to demonstrate continuous compliance with the revised form of the emission standard for facilities that are currently operating because it will require a change in recordkeeping and reporting procedures. CAA section 112(i)(3) requires that compliance dates for existing sources require compliance with any emission standard, limitation, or regulation promulgated under section 112 “as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard.” While we believe, based on information gathered during the site visits and phone calls conducted prior to the proposed rulemaking, that the facilities have all of the data needed to demonstrate continuous compliance with the amended requirements immediately, it is prudent to allow time to train staff and establish long-term procedures for the efficient management of this data. Therefore, the EPA has finalized amendments allowing the facilities up to 1 year to demonstrate continuous compliance with the revised form of the emission limitations and the associated reporting and recordkeeping requirements. We believe that 1 year is a sufficient period of time for facilities to update recordkeeping systems and train staff. The current emission limitations require facilities to record the emissions from each batch in a rolling 12-month period, compare the emissions from each batch with the standard, and count how many of the batches had emissions equal to or lower than the limit. A facility then determines the total number of batches that were manufactured during the rolling 12-month period and calculates the percentage of batches in that period that met the emission limitations. The revised form of the standard is slightly more streamlined in that facilities simply average the emissions from each batch produced in a given fermentation stage over the 12-month period and compare it to the emission limitation. While this necessitates a change in the overall calculation and reporting procedures, it does not require significant actions such as the selection, installation, and testing of new

equipment or changes to the yeast manufacturing process that would warrant 2 years to implement the revisions. As specified in section III.E of this preamble to the rule, facilities must continue to demonstrate continuous compliance with the existing emission limitations and reporting and recordkeeping requirements during the time it takes them to transition to the revised requirements. The revised requirements are expected to be slightly more streamlined than the existing requirements and there is no prohibition against facilities from demonstrating compliance with the new form of the emission limitations and associated reporting and recordkeeping requirements immediately.

Comment: Two commenters do not support having only 1 year to install CEMS if a facility currently monitors brew ethanol. The commenters requested a minimum of 3 years to comply to allow for the purchase, design, testing, and installation of new CEMS equipment. The commenters stated 3 years is consistent with the approach for sources when the rule was originally promulgated and the EPA has authority to allow 3 years to comply under CAA section 112(i)(3).

Response: The EPA has finalized requirements allowing the one existing facility that currently demonstrates compliance by monitoring brew ethanol up to 3 years to install CEMS to demonstrate compliance. This facility must continue to meet the performance test and operation and maintenance requirements of 40 CFR 63.2161 and 40 CFR 63.2164 during this time. Additionally, we note that the facility must comply with the revised form of the emission limitations at the specified time (within 1 year), regardless of the monitoring method used.

4. What is the rationale for our final approach?

For the reasons explained in the comment responses in section IV.G.3 of this preamble and in the response to comments document in the docket for this rulemaking, we are finalizing the requirements related to the compliance dates for the demonstration of compliance with the revised form of the fermenter VOC standards and the use of CEMS for existing facilities with the changes described in section IV.G.2 of this preamble. We finalized revisions in Table 7 and Table 8 to subpart CCCC to specify the emission limitation and monitoring system timelines. We finalized the revisions requiring immediate compliance for the additional testing, monitoring, reporting, and recordkeeping

requirements (*i.e.*, the removal of GC CEMS in 40 CFR 63.2163(a), collection of all valid CEMS data from the entire batch monitoring period in 40 CFR 63.2163(h), requirement to conduct RATA in 40 CFR 63.2163(b)(1), use of Procedure 1 of Appendix F to part 60 for VOC CEMS in 40 CFR 63.2163(b)(3), and the electronic reporting requirements in 40 CFR 63.2181(a)), as well as with the revised SSM requirements as proposed.

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

A. What are the affected facilities?

We anticipate that four nutritional yeast facilities currently operating in the United States will be affected by this final rule.

B. What are the air quality impacts?

The amendments to this subpart will have a positive impact on air quality. While facilities will not need to install additional controls to comply with the fermenter emission limitations, the revisions remove the exemption that allowed up to 2 percent of the total number of batches to be produced with no limit on emissions (*i.e.*, the revisions apply the emission limitations continuously). The rule revisions also remove the exemption that allowed emissions from batches produced during periods of malfunction, other than monitoring system malfunctions, to be excluded when determining compliance with emission limitations. While the air quality impact of these changes cannot easily be quantified due to a current lack of data on the number of and emissions from previously exempted batches, the practical effect is that production of all batches of nutritional yeast at affected sources will now be required to meet emission limitations. The other revisions, which affect testing, monitoring, recordkeeping, and reporting requirements, will ensure that emissions monitoring equipment continues to perform as expected and provides reliable data from each facility to be used in determining compliance. For reference, the baseline emissions for each facility are documented in the memorandum, “Emissions Data and Acute Risk Factor Used in Residual Risk Modeling: Manufacturing of Nutritional Yeast Source Category,” which is available in the docket for this action (Docket ID. No EPA-HQ-OAR-2015-0730-0007).

C. What are the cost impacts?

We have estimated compliance costs for all existing sources to perform RATA for VOC CEMS and for the single facility currently monitoring brew ethanol to install the necessary monitoring equipment (*i.e.*, VOC CEMS). We estimated a total capital investment of \$511,000 and an average annual cost of approximately \$115,000. The details of the cost estimates are documented in the memorandum, "Costs for the Manufacturing of Nutritional Yeast Source Category—Final Rule," which is available in the docket for this action.

D. What are the economic impacts?

The economic analysis conducted for this action is presented in the memorandum, "Economic Impact Analysis for the Manufacturing of Nutritional Yeast Risk and Technology Review (RTR)," which is available in the docket for this action. The costs of this action are associated with the installation and maintenance of CEMS at one facility, and ongoing RATA for CEMS at all four facilities subject to subpart CCCC. The equivalent annualized net cost of this action is approximately \$86,000 under a 3-percent discount rate, and \$89,000 under a 7-percent discount rate.

This action is projected to affect four facilities, and none of these facilities is ultimately owned by a small entity. Of the four facilities affected by this final action, two are ultimately owned by the same private entity. The remaining two facilities are each ultimately owned by different private entities. The equivalent annualized net costs for each of the three entities range from approximately \$8,600 to \$65,000 under a 3-percent discount rate, and from approximately \$8,300 to \$70,000 under a 7-percent discount rate. The equivalent annualized net compliance costs for the three entities are all estimated to be less than 0.1 percent of sales for their respective ultimate parent companies. Therefore, we expect that this final action will not have a significant economic impact on the affected entities.

E. What are the benefits?

As discussed above, the amendments to this subpart will have positive impacts on air quality and may improve air quality by removing the brew ethanol monitoring option and the exemption that allowed a portion of batches to be produced without being subject to emission limitations. The changes to monitoring methods will increase the reliability of emissions data collected by facilities by requiring

continued maintenance of emission monitoring systems and monitoring of actual emission measurements at all times instead of allowing emission estimates based on brew ethanol correlations and collection of 100 percent of valid CEMS data (instead of 75 percent). These changes will allow regulators to clearly assess whether the standards for the protection of public health and the environment are being met. In particular, the demographics analysis shows that increased risk levels are concentrated around the facility that is not currently using CEMS. The amendments will directly benefit this population, of which 100 percent are defined as minority, by increasing the accuracy of the emissions data that is monitored and reported (see section V.F of this preamble). Other amendments will result in additional benefits, such as streamlined reporting through electronic methods for owners or operators of nutritional yeast manufacturing facilities and increased access to emissions data by stakeholders, as described in the preamble to the proposed rule (81 FR 95834, December 28, 2016).

F. What analysis of environmental justice did we conduct?

To examine the potential for any environmental justice issues that might be associated with emissions from this source category, we performed a demographic analysis of the population close to the four affected facilities (within 50 kilometers (km) and within 5 km). In this analysis, we evaluated the distribution of HAP-related cancer risks and non-cancer hazards from the four nutritional yeast manufacturing facilities across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks.

The analysis indicated that the minority population living within 50 km (1,700,000 people, of which 41 percent are minority) and within 5 km (131,567 people, of which 68 percent are minority) of the four nutritional yeast manufacturing facilities is greater than the minority population found nationwide (28 percent). The specific demographics of the population within 5 and 50 km of the facilities indicate potential disparities in certain demographic groups, including the "African American," "Below the Poverty Level," and "Over 25 and without high school diploma" groups.

When examining the risk levels of those exposed to emissions from the four nutritional yeast manufacturing facilities, we find approximately 750

persons around one facility are exposed to a cancer risk greater than or equal to 1-in-1 million with the highest exposure to these individuals of less than 2-in-1 million. Of these 750 persons, all are defined as minority. When examining the non-cancer risks surrounding these facilities, no one is predicted to have a chronic non-cancer TOSHI greater than 1. These findings are based on the level of acetaldehyde emissions the facility reported to the 2011 NEI. The facility calculated these emissions by applying acetaldehyde emissions rates (pounds of acetaldehyde per batch) for each fermentation stage determined from a stack test conducted in 2000. During the public comment period, the facility performed additional testing and determined that the acetaldehyde emissions rates during the February 2017 test were approximately half of the previous rates. Therefore, the facility anticipates that future estimates of annual emissions will be reduced. Additionally, this facility currently monitors brew ethanol to comply with the emission limitations established in this NESHAP. The final amendments require the facility to install CEMS to monitor emissions. We anticipate that the use of CEMS will directly benefit this population by increasing the accuracy of the emissions data that are monitored and reported because the CEMS reflects batch-specific emission characteristics that are not accounted for with the brew ethanol correlation.

The EPA has determined that this rule does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples because the health risks based on actual emissions are low (below 2-in-1 million), the population exposed to risks greater than 1-in-1 million is relatively small (750 persons), and the rule maintains or increases the level of environmental protection for all affected populations.

The methodology and the results of the demographic analysis are included in the technical report, "Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Nutritional Yeast Manufacturing Facilities," which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2015-0730-0015).

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

The EPA assessed risks to infants and children as part of the health and risk assessments, as well as the proximity analysis conducted for this action. These analyses are documented in the

memoranda, “Residual Risk Assessment for the Manufacturing of Nutritional Yeast Source Category in Support of the October, 2017 Risk and Technology Review Final Rule” and “Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Nutritional Yeast Manufacturing Facilities,” which are available in the docket for this action.

The results of the proximity analysis show that children 17 years and younger as a percentage of the population in close proximity to nutritional yeast manufacturing facilities and with an estimated cancer risk greater than or equal to 1-in-1 million is similar to the percentage of the national population in this age group (25 percent versus 24 percent, respectively). The difference in the absolute number of percentage points of the population 17 years old and younger from the national average indicates a 1-percent over-representation near nutritional yeast manufacturing facilities.

Consistent with the EPA’s *Policy on Evaluating Health Risks to Children*,⁶ we conducted inhalation risk assessments for the Manufacturing of Nutritional Yeast source category, considering risk to infants and children. Children are exposed to chemicals emitted to the atmosphere via two primary routes: Directly via inhalation or indirectly via ingestion or dermal contact with various media that have been contaminated with the emitted chemicals. The EPA considers the possibility that children might be more sensitive than adults to toxic chemicals, including chemical carcinogens. For each carcinogenic HAP included in this assessment that has a potency estimate available, the EPA calculated individual and population cancer risks by multiplying the corresponding lifetime average exposure estimate by the appropriate unit risk estimate (URE). This calculated cancer risk is defined as the upper-bound probability of developing cancer over a 70-year period (*i.e.*, the assumed human lifespan) at that exposure. Because UREs for most HAP are upper-bound estimates, actual risks at a given exposure level may be lower than predicted, and could be zero. For the EPA’s list of carcinogenic HAP that act by a mutagenic mode-of action, we applied the EPA’s *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to*

Carcinogens.⁷ This guidance has the effect of adjusting the URE by factors of 10 (for children aged 0–1), 3 (for children aged 2–15), or 1.6 (for 70 years of exposure beginning at birth), as needed in risk assessments. In this case, this has the effect of increasing the estimated lifetime risks for these pollutants by a factor of 1.6. With regard to other carcinogenic pollutants for which early-life susceptibility data are lacking, it is the EPA’s long-standing science policy position that use of the linear low-dose extrapolation approach (without further adjustment) provides adequate public health conservatism in the absence of chemical-specific data indicating differential early-life susceptibility or when the mode of action is not mutagenicity. The basis for this methodology is also provided in the 2005 Supplemental Guidance.

Unlike linear dose-response assessments for cancer, non-cancer health hazards generally are not expressed as a probability of an adverse occurrence. Instead, hazard of non-cancer effects is expressed by comparing an exposure to a reference level as a ratio. The HQ is the estimated exposure divided by a reference level (*e.g.*, the reference concentration, RfC). For a given HAP, exposures at or below the reference level (HQ≤1) are not likely to cause adverse health effects. As exposures increase above the reference level (HQs increasingly greater than 1), the potential for adverse effects increases. For exposures predicted to be above the RfC, the risk characterization includes the degree of confidence ascribed to the RfC values for the compound(s) of concern (*i.e.*, high, medium, or low confidence) and discusses the impact of this on possible health interpretations. The reference levels used to determine the HQs incorporate generally conservative uncertainty factors that account for effects in the most susceptible populations including all life stages (*e.g.*, infants and children).

The EPA concludes that the standards provide an ample margin of safety to protect public health of all demographic groups, including children.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be

found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis, “Economic Impact Analysis for the Manufacturing of Nutritional Yeast Risk and Technology Review (RTR),” is available in the docket for this rule.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This rule is not subject to the requirements of Executive Order 13771 because this rule results in no more than *de minimis* costs.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1886.03. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

Concurrent to the residual risk and technology reviews for the NESHAP, the EPA finalized amendments that change the form of the current emission limitations, require the use of VOC CEMS, require valid CEMS data from each hour of the batch monitoring period, require ongoing tests to evaluate the performance of the CEMS over time, require electronic reporting, and remove exemptions for malfunctions so that affected facilities would be subject to the emission standards at all times. This information collection request documents the recordkeeping and reporting requirements and burden imposed by the rule—both the requirements that were previously promulgated and retained, as well as the final amendments.

Respondents/affected entities: Manufacturers of nutritional yeast.

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

Estimated number of respondents: Four facilities.

⁶ *Policy on Evaluating Health Risks to Children*, U.S. Environmental Protection Agency, Washington, DC, May 2014. Available at http://www2.epa.gov/sites/production/files/2014-05/documents/1995_childrens_health_policy_statement.pdf.

⁷ *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*. Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC, EPA/630/R-03/003F, March 2005. Available at http://www.epa.gov/raf/publications/pdfs/childrens_supplement_final.pdf.

Frequency of response: Initially and semiannually.

Total estimated burden: 1,370 hours (per year) for the responding facilities and 175 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$817,000 (per year), which includes \$695,000 annualized capital and operation and maintenance costs for the responding facilities and \$9,500 (per year) for the Agency to comply with all of the requirements in this NESHAP.

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

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

This action is projected to affect four facilities, and none of these facilities is ultimately owned by a small entity. Details of the associated analysis are presented in the memorandum, "Economic Impact Analysis for the Manufacturing of Nutritional Yeast Risk and Technology Review (RTR)," which is available in the docket for this action. At the time of proposal for this action, there was one entity which was assumed to be a small business for the purpose of the analysis, as the complex ownership structure made it difficult to clearly determine the entity's size. However, between proposal and promulgation, this entity was sold to a company that owns other nutritional yeast manufacturing facilities, and which is not a small business.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments. The nationwide equivalent annualized net cost of this action for affected industrial sources is approximately \$86,000 under a 3 percent discount rate,

and \$89,000 under a 7 percent discount rate. Details of the associated economic analysis are presented in the memorandum "Economic Impact Analysis for the Manufacturing of Nutritional Yeast Risk and Technology Review (RTR)," which is available in the docket for this action.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the nutritional yeast manufacturing industry that would be affected by this action. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The action is not related to the energy sector nor the supply, production, or price of energy.

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

This action involves technical standards that are reasonably available and already widely used by industry. The EPA conducted a search to identify potentially applicable voluntary consensus standards. However, the Agency identified no available standards that were practical for use as alternates and none were brought to our

attention in comments. Therefore, the EPA has decided to use EPA Method 25A of 40 CFR part 60, appendix A (Method) and EPA/600/R-12/531, EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards (Protocol). The Method is used to determine total gaseous organic concentration using a flame ionization analyzer. More information about the Method is available at: <https://www.epa.gov/emc/method-25a-gaseous-organic-concentration-flame-ionization>. The Protocol is used to certify calibration gases for continuous emission monitors and specifies methods for assaying gases and establishing traceability to National Institute of Standards and Technology reference standards. The Protocol and associated information is available at: <https://www.epa.gov/air-research/epa-traceability-protocol-assay-and-certification-gaseous-calibration-standards>.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (58 FR 7629, February 16, 1994).

The documentation for this decision is contained in the proposal (81 FR 95824, December 28, 2016), section V.F of this preamble, and the technical report, "Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Nutritional Yeast Manufacturing Facilities," which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2015-0730-0015).

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 29, 2017.

E. Scott Pruitt, Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 63 as follows:

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

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

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

■ 2. Section 63.14 is amended by redesignating paragraphs (m)(5) through (m)(23) as (m)(6) through (m)(24), respectively; and adding a new paragraph (m)(5) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(m) * * *

(5) EPA/600/R-12/531, EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards, May 2012, IBR approved for § 63.2163(b).

* * * * *

■ 3. Part 63 is amended by revising subpart CCCC to read as follows:

Subpart CCCC—National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast

What This Subpart Covers

Sec.

- 63.2130 What is the purpose of this subpart?
63.2131 Am I subject to this subpart?
63.2132 What parts of my plant does this subpart cover?
63.2133 When do I have to comply with this subpart?

Emission Limitations

63.2140 What emission limitations must I meet?

General Compliance Requirements

63.2150 What are my general requirements for complying with this subpart?

Testing and Initial Compliance Requirements

- 63.2160 By what date must I conduct an initial compliance demonstration?
63.2161 What performance tests and other procedures must I use if I monitor brew ethanol?
63.2162 When must I conduct subsequent performance tests if I monitor brew ethanol?
63.2163 If I monitor fermenter exhaust, what are my monitoring installation, operation, and maintenance requirements?
63.2164 If I monitor brew ethanol, what are my monitoring installation, operation, and maintenance requirements?

63.2165 How do I demonstrate initial compliance with the emission limitations if I monitor fermenter exhaust?

Continuous Compliance Requirements

- 63.2170 How do I monitor and collect data to demonstrate continuous compliance?
63.2171 How do I demonstrate continuous compliance with the emission limitations?

Notification, Reports, and Records

- 63.2180 What notifications must I submit and when?
63.2181 What reports must I submit and when?
63.2182 What records must I keep?
63.2183 In what form and how long must I keep my records?

Other Requirements and Information

- 63.2190 What parts of the General Provisions apply to me?
63.2191 Who implements and enforces this subpart?
63.2192 What definitions apply to this subpart?
Table 1 to Subpart CCCC of Part 63—Emission Limitations
Table 2 to Subpart CCCC of Part 63—Requirements for Performance Tests If You Monitor Brew Ethanol
Table 3 to Subpart CCCC of Part 63—Initial Compliance With Emission Limitations
Table 4 to Subpart CCCC of Part 63—Continuous Compliance With Emission Limitations
Table 5 to Subpart CCCC of Part 63—Requirements for Reports
Table 6 to Subpart CCCC of Part 63—Applicability of General Provisions to Subpart CCCC
Table 7 to Subpart CCCC of Part 63—Emission Limitation Applicability Timeline
Table 8 to Subpart CCCC of Part 63—Monitoring System Requirements Timeline

Subpart CCCC—National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast

What This Subpart Covers

§ 63.2130 What is the purpose of this subpart?

This subpart establishes national emission limitations for hazardous air pollutants (HAP) emitted from manufacturers of nutritional yeast. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.2131 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a nutritional yeast manufacturing facility that is, is located at, or is part of a major source of HAP emissions.

(1) A manufacturer of nutritional yeast is a facility that makes yeast for the purpose of becoming an ingredient in dough for bread or any other yeast-raised baked product, or for becoming a nutritional food additive intended for consumption by humans. A manufacturer of nutritional yeast does not include production of yeast intended for consumption by animals, such as an additive for livestock feed.

(2) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) [Reserved]

§ 63.2132 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing "affected source" that produces *Saccharomyces cerevisiae* at a nutritional yeast manufacturing facility.

(b) The affected source is the collection of equipment used in the manufacture of the nutritional yeast species *Saccharomyces cerevisiae*. This collection of equipment includes fermentation vessels (fermenters), as described in paragraph (c) of this section. The collection of equipment used in the manufacture of the nutritional yeast species *Candida utilis* (torula yeast) is not part of the affected source.

(c) The emission limitations in this subpart apply to fermenters in the affected source that meet all of the criteria listed in paragraphs (c)(1) and (2) of this section.

(1) The fermenters are "fed-batch" as defined in § 63.2192.

(2) The fermenters are used to support one of the last three fermentation stages in a production run (i.e., third-to-last stage, second-to-last stage, and last stage), which may be referred to as "stock, first generation, and trade," "seed, semi-seed, and commercial," or "CB4, CB5, and CB6" stages.

(d) The emission limitations in this subpart do not apply to flask, pure-culture, yeasting-tank, or any other set-batch (as defined in § 63.2192) fermentation, and they do not apply to any operations after the last dewatering operation, such as filtration.

(e) The emission limitations in Table 1 to this subpart do not apply to fermenters during the production of specialty yeast (defined in § 63.2192).

(f) An affected source is a “new affected source” if you commenced construction of the affected source after October 19, 1998, and you met the applicability criteria in § 63.2131 at the time you commenced construction.

(g) An affected source is “reconstructed” if it meets the criteria for reconstruction as defined in § 63.2.

(h) An affected source is “existing” if it is not new or reconstructed.

§ 63.2133 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, then you must comply with paragraph (a)(1) or (2) of this section.

(1) If you start up your affected source before May 21, 2001, then you must comply with this subpart no later than May 21, 2001.

(2) If you start up your affected source on or after May 21, 2001, then you must comply with this subpart upon startup of your affected source.

(b) If you have an existing affected source, then you must comply with this subpart no later than May 21, 2004.

(c) If you have an area source that increases its emissions, or its potential to emit, so that it becomes a major source of HAP, then paragraphs (c)(1) and (2) of this section apply.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the affected source must be in compliance with this subpart by no later than 1 year after it becomes a major source.

(d) You must meet the notification requirements in § 63.2180 according to the schedule in § 63.2180 and in subpart A of this part.

Emission Limitations

§ 63.2140 What emission limitations must I meet?

You must meet the applicable emission limitations in Table 1 to this subpart, according to the timeline provided in Table 7 to this subpart.

General Compliance Requirements

§ 63.2150 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the applicable emission limitations in Table 1 to this subpart at all times, and demonstrate compliance according to paragraphs (a)(1) through (3) of this section.

(1) To demonstrate compliance with emission limitations by using the 98-

Percent Option, you must follow the procedures of § 63.2171(b).

(2) To demonstrate compliance with emission limitations by using the Average Option, you must follow the procedures of § 63.2171(c).

(3) To demonstrate compliance with emission limitations by using the Batch Option, you must follow the procedures of § 63.2171(d).

(b) You must monitor VOC concentration continuously for each batch by using the applicable monitoring method in Table 8 to this subpart.

(c) If the date upon which you must demonstrate initial compliance as specified in § 63.2160 falls after the compliance date specified for your affected source in § 63.2133, then you must maintain a log detailing the operation and maintenance of the continuous emission monitoring systems and the process and emissions control equipment during the period between those dates.

(d) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether an affected source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

Testing and Initial Compliance Requirements

§ 63.2160 By what date must I conduct an initial compliance demonstration?

(a) For each emission limitation in Table 1 to this subpart for which you demonstrate compliance using the Average Option, you must demonstrate initial compliance for the period ending on the last day of the month that is 12 calendar months (or 11 calendar months, if the compliance date for your affected source is the first day of the month) after the compliance date that is specified for your affected source in § 63.2133.

(b) For each emission limitation in Table 1 to this subpart for which you demonstrate compliance using the Batch

Option, you must demonstrate initial compliance for the period ending June 30 or December 31 (use whichever date is the first date following the compliance date that is specified for your affected source in § 63.2133).

§ 63.2161 What performance tests and other procedures must I use if I monitor brew ethanol?

(a) You must conduct each performance test in Table 2 to this subpart that applies to you, as specified in paragraphs (b) through (f) of this section.

(b) You must conduct performance tests under such conditions as the Administrator specifies, based on representative performance of the affected source for the period being tested, and under the specific conditions that this subpart specifies in Table 2 to this subpart and in paragraphs (b)(1) through (4) of this section. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(1) You must conduct each performance test concurrently with brew ethanol monitoring to establish a brew-to-exhaust correlation as specified in paragraph (e) of this section.

(2) For each fermentation stage, you must conduct one run of the EPA Test Method 25A of 40 CFR part 60, appendix A–7, over the entire length of a batch. The three fermentation stages do not have to be from the same production run.

(3) You must obtain your test sample at a point in the exhaust-gas stream before you inject any dilution air. For fermenters, dilution air is any air not needed to control fermentation.

(4) You must record the results of the test for each fermentation stage.

(c) You may not conduct performance tests during periods of malfunction.

(d) You must collect data to correlate the brew ethanol concentration to the VOC concentration in the fermenter exhaust according to paragraphs (d)(1) through (3) of this section.

(1) You must collect a separate set of brew ethanol concentration data for each fed-batch fermentation stage while manufacturing the product that constitutes the largest percentage (by mass) of average annual production.

(2) You must measure brew ethanol as specified in § 63.2164 concurrently with conducting a performance test for VOC

in fermenter exhaust as specified in paragraph (b) of this section. You must measure brew ethanol at least once during each successive 30-minute period over the entire period of the performance test for VOC in fermenter exhaust.

(3) You must keep a record of the brew ethanol concentration data for each fermentation stage over the period of EPA Test Method 25A of 40 CFR part 60, appendix A-7, performance test.

(e) For each set of data that you collected under paragraphs (b) and (d) of this section, you must perform a linear regression of brew ethanol concentration (percent) on VOC fermenter exhaust concentration (parts per million by volume (ppmv) measured as propane). You must ensure the correlation between the brew ethanol concentration, as measured by the brew ethanol monitor, and the VOC fermenter exhaust concentration, as measured by

EPA Test Method 25A of 40 CFR part 60, appendix A-7, is linear with a correlation coefficient of at least 0.90.

(f) You must calculate the VOC concentration in the fermenter exhaust for each batch using the brew ethanol concentration data according to Equation 1 of this section, and using the constants (CF and y) calculated by the applicable linear regression performed under paragraph (e) of this section.

$$BAVOC = BAE * CF + y \quad (Eq. 1)$$

Where:

BAVOC = Batch-average concentration of VOC in fermenter exhaust (ppmv measured as propane), calculated for compliance demonstration

BAE = Batch-average concentration of brew ethanol in fermenter liquid (percent), measured by the brew ethanol monitor

CF = Constant established at performance test and representing the slope of the regression line

y = Constant established at performance test and representing the y-intercept of the regression line

§ 63.2162 When must I conduct subsequent performance tests if I monitor brew ethanol?

(a) For each emission limitation in Table 1 to this subpart for which compliance is demonstrated by monitoring brew ethanol concentration and calculating VOC concentration in the fermenter exhaust according to the procedures in § 63.2161, you must conduct an EPA Test Method 25A of 40 CFR part 60, appendix A-7, performance test and establish a brew-to-exhaust correlation according to the procedures in Table 2 to this subpart and in § 63.2161, at least once every year.

(b) The first subsequent performance test must be conducted no later than 365 calendar days after the initial performance test conducted according to § 63.2160. Each subsequent performance test must be conducted no later than 365 calendar days after the previous performance test. You must conduct a performance test for each 365 calendar day period during which you demonstrate compliance using the brew ethanol correlation developed according to § 63.2161.

§ 63.2163 If I monitor fermenter exhaust, what are my monitoring installation, operation, and maintenance requirements?

(a) You must install and certify a CEMS that generates a single combined response value for VOC concentration (VOC CEMS) according to the

procedures and requirements in Performance Specification 8—Performance Specifications for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources in appendix B to part 60 of this chapter.

(b) You must operate and maintain your VOC CEMS according to the procedures and requirements in Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination in appendix F to part 60 of this chapter, except with regard to provisions concerning relative accuracy test audit (RATA), cylinder gas audit (CGA), and relative accuracy audit (RAA) frequencies; out of control period definition; and CEMS data status during out of control periods; which are instead specified in this paragraph for frequencies; and § 63.8(c)(7) for the definition of and status of CEMS data during out of control periods.

(1) You must conduct a RATA at least once every 12 calendar quarters, in accordance with sections 8 and 11, as applicable, of Performance Specification 8.

(2) You must conduct a CGA or RAA in the calendar quarters during which a RATA is not conducted, but in no more than 11 quarters in succession.

(3) As necessary, rather than relying on citation 2 of Procedure 1 of appendix F to 40 CFR part 60, you must rely on EPA/600/R-12/531 (incorporated by reference, see § 63.14).

(4) Your affected source must meet the criteria of Performance Specification 8, section 13.2.

(c) You must use Method 25A in appendix A-7 to part 60 of this chapter as the Reference Method.

(d) You must calibrate your VOC CEMS with propane.

(e) You must set your VOC CEMS span at less than 5 times the relevant VOC emission limitation given in Table 1 of this subpart. Note that the EPA

considers 1.5 to 2.5 times the relevant VOC emission limitation to be the optimum range, in general.

(f) You must complete the performance evaluation and submit the performance evaluation report before the compliance date that is specified for your affected source in § 63.2133.

(g) You must monitor VOC concentration in fermenter exhaust at any point prior to dilution of the exhaust stream.

(h) You must collect data using the VOC CEMS at all times during each batch monitoring period, except for periods of monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance.

(i) For each CEMS, you must record the results of each inspection, calibration, and validation check.

(j) You must check the zero (low-level) and high-level calibration drifts for each CEMS in accordance with the applicable Performance Specification of 40 CFR part 60, appendix B. You must adjust the zero (low-level) and high-level calibration drifts, at a minimum, whenever the zero (low-level) drift exceeds 2 times the limits of the applicable Performance Specification. You must perform the calibration drift checks at least once daily except under the conditions of paragraphs (j)(1) through (3) of this section.

(1) If a 24-hour calibration drift check for your CEMS is performed immediately prior to, or at the start of, a batch monitoring period of a duration exceeding 24 hours, then you are not required to perform 24-hour-interval calibration drift checks during that batch monitoring period.

(2) If the 24-hour calibration drift exceeds 2.5 percent of the span value in fewer than 5 percent of the checks over a 1-month period, and the 24-hour

calibration drift never exceeds 7.5 percent of the span value, then you may reduce the frequency of calibration drift checks to at least weekly (once every 7 days).

(3) If, during two consecutive weekly checks, the weekly calibration drift exceeds 5 percent of the span value, then you must resume a frequency of at least 24-hour interval calibration checks until the 24-hour calibration checks meet the test of paragraph (j)(2) of this section.

§ 63.2164 If I monitor brew ethanol, what are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each brew ethanol monitor according to the manufacturer's specifications and in accordance with § 63.2150(d).

(b) Each of your brew ethanol monitors must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 30-minute period within each batch monitoring period. Except as specified in paragraph (c) of this section, you must have a minimum of two cycles of operation in a 1-hour period to have a valid hour of data.

(c) You must reduce the brew ethanol monitor data to arithmetic batch averages computed from two or more data points 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 hour of data must consist of at least one data point representing a 30-minute period.

(d) You must have valid brew ethanol monitor data from all operating hours over the entire batch monitoring period.

(e) You must set the brew ethanol monitor span to correspond to not greater than 5 times the relevant emission limitation; note that we consider 1.5 to 2.5 times the relevant emission limitation to be the optimum range, in general. You must use the brew-to-exhaust correlation equation established under § 63.2161(f) to determine the span value for your brew ethanol monitor that corresponds to the relevant emission limitation.

(f) For each brew ethanol monitor, you must record the results of each inspection, calibration, and validation check.

(g) The gas chromatograph (GC) that you use to calibrate your brew ethanol monitor must meet the requirements of paragraphs (g)(1) through (3) of this section.

(1) You must calibrate the GC at least daily, by analyzing standard solutions of

ethanol in water (0.05 percent, 0.15 percent, and 0.3 percent).

(2) For use in calibrating the GC, you must prepare the standard solutions of ethanol using the procedures listed in paragraphs (g)(2)(i) through (vi) of this section.

(i) Starting with 100-percent ethanol, you must dry the ethanol by adding a small amount of anhydrous magnesium sulfate (granular) to 15–20 milliliters (ml) of ethanol.

(ii) You must place approximately 50 ml of water into a 100-ml volumetric flask and place the flask on a balance. You must tare the balance. You must weigh 2.3670 grams of the dry (anhydrous) ethanol into the volumetric flask.

(iii) You must add the 100-ml volumetric flask contents to a 1000-ml volumetric flask. You must rinse the 100-ml volumetric flask with water into the 1000-ml flask. You must bring the volume to 1000 ml with water.

(iv) You must place an aliquot into a sample bottle labeled "0.3% Ethanol."

(v) You must fill a 50-ml volumetric flask from the contents of the 1000-ml flask. You must add the contents of the 50-ml volumetric flask to a 100-ml volumetric flask and rinse the 50-ml flask into the 100-ml flask with water. You must bring the volume to 100 ml with water. You must place the contents into a sample bottle labeled "0.15% Ethanol."

(vi) With a 10-ml volumetric pipette, you must add two 10.0-ml volumes of water to a sample bottle labeled "0.05% Ethanol." With a 10.0-ml volumetric pipette, you must pipette 10.0 ml of the 0.15 percent ethanol solution into the sample bottle labeled "0.05% Ethanol."

(3) For use in calibrating the GC, you must dispense samples of the standard solutions of ethanol in water in aliquots to appropriately labeled and dated glass sample bottles fitted with caps having a Teflon® seal. You may keep refrigerated samples unopened for 1 month. You must prepare new calibration standards of ethanol in water at least monthly.

(h) You must calibrate the brew ethanol monitor according to paragraphs (h)(1) through (3) of this section.

(1) To calibrate the brew ethanol monitor, you must inject a brew sample into a calibrated GC and compare the simultaneous ethanol value given by the brew ethanol monitor to that given by the GC. You must use either the Porapak® Q, 80–100 mesh, 6' x 1/8", stainless steel packed column; or the DB Wax, 0.53 millimeter x 30 meter capillary column.

(2) If a brew ethanol monitor value for ethanol differs by 20 percent or more from the corresponding GC ethanol

value, you must determine the brew ethanol values throughout the rest of the batch monitoring period by injecting brew samples into the GC not less frequently than once every 30 minutes. From the time at which you detect a difference of 20 percent or more until the batch monitoring period ends, the GC data will serve as the brew ethanol monitor data.

(3) You must perform a calibration of the brew ethanol monitor at least four times per batch.

§ 63.2165 How do I demonstrate initial compliance with the emission limitations if I monitor fermenter exhaust?

(a) You must demonstrate initial compliance with each emission limitation in Table 1 to this subpart that applies to you according to the methods in Table 3 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.2180(f).

Continuous Compliance Requirements

§ 63.2170 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section and § 63.2163 or § 63.2164.

(b) Except for periods of monitoring system malfunctions, required monitoring system quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance, you must collect data using the CEMS or brew ethanol monitor, as applicable, at all times during each batch monitoring period.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities in data averages and calculations used to report emission or operating levels, or to fulfill a data collection requirement. You must use all the data collected during all other periods in assessing the operation of the control system.

(d) Any hour during the batch monitoring period for which quality-assured VOC CEMS data or brew ethanol monitor data, as applicable, are not obtained is a deviation from monitoring requirements and is counted as an hour of monitoring system downtime.

§ 63.2171 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission

limitation in Table 1 to this subpart that applies to you according to the methods specified in Table 4 to this subpart and the applicable procedures of this section.

(b) To demonstrate compliance with emission limitations by using the 98-Percent Option, you must calculate the percentage of within-concentration batches (as defined in § 63.2192) for each 12-month calculation period by following the procedures in this paragraph and paragraphs (e)(1) and (2) of this section. At the end of each calendar month, you must determine the percentage of batches that were in compliance with the applicable maximum concentration in the 12-month calculation period. The total number of batches in the calculation period is the sum of the numbers of batches of each fermentation stage for which emission limitations apply. To determine which batches are in the 12-month calculation period, you must include those batches for which the batch monitoring period ended at or after midnight on the first day of the period and exclude those batches for which the batch monitoring period did not end before midnight on the last day of the period.

(c) To demonstrate compliance with emission limitations by using the Average Option, you must follow the procedures in this paragraph and paragraphs (e)(1) and (2) of this section. At the end of each calendar month, you must determine the average VOC concentration from all batches in each fermentation stage in a 12-month calculation period. To determine which batches are in a 12-month calculation period, you must include those batches for which the batch monitoring period ended at or after midnight on the first day of the period and exclude those batches for which the batch monitoring period did not end before midnight on the last day of the period.

(d) To demonstrate compliance with emission limitations by using the Batch Option, you must determine the average VOC concentration in the fermenter exhaust for each batch of each fermentation stage in a semiannual reporting period (*i.e.*, January 1 through June 30 or July 1 through December 31). To determine which batches are in the semiannual reporting period, you must include those batches for which the batch monitoring period ended at or after midnight on the first day of the period and exclude those batches for which the batch monitoring period did not end before midnight on the last day of the period.

(e) To demonstrate compliance with an emission limitation using a 12-month

calculation period, you must follow the procedures in paragraphs (e)(1) and (2) of this section.

(1) The first 12-month calculation period begins on the compliance date that is specified for your affected source in § 63.2133 and ends on the last day of the month that includes the date 1 year after your compliance date, unless the compliance date for your affected source is the first day of the month, in which case the first 12-month calculation period ends on the last day of the month that is 11 calendar months after the compliance date.

(2) The second 12-month calculation period and each subsequent 12-month calculation period begins on the first day of the month following the first full month of the previous 12-month calculation period and ends on the last day of the month 11 calendar months later.

Notification, Reports, and Records

§ 63.2180 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c); 63.8(e), (f)(4) and (6); and 63.9(b) through (h) that apply to you by the dates specified.

(b) If you start up your affected source before May 21, 2001, you are not subject to the initial notification requirements of § 63.9(b)(2).

(c) If you are required to conduct a performance test as specified in § 63.2161 to this subpart, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(d) If you are required to conduct a performance evaluation as specified in § 63.2163, you must submit a notification of the date of the performance evaluation at least 60 days prior to the date the performance evaluation is scheduled to begin as required in § 63.8(e)(2).

(e) If you are required to conduct a performance test as specified in Table 2 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(f) For each initial compliance demonstration required in Table 3 to this subpart, you must submit the Notification of Compliance Status no later than July 31 or January 31, whichever date follows the initial compliance period that is specified for your affected source in § 63.2160(a) or (b). The first compliance report, described in § 63.2181(b)(1), serves as the Notification of Compliance Status.

§ 63.2181 What reports must I submit and when?

(a) You must submit each report in Table 5 to this subpart that applies to you.

(1) On and after October 16, 2017, you must also comply with reporting for performance tests or for performance evaluations as specified in paragraphs (a)(1)(i) and (ii) of this section.

(i) Within 60 days after the date of completing each performance test as required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (a)(1)(i)(A) through (C) of this section.

(A) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>)). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site.

(B) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(C) If you claim that some of the performance test information being submitted under paragraph (a)(1)(i)(A) of this section is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (a)(1)(i)(A) of this section.

(ii) Within 60 days after the date of completing each continuous monitoring system performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (a)(1)(ii)(A) through (C) of this section.

(A) For performance evaluations of continuous monitoring systems measuring RATA pollutants that are supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the EPA via the CEDRI. Performance evaluation data must be submitted in a file format generated through the use of the EPA's ERT or an alternate file format consistent with the XML schema listed on the EPA's ERT Web site.

(B) For any performance evaluations of continuous monitoring systems measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(C) If you claim that some of the performance evaluation information being submitted is CBI, then you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic storage media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to the schedule in Table 5 to this subpart and according to paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must include the information specified in paragraph (c) of this section. If you are demonstrating compliance with an emission limitation using a 12-month calculation period (e.g., the Average Option), then the first compliance report must cover the period beginning on the compliance date that is specified for

your affected source in § 63.2133 and ending on either June 30 or December 31 (use whichever date is the first date following the end of the first 12 calendar months after the compliance date that is specified for your affected source in § 63.2133). If you are demonstrating compliance with an emission limitation using the Batch Option, then the first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2133 and ending on either June 30 or December 31 (use whichever date is the first date following the compliance date that is specified for your affected source in § 63.2133).

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first compliance reporting period specified in paragraph (b)(1) of this section.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31. Each subsequent compliance report must include the information specified in paragraph (c) of this section.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information listed in paragraphs (c)(1) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) For each 12-month calculation period ending on a calendar month that falls within a reporting period for which you are using the 98-Percent Option to comply, the percentage of batches that are within-concentration batches.

(5) For each 12-month calculation period ending on a calendar month that falls within a reporting period for which you are using the 98-Percent Option to comply and your affected source fails to meet an applicable standard, the information for each batch for which BAVOC exceeded the applicable maximum VOC concentration in Table 1 to this subpart and whether the batch was in production during a period of malfunction or during another period.

(6) For each 12-month calculation period ending on a calendar month that falls within a reporting period for which you are using the Average Option to comply or for any reporting period for which you are using the Batch Option to comply, and your affected source meets an applicable standard, the information in paragraph (c)(6)(i) or (ii) of this section, depending on the compliance option selected from Table 1 to this subpart.

(i) If you are using the Average Option to comply, the average BAVOC of all batches in each fermentation stage for each 12-month calculation period ending on a calendar month that falls within the reporting period that did not exceed the applicable emission limitation.

(ii) If you are using the Batch Option to comply, a certification that BAVOC for each batch manufactured during the reporting period did not exceed applicable emission limitations.

(7) For each 12-month calculation period ending on a calendar month that falls within a reporting period for which you are using the Average Option to comply or for any reporting period for which you are using the Batch Option to comply and your affected source fails to meet an applicable standard, the information in paragraph (c)(7)(i) or (ii) of this section, depending on the compliance option selected from Table 1 to this subpart.

(i) If you are using the Average Option to comply, the average BAVOC of all batches in each fermentation stage for each 12-month calculation period that failed to meet the applicable standard; the fermenters that operated in each fermentation stage that failed to meet the applicable standard; the duration of each failure; an estimate of the quantity of VOC emitted over the emission limitation; a description of the method used to estimate the emissions; and the actions taken to minimize emissions and correct the failure.

(ii) If you are using the Batch Option to comply, the fermenters and batches that failed to meet the applicable standard; the date, time, and duration of each failure; an estimate of the quantity of VOC emitted over the emission

limitation; a description of the method used to estimate the emissions; and the actions taken to minimize emissions and correct the failure.

(8) The total operating hours for each fermenter, the total hours of monitoring system operation for each CEMS or brew ethanol monitor, and the total hours of monitoring system downtime for each CEMS or brew ethanol monitor.

§ 63.2182 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Notification of Compliance Status and compliance report that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of failures to meet a standard, specified in § 63.2181(c)(5) and (7).

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii) and (ix).

(b) For each affected source that monitors brew ethanol, you must keep records demonstrating the calculation of the brew-to-exhaust correlations specified in § 63.2161.

(c) For each CEMS and brew ethanol monitor, you must keep the records listed in paragraphs (c)(1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vi), (vii), (x), and (xi). The CEMS must allow the amount of excess zero (low-level) and high-level calibration drift measured at the interval checks to be quantified and recorded.

(2) Records described in § 63.10(c)(1) through (6).

(3) Records of the quality control program as specified in § 63.8(d), including the program of corrective action; the current version of the performance evaluation test plan, as specified in § 63.8(e)(3); and previous (*i.e.*, superseded) versions of the performance evaluation test plan for a period of 5 years after each revision to the plan.

(4) Requests for alternatives to RATA for CEMS as required in § 63.8(f)(6)(i).

(5) Records of each deviation from monitoring requirements, including a description of the time period during which the deviation occurred, the nature and cause of the deviation, the corrective action taken or preventive measures adopted, and the nature of repairs or adjustments to the monitoring system.

(d) You must keep the records required to show continuous

compliance with each emission limitation that applies to you according to the requirements in Table 4 to this subpart.

(e) You must also keep the records listed in paragraphs (e)(1) through (3) of this section for each batch in your affected source.

(1) Unique batch identification number.

(2) Fermentation stage for which you are using the fermenter.

(3) Unique CEMS equipment identification number.

§ 63.2183 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

(d) Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

(e) You must keep written procedures documenting the CEMS quality control program 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.

Other Requirements and Information

§ 63.2190 What parts of the General Provisions apply to me?

Table 6 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.2191 Who implements and enforces this subpart?

(a) We, the U.S. EPA, or a delegated authority such as your state, local, or tribal agency, can implement and enforce this subpart. If our Administrator has delegated authority to your state, local, or tribal agency, then that agency has the authority to

implement and enforce this subpart. You should contact the U.S. EPA Regional Office that serves you to find out if this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by our Administrator and are not transferred to the state, local, or tribal agency.

(c) The authorities that will not be delegated to state, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.2140 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.2192 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, in the General Provisions of this part (§§ 63.1 through 63.15), and in this section as follows:

Batch means a single fermentation cycle in a single fermentation vessel (fermenter).

Batch monitoring period means the period that begins at the later of either the start of aeration or the addition of yeast to the fermenter; the period ends at the earlier of either the end of aeration or the point at which the yeast has begun being emptied from the fermenter.

BAVOC means the average VOC concentration in the fermenter exhaust over the duration of a batch ("batch-average VOC concentration").

Brew means the mixture of yeast and additives in the fermenter.

Brew ethanol means the ethanol in fermenter liquid.

Brew ethanol monitor means the monitoring system that you use to measure brew ethanol to demonstrate compliance with this subpart. The monitoring system includes a resistance element used as an ethanol sensor, with the measured resistance proportional to the concentration of ethanol in the brew.

Brew-to-exhaust correlation means the correlation between the concentration of ethanol in the brew and the concentration of VOC in the

fermenter exhaust. This correlation is specific to each fed-batch fermentation stage and is established while manufacturing the product that comprises the largest percentage (by mass) of average annual production.

Emission limitation means any emission limit or operating limit.

Fed-batch means the yeast is fed carbohydrates and additives during fermentation in the vessel.

Monitoring system malfunction means any sudden, infrequent, and not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are

caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

1-hour period means any successive period commencing on the minute at which the batch monitoring period begins and continuing for 60 minutes, except for the last period, which may be less than 60 minutes.

Product means the yeast resulting from the final stage in a production run.

Products are distinguished by yeast species, strain, and variety.

Responsible official means responsible official as defined in 40 CFR 70.2.

Set-batch means the yeast is fed carbohydrates and additives only at the start of the batch.

Specialty yeast includes, but is not limited to, yeast produced for use in wine, champagne, whiskey, and beer.

Within-concentration batch means a batch for which BAVOC is not higher than the maximum concentration that is allowed as part of the applicable emission limitation.

TABLE 1 TO SUBPART CCCC OF PART 63—EMISSION LIMITATIONS

For each fed-batch fermenter producing yeast in the following fermentation stage . . .	98-percent option: You must not exceed the following VOC emission limitation ^a according to the timeline in Table 7 to this subpart . . .	Average option: You must not exceed the following VOC emission limitation ^a according to the timeline in Table 7 to this subpart . . .	Batch option: You must not exceed the following VOC emission limitation ^a according to the timeline in Table 7 to this subpart . . .
Last stage	100 ppmv (measured as propane) for BAVOC for at least 98 percent of all batches in each 12-month calculation period described in § 63.2171(b) and (e).	95 ppmv (measured as propane) for the average BAVOC of all batches in this stage in each 12-month calculation period described in § 63.2171(c) and (e).	100 ppmv (measured as propane) for BAVOC for each batch.
Second-to-last stage	200 ppmv (measured as propane) for BAVOC for at least 98 percent of all batches in each 12-month calculation period described in § 63.2171(b) and (e).	190 ppmv (measured as propane) for the average BAVOC of all batches in this stage in each 12-month calculation period described in § 63.2171(c) and (e).	200 ppmv (measured as propane) for BAVOC for each batch.
Third-to-last stage	300 ppmv (measured as propane) for BAVOC for at least 98 percent of all batches in each 12-month calculation period described in § 63.2171(b) and (e).	285 ppmv (measured as propane) for the average BAVOC of all batches in this stage in each 12-month calculation period described in § 63.2171(c) and (e).	300 ppmv (measured as propane) for BAVOC for each batch.

^a The emission limitation does not apply during the production of specialty yeast.

TABLE 2 TO SUBPART CCCC OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS IF YOU MONITOR BREW ETHANOL

For each fed-batch fermenter for which compliance is determined by monitoring brew ethanol concentration and calculating VOC concentration in the fermenter exhaust according to the procedures in § 63.2161, you must . . .	Using . . .	According to the following requirements . . .
Measure VOC as propane	Method 25A, ^a or an alternative validated by EPA Method 301 ^b and approved by the Administrator.	You must measure the VOC concentration in the fermenter exhaust at any point prior to the dilution of the exhaust stream.

^a EPA Test Method 25A is found in appendix A-7 of 40 CFR part 60.

^b EPA Test Method 301 is found in appendix A of 40 CFR part 63.

TABLE 3 TO SUBPART CCCC OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

For . . .	Average option: You have demonstrated initial compliance if . . .	Batch option: You have demonstrated initial compliance if . . .
Each fed-batch fermenter producing yeast in a fermentation stage (last, second-to-last, or third-to-last) for which compliance is determined by monitoring VOC concentration in the fermenter exhaust.	The average BAVOC of all batches in each fermentation stage during the initial compliance period described in § 63.2160(a) does not exceed the applicable concentration in Table 1 to this subpart.	BAVOC for each batch of each fermentation stage during the initial compliance period described in § 63.2160(b) does not exceed the applicable concentration in Table 1 to this subpart.

TABLE 4 TO SUBPART CCCC OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

For . . .	98-percent option: You must demonstrate continuous compliance by . . .	Average option: You must demonstrate continuous compliance by . . .	Batch option: You must demonstrate continuous compliance by . . .
1. Each fed-batch fermenter producing yeast in a fermentation stage (last, second-to-last, or third-to-last) for which compliance is determined by monitoring VOC concentration in the fermenter exhaust. 2. Each fed-batch fermenter producing yeast in a fermentation stage (last, second-to-last, or third-to-last) for which compliance is determined by monitoring brew ethanol concentration and calculating VOC concentration in the fermenter exhaust according to the procedures in § 63.2161 ^a .	Showing that BAVOC for at least 98 percent of the batches for each 12-month calculation period ending within a semiannual reporting period described in § 63.2181(b)(3) does not exceed the applicable maximum concentration in Table 1 to this subpart.	Showing that the average BAVOC of all batches in each fermentation stage during each 12-month calculation period ending within a semiannual reporting period described in § 63.2181(b)(3) does not exceed the applicable concentration in Table 1 to this subpart.	Showing that BAVOC for each batch within a semiannual reporting period described in § 63.2181(b)(3) does not exceed the applicable concentration in Table 1 to this subpart.

^a Monitoring brew ethanol concentration to demonstrate compliance is not allowed on and after October 16, 2020, as specified in Table 8 to this subpart.

TABLE 5 TO SUBPART CCCC OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. The information described in § 63.2181(c), as appropriate. b. If you fail to meet an applicable standard during the reporting period, then the compliance report must include the information in § 63.2181(c)(5) or (7).	Semiannually according to the requirements in § 63.2181(b). Semiannually according to the requirements in § 63.2181(b).
2. Performance test report . . .	The results of the performance test, including the information described in § 63.7(g).	At least once every 365 calendar days and according to the requirements in § 63.2181(a)(1)(i).
3. Performance evaluation report.	The results of the performance evaluation, including information from the performance evaluation plan at § 63.8(e)(3).	At least once every twelve calendar quarters and according to the requirements in §§ 63.2163(f) and 63.2181(a)(1)(ii).

TABLE 6 TO SUBPART CCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART CCCC

Citation	Subject	Applicable to subpart CCCC?
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities and Circumvention	Yes.
§ 63.5	Construction and Reconstruction	Yes.
§ 63.6	Compliance With Standards and Maintenance Requirements.	1. § 63.6(e)(1)(i) does not apply, instead specified in § 63.2150(d). 2. § 63.6(e)(1)(ii), (e)(3), (f)(1), and (h) do not apply. 3. Otherwise, all apply.
§ 63.7	Performance Testing Requirements	1. § 63.7(a)(1) and (2) do not apply, instead specified in § 63.2162. 2. § 63.7(e)(1) and (e)(3) do not apply, instead specified in § 63.2161(b). 3. Otherwise, all apply.
§ 63.8	Monitoring Requirements	1. § 63.8(a)(2) is modified by § 63.2163. 2. § 63.8(d)(3) is modified by § 63.2182(c)(3) and § 63.2183(e). 3. § 63.8(a)(4), (c)(1)(i), (c)(1)(iii), (c)(4)(i), (c)(5), (e)(5)(ii), and (g)(5) do not apply. 4. § 63.8(c)(6), (c)(8), (e)(4), (g)(1), and (g)(3) do not apply, instead specified in §§ 63.2163(b) and (j), 63.2164(c), and 63.2182(c)(1) and (5). 5. Otherwise, all apply.
§ 63.9	Notification Requirements	1. § 63.9(b)(2) does not apply because rule omits requirements for initial notification for affected sources that start up prior to May 21, 2001. 2. § 63.9(f) does not apply. 3. Otherwise, all apply.
§ 63.10	Recordkeeping and Reporting Requirements.	1. § 63.10(b)(2)(ii) does not apply, instead specified in § 63.2182(a)(2) and (c)(5). 2. § 63.10(b)(2)(i), (b)(2)(iv), (b)(2)(v), (c)(15), (d)(3), (e)(2)(ii), and (e)(3) and (4) do not apply. 3. § 63.10(d)(5) does not apply, instead specified in § 63.2181(c)(5) and (7). 4. Otherwise, all apply.
§ 63.11	Flares	No.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.

TABLE 6 TO SUBPART CCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART CCCC—Continued

Citation	Subject	Applicable to subpart CCCC?
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

TABLE 7 TO SUBPART CCCC OF PART 63—EMISSION LIMITATION APPLICABILITY TIMELINE

For each . . .	During this time frame . . .	You must comply with the emission limitations in Table 1 to this subpart using the . . .
Existing affected source	Before 10/16/2017	98-Percent Option.
	Between 10/16/2017 and October 16, 2018 ...	98-Percent Option, Average Option, or Batch Option.
	On and after October 16, 2018	Average Option or Batch Option.
New or reconstructed affected source that you start up prior to 10/16/2017.	Before 10/16/2017	98-Percent Option.
	Between 10/16/2017 and October 16, 2018 ...	98-Percent Option, Average Option, or Batch Option.
	On and after October 16, 2018	Average Option or Batch Option.
New or reconstructed affected source that you start up after 10/16/2017.	After 10/16/2017	Average Option or Batch Option.

TABLE 8 TO SUBPART CCCC OF PART 63—MONITORING SYSTEM REQUIREMENTS TIMELINE

For each . . .	During this time frame . . .	You must monitor VOC concentration by . . .
Existing affected source	Before 10/16/2017	Monitoring fermenter exhaust using a CEMS or by monitoring brew ethanol concentration using a brew ethanol monitor.
	Between 10/16/2017 and October 16, 2020 ...	Monitoring fermenter exhaust using a VOC CEMS or by monitoring brew ethanol concentration using a brew ethanol monitor.
	On and after October 16, 2020	Monitoring fermenter exhaust using a VOC CEMS.
New or reconstructed affected source that you start up prior to 10/16/2017.	Before 10/16/2017	Monitoring fermenter exhaust using a CEMS or by monitoring brew ethanol concentration using a brew ethanol monitor.
	Between 10/16/2017 and October 16, 2020 ...	Monitoring fermenter exhaust using a VOC CEMS or by monitoring brew ethanol concentration using a brew ethanol monitor.
	On and after October 16, 2020	Monitoring fermenter exhaust using a VOC CEMS.
New or reconstructed affected source that you start up after 10/16/2017.	After 10/16/2017	Monitoring fermenter exhaust using a VOC CEMS.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2014-0741; FRL-9969-06-OAR]

RIN 2060-AS46

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills regulated under the national emission standards for hazardous air pollutants (NESHAP). We are finalizing our proposed determination that risks from the source category are acceptable and that the standards provide an ample margin of safety to protect public health. We are also finalizing amendments to the NESHAP based on developments in practices, processes, and control technologies identified as part of the technology review. These final amendments include revisions to the opacity monitoring provisions and the addition of requirements to maintain proper operation of the electrostatic precipitator (ESP) automatic voltage control (AVC). Additional amendments are also being finalized including the requirement to conduct 5-year periodic emissions testing, and submit electronic reports; revisions to provisions addressing periods of startup, shutdown, and malfunction (SSM); and technical and editorial changes. These amendments are made under the authority of the Clean Air Act (CAA) and will improve the effectiveness of the rule.

DATES: This final rule is effective on October 11, 2017. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 11, 2017]

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0741. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information

(CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov>, or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Dr. Kelley Spence, Sector Policies and Programs Division (Mail Code: E143-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3158; fax number: (919) 541-0516; and email address: spence.kelley@epa.gov. For specific information regarding the risk modeling methodology, contact Mr. James Hirtz, Health and Environmental Impacts Division (Mail Code: C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0881; and email address: hirtz.james@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Ms. Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, USEPA Region 5 (Mail Code: E-19J), 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: (312) 353-6266; and email address: ayres.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

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

ASTM American Society for Testing and Materials
 AVC automatic voltage control
 BLO black liquor oxidation
 CAA Clean Air Act
 CBI confidential business information
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting Interface
 CFR Code of Federal Regulations

CHIEF Clearinghouse for Inventories and Emissions Factors
 CMS continuous monitoring system
 COMS continuous opacity monitoring system
 CPMS continuous parameter monitoring system
 CRA Congressional Review Act
 DAS data acquisition system
 D.C. Cir. United States Court of Appeals for the District of Columbia Circuit
 DCE direct contact evaporator
 EPA Environmental Protection Agency
 ERT Electronic Reporting Tool
 ESP electrostatic precipitator
 EST Eastern Standard Time
 FR Federal Register
 HAP hazardous air pollutant
 HI hazard index
 HQ hazard quotient
 IBR incorporation by reference
 ICR Information Collection Request
 km kilometer
 MACT maximum achievable control technology
 MIR maximum individual risk
 NAAQS National Ambient Air Quality Standards
 NAICS North American Industry Classification System
 NAS National Academy of Sciences
 NDCE nondirect contact evaporator
 NESHAP national emission standards for hazardous air pollutants
 No. number
 NRDC Natural Resources Defense Council
 NSPS new source performance standards
 NTTAA National Technology Transfer and Advancement Act
 OAQPS Office of Air Quality Planning and Standards
 OEHHA Office of Environmental Health Hazard Assessment
 OMB Office of Management and Budget
 PAH polycyclic aromatic hydrocarbons
 PB-HAP hazardous air pollutant known to be persistent and bio-accumulative in the environment
 PM particulate matter
 PRA Paperwork Reduction Act
 PS-1 Performance Specification 1
 QA quality assurance
 REL reference exposure level
 RFA Regulatory Flexibility Act
 RIN Regulatory Information Number
 RTO regenerative thermal oxidizer
 RTR residual risk and technology review
 SAB Science Advisory Board
 SDT smelt dissolving tank
 SSM startup, shutdown, and malfunction
 THC total hydrocarbons
 TOSHI target organ-specific hazard index
 tpy tons per year
 TRIM.FaTE Total Risk Integrated Methodology, Fate, Transport, and Ecological Exposure model
 UMRA Unfunded Mandates Reform Act
 U.S. United States
 U.S.C. United States Code
 v. versus
 WebFIRE Web Factor Information Retrieval System
 XML extensible markup language

Background information. On December 30, 2016, the EPA proposed revisions to the NESHAP for Chemical

Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills based on our RTR. In this action, we are finalizing amendments to the rule based on public comment and updated analyses. We summarize comments that the EPA received regarding the proposed rule that resulted in changes in the final rulemaking package and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the document titled, *National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR part 63, subpart MM)—Residual Risk and Technology Review, Final Amendments: Response to Public Comments on December 30, 2016 Proposal*, in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741). A "track changes" version of the regulatory language that incorporates the changes in this action is also available in the docket.

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

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

- A. What is the statutory authority for this action?
- B. What is the subpart MM source category and how does the NESHAP regulate HAP emissions from the source category?
- C. What changes did we propose for the subpart MM source category in our December 30, 2016, proposal?
- III. What is included in this final rule?
 - A. What are the final rule amendments based on the risk review for the subpart MM source category?
 - B. What are the final rule amendments based on the technology review for the subpart MM source category?
 - C. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?
 - D. What other changes have been made to the NESHAP?
 - E. What are the effective and compliance dates of the standards?
 - F. What are the requirements for submission of performance test data to the EPA?
- IV. What is the rationale for our final decisions and amendments for the subpart MM source category?
 - A. Residual Risk Review for the Subpart MM Source Category
 - B. Technology Review for the Subpart MM Source Category
 - C. Changes to SSM Provisions
 - D. Emissions Testing
 - E. CPMS Operating Limits
 - F. Recordkeeping and Reporting Requirements
 - G. Technical and Editorial Changes
- V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
 - A. What are the affected sources?
 - B. What are the air quality impacts?
 - C. What are the cost impacts?
 - D. What are the economic impacts?

- E. What are the benefits?
- F. What analysis of environmental justice did we conduct?
- G. What analysis of children's environmental health did we conduct?
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 12871: Reducing Regulations and Controlling Regulatory Costs
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
 - K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category	NESHAP	NAICS ¹ code
Pulp and Paper Production	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	32211, 32212, 32213.

¹ North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: <https://www.epa.gov/stationary-sources-air-pollution/kraft-soda-sulfite-and-stand-alone-semichemical-pulp-mills-mact-ii>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same Web site.

Additional information is available on the RTR Web site at [https://](https://www3.epa.gov/ttn/atw/risk/rtrpg.html)

www3.epa.gov/ttn/atw/risk/rtrpg.html. This information includes an overview of the RTR program, links to project Web sites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 11, 2017. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal

proceedings brought by the EPA to enforce the requirements.

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

II. Background

A. What is the statutory authority for this action?

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

materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAPs when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

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

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant

to CAA section 112(f).¹ For more information on the statutory authority for this rule, see 81 FR 97049–51.

B. What is the subpart MM source category and how does the NESHAP regulate HAP emissions from the source category?

As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992), the "Pulp and Paper Production" source category is any facility engaged in the production of pulp and/or paper. The EPA developed the NESHAPs for the source category in two phases. The first phase, 40 CFR part 63, subpart S, regulates non-combustion processes at mills that (1) chemically pulp wood fiber (using kraft, sulfite, soda, and semichemical methods), (2) mechanically pulp wood fiber (e.g., groundwood, thermomechanical, pressurized), (3) pulp secondary fibers (deinked and non-deinked), (4) pulp non-wood material, and (5) manufacture paper. Subpart S was originally promulgated on April 15, 1998, (63 FR 18504). The second phase, 40 CFR part 63, subpart MM, regulates chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills, and was originally promulgated on January 12, 2001 (66 FR 3180). The chemical recovery combustion sources include kraft and soda recovery furnaces, smelt dissolving tanks (SDTs), and lime kilns; kraft black liquor oxidation (BLO) units; sulfite combustion units; and semichemical combustion units. Because subpart MM sources comprise a subset of the sources at a pulp and paper mill, for purposes of this preamble, we are referring to the source category for this NESHAP as the "subpart MM source category."

We already completed the RTR for 40 CFR part 63, subpart S, with final amendments published in the **Federal Register** on September 11, 2012 (77 FR 55698). For the 40 CFR part 63, subpart MM RTR, we published proposed amendments in the **Federal Register** on December 30, 2016 (81 FR 97046). We conducted a risk assessment and technology review of the emission sources covered by subpart MM, as well as a risk assessment of the whole facility. The facility-wide risk

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

assessment includes emissions from all sources of HAPs at the facility, including sources covered by other NESHAP (e.g., pulp and paper production processes covered under subpart S, boilers covered under 40 CFR part 63, subpart DDDDD, and paper and other web coating operations covered under 40 CFR part 63, subpart JJJJ). This final rule focuses exclusively on the RTR for subpart MM. The EPA is not amending subpart S, subpart DDDDD, or subpart JJJJ in this action.

According to the results of the EPA's 2011 pulp and paper Information Collection Request (ICR), and updates based on more recent information, there are a total of 107 major sources in the United States (U.S.) that conduct chemical recovery combustion operations, including 97 kraft pulp mills, 1 soda pulp mill, 3 sulfite pulp mills, and 6 stand-alone semichemical pulp mills.

Subpart MM of 40 CFR part 63 includes numerical emission limits for recovery furnaces, SDTs, lime kilns, and sulfite and semichemical combustion units. The control systems used by most mills to meet the subpart MM emission limits are as follows:

- Recovery furnaces: ESPs, wet scrubbers, and nondirect contact evaporator (NDCE) furnace design with dry-bottom ESP and dry particulate matter (PM) return system.
- Smelt dissolving tanks: Wet scrubbers, mist eliminators, and venting to recovery furnace.
- Lime kilns: ESPs and wet scrubbers.
- Sulfite combustion units: Wet scrubbers and mist eliminators.
- Semichemical combustion units: Wet scrubbers, ESPs, and regenerative thermal oxidizers (RTOs).

C. What changes did we propose for the subpart MM source category in our December 30, 2016, proposal?

On December 30, 2016, the EPA published a proposed rule in the **Federal Register** for the subpart MM NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, which took into consideration the RTR analyses. In that action, we proposed to:

- Reduce the opacity limits for recovery furnaces;
- Revise the opacity monitoring allowances for recovery furnaces and lime kilns (i.e., the percentage of the operating time within a semiannual period below which opacity can exceed the limit without it being considered a violation);

- Require ESP parameter monitoring for recovery furnaces and lime kilns equipped with ESPs;
- Clarify the monitoring requirements for combined ESP/wet scrubber controls;
- Provide alternative monitoring parameters for SDT wet scrubbers;
- Require periodic air emissions performance testing once every 5 years as facilities renew their operating permits;
- Eliminate the SSM exemption;
- Provide alternative monitoring parameters for wet scrubbers and ESPs during SSM periods;
- Specify procedures for establishing continuous parameter monitoring system (CPMS) operating limits;
- Reduce the reporting frequency and require electronic submission for excess emissions reports;
- Require mills to submit electronic copies of performance test reports; and
- Make a number of technical and editorial changes.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the subpart MM source category and amends the subpart MM NESHAP based on those determinations. This action also finalizes other changes to the NESHAP, including a requirement for 5-year periodic emissions testing; electronic reporting; revisions to provisions addressing periods of SSM; and technical and editorial changes. This final action is based on the proposed rulemaking (published in the **Federal Register** on December 30, 2016) and reflects refinements made in response to comments received during the public comment period for that proposal.

A. What are the final rule amendments based on the risk review for the subpart MM source category?

The EPA proposed no changes to the subpart MM NESHAP based on the risk review conducted pursuant to CAA section 112(f). We are finalizing our proposed determination that risks from the source category are acceptable, considering all of the health information and factors evaluated, and also considering risk estimation uncertainty. We are also finalizing our proposed determination that the current standards provide an ample margin of safety, as well as our finding regarding the absence of adverse environmental effects. The EPA received no new data or other information during the public comment period that affected our determinations. Therefore, we are not

requiring additional controls and, thus, are not making any revisions to the existing standards under CAA section 112(f).

B. What are the final rule amendments based on the technology review for the subpart MM source category?

We determined that there are developments in practices, processes, and control technologies that warrant revisions to the NESHAP for this source category. Therefore, to satisfy the requirements of CAA section 112(d)(6), we are revising the NESHAP as follows:

- Revising the opacity monitoring allowance for all recovery furnaces equipped with ESPs from 6 percent to 2 percent;
- Revising the opacity monitoring allowance for all lime kilns equipped with ESPs from 6 percent to 3 percent;
- Adding a requirement for recovery furnaces and lime kilns equipped with ESPs to maintain proper operation of the ESP AVC;
- Adding the aforementioned ESP requirement and wet scrubber parameter monitoring for emission units equipped with an ESP followed by a wet scrubber; and
- Providing alternative monitoring, specifically scrubber fan amperage, as an alternative to pressure drop measurement, for SDT dynamic scrubbers operating at ambient pressure and low-pressure entrainment scrubbers on SDTs where the fan speed does not vary.

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

As proposed, we are finalizing amendments to the subpart MM NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), the EPA has established standards in this rule that apply at all times. We are also revising Table 1 to Subpart MM of Part 63 (General Provisions applicability table) to change several references related to requirements that apply during periods of SSM. We are eliminating or revising certain recordkeeping and reporting requirements related to the eliminated SSM exemption, including the requirement for an SSM plan. We are also making changes to the rule to remove or modify language that is no longer applicable due to the removal of the SSM exemption. With the final amendments to the 40 CFR part 63, subpart MM monitoring requirements, we determined that facilities in this source category can meet the applicable emissions standards in this NESHAP at

all times, including periods of startup and shutdown; therefore, no additional standards are needed to address emissions during these periods.

The 40 CFR part 63, subpart MM monitoring requirements were analyzed and adjusted to ensure that continuous compliance can feasibly be demonstrated during periods of startup and shutdown. Subpart MM requires continuous opacity monitoring to indicate ongoing compliance with the PM emission limits. In developing the proposed standards for the subpart MM RTR, the EPA reviewed numerous continuous opacity monitoring datasets that included periods of startup and shutdown, and stated that the affected units would be able to comply with the proposed standards at all times. Further analysis of the datasets show that sufficient startup and shutdown data were included in the analyses to form the basis for our conclusions, even though not all units provided such data. Subpart MM also requires continuous RTO operating temperature and wet scrubber parameter monitoring. As proposed, we are removing the requirement to consider wet scrubber pressure drop during startup and shutdown because pressure drop is dependent on gas flow, which is transient (changing) during startup and shutdown. Continuous compliance is based on scrubber liquid flow rate monitoring during startup and shutdown instead of both pressure drop and liquid flow rate. We are also limiting the times when corrective actions are implemented or violations are recorded to times when spent pulping liquor or lime mud is fed (as applicable). The final rule specifies that corrective action can include completion of transient startup and shutdown conditions as expediently as possible.

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

Other changes to the NESHAP that do not fall into the categories in the previous sections include:

- Requiring facilities to conduct periodic air emissions performance testing, with the first of the tests to be conducted within 3 years of the effective date of the revised standards, and thereafter no longer than 5 years following the previous performance test;
- Specifying procedures for establishing operating limits based on data recorded by CPMS, including the frequency for recording parameters and the averaging period for reducing the recorded readings;
- Reducing the frequency for submitting excess emissions reports

from quarterly to semiannually in conjunction with requiring electronic reporting of excess emissions (in the future, as reporting forms are tested and become available—see section IV.F of this preamble);

- Requiring facilities to submit electronic copies of performance test reports;
- Requiring facilities to submit initial notifications and notifications of compliance status electronically; and
- Making various technical and editorial corrections.

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

The revisions to the NESHAP being promulgated in this action are effective on October 11, 2017. The compliance date for existing sources is October 11, 2019, with the exception of the first periodic performance test, which must be conducted by October 13, 2020, and the date to submit performance test data through CEDRI, which is within 60 days of completing the test. Facilities must comply with the changes set out in this final rule no later than 2 years after the effective date of the final rule. Section 112(i)(3) of the CAA provides that, for a standard or other regulation promulgated under CAA section 112, the Administrator shall establish a compliance date no later than 3 years after the effective date of the standard, except where otherwise provided. We conclude that 2 years are necessary to make the system adjustments needed to demonstrate compliance with the revised requirements, including adjusting data acquisition systems (DAS) to include startup and shutdown periods and the revised opacity monitoring allowances, to transition to electronic excess emissions reporting, and to comply with revised monitoring requirements.

As noted in section IV.F of this preamble, the initial compliance date for electronic excess emissions reporting will be 1 year after the excess emissions reporting form (*i.e.*, a spreadsheet template) becomes available in the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). A compliance date 2 years after promulgation allows 1 year for beta-testing of the e-reporting form before it is placed into CEDRI, followed by 1 year for facilities to begin using the final form.² A period of 3 years after promulgation is not needed for compliance because, as explained in

² A copy of the revised semiannual electronic excess emissions reporting form (spreadsheet template) incorporating public comments has been placed in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).

section IV.B of this preamble, the EPA is not finalizing the proposed revisions to the opacity limits or ESP parameter monitoring requirements that would involve capital projects such as an ESP upgrade.

New sources must comply with all of the standards by October 11, 2017, or upon startup, whichever is later.

F. What are the requirements for submission of performance test data to the EPA?

The EPA is requiring owners and operators of pulp and paper production facilities to submit electronic copies of certain required performance test reports to the EPA's Central Data Exchange (CDX) using the CEDRI. The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

The EPA Web site that stores the submitted electronic data, WebFIRE, is easily accessible and provides a user-friendly interface. By making the records, data, and reports addressed in this rulemaking readily available, the EPA, the regulated community, and the public will benefit when the EPA conducts future CAA-required technology reviews. As a result of having reports readily accessible, our ability to carry out timely comprehensive reviews will be increased.

We anticipate that fewer or less substantial ICRs in conjunction with prospective CAA-required technology reviews may be needed, which results in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing requirements would be a cost savings to

industry. The EPA should also be able to conduct these required reviews more efficiently. While the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the Agency's ability to provide these required reviews more efficiently, resulting in increased public health and environmental protection.

State, local, and tribal air agencies, as well as the EPA, can benefit from more streamlined and automated review of the electronically submitted data. Standardizing report formats allows air agencies to review reports and data more quickly. Having reports and associated data in electronic format will facilitate review through the use of software "search" options, as well as the downloading and analyzing of data in spreadsheet format. Additionally, air agencies and the EPA can access reports wherever and whenever they want or need, as long as they have access to the Internet. The ability to access and review air emission report information electronically will assist air agencies to more quickly and accurately determine compliance with the applicable regulations, potentially allowing a faster response to violations which could minimize harmful air emissions. This benefits both air agencies and the general public.

For a more thorough discussion of electronic reporting required by this rule, see the discussion in the preamble

of the proposal (81 FR 97079–81). In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, air agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations and enhancing the public's access to this important information.

IV. What is the rationale for our final decisions and amendments for the subpart MM source category?

For each action, this section provides a description of what we proposed and what we are finalizing, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. A thorough discussion of all comments received on the proposed rulemaking and EPA's corresponding responses can be found in the comment summary and response document available in the docket (Docket ID No. EPA-HQ-OAR-2014-0741).

A. Residual Risk Review for the Subpart MM Source Category

Results of residual risk review. Pursuant to CAA section 112(f), we conducted a residual risk review and presented the results for the review, along with our proposed decisions

regarding risk acceptability and ample margin of safety, in the December 30, 2016, proposed rule for the subpart MM source category (81 FR 97046). The results of the risk assessment are presented briefly in Table 2 of this preamble, and in more detail in a document titled, *Residual Risk Assessment for Pulp Mill Combustion Sources in Support of the October 2017 Risk and Technology Review Final Rule*, available in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2014-0741). Based on both actual and allowable emissions for the source category, the estimated maximum individual risk (MIR)³ was 4-in-1 million, with emissions of gaseous organic HAPs acetaldehyde and naphthalene from the BLO process accounting for the majority of the risk. The total estimated national cancer incidence for this source category, based on actual emission levels, was 0.01 excess cancer cases per year, or one case in 100 years. The total estimated national cancer incidence for this source category, based on allowable emission levels, was 0.02 excess cancer cases per year, or one case in 50 years. The estimated maximum chronic non-cancer target organ specific hazard index (TOSHI) value for this source category was 0.3, based on both actual and allowable emissions and driven by acrolein emissions from lime kilns.

TABLE 2—PULP MILL COMBUSTION SOURCES (SUBPART MM) INHALATION RISK ASSESSMENT RESULTS IN THE DECEMBER 2016 PROPOSAL

	Cancer MIR (in-1-million)		Cancer incidence (cases per year)	Population with risk of 1-in-1 million or more	Population with risk of 10-in-1 million or more	Max chronic non-cancer HI ¹ (actuals)	Max chronic non-cancer HI ¹ (allowables)
	Based on actual emissions	Based on allowable emissions					
Source category.	4 (naphthalene, acetaldehyde).	4 (naphthalene, acetaldehyde).	0.01	7,600	0	HI < 1	HI < 1
Whole facility	20 (arsenic, chromium VI) .....	.....	0.05	440,000	280	HI = 1	HI = 1

¹ Hazard index.

The multi-pathway screening analysis, based on actual emissions, indicates the excess cancer risk from this source category is less than 10-in-1 million, based on dioxins/furans and polycyclic aromatic hydrocarbon (PAH) emissions, with PAH emissions accounting for 99 percent of these potential risks from the fisher and the farmer scenarios considered for multi-pathway modeling. There were no facilities within this source category with a final multi-pathway non-cancer screen value greater than 1 for cadmium or mercury.

To put the risks from the source category in context, we also evaluated facility-wide risk. Our facility-wide risk assessment, based on actual emissions, estimated the MIR to be 20-in-1 million driven by arsenic and chromium VI emissions, and estimated the chronic non-cancer TOSHI value to be 1, driven by emissions of acrolein. We estimated approximately 440,000 people to have cancer risks greater than or equal to 1-in-1 million considering facility-wide emissions from the pulp and paper production source category (see Table 2). The facility-wide cancer and non-cancer risks are driven by emissions

from industrial boilers, representing 62 percent of the cancer risks and 95 percent of the non-cancer risks. Emissions from 40 CFR part 63, subpart MM sources represent only 6 percent of the total facility-wide cancer risk of 20-in-1 million.

The screening assessment of worst-case acute inhalation impacts indicates no pollutants exceeding a hazard quotient (HQ) value of 1 based on the reference exposure level (REL), with an estimated worst-case maximum acute HQ of 0.3 for acrolein based on the 1-hour REL.

³ Although defined as "maximum individual risk," MIR refers only to cancer risk. MIR, one

metric for assessing cancer risk, is the estimated

risk were an individual exposed to the maximum level of a pollutant for a lifetime.

A review of the uncertainties in the risk assessment identified one additional key consideration, and that is the quality of data associated with the facility-wide emissions. The data provided from the power boilers (*i.e.*, sources covered under Boiler MACT, 40 CFR part 63, subpart DDDDD) were collected in 2009 and represent pre-MACT emissions before any controls were implemented. The uncertainty introduced by using pre-MACT boiler emissions data may result in an overestimated risk estimate for the facility-wide analysis for both cancer and non-cancer impacts.

We weighed all health risk factors in our risk acceptability determination, and we proposed that the residual risks from this source category are acceptable. We then considered whether the NESHAP provides an ample margin of safety to protect public health and whether more stringent standards were necessary to prevent an adverse environmental effect by taking into consideration costs, energy, safety, and other relevant factors. In determining whether the standards provide an ample margin of safety to protect public health, we examined the same risk factors that we investigated for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. As noted in the discussion of the ample margin of safety analysis in the preamble to the proposed rule (81 FR 97069–70), we considered options for further reducing gaseous organic HAP emissions from recovery furnace systems. We considered the reduction in HAP emissions that could be achieved by converting or replacing direct contact evaporator (DCE) recovery furnaces (which include BLO systems) with NDCE recovery furnaces. We also considered conversion of wet ESP systems to dry ESP systems for NDCE recovery furnaces. The overall cost of these options is an estimated \$1.4 billion to \$3.7 billion in capital cost and \$120 million to \$440 million in annualized cost. Application of these options would achieve an estimated emission reduction of 2,920 tpy of gaseous organic HAPs (including risk drivers and other gaseous organic HAPs), with a corresponding cost effectiveness of \$45,000 to \$153,000 per ton of emissions reduced. Due to the low level of current risk and the costs associated with these options, we proposed that additional HAP emission reductions from the source category are

not necessary to provide an ample margin of safety. Based on the results of our environmental risk screening assessment,⁴ we also proposed that more stringent standards are not necessary to prevent an adverse environmental effect.

Public comments and final approach. Most of the commenters providing input on the proposed risk review supported our determination of risk acceptability and ample margin of safety analysis for 40 CFR part 63, subpart MM.

We evaluated all of the comments on EPA's risk review and determined that no changes to the review are needed. A summary of these comments and our responses is located in the comment summary and response document, available in the docket for this action (Docket ID No. EPA–HQ–OAR–2014–0741).

For the reasons explained in the proposed rule, we determined that the risks from the 40 CFR part 63, subpart MM source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety or adverse environmental effects have changed. Therefore, pursuant to CAA section 112(f)(2), we are finalizing our residual risk review as proposed.

B. Technology Review for the Subpart MM Source Category

Pursuant to CAA section 112(d)(6), we conducted a technology review, which focused on identifying and evaluating developments in practices, processes, and control technologies for the emission sources in the source category. The following paragraphs discuss what we proposed pursuant to CAA section 112(d)(6), changes to the technology review since proposal, the key comments we received on the technology review and our responses, and the rationale for our final approach for the technology review. For an in-depth account of the comments and responses, see the comment summary and response document in the docket for this action (Docket ID No. EPA–HQ–OAR–2014–0741).

Emissions standards. At proposal, we focused our CAA section 112(d)(6) review of 40 CFR part 63, subpart MM on the emissions standards currently

established in subpart MM. No cost-effective developments in practices, processes, or control technologies were identified in our technology review to warrant revisions to the gaseous organic HAP standards for recovery furnaces and semichemical combustion units, or to the HAP metal standards for recovery furnaces, lime kilns, SDTs, and sulfite combustion units. More information concerning our technology review is in the memorandum titled, *Section 112(d)(6) Technology Review for the NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills*, available in the docket for this action (Docket ID No. EPA–HQ–OAR–2014–0741), and in the preamble to the proposed rule (81 FR 97070–75).

Multiple commenters concurred with the EPA that the results of the technology review supported the conclusion that there should be no changes to the emissions standards. One commenter objected and argued that the current MACT standards for HAP metals from recovery furnaces, SDTs, lime kilns, and sulfite combustion units did not meet the requirements of CAA section 112(d)(2) and (3) when originally promulgated. The commenter stated that each of the emissions standards must receive a proper CAA section 112(d)(6) review to evaluate whether there is an emissions standard in place that met the CAA section 112(d)(2) and (3) test. According to the commenter, the EPA must set emissions standards on each of these emission units to satisfy the CAA, by establishing a proper floor for the first time, and performing a beyond-the-floor analysis. The commenter argued that the EPA is not authorized by CAA section 112(d)(6) to leave in place errors made when performing the originally-required MACT rulemaking under CAA section 112(d)(2) and (3).

In addition to commenting on the current 40 CFR part 63, subpart MM standards, commenters offered opposing opinions regarding whether the EPA should have expanded the scope of sources and/or pollutants covered by subpart MM as part of the technology review. One commenter argued that the EPA has no obligation to expand the scope of the existing standards, and does not in fact have statutory authority to do so. The commenter stated that there is neither legal nor technical justification for considering limitations for new pollutants or for new sources as part of the CAA section 112(d)(6) review of the subpart MM standards. The commenter also stated that the EPA's residual risk review, which included the major processes and pollutants, did not

⁴ The environmental screening analysis is documented in *Residual Risk Assessment for Pulp Mill Combustion Sources in Support of the October 2017 Risk and Technology Review Final Rule*, available in the docket for this action (Docket ID No. EPA–HQ–OAR–2014–0741).

identify any reason for expanding the emission units covered or the pollutants limited in the subpart MM standards.

Another commenter argued that the EPA must set emissions standards for all emitted HAPs from all emission units. The commenter stated that, currently, there are uncontrolled HAPs emitted by pulp mills, including mercury, dioxins/furans, and hydrochloric acid. The commenter also stated that the gaseous organic HAPs emitted from existing recovery furnaces and from new and existing lime kilns and SDTs have no applicable emission limit. The commenter also noted that the EPA failed to set any standard for HAP metals emissions from new and existing chemical recovery combustion units at stand-alone semichemical pulp mills. The commenter indicated that the CAA section 112(d)(6) review has brought the problem of currently unregulated HAPs to the EPA's attention, and it is now "necessary" under CAA section 112(d)(6) to set emissions standards that control these pollutants, as the CAA directs. The commenter also asserted that, under CAA section 112(d)(6), the D.C. Circuit Court legal decisions governing the EPA's regulatory responsibility are "developments" that define proper pollution controls, practices, and technologies, and the EPA is legally required to account for them and set standards to limit these pollutants in the review rulemaking.

Regarding our review of the current 40 CFR part 63, subpart MM standards, we disagree with the commenter that implied the EPA must recalculate or reanalyze the validity of MACT floors previously established under CAA sections 112(d)(2) and (3) as part of the technology review under CAA section 112(d)(6). As explained in prior RTR rulemakings, the EPA does not read CAA section 112(d)(6) as requiring a reanalysis or recalculation of MACT floors. See National Emissions Standards for Coke Oven Batteries (70 FR 19992, 20008 (April 15, 2005)). We read CAA section 112(d)(6) as providing the EPA with substantial latitude in weighing a variety of factors and arriving at an appropriate balance in considering revisions to standards promulgated under CAA section 112(d)(2) and (3). Nothing in CAA section 112(d)(6) expressly or implicitly requires that the EPA recalculate the MACT floor as part of the CAA section 112(d)(6) review. The EPA's interpretation on this point has been upheld by the D.C. Circuit. *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 7–9 (D.C. Cir. 2015); *Ass'n of Battery Recyclers v. EPA*, 716 F.3d 667, 673 (D.C. Cir. 2013); *Natural Resources*

Defense Council (NRDC) v. EPA, 529 F.3d 1077, 1084 (D.C. Cir. 2008). Further, CAA section 112(d)(6) provides that the "developments" the EPA must take into account when conducting technology reviews are specifically "developments in practices, processes, and control technologies." See 81 FR 79066 (December 30, 2016) (describing the developments the EPA considers when conducting CAA section 112(d)(6) reviews). The EPA interprets the term "developments" to include technological improvements that could result in significant additional emission reduction as well as wholly new methods of emission reduction. See, e.g., 75 FR 65083; see also *Nat'l Ass'n Surface Finishing v. EPA*, 795 F.3d 1, 11 (D.C. Cir. 2015) (upholding the EPA's conclusion that developments include changes that indicate that a previously considered option for reducing emissions may now be cost-effective or technologically feasible and concluding that it is sufficient for the EPA "to assess and discuss the collective impact of the developments it has identified, and to revise standards appropriately in light thereof."). The EPA does not, however, interpret the term "development" as used in CAA section 112(d)(6) to include intervening case law. An intervening decision by a court regarding other CAA section 112 requirements does not constitute a development in a practice, process or control technology. As such, the EPA has no obligation to consider intervening case law as a "development" when identifying developments for purposes of the section 112(d)(6) review.

Regarding the scope of the subpart MM technology review, the EPA acknowledges that standards for certain combinations of pollutants and processes in the subpart MM source category have not been promulgated according to CAA section 112(d)(2) and (3). We agree that the EPA does not have any obligation to expand the scope of the existing standards under CAA section 112(d)(6), and we do not look to CAA section 112(d)(6) for authority to set additional standards within a source category. The authority to set additional standards within a source category comes from CAA section 112(d)(2) and (3). Though the EPA has discretion to develop standards under CAA section 112(d)(2) and (3) for previously unregulated pollutants at the same time as the Agency completes the CAA section 112(d)(6) review, nothing in CAA section 112(d)(6) expressly requires the EPA to do so as part of that review. The compressed schedule for

this rulemaking, due to the court-ordered deadline, did not make it reasonable to appropriately evaluate new standards for unregulated pollutants and processes. This issue is discussed further in the comment summary and response document that is available in the docket. The EPA is not taking any action at this time with respect to the unregulated pollutants or processes, though the EPA might choose to do so in the future after assembling the data and information needed to conduct the CAA section 112(d)(2) and (3) analyses.

Continuous opacity monitoring. Based on our analysis of continuous opacity monitoring system (COMS) data for kraft and soda recovery furnaces and lime kilns equipped with ESPs⁵ and our consideration of the costs and impacts of various opacity monitoring options for these sources,⁶ we stated at proposal that:

- There had been a development in existing recovery furnace operating practices that supported reducing the existing source opacity limit from 35 percent to 20 percent and revising the monitoring allowance for the 20 percent opacity limit from 6 percent to a 2 percent monitoring allowance as part of the subpart MM technology review process; and
- There had been a development in existing lime kiln operating practices that supported revising the monitoring allowance from 6 percent to a 1 percent monitoring allowance for opacity as part of the subpart MM technology review process.

The estimated cost effectiveness of the proposed recovery furnace option, \$36,800 per ton PM, was within the range of other recent EPA regulations. There was no cost-effectiveness value for the proposed lime kiln option because there were no estimated incremental HAP reductions (81 FR 97072–73).

Multiple commenters objected to the proposed changes to the opacity requirements for recovery furnaces and lime kilns, questioning the cost effectiveness and stating that the technology review should not result in changing the opacity requirements. The commenters argued that the EPA's assumption for "improving maintenance" to reduce the number of exceedances of the recovery furnace and lime kiln opacity limits was incorrect,

⁵ See the memorandum in the docket titled, *Review of the Continuous Opacity Monitoring Data from the Pulp and Paper ICR Responses for Subpart MM Sources*.

⁶ See the memorandum in the docket titled, *Costs/Impacts of the Subpart MM Residual Risk and Technology Review*.

and stated that facilities would incur emission unit shutdown (and resulting lost production) and potential capital costs in order to meet the reduced opacity limits and monitoring allowances. Commenters stated that facilities would need to make ESP upgrades to meet the proposed limits and they provided cost estimates for these upgrades, based on their experiences. In response to these comments, we conducted further analysis, based on the assumption that ESP upgrades (but not maintenance) would be needed to meet the proposed standard and revised the cost estimates considering the cost data provided.⁷ In this further analysis considering new information, we estimated costs that are significantly higher than what we estimated at proposal. For recovery furnaces, we estimated annual ESP upgrade costs of \$21 million v. \$8.7 million at proposal; for lime kilns, we estimated annual ESP upgrade costs of \$0.87 million v. \$0.068 million at proposal. For PM, the surrogate for HAP metals, we estimated the cost effectiveness for recovery furnace ESP upgrades to increase from \$36,800 to \$91,400 per ton. For HAP metals specifically, the cost effectiveness exceeds \$250 million per ton.

Commenters also stated that examination of only 1 year of COMS data for 2009 from the 2011 pulp and paper ICR was not adequate to fully determine the impacts of the proposed change or to demonstrate that there has been a change in operating practice. Commenters further stated that the COMS data for recovery furnaces and lime kilns that the EPA used in its analysis did not include periods of startup and shutdown in all instances, and that the EPA's analysis of existing performance relative to the proposed opacity limits and monitoring allowances was, therefore, incomplete. The EPA acknowledges that 2009 data may not be representative of current operation, as suggested by the commenters, and that the number of startup and shutdown events likely vary from year to year. Considering this information and the analyses performed for the final action,⁸ we are not finalizing the recovery furnace and lime kiln opacity requirements as proposed. Instead, we are finalizing an opacity limit of 35 percent for existing recovery furnaces, with a corrective action level of 20 percent and a 2 percent monitoring allowance. A 2 percent

monitoring allowance reflects improvements in operating practices from the previous 6 percent allowance, but allows sufficient flexibility for periods of startup and shutdown. We are finalizing, as proposed, an opacity limit of 20 percent for new recovery furnaces, with a corrective action level of 20 percent and a 2 percent monitoring allowance. For lime kilns, we are finalizing an opacity limit of 20 percent, with a 3 percent monitoring allowance. A 3 percent monitoring allowance reflects improvements in operating practices from the previous 6 percent allowance, but allows sufficient flexibility for periods of startup and shutdown as compared to the proposed 1 percent allowance. Our review of available COMS data indicates that all recovery furnaces and lime kilns equipped with ESPs can meet these limits, so we do not expect any costs associated with these requirements, which addresses commenters' concerns about the cost of the proposed opacity options.⁹

ESP parameter monitoring. We proposed an ESP parameter monitoring requirement for recovery furnaces and lime kilns equipped with ESPs. We proposed that these sources monitor the secondary voltage and secondary current (or, alternatively, total secondary power) of each ESP collection field. These proposed ESP parameter monitoring requirements were in addition to opacity monitoring for recovery furnaces equipped with ESPs alone. The purpose of this proposed requirement was to provide an additional indicator of ESP performance and enable affected sources to show continuous compliance with the HAP metal standards (surrogate PM emission limits) at all times, including periods when the opacity monitoring allowance is used (81 FR 97073). For example, these requirements were proposed to provide an indicator that the ESP was efficiently operated and properly maintained for the duration of the semiannual reporting period, including during periods of startup and shutdown. At the time of the proposed rule, we estimated that the nationwide costs associated with adding the proposed ESP parameter monitoring requirements would be \$5.7 million capital and \$1.4 million annualized for ESP parameter monitors, and that all mills with ESP-controlled recovery furnaces and lime kilns would be impacted (81 FR 97073).

⁹ See the memoranda in the docket titled, *Addendum to the Review of the Continuous Opacity Monitoring Data from the Pulp and Paper ICR Responses for Subpart MM Sources, and Revised Costs/Impacts of the Subpart MM Residual Risk and Technology Review for Promulgation.*

Multiple commenters stated that the ESP total power monitoring provisions should be removed or revised. Instead of adding an additional monitoring requirement that they believed would be burdensome and duplicative of the opacity monitoring already being conducted, commenters suggested that the EPA should instead require proper operation of the ESP's AVC or power management system, which would achieve the same goal of ensuring the ESP performance. Commenters provided information suggesting that we underestimated the ESP parameter monitoring costs, specifically that EPA incorrectly assumed that all ESPs were equipped with the ability to record the parameters. Based on our review of this cost information, we conducted a reanalysis and estimated revised costs of \$16 million in capital costs and \$4 million in annualized costs associated with adding ESP parameter monitoring for existing sources.¹⁰

Given that the intent of the proposed additional ESP monitoring was to ensure efficient operation and proper maintenance of the ESP, see 81 FR 97073 (December 30, 2016), and that commenters suggested that the use of the AVC ensures efficient operation and notifies operators of issues requiring maintenance, and that the costs were significantly higher than EPA estimated at proposal, we are not finalizing the proposed ESP parameter monitoring requirements. The EPA is instead finalizing a requirement for recovery furnaces and lime kilns equipped with ESPs to maintain proper operation of the ESP's AVC. This requirement applies at all times, including times when the opacity monitoring allowance is used. Because existing ESPs already have AVC, there is no need to estimate equipment cost. We have only estimated recordkeeping costs for this requirement.¹¹ The final rule also clarifies that the requirement to maintain proper operation of the ESP's AVC does not apply to recovery furnaces and lime kilns subject to the 40 CFR part 60, subpart BBa New Source Performance Standards (NSPS) for Kraft Pulp Mills, because the NSPS requires ESP parameter monitoring for these units.

Monitoring of ESPs followed by wet scrubbers. Because moisture in wet stacks interferes with opacity readings, opacity is not a suitable monitoring requirement for recovery furnaces or lime kilns with wet scrubber stacks.

¹⁰ See the memorandum in the docket titled, *Revised Costs/Impacts of the Subpart MM Residual Risk and Technology Review for Promulgation.*

¹¹ *Id.*

⁷ See the memorandum in the docket titled, *Revised Costs/Impacts of the Subpart MM Residual Risk and Technology Review for Promulgation.*

⁸ *Id.*

Therefore, we proposed to require ESP and wet scrubber parameter monitoring for emission units equipped with an ESP followed by a wet scrubber. The ESP parameters proposed to be monitored were secondary voltage and secondary current (or, alternatively, total secondary power), and the wet scrubber parameters were pressure drop and scrubber liquid flow rate (81 FR 97073–74). As noted in the previous paragraph, for the final rule, we are replacing the proposed ESP parameter monitoring requirement with a requirement to maintain proper operation of the ESP's AVC based on public comment, except for recovery furnaces and lime kilns subject to the subpart BBa NSPS, because ESP parameter monitoring is already required for these units. We are finalizing the rest of these monitoring requirements as proposed.

Wet scrubber parameter monitoring. Subpart MM of 40 CFR part 63 specifies monitoring of scrubber liquid flow rate and pressure drop for kraft and soda SDTs and sulfite combustion units equipped with wet scrubbers. Facilities may have difficulty meeting the minimum pressure drop requirement during startup and shutdown, as expected due to the reduced (and changing) volumetric flow of stack gases during these periods. We proposed revising the monitoring requirements to address startup and shutdown periods when certain parameters could be difficult to achieve. Specifically, we proposed to consider only scrubber liquid flow rate during these periods (*i.e.*, excess emissions would include any 3-hour period when black liquor solids (BLS) are fired that the scrubber flow rate does not meet the minimum parameter limits set in the initial performance test). Based on previous alternative monitoring requests for SDTs, we also proposed to allow operators to use SDT scrubber fan amperage as an alternative to pressure drop measurement for SDT dynamic scrubbers operating at ambient pressure or for low-energy entrainment scrubbers on SDTs where the fan speed does not vary (81 FR 97074–75). We received no public comments on the proposed changes in wet scrubber parameter monitoring and, therefore, are finalizing these monitoring requirements as proposed.

C. Changes to SSM Provisions

We received several comments on our proposal to remove exemptions for SSM events. See the comment summary and response document available in the docket for this action (Docket ID No. EPA–HQ–OAR–2014–0741) for public

comments and our responses relating to our proposal to remove the SSM exemption from 40 CFR part 63, subpart MM. An overview of our rationale for removing this exemption is provided below.

In its 2008 decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We have eliminated the SSM exemption in this rule. Consistent with *Sierra Club v. EPA*, the EPA has established standards in this rule that apply at all times. We have also revised Table 1 (the General Provisions applicability table) in several respects as is explained in more detail below. For example, we have eliminated the incorporation of the General Provisions' requirement that the source develop an SSM plan. We have also eliminated and revised certain recordkeeping and reporting that is related to the SSM exemption as described in detail in the proposed rule and summarized again here.

In establishing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not established alternate emissions standards for those periods.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent and not reasonably preventable failures of emissions control, process or monitoring equipment (40 CFR 63.2) (definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the D.C. Circuit in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source, and for existing sources, generally must be no less stringent than the average emission

limitation "achieved" by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level "achieved" by the best performing sources when setting emissions standards. As the D.C. Circuit has recognized, the phrase "average emissions limitation achieved by the best performing 12 percent of" sources "says nothing about how the performance of the best units is to be calculated." *Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a "normal or usual manner" and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the D.C. Circuit recognized in *U.S. Sugar Corp.*, accounting for malfunctions in setting emissions standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 ("the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.") As such, the performance of units that are malfunctioning is not "reasonably" foreseeable. *See, e.g., Sierra Club v. EPA*, 167 F.3d 658, 662 (D.C. Cir. 1999) ("The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.'") *See also, Weyerhaeuser v. Costle*, 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,'

such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.”). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99 percent removal goes offline as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99 percent control to zero control until the control device was repaired. The source’s emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA’s approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source’s failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emissions standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine

whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (2016).

40 CFR 63.860(d) General duty. We are revising the General Provisions table (Table 1) entry for 40 CFR 63.6(e) by re-designating it as 40 CFR 63.6(e)(1)(i) and changing the “yes” in column 3 to a “no.” Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are instead adding general duty regulatory text at 40 CFR 63.860(d) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is promulgating for 40 CFR 63.860(d) does not include that language from 40 CFR 63.6(e)(1).

We are also revising the General Provisions table (Table 1) to add an entry for 40 CFR 63.6(e)(1)(ii) and include a “no” in column 3. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.860(d).

SSM plan. We are revising the General Provisions table (Table 1) to add an entry for 40 CFR 63.6(e)(3) and include a “no” in column 3. Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is removing the SSM exemptions. Therefore, affected units will be subject to an emissions standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

Compliance with standards. We are revising the General Provisions table (Table 1) entry for 40 CFR 63.6(f) by re-

designating this section as 40 CFR 63.6(f)(1) and including a “no” in column 3. The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club*, the EPA is revising standards in this rule to apply at all times.

We are revising the General Provisions table (Table 1) entry for 40 CFR 63.6(h) by re-designating this section as 40 CFR 63.6(h)(1) and including a “no” in column 3. The current language of 40 CFR 63.6(h)(1) exempts sources from opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club*, the EPA is revising standards in this rule to apply at all times.

40 CFR 63.865 Performance test requirements and test methods. We are revising the General Provisions table (Table 1) entry for 40 CFR 63.7(e) by re-designating it as 40 CFR 63.7(e)(1) and including a “no” in column 3. Section 63.7(e)(1) describes performance testing requirements. The EPA is instead adding a performance testing requirement at 40 CFR 63.865. The performance testing requirements we are adding differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered “representative” for purposes of performance testing. The revised performance testing provisions require testing under representative operating conditions, excluding periods of startup and shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is adding language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available records “as

may be necessary to determine the condition of the performance test” to the Administrator upon request, but does not specifically require the information to be recorded. The regulatory text the EPA is adding to this provision builds on that requirement and makes explicit the requirement to record the information.

40 CFR 63.864 Monitoring requirements. We are revising the General Provisions table (Table 1) by re-designating 40 CFR 63.8(c) as 40 CFR 63.8(c)(1), adding entries for 40 CFR 63.8(c)(1)(i) through (iii) and including “no” in column 3 for paragraphs (i) and (iii). The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

We are revising the General Provisions table (Table 1) by adding an entry for 40 CFR 63.8(d)(3) and including a “no” in column 3. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions’ SSM plan requirement which is no longer applicable. The EPA is adding to the rule at 40 CFR 63.864(f) text that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: “The program of corrective action should be included in the plan required under 40 CFR 63.8(d)(2).”

40 CFR 63.866 Recordkeeping requirements. We are revising the General Provisions table (Table 1) by adding an entry for 40 CFR 63.10(b)(2)(i) and including a “no” in column 3. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is promulgating that recordkeeping and reporting applicable to normal operations applies to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are revising the General Provisions table (Table 1) by adding an entry for 40 CFR 63.10(b)(2)(ii) and including a “no” in column 3. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is adding such requirements to 40 CFR 63.866(d). The regulatory text we are adding differs from the General Provisions it is replacing in that the General Provisions

requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is applying the requirement to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the “occurrence.” The EPA is also adding to 40 CFR 63.866(d) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over any emission limit the source failed to meet, and a description of the method used to estimate the emissions. Examples of such methods could include mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is requiring that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are revising the General Provisions table (Table 1) by adding an entry for 40 CFR 63.10(b)(2)(iv) and including a “no” in column 3. When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.866(d).

We are revising the General Provisions table (Table 1) by adding an entry for 40 CFR 63.10(b)(2)(v) and including a “no” in column 3. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are revising the General Provisions table (Table 1) by adding an entry for 40 CFR 63.10(c)(15) and including a “no” in column 3. The EPA is promulgating that 40 CFR 63.10(c)(15) no longer applies. When applicable, the provision allows an owner or operator to use the affected source’s SSM plan or records kept to satisfy the recordkeeping

requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is eliminating this requirement because SSM plans will no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

40 CFR 63.867 Reporting requirements. We are revising the General Provisions table (Table 1) entry for 40 CFR 63.10(d)(5) by re-designating it as 40 CFR 63.10(d)(5)(i) and changing the “yes” in column 3 to a “no.” Section 63.10(d)(5)(i) describes the periodic reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is adding reporting requirements to 40 CFR 63.867(c). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are promulgating language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semiannual report already required under this rule. We are promulgating that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans will no longer be required. The final amendments, therefore, eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are revising the General Provisions table (Table 1) to add an entry for 40 CFR 63.10(d)(5)(ii) and include a “no” in column 3. Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard, but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not

consistent with an SSM plan, because plans will no longer be required.

D. Emissions Testing

Periodic testing. As part of an ongoing effort to improve compliance with various federal air emission regulations, we reviewed the 40 CFR part 63, subpart MM emissions testing and monitoring requirements and proposed to require periodic emissions testing every 5 years. We proposed that the first of the periodic performance tests be conducted within 3 years of the effective date of the revised standards and, thereafter, before the facilities renew their 40 CFR part 70 operating permits, but no longer than 5 years following the previous performance test. The proposal required periodic filterable PM testing for existing and new kraft and soda recovery furnaces, SDTs, and lime kilns and sulfite combustion units; periodic methanol testing for new kraft and soda recovery furnaces; and periodic total hydrocarbon (THC) testing for existing and new semichemical combustion units (81 FR 97078).

Multiple commenters expressed concern about the proposed requirement for facilities to conduct periodic tests “before renewing their 40 CFR part 70 operating permit,” arguing that the phrase was confusing and unnecessary, and they recommended that the wording linking periodic testing to permit renewal should be struck. We have reviewed these comments and agree that tying the timing for periodic testing to title V permit renewal could be considered confusing and could unnecessarily complicate the rule. Therefore, we are finalizing (as proposed) the requirement to conduct the first of the periodic tests within 3 years of the effective date of the revised standards and, thereafter, no longer than 5 years following the previous test, without reference to permit renewal. For more information, see the comment summary and response document available in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).¹²

Test conditions. We also proposed to revise the performance test requirements to specify that “performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested” (81 FR 97081). The proposed rule language was included in 40 CFR part 63, subpart MM as a replacement for similar language in 40 CFR 63.7(e)(1) that is no longer

entirely applicable because it stated that periods of SSM would not be considered a violation.

A commenter objected to the proposed language, stating that, depending on what “conditions” the Administrator specifies, it may be impossible to conduct performance testing in the time frame required, while simultaneously meeting all the conditions the Administrator or their designee may specify. The commenter suggested that the rule should simply require that performance tests be conducted under normal operating conditions. We agree that the proposed rule language needs clarification and have revised the language for the final rule to refer to “normal operating conditions” and eliminate the phrase “such conditions as the Administrator specifies to the owner or operator.”

E. CPMS Operating Limits

We proposed specific changes regarding the establishment and enforcement of CPMS operating limits. A discussion of the proposed changes, the public comments received, and the changes made for promulgation is provided in the following paragraphs and presented in greater detail in the comment summary and response document available in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).¹³

Procedures for establishing operating limits. We proposed procedures for establishing operating limits based on data recorded by CPMS. The 40 CFR part 63, subpart MM emissions standards include numerical emission limits, with compliance demonstrated through the proposed periodic performance tests, and operating limits (e.g., opacity limits or continuously monitored parameter limits) used to demonstrate ongoing compliance in between performance tests. The original subpart MM regulatory text referred extensively to operating parameter ranges and is not as specific as more recent NESHAPs in specifying how operating limits are to be determined. Therefore, we proposed language to clarify the procedures for establishing parameter limits, beginning with the first periodic performance test proposed to be required under 40 CFR 63.865. We proposed that the operating limits be established as the average of the parameter values associated with each performance test run in 40 CFR 63.864(j). Wet scrubbers and RTOs have minimum operating limits, such that the EPA would consider 3-hour average values below the minimum operating

limit to be a monitoring exceedance to be reported under 40 CFR 63.867(c) (81 FR 97078–79).

Multiple commenters objected to the proposed provisions in 40 CFR 63.864(j) that specify how operating parameter limits are established. The commenters argued that use of the test average conflicts with the language in 40 CFR part 63, subpart MM that allows the operating parameter limits to be expanded based on additional test data and limits the flexibility facilities need to establish an operating limit that allows for the full range of process operation. Commenters argued that the proposed methodology also conflicts with recent MACT rules such as the Boiler MACT rule (subpart DDDDD) that allows use of the lowest or highest individual test run to be used. Commenters concluded that flexibility in use of the hourly average value obtained during a test run and not the test average is important to establishing operating parameter limits that allow for a compliance demonstration at operating conditions below full load. Commenters stated that the ability to confirm the established operating limit during subsequent testing is another important element of flexibility needed in subpart MM. Commenters also recommended that subpart MM should allow operating parameter limits to be adjusted to a level that is 90 percent of the value during the test to allow for operational flexibility.

In response to these comments, we have revised the rule from proposal to allow minimum operating parameter limits to be established based on the lowest 1-hour average value recorded during a performance test that demonstrates compliance. We have also revised the rule from proposal to allow facilities to confirm the established operating limits during subsequent testing instead of requiring the operating limits to be reestablished during each repeat test. With these added flexibilities, in addition to provisions included in 40 CFR 63.864(k) that specify corrective actions before an operating parameter violation is incurred, we did not include the commenter’s suggested 90 percent adjustment for minimum operating parameter limits. Facilities may establish a range of parameter values by conducting multiple performance tests.

Exceedances of operating limits. We proposed to eliminate the language in 40 CFR 63.864(k)(3) providing that no more than one non-opacity monitoring exceedance will be attributed in any 24-hour period (81 FR 97079). Multiple commenters argued that the EPA should not delete 40 CFR 63.864(k)(3), noting

¹² *Id.*

¹³ *Id.*

that facilities may experience consecutive 3-hour periods where operating parameter values (*e.g.*, concurrent scrubber flow and pressure drop) are out of range as part of the same event, despite a facility's best efforts to take corrective action as soon as possible. With the removal of the 24-hour defined period, commenters indicated it is unclear how to count concurrent parameter events for the purposes of determining a noncompliance count. Commenters also noted that 40 CFR part 63, subpart MM does not currently specify that the 3-hour wet scrubber continuous monitoring systems (CMS) are averaged over 3-hour blocks or 3-hour rolling periods and that states have not been consistent in applying this averaging period, so a facility with a 3-hour rolling average would consume the five allowed 3-hour averages in as little as 7 hours.

In response to these comments, we are not taking any final action to eliminate or in any way revise 40 CFR 63.864(k)(3). We recognize that one event could trigger multiple 3-hour exceedances in a 24-hour period, especially for facilities using a 3-hour rolling average. As originally promulgated, 40 CFR part 63, subpart MM did not specify whether 3-hour averages were to be reduced to 3-hour block or 3-hour rolling averages. As a result, commenters brought to our attention that some facilities are currently using block averages, while others are using rolling averages. Keeping in place the current provision in 40 CFR 63.864(k)(3) that no more than one exceedance will be attributed in any given 24-hour period avoids creating a difference in the compliance obligation between the two monitoring approaches.

F. Recordkeeping and Reporting Requirements

We proposed specific changes to the recordkeeping and reporting requirements. Major public comments on the proposed amendments to these requirements and the EPA's responses are discussed in the paragraphs below and presented in greater detail in the comment summary and response document, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).¹⁴

Reporting frequency and electronic reporting. As originally promulgated, 40 CFR part 63, subpart MM requires that owners and operators of facilities submit quarterly excess emissions reports for monitoring exceedances and

periods of noncompliance and semiannual reports when no excess emissions have occurred during the reporting period. These excess emission reports are typically submitted as a hard copy to the delegated authority, and reports in this form usually are not readily available for the EPA and the public to analyze. We proposed that semiannual electronic reporting would provide ample data to assess a facility's performance with regard to the emissions standards in subpart MM. We proposed that all excess emissions reports be submitted on a semiannual basis in conjunction with requiring electronic reporting as discussed below (81 FR 97079). We received public comments supporting the reduction in reporting frequency and no comments disagreeing with this change. Therefore, we are finalizing this provision as proposed.

We proposed that owners and operators of 40 CFR part 63, subpart MM facilities submit performance test reports, semiannual reports, and notifications through CEDRI. The EPA believes that the electronic submittal of these reports will increase the usefulness of the data contained in the reports, is consistent with current trends in data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community (81 FR 97079).

Multiple commenters stated that the EPA's proposed new electronic reporting requirement in 40 CFR part 63, subpart MM will be excessively burdensome to industry and is not justified. We disagree with these comments. Based on the analysis performed for the proposed Electronic Reporting and Recordkeeping Requirements for the New Source Performance Standards (*i.e.*, the NSPS electronic reporting rule) (80 FR 15100), electronic reporting results in an overall cost savings to industry when annualized over a 20-year period, although there are some initial costs in the short term (80 FR 15111). The cost savings is achieved through means such as standardization of data, embedded quality assurance (QA) checks, automatic calculation routines, and reduced data entry through the ability to reuse data in files instead of starting anew with each report. As outlined in the NSPS electronic reporting rule, there are many benefits to electronic reporting spanning all users of the data—the EPA, state and local regulators, the regulated entities, and the public. In the preamble to this proposed rule (81 FR 97079–80), we provided a number of reasons why the electronic reporting required by the

amendments will provide benefits going forward and that most of the benefits we outlined were longer-term benefits (*e.g.*, eliminating “paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors and providing data quickly and accurately to the affected facilities, air agencies, the EPA and the public.”). For these reasons, we are finalizing the requirement to electronically report test results through CEDRI using the Electronic Reporting Tool (ERT).

One commenter noted that the EPA's ERT, which is used to generate the test data files uploaded to the EPA's CDX through CEDRI, continues to be revised and updated due to various flaws. The commenter argued that it is unreasonable to put sources at risk of violations (due to late or inaccurate reporting) because of EPA reporting tool issues or availability. At a minimum, the commenter suggested that the requirement to use a particular CEDRI form should stipulate that the form has been available for 1 year, per the recently signed final, but not published NSPS electronic reporting rule. According to the commenter, that rule also provides for a reporting extension in the event of an outage of the EPA's CDX or CEDRI the week prior to a report's due date. The commenter suggested that this same allowance should be provided in 40 CFR part 63, subpart MM if the electronic reporting requirement is finalized.

We agree that it is unreasonable to put sources at risk of violations because of EPA reporting tool issues or availability. Based on commenter input and our consideration of the tasks that facilities must conduct prior to initial compliance, we have determined 1 year from the posting of the reporting form (*i.e.*, a spreadsheet template) on the CEDRI Web site will provide for a more efficient transition to electronic reporting of semiannual reports. For these reports, the initial compliance date for electronic reporting will be 1 year from the date the form is posted on the CEDRI Web site. We have also added language to the final rule to provide facilities with the ability to seek electronic reporting extensions for circumstances beyond the control of the facility, *i.e.*, for a possible outage in the CDX or CEDRI or for a force majeure event in the time just prior to a report's due date. If either the CDX or CEDRI is unavailable at any time beginning 5 business days prior to the date that the submission is due, and the unavailability prevents the submission of a report by the required date, a

¹⁴ *Id.*

facility may assert a claim of EPA system outage. We consider 5 business days prior to the reporting deadline to be an appropriate timeframe because if the system is down prior to this time, facilities will have 1 week to complete reporting once the system is back online. We will provide notification of known outages as far in advance as possible by the EPA's Clearinghouse for Inventories and Emissions Factors (CHIEF) Listserv notice, posting on the CEDRI Web site and posting on the CDX Web site to enable facilities to plan accordingly. However, if a planned or unplanned outage occurs and a facility believes that it will affect or it has affected compliance with an electronic reporting requirement, we have provided a process to assert such a claim. A force majeure event is an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically as required by this rule. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. If such an event occurs or is still occurring or if there are still lingering effects of the event in the 5 business days prior to a submission deadline, we have provided a process to assert a claim of force majeure. In both circumstances, reporting should occur as soon as possible once the situation has been resolved. We are providing these potential extensions to protect facilities from noncompliance in cases when a facility cannot successfully submit a report by the reporting deadline for reasons outside of its control, as described above. We are not providing an extension for other instances. You should register for CEDRI far in advance of the initial compliance date, in order to make sure that you can complete the identity proofing process prior to the initial compliance date. Additionally, we recommend you start developing reports early, in case any questions arise during the reporting process.

While we do agree that more time is necessary to comply with electronic reporting requirements for semiannual reports, we do not agree that more time is necessary to comply with electronic reporting requirements for performance test reports and performance evaluation reports, which are uploads of ERT files. The allotted 60 days should be ample time to determine whether reports using the ERT need to be uploaded to the CDX through CEDRI. We also disagree that

the ERT continues to be revised and updated due to various flaws. We acknowledge that, in early versions of the ERT, there were some issues, particularly related to rounding results. However, we have diligently worked to address issues as they have been brought to our attention. We have also added many improvements to the ERT based on feedback from users. We are finalizing the requirement to submit reports electronically to the EPA through CEDRI.

If the requirement for using CEDRI for electronic reporting remains in the final rule, commenters stated they would prefer filling and uploading the spreadsheet to fulfill the reporting requirements rather than entering the required information into a fillable CEDRI web form and increasing the chances of transcription errors, if they must choose between approaches. However, the commenters indicated their ultimate preference would be for facilities to upload their own already-formatted reports generated from their DAS, rather than reformatting the current information to fit the EPA's reporting form.

We acknowledge the commenter's support for the use of the spreadsheet style form for fulfilling reporting requirements. We intend to solely use the spreadsheet-style form for this rule in lieu of a fillable web form or extensible markup language (XML) submittal. Commenters provided a variety of detailed comments on the semiannual compliance reporting spreadsheet for 40 CFR part 63, subpart MM, which have resulted in a number of changes to the spreadsheet reporting form (template) for the final rule. For more information, see the comment summary and response document, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).¹⁵ We have also placed a copy of the revised electronic reporting spreadsheet template incorporating public comments in the docket. The spreadsheet template includes tabs for excess emissions summary reports and excess emissions detailed reports (if required). We are not allowing free-form excess emissions summary reports because this does not allow for efficient electronic compilation of the information reported, a key benefit of electronic reporting. The final rule requires use of the excess emissions summary report tabs in the spreadsheet template for each semiannual report. However, when detailed reporting is required (e.g., due to the number of operating limit exceedances or monitor

downtime), facilities would be allowed to submit detailed reports in either the spreadsheet template format provided or in an alternative format specifying the required details (e.g., as a separate file upload into CEDRI) given the length of detailed reports. Allowing a file upload of detailed reports in an alternate format allows facilities to provide data generated from their DAS.

As another burden-reducing measure, we have reduced the number of notifications proposed to be uploaded into CEDRI. As proposed, an electronic copy of all notifications required under 40 CFR part 63, subpart MM would have been required to be uploaded into CEDRI. Subpart MM requires numerous notifications listed in the NESHAP General Provisions (40 CFR part 63, subpart A), as specified in Table 1 of subpart MM. For example, facilities are required to notify their delegated authority prior to conducting or rescheduling performance tests, as well as in the event of a CMS performance evaluation. Considering comments on electronic reporting in general, and after reviewing the number of notifications, we revised the final rule to only require upload of initial notifications required in 40 CFR 63.9(b), notifications of compliance status required in 40 CFR 63.9(h), and the report of PM emission limits required in 40 CFR 63.867(b) to be included in a notification of compliance status. This change focuses CEDRI-reporting of notifications for subpart MM on key (non-routine) notifications that will be the most informative in conjunction with electronically submitted emissions test reports and semiannual reports. Any of these notifications required after 2 years following the effective date of the final rule would be required to be uploaded into CEDRI in a user-specified file format. No specific form is being designed for subpart MM notifications at this time.

Excess emissions recordkeeping and reporting. We proposed specifying in 40 CFR 63.867(c)(1) and (3) the reporting requirements from the NESHAP General Provisions for the excess emissions and summary reports. We believed that specifying the General Provision reporting requirements for the proposed semiannual reports in 40 CFR part 63, subpart MM would help eliminate confusion as to which report is submitted (e.g., full excess emissions report or summary report) and the content of the required report (81 FR 97080).

The EPA's intent with the proposed revisions to 40 CFR 63.867(c)(1) and (3) was to include the relevant language from 40 CFR 63.10(e)(3) of the General

¹⁵ *Id.*

Provisions specifying the contents of summary and detailed excess emissions reports into 40 CFR part 63, subpart MM to improve clarity. However, we received public comments indicating that duplicating the relevant portions of 40 CFR 63.10(e)(3) as proposed may have caused some confusion. To remedy this confusion, we are splitting out the paragraphs of 40 CFR 63.10(e) and 63.10(e)(3) in the General Provisions applicability table (Table 1 to Subpart MM of Part 63) to more clearly indicate which sections apply or are replaced by sections in subpart MM. We are finalizing a revised version of 40 CFR 63.867(c)(1) that removes the proposed references to paragraphs in 40 CFR 63.10(e)(3), replaced by 40 CFR 63.867(c)(1). We are also noting in Table 1 that 40 CFR 63.867(c)(1) and (3) specify the contents of the summary and detailed excess emissions reports. We are finalizing a revised version of § 63.867(c) that refers to the procedures in 40 CFR 63.867(d)(2) and 40 CFR 63.10(e)(3)(v) for submittal of the semiannual excess emission reports and summary reports.

Section 63.10(e)(3)(v) continues to apply and is not being replaced with language in 40 CFR part 63, subpart MM. This section specifies the delivery date for the report (*i.e.*, post-marked by the 30th business day following each calendar half) and general content for the report. The final rule now relies on 40 CFR 63.10(e)(3)(v) for the requirement: “When no excess emissions or exceedances of a parameter have occurred, or a CMS has not been inoperative, out of control, repaired, or adjusted, such information shall be stated in the report.”

In addition, we are not finalizing the proposed requirement in 40 CFR 63.867(c)(3)(iii)(A)(2) to include in the detailed excess emissions report the number of 6-minute opacity averages removed due to invalid readings, to address a comment that including this provision could imply that invalid opacity averages are periods of excess emissions. The CMS performance summary portion of the summary and detail reports provide sufficient information on the duration of invalid readings.

We proposed to revise the recordkeeping requirements section in 40 CFR 63.866(d)(2) to require that sources record information on failures to meet the applicable standard (81 FR 97081). We further proposed in 40 CFR 63.867(c)(4) to require reporting of this information in the excess emissions report along with an estimate of emissions associated with the failure. Multiple commenters objected to the

proposed requirement that would have required an emissions estimate in association with opacity or parameter operating limits. The commenters argued that attempting to quantify emissions that may theoretically result from a violation of monitoring requirements would be extremely burdensome, impracticable, and would result in over-reporting and inaccurate emissions estimates. The commenters stated that, with a large margin of compliance, a monitoring violation may not actually result in emissions in excess of the applicable emission limit. They recommended that this proposed language be revised.

In response to this comment, we have revised the language in the final rulemaking to require emissions estimates to be provided in the semiannual report only for failures to meet “emission limits,” such as the PM (HAP metal), methanol, or THC limits contained in 40 CFR part 63, subpart MM. Failures to meet emission limits are likely to be discovered during periodic emissions tests, which provide a quantitative means for estimating emissions. Failures also include violations of opacity and parameter operating limits as specified in § 63.864(k)(2), which are required to be reported with the corresponding number of failures, and the date, time, and duration of each failure in the semiannual report. The final rule does not require reporting of an emissions estimate associated with failure to meet an opacity or parameter operating limit, but does require facilities to maintain sufficient information to provide an emissions estimate if such an estimate was requested by the Administrator.

G. Technical and Editorial Changes

The EPA is finalizing as proposed (81 FR 97081) several technical and editorial corrections on which we received no public comments, including:

- Revisions throughout 40 CFR part 63, subpart MM to clarify the location in 40 CFR part 60 of applicable EPA test methods;
- Revisions throughout 40 CFR part 63, subpart MM to update the facility name for Cosmo Specialty Fibers;
- Revisions to the definitions section in 40 CFR 63.861 to:
 - Remove the definition for “black liquor gasification” and remove reference to black liquor gasification in the definitions for “kraft recovery furnace,” “recovery furnace,” “semichemical combustion unit,” and “soda recovery furnace”;
 - Remove the SSM exemption from the definition for “modification”;

- Clarify that the definition for “particulate matter (PM)” refers to filterable PM;

- Remove reference to use of one-half of the method detection limit for non-detect Method 29 measurements within the definition of “hazardous air pollutant (HAP) metals”;

- Change the definition for “smelt dissolving tanks (SDT)” to refer to the singular “smelt dissolving tank (SDT)” to be consistent with the use of the term in the rule; and

- Remove the definition for “startup” that pertains to the former black liquor gasification system at Georgia-Pacific’s facility in Big Island, Virginia.

- Correction of a misspelling in 40 CFR 63.862(c).

- Revisions to multiple sections (40 CFR 63.863, 63.866, and 63.867) to remove reference to the former smelters and former black liquor gasification system at Georgia-Pacific’s facility in Big Island, Virginia.

- Revisions to the monitoring requirements section in 40 CFR 63.864 to add reference to Performance Specification 1 (PS–1) in COMS monitoring provisions and add incorporation by reference (IBR) for bag leak detection systems.

- Revisions to the performance test requirements section in 40 CFR 63.865 to change the ambient oxygen concentration in Equations 7 and 8 from 21 percent to 20.9 percent to make subpart MM consistent with the rest of the NESHAPs.

- Revision to the terminology in the delegation of authority section in 40 CFR 63.868 to match the definitions in 40 CFR 63.90.

- Revisions to the General Provisions applicability table (Table 1 to subpart MM of part 63) to align with those sections of the General Provisions that have been amended or reserved over time.

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

A. What are the affected sources?

There are currently 107 major source pulp and paper mills operating in the U.S. that conduct chemical recovery combustion operations, including 97 kraft pulp mills, 1 soda pulp mill, 3 sulfite pulp mills, and 6 stand-alone semichemical pulp mills. The existing affected source regulated at kraft or soda pulp mills is each existing chemical recovery system, defined as all existing DCE and NDCE recovery furnaces, SDTs, and lime kilns. A DCE recovery furnace system is defined to include the DCE recovery furnace and BLO system

at the pulp mill. New affected sources at kraft or soda pulp mills include each new recovery furnace and associated SDT, and each new lime kiln. Subpart MM of 40 CFR part 63 affected sources also include each new or existing chemical recovery combustion unit located at a sulfite pulp mill or at a stand-alone semichemical pulp mill.

B. What are the air quality impacts?

At the current level of control, emissions of HAPs (HAP metals, acid gases, and gaseous organic HAPs) are approximately 11,600 tpy. Current emissions of PM (a surrogate pollutant for HAP metals) and total reduced sulfur compounds (emitted by the same mechanism as gaseous organic HAP) are approximately 23,200 tpy and 3,600 tpy, respectively.

The final amendments require all 107 mills subject to 40 CFR part 63, subpart MM to conduct periodic testing for their chemical recovery combustion operations; 96 mills with recovery furnaces or lime kilns equipped with ESP controls to meet more stringent opacity monitoring allowances and comply with a requirement to maintain proper operation of the ESP's AVC; and all 107 mills to operate without the SSM exemption. The EPA estimates that the final changes to the opacity monitoring allowances will result in no emissions reductions. We were unable to quantify the specific emissions reductions associated with periodic emissions testing or eliminating the SSM exemption, and we expect no emissions reductions with the aforementioned ESP requirement. Periodic testing will help facilities understand the emissions from and performance of their processes and control systems, and will help to identify potential issues that may otherwise go unnoticed, and thus, providing benefit to both the facilities and to surrounding populations. Eliminating the SSM exemption will reduce emissions by requiring facilities to meet the applicable standards at all times.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*i.e.*, increased secondary emissions of criteria pollutants from power plants, which include PM, carbon monoxide, nitrogen oxides, and sulfur dioxide). Energy impacts include the electricity and steam needed to operate control devices and other equipment that would be required under this final rule. The EPA estimates that the final changes to the opacity monitoring allowances will result in no energy impacts or secondary emissions

of criteria pollutants. The EPA also expects no secondary air emissions impacts or energy impacts from the other final requirements.

For further information on these impacts, see the memorandum titled, *Revised Costs/Impacts of the Subpart MM Residual Risk and Technology Review for Promulgation*, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).

C. What are the cost impacts?

Costs associated with elimination of the startup and shutdown exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating previously developed SSM record systems. Costs to transition to electronic excess emissions reporting and adjust existing record systems for the revised opacity monitoring allowances were also estimated as part of the reporting and recordkeeping costs. Costs associated with periodic testing were estimated for the 73 mills that do not already conduct periodic testing and include the costs for EPA Method 5 filterable PM testing for kraft and soda recovery furnaces, lime kilns, and SDTs and sulfite combustion units; EPA Method 308 methanol testing for new kraft and soda recovery furnaces; and EPA Method 25A THC testing for semichemical combustion units. Costs associated with the requirement to maintain proper operation of ESP AVC were estimated for the 96 mills with ESP-controlled recovery furnaces and lime kilns and include only recordkeeping costs, since existing ESPs are already expected to have these systems. The EPA estimates the nationwide capital costs associated with these new requirements to be \$3.8 million and the nationwide annual costs to be \$0.97 million to \$1.0 million per year at 3 percent and 7 percent interest rates, respectively.

For further information on these costs, see the memorandum titled, *Revised Costs/Impacts of the Subpart MM Residual Risk and Technology Review for Promulgation*, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. For the final rule, the EPA performed a partial-equilibrium analysis of national pulp and paper product markets to estimate potential paper product market impacts, as well as consumer and producer welfare impacts of the regulatory options.

Across regulatory options, the EPA estimates market-level changes in the paper and paperboard markets to be insignificant. For the final rule, the EPA predicts national-level weighted average paper and paperboard prices to increase about 0.01 percent, while total production levels decrease less than 0.01 percent on average.

In addition, the EPA performed a screening analysis for impacts on small businesses by comparing estimated annualized engineering compliance costs at the firm-level to firm sales. The screening analysis found that the ratio of compliance cost to firm revenue falls below 1 percent for the three small companies likely to be affected by the final rule. For small firms, the minimum and maximum cost-to-sales ratios are less than 1 percent.

More information and details of this analysis are provided in the technical document, titled *Economic Impact Analysis for Final Revisions to the National Emissions Standards for Hazardous Air Pollutants, Subpart MM, for the Pulp and Paper Industry*, available in the docket for this final rule (Docket ID No. EPA-HQ-OAR-2014-0741).

E. What are the benefits?

We do not estimate any significant reductions in HAP emissions as a result of these final amendments. However, the amendments will help to improve the clarity of the rule, which will improve compliance and, therefore, minimize emissions. Certain provisions also provide operational flexibility with no increase in HAP emissions.

F. What analysis of environmental justice did we conduct?

We examined the potential for any environmental justice issues that might be associated with the source category by performing a demographic analysis of the population close to the facilities. In this analysis, we evaluated the distribution of HAP-related cancer and non-cancer risks from the subpart MM source category across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks. The methodology and the results of the demographic analyses are included in a technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Pulp Mill Combustion Sources*, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741). The results, for various demographic groups, are based on the estimated risks from actual emissions

levels for the population living within 50 kilometers (km) of the facilities.¹⁶

The results of the subpart MM source category demographic analysis indicate that emissions from the source category expose approximately 7,600 people to a cancer risk at or above 1-in-1 million and do not expose any person to a chronic non-cancer TOSHI greater than 1. The specific demographic results indicate that the percentage of the population potentially impacted by emissions is greater than its corresponding national percentage for the minority population (33 percent for the source category compared to 28 percent nationwide), the African American population (28 percent for the source category compared to 13 percent nationwide) and for the population over age 25 without a high school diploma (18 percent for the source category compared to 15 percent nationwide). The proximity results (irrespective of risk) indicate that the population percentages for certain demographic categories within 5 km of source category emissions are greater than the corresponding national percentage for those same demographics. The following demographic percentages for populations residing within close proximity to facilities with chemical recovery combustion sources are higher than the corresponding nationwide percentage: African American, ages 65 and up, over age 25 without a high school diploma, and below the poverty level.

The risks due to HAP emissions from this source category are low for all populations (*e.g.*, inhalation cancer risks are less than 4-in-1 million for all populations and non-cancer HIs are less than 1). Furthermore, we do not expect this final rule to achieve significant reductions in HAP emissions. Section IV.B of this preamble addresses opportunities as part of the technology review to further reduce HAP emissions. We did not find these technologies to be cost effective.

Therefore, we conclude that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. However, this final rule will provide additional benefits to these demographic groups by improving the compliance, monitoring, and implementation of the NESHAP.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. The results of the subpart MM source category demographic analysis¹⁷ indicate that approximately 7,600 people are exposed to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic non-cancer TOSHI greater than 1 due to emissions from the source category. The distribution of the population with risks above 1-in-1 million is 26 percent for ages 0 to 17, 61 percent for ages 18 to 64, and 13 percent for ages 65 and up. Children ages 0 to 17 also constitute 24 percent of the population nationwide. Therefore, the analysis shows that actual emissions from 40 CFR part 63, subpart MM facilities have only a slightly greater impact on children ages 0 to 17.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1805.09. You can find a copy of the ICR in the docket for this rule (Docket ID No. EPA-HQ-OAR-2014-0741), and it is briefly summarized here. The

information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions, which are essential in determining compliance and mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

We are finalizing changes to the 40 CFR part 63, subpart MM paperwork requirements in the form of eliminating the SSM reporting and SSM plan requirements, adding periodic emissions testing for selected process equipment, revising opacity monitoring allowances, adding a recordkeeping requirement for recovery furnaces and lime kilns equipped with ESPs, reducing the frequency of all excess emissions reports to semiannual, and requiring electronic submittal of all performance test reports and semiannual reports.

Respondents/affected entities: Respondents include chemical pulp mills operating equipment subject to 40 CFR part 63, subpart MM.

Respondent's obligation to respond: Mandatory (authorized by section 114 of the CAA).

Estimated number of respondents: 107.

Frequency of response: The frequency of responses varies depending on the burden item. Responses include notifications, reports of periodic performance tests, and semiannual compliance reports.

Total estimated burden: The estimated annual recordkeeping and reporting burden for this information collection, averaged over the first 3 years of this ICR, is 124,085 labor hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$14.1 to 14.2 million per year, including \$13.4 million per year in labor costs and \$0.7 to 0.8 million per year in annualized capital costs at 3 percent and 7 percent interest, respectively. These estimated costs represent the full ongoing information collection burden for 40 CFR part 63, subpart MM, as revised by the final amendments being promulgated.

¹⁶ This metric comes from the Benzene NESHAP. See 54 FR 38046.

¹⁷ See the following document in the docket titled, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Pulp Mill Combustion Sources*.

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

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA estimates that all affected small entities will have annualized costs of less than 1 percent of their sales. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities. For more information on the small entity impacts associated with this rule, please refer to the *Economic Impact Analysis for Final Revisions to the National Emissions Standards for Hazardous Air Pollutants, Subpart MM, for the Pulp and Paper Industry* in the public docket (Docket ID No. EPA-HQ-OAR-2014-0741).

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This final rule imposes requirements on owners and operators of kraft, soda, sulfite, and stand-alone semichemical pulp mills and not tribal governments. The EPA does not know of any pulp mills owned or operated by Indian tribal governments, or located within tribal lands. However, if there are any, the effect of this rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in section IV.A of this preamble and further documented in the risk report titled, *Residual Risk Assessment for Pulp Mill Combustion Sources in Support of the October 2017 Risk and Technology Review Final Rule*, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).

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

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

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

This action involves technical standards. While the EPA identified ASTM D6784-02 (Reapproved 2008), "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)" as being potentially applicable, the Agency decided not to

use it. The use of this voluntary consensus standard would be impractical because this standard is only acceptable as an alternative to the portion of EPA Method 29 for mercury, and emissions testing for mercury alone is not required under 40 CFR part 63, subpart MM.

The EPA is incorporating into 40 CFR part 63, subpart MM the following guidance document: EPA-454/R-98-015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997. This guidance document provides procedures for selecting, installing, setting up, adjusting, and operating a bag leak detection system; and also includes QA procedures. This guidance document is readily accessible at <https://www.epa.gov/emc/emc-continuous-emission-monitoring-systems>.

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

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

The documentation for this decision is contained in section V.F of this preamble and the technical report titled, *Risk and Technology Review-Analysis of Socio-Economic Factors for Populations Living Near Pulp Mill Combustion Sources*, in the public docket for this action (Docket ID No. EPA-HQ-OAR-2014-0741).

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Pulp and paper mills, Reporting and recordkeeping requirements.

Dated: September 29, 2017.

E. Scott Pruitt,
Administrator.

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

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

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (m)(3) to read as follows:

§ 63.14 Incorporations by reference.

(m) * * *
 (3) EPA-454/R-98-015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=2000D5T6.PDF>, IBR approved for §§ 63.548(e), 63.864(e), 63.7525(j), 63.8450(e), 63.8600(e), and 63.11224(f).

Subpart MM—[Amended]

■ 3. Section 63.860 is amended by revising paragraphs (b)(5) and (7) and adding paragraph (d) to read as follows:

§ 63.860 Applicability and designation of affected source.

(b) * * *
 (5) Each new or existing sulfite combustion unit located at a sulfite pulp mill, except such existing units at Cosmo Specialty Fibers' Cosmopolis, Washington facility (Emission Unit no. AP-10).

(7) The requirements of the alternative standard in § 63.862(d) apply to the hog fuel dryer at Cosmo Specialty Fibers' Cosmopolis, Washington facility (Emission Unit no. HD-14).

(d) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the

Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

- 4. Section 63.861 is amended by:
 - a. Removing the definition for “Black liquor gasification”;
 - b. Revising the definitions for “Hazardous air pollutants (HAP) metals,” “Hog fuel dryer,” “Kraft recovery furnace,” “Modification,” “Particulate matter (PM),” “Recovery furnace,” “Semicheical combustion unit,” “Smelt dissolving tanks,” and “Soda recovery furnace”;
 - c. Removing the definition for “Startup”; and
 - d. Revising the definition for “Total hydrocarbons (THC).”

The revisions read as follows:

§ 63.861 Definitions.

Hazardous air pollutants (HAP) metals means the sum of all emissions of antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium as measured by EPA Method 29 (40 CFR part 60, appendix A-8).

Hog fuel dryer means the equipment that combusts fine particles of wood waste (hog fuel) in a fluidized bed and directs the heated exhaust stream to a rotary dryer containing wet hog fuel to be dried prior to combustion in the hog fuel boiler at Cosmo Specialty Fibers' Cosmopolis, Washington facility. The hog fuel dryer at Cosmo Specialty Fibers' Cosmopolis, Washington facility is Emission Unit no. HD-14.

Kraft recovery furnace means a recovery furnace that is used to burn black liquor produced by the kraft pulping process, as well as any recovery furnace that burns black liquor produced from both the kraft and semichemical pulping processes, and includes the direct contact evaporator, if applicable.

Modification means, for the purposes of § 63.862(a)(1)(ii)(E)(1), any physical change (excluding any routine part replacement or maintenance) or operational change that is made to the air pollution control device that could result in an increase in PM emissions.

Particulate matter (PM) means total filterable particulate matter as measured by EPA Method 5 (40 CFR part 60, appendix A-3), EPA Method 17 (§ 63.865(b)(1)) (40 CFR part 60,

appendix A-6), or EPA Method 29 (40 CFR part 60, appendix A-8).

Recovery furnace means an enclosed combustion device where concentrated black liquor produced by the kraft or soda pulping process is burned to recover pulping chemicals and produce steam.

Semicheical combustion unit means any equipment used to combust or pyrolyze black liquor at stand-alone semichemical pulp mills for the purpose of chemical recovery.

Smelt dissolving tank (SDT) means a vessel used for dissolving the smelt collected from a kraft or soda recovery furnace.

Soda recovery furnace means a recovery furnace used to burn black liquor produced by the soda pulping process and includes the direct contact evaporator, if applicable.

Total hydrocarbons (THC) means the sum of organic compounds measured as carbon using EPA Method 25A (40 CFR part 60, appendix A-7).

■ 5. Section 63.862 is amended by revising paragraphs (c)(1) and (d) to read as follows:

§ 63.862 Standards.

(c) *Standards for gaseous organic HAP.* (1) The owner or operator of any new recovery furnace at a kraft or soda pulp mill must ensure that the concentration of gaseous organic HAP, as measured by methanol, discharged to the atmosphere is no greater than 0.012 kg/Mg (0.025 lb/ton) of black liquor solids fired.

(d) *Alternative standard.* As an alternative to meeting the requirements of paragraph (a)(2) of this section, the owner or operator of the existing hog fuel dryer at Cosmo Specialty Fibers' Cosmopolis, Washington facility (Emission Unit no. HD-14) must ensure that the mass of PM in the exhaust gases discharged to the atmosphere from the hog fuel dryer is less than or equal to 4.535 kilograms per hour (kg/hr) (10.0 pounds per hour (lb/hr)).

■ 6. Section 63.863 is amended by revising paragraphs (a) and (c) to read as follows:

§ 63.863 Compliance dates.

(a) The owner or operator of an existing affected source or process unit must comply with the requirements in

this subpart no later than March 13, 2004, except as noted in paragraph (c) of this section.

* * * * *

(c) The owner or operator of an existing source or process unit must comply with the revised requirements published on October 11, 2017 no later than October 11, 2019, with the exception of the following:

(1) The first of the 5-year periodic performance tests must be conducted by October 13, 2020, and thereafter within 5 years following the previous performance test; and

(2) The date to submit performance test data through the CEDRI is within 60 days after the date of completing each performance test.

■ 7. Section 63.864 is amended by:

- a. Revising the introductory text of paragraph (d) and paragraph (d)(4);
- b. Adding paragraphs (e)(1) and (2);
- c. Revising paragraphs (e)(10)(i) and (ii);
- d. Adding paragraph (e)(10)(iii);
- e. Revising the introductory text of paragraph (e)(12) and paragraphs (e)(12)(i), (ix), and (x);
- f. Revising paragraphs (e)(13) and (14);
- g. Adding paragraph (f);
- h. Revising paragraph (g);
- i. Adding paragraph (h); and
- j. Revising paragraphs (j) and (k).

The revisions and additions read as follows:

§ 63.864 Monitoring requirements.

* * * * *

(d) *Continuous opacity monitoring system (COMS)*. The owner or operator of each affected kraft or soda recovery furnace or lime kiln equipped with an ESP must install, calibrate, maintain, and operate a COMS in accordance with Performance Specification 1 (PS-1) in appendix B to 40 CFR part 60 and the provisions in §§ 63.6(h) and 63.8 and paragraphs (d)(3) and (4) of this section.

* * * * *

(4) As specified in § 63.8(g)(2), each 6-minute COMS data average must be calculated as the average of 36 or more data points, equally spaced over each 6-minute period.

(e) * * *

(1) For any kraft or soda recovery furnace or lime kiln using an ESP emission control device, the owner or operator must maintain proper operation of the ESP's automatic voltage control (AVC).

(2) For any kraft or soda recovery furnace or lime kiln using an ESP followed by a wet scrubber, the owner or operator must follow the parameter monitoring requirements specified in paragraphs (e)(1) and (10) of this

section. The opacity monitoring system specified in paragraph (d) of this section is not required for combination ESP/wet scrubber control device systems.

* * * * *

(10) * * *

(i) A monitoring device used for the continuous measurement of the pressure drop of the gas stream across the scrubber must be certified by the manufacturer to be accurate to within a gage pressure of ±500 pascals (±2 inches of water gage pressure); and

(ii) A monitoring device used for continuous measurement of the scrubbing liquid flow rate must be certified by the manufacturer to be accurate within ±5 percent of the design scrubbing liquid flow rate.

(iii) As an alternative to pressure drop measurement under paragraph (e)(3)(i) of this section, a monitoring device for measurement of fan amperage may be used for smelt dissolving tank dynamic scrubbers that operate at ambient pressure or for low-energy entrainment scrubbers where the fan speed does not vary.

* * * * *

(12) The owner or operator of the affected hog fuel dryer at Cosmo Specialty Fibers' Cosmopolis, Washington facility (Emission Unit no. HD-14) must meet the requirements in paragraphs (e)(12)(i) through (xi) of this section for each bag leak detection system.

(i) The owner or operator must install, calibrate, maintain, and operate each triboelectric bag leak detection system according to EPA-454/R-98-015, "Fabric Filter Bag Leak Detection Guidance" (incorporated by reference—see § 63.14). The owner or operator must install, calibrate, maintain, and operate other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

* * * * *

(ix) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance" (incorporated by reference—see § 63.14).

(x) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in the site-specific monitoring plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete

fabric filter inspection which demonstrates that the fabric filter is in good operating condition, as defined in section 5.2 of the "Fabric Filter Bag Leak Detection Guidance," (incorporated by reference—see § 63.14). Record each adjustment.

* * * * *

(13) The owner or operator of each affected source or process unit that uses an ESP, wet scrubber, RTO, or fabric filter may monitor alternative control device operating parameters subject to prior written approval by the Administrator. The request for approval must also include the manner in which the parameter operating limit is to be set.

(14) The owner or operator of each affected source or process unit that uses an air pollution control system other than an ESP, wet scrubber, RTO, or fabric filter must provide to the Administrator an alternative monitoring request that includes a description of the control device, test results verifying the performance of the control device, the appropriate operating parameters that will be monitored, how the operating limit is to be set, and the frequency of measuring and recording to establish continuous compliance with the standards. The alternative monitoring request is subject to the Administrator's approval. The owner or operator of the affected source or process unit must install, calibrate, operate, and maintain the monitor(s) in accordance with the alternative monitoring request approved by the Administrator. The owner or operator must include in the information submitted to the Administrator proposed performance specifications and quality assurance procedures for the monitors. The Administrator may request further information and will approve acceptable test methods and procedures. The owner or operator must monitor the parameters as approved by the Administrator using the methods and procedures in the alternative monitoring request.

(f) *Data quality assurance*. The owner or operator shall keep CMS data quality assurance procedures consistent with the requirements in § 63.8(d)(1) and (2) on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan in § 63.8(d)(2) is revised, 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. The program of corrective action should be included in the plan required under § 63.8(d)(2).

(g) *Gaseous organic HAP.* The owner or operator of each affected source or process unit complying with the gaseous organic HAP standard of § 63.862(c)(1) through the use of an NDCE recovery furnace equipped with a dry ESP system is not required to conduct any continuous monitoring to demonstrate compliance with the gaseous organic HAP standard.

(h) *Monitoring data.* As specified in § 63.8(g)(5), monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high level adjustments must not be included in any data average computed under this subpart.

* * * * *

(j) *Determination of operating limits.*

(1) During the initial or periodic performance test required in § 63.865, the owner or operator of any affected source or process unit must establish operating limits for the monitoring parameters in paragraphs (e)(1) and (2) and (e)(10) through (14) of this section, as appropriate; or

(2) The owner or operator may base operating limits on values recorded during previous performance tests or conduct additional performance tests for the specific purpose of establishing operating limits, provided that data used to establish the operating limits are or have been obtained during testing that used the test methods and procedures required in this subpart. The owner or operator of the affected source or process unit must certify that all control techniques and processes have not been modified subsequent to the testing upon which the data used to establish the operating parameter limits were obtained.

(3) The owner or operator of an affected source or process unit may establish expanded or replacement operating limits for the monitoring parameters listed in paragraphs (e)(1) and (2) and (e)(10) through (14) of this section and established in paragraph (j)(1) or (2) of this section during subsequent performance tests using the test methods in § 63.865.

(4) The owner or operator of the affected source or process unit must continuously monitor each parameter and determine the arithmetic average value of each parameter during each performance test run. Multiple

performance tests may be conducted to establish a range of parameter values. Operating outside a previously established parameter limit during a performance test to expand the operating limit range does not constitute a monitoring exceedance. Operating limits must be confirmed or reestablished during performance tests.

(5) New, expanded, or replacement operating limits for the monitoring parameter values listed in paragraphs (e)(1) and (2) and (e)(10) through (14) of this section should be determined as described in paragraphs (j)(5)(i) and (ii) of this section.

(i) The owner or operator of an affected source or process unit that uses a wet scrubber must set a minimum scrubber pressure drop operating limit as the lowest of the 1-hour average pressure drop values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862.

(A) For a smelt dissolving tank dynamic wet scrubber operating at ambient pressure or for low-energy entrainment scrubbers where fan speed does not vary, the minimum fan amperage operating limit must be set as the lowest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862.

(B) [Reserved]

(ii) The owner or operator of an affected source equipped with an RTO must set the minimum operating temperature of the RTO as the lowest of the 1-hour average temperature values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862.

(k) *On-going compliance provisions.*

(1) Following the compliance date, owners or operators of all affected sources or process units are required to implement corrective action if the monitoring exceedances in paragraphs (k)(1)(i) through (vii) of this section occur during times when spent pulping liquor or lime mud is fed (as applicable). Corrective action can include completion of transient startup and shutdown conditions as expeditiously as possible.

(i) For a new or existing kraft or soda recovery furnace or lime kiln equipped with an ESP, when the average of ten consecutive 6-minute averages result in a measurement greater than 20 percent opacity;

(ii) For a new or existing kraft or soda recovery furnace, kraft or soda smelt dissolving tank, kraft or soda lime kiln, or sulfite combustion unit equipped with a wet scrubber, when any 3-hour

average parameter value is below the minimum operating limit established in paragraph (j) of this section, with the exception of pressure drop during periods of startup and shutdown;

(iii) For a new or existing kraft or soda recovery furnace or lime kiln equipped with an ESP followed by a wet scrubber, when any 3-hour average scrubber parameter value is below the minimum operating limit established in paragraph (j) of this section, with the exception of pressure drop during periods of startup and shutdown;

(iv) For a new or existing semichemical combustion unit equipped with an RTO, when any 1-hour average temperature falls below the minimum temperature operating limit established in paragraph (j) of this section;

(v) For the hog fuel dryer at Cosmo Specialty Fibers' Cosmopolis, Washington facility (Emission Unit no. HD-14), when the bag leak detection system alarm sounds;

(vi) For an affected source or process unit equipped with an ESP, wet scrubber, RTO, or fabric filter and monitoring alternative operating parameters established in paragraph (e)(13) of this section, when any 3-hour average value does not meet the operating limit established in paragraph (j) of this section; and

(vii) For an affected source or process unit equipped with an alternative air pollution control system and monitoring operating parameters approved by the Administrator as established in paragraph (e)(14) of this section, when any 3-hour average value does not meet the operating limit established in paragraph (j) of this section.

(2) Following the compliance date, owners or operators of all affected sources or process units are in violation of the standards of § 63.862 if the monitoring exceedances in paragraphs (k)(2)(i) through (ix) of this section occur during times when spent pulping liquor or lime mud is fed (as applicable):

(i) For an existing kraft or soda recovery furnace equipped with an ESP, when opacity is greater than 35 percent for 2 percent or more of the operating time within any semiannual period;

(ii) For a new kraft or soda recovery furnace equipped with an ESP, when opacity is greater than 20 percent for 2 percent or more of the operating time within any semiannual period;

(iii) For a new or existing kraft or soda lime kiln equipped with an ESP, when opacity is greater than 20 percent for 3 percent or more of the operating time within any semiannual period;

(iv) For a new or existing kraft or soda recovery furnace, kraft or soda smelt dissolving tank, kraft or soda lime kiln, or sulfite combustion unit equipped with a wet scrubber, when six or more 3-hour average parameter values within any 6-month reporting period are below the minimum operating limits established in paragraph (j) of this section, with the exception of pressure drop during periods of startup and shutdown;

(v) For a new or existing kraft or soda recovery furnace or lime kiln equipped with an ESP followed by a wet scrubber, when six or more 3-hour average scrubber parameter values within any 6-month reporting period are outside the range of values established in paragraph (j) of this section, with the exception of pressure drop during periods of startup and shutdown;

(vi) For a new or existing semichemical combustion unit equipped with an RTO, when any 3-hour average temperature falls below the temperature established in paragraph (j) of this section;

(vii) For the hog fuel dryer at Cosmo Specialty Fibers' Cosmopolis, Washington facility (Emission Unit no. HD-14), when corrective action is not initiated within 1 hour of a bag leak detection system alarm and the alarm is engaged for more than 5 percent of the total operating time in a 6-month block reporting period. In calculating the operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if corrective action is not initiated within 1 hour, the alarm time is counted as the actual amount of time taken to initiate corrective action;

(viii) For an affected source or process unit equipped with an ESP, wet scrubber, RTO, or fabric filter and

monitoring alternative operating parameters established in paragraph (e)(13) of this section, when six or more 3-hour average values within any 6-month reporting period do not meet the operating limits established in paragraph (j) of this section; and

(ix) For an affected source or process unit equipped with an alternative air pollution control system and monitoring operating parameters approved by the Administrator as established in paragraph (e)(14) of this section, when six or more 3-hour average values within any 6-month reporting period do not meet the operating limits established in paragraph (j) of this section.

(3) For purposes of determining the number of nonopacity monitoring exceedances, no more than one exceedance will be attributed in any given 24-hour period.

■ 8. Section 63.865 is amended by revising the introductory text and paragraphs (b)(1) through (5), (c)(1), and the introductory text of paragraph (d) to read as follows:

§ 63.865 Performance test requirements and test methods.

The owner or operator of each affected source or process unit subject to the requirements of this subpart is required to conduct an initial performance test and periodic performance tests using the test methods and procedures listed in § 63.7 and paragraph (b) of this section. The owner or operator must conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards and thereafter within 5 years following the previous performance test. Performance tests shall be conducted based on representative performance (*i.e.*, performance based on normal operating conditions) of the affected source for the

period being tested. Representative conditions exclude periods of startup and shutdown. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(b) * * *

(1) For purposes of determining the concentration or mass of PM emitted from each kraft or soda recovery furnace, sulfite combustion unit, smelt dissolving tank, lime kiln, or the hog fuel dryer at Cosmo Specialty Fibers' Cosmopolis, Washington facility (Emission Unit no. HD-14), Method 5 in appendix A-3 of 40 CFR part 60 or Method 29 in appendix A-8 of 40 CFR part 60 must be used, except that Method 17 in appendix A-6 of 40 CFR part 60 may be used in lieu of Method 5 or Method 29 if a constant value of 0.009 g/dscm (0.004 gr/dscf) is added to the results of Method 17, and the stack temperature is no greater than 205 °C (400 °F). For Methods 5, 29, and 17, the sampling time and sample volume for each run must be at least 60 minutes and 0.90 dscm (31.8 dscf), and water must be used as the cleanup solvent instead of acetone in the sample recovery procedure.

(2) For sources complying with § 63.862(a) or (b), the PM concentration must be corrected to the appropriate oxygen concentration using Equation 7 of this section as follows:

$$C_{corr} = C_{meas} \times (20.9 - X) / (20.9 - Y) \quad (\text{Eq. 7})$$

Where:

C_{corr} = the measured concentration corrected for oxygen, g/dscm (gr/dscf);
 C_{meas} = the measured concentration uncorrected for oxygen, g/dscm (gr/dscf);
 X = the corrected volumetric oxygen concentration (8 percent for kraft or soda recovery furnaces and sulfite combustion units and 10 percent for kraft or soda lime kilns); and

Y = the measured average volumetric oxygen concentration.

(3) Method 3A or 3B in appendix A-2 of 40 CFR part 60 must be used to determine the oxygen concentration. The voluntary consensus standard ANSI/ASME PTC 19.10-1981—Part 10 (incorporated by reference—see § 63.14) may be used as an alternative to using

Method 3B. The gas sample must be taken at the same time and at the same traverse points as the particulate sample.

(4) For purposes of complying with § 63.862(a)(1)(ii)(A), the volumetric gas flow rate must be corrected to the appropriate oxygen concentration using Equation 8 of this section as follows:

$$Q_{corr} = Q_{meas} \times (20.9 - Y) / (20.9 - X) \quad (\text{Eq. 8})$$

Where:

Q_{corr} = the measured volumetric gas flow rate corrected for oxygen, dscf/min (dscf/min).

Q_{meas} = the measured volumetric gas flow rate uncorrected for oxygen, dscf/min (dscf/min).

Y = the measured average volumetric oxygen concentration.

X = the corrected volumetric oxygen concentration (8 percent for kraft or soda recovery furnaces and 10 percent for kraft or soda lime kilns).

(i) For purposes of selecting sampling port location and number of traverse points, Method 1 or 1A in appendix A-1 of 40 CFR part 60 must be used;

(ii) For purposes of determining stack gas velocity and volumetric flow rate, Method 2, 2A, 2C, 2D, or 2F in appendix A-1 of 40 CFR part 60 or Method 2G in appendix A-2 of 40 CFR part 60 must be used;

(iii) For purposes of conducting gas analysis, Method 3, 3A, or 3B in appendix A-2 of 40 CFR part 60 must be used. The voluntary consensus standard ANSI/ASME PTC 19.10-1981—Part 10 (incorporated by reference—see § 63.14) may be used as an alternative to using Method 3B; and

(iv) For purposes of determining moisture content of stack gas, Method 4 in appendix A-3 of 40 CFR part 60 must be used.

* * * * *

(c) * * *

(1) The owner or operator complying through the use of an NDCE recovery furnace equipped with a dry ESP system is required to conduct periodic performance testing using Method 308 in appendix A of this part, as well as the methods listed in paragraphs (b)(5)(i) through (iv) of this section to demonstrate compliance with the gaseous organic HAP standard. The requirements and equations in paragraph (c)(2) of this section must be met and utilized, respectively.

* * * * *

(d) The owner or operator seeking to determine compliance with the gaseous organic HAP standards in § 63.862(c)(2) for semichemical combustion units must use Method 25A in appendix A-7 of 40 CFR part 60, as well as the methods listed in paragraphs (b)(5)(i) through (iv) of this section. The sampling time for each Method 25A run must be at least 60 minutes. The calibration gas for each Method 25A run must be propane.

* * * * *

■ 9. Section 63.866 is amended by removing and reserving paragraph (a) and revising paragraphs (c) and (d) to read as follows:

§ 63.866 Recordkeeping requirements.

* * * * *

(c) In addition to the general records required by § 63.10(b)(2)(iii) and (vi) through (xiv), the owner or operator must maintain records of the information in paragraphs (c)(1) through (8) of this section:

(1) Records of black liquor solids firing rates in units of Mg/d or ton/d for all recovery furnaces and semichemical combustion units;

(2) Records of CaO production rates in units of Mg/d or ton/d for all lime kilns;

(3) Records of parameter monitoring data required under § 63.864, including any period when the operating parameter levels were inconsistent with the levels established during the performance test, with a brief explanation of the cause of the monitoring exceedance, the time the monitoring exceedance occurred, the time corrective action was initiated and completed, and the corrective action taken;

(4) Records and documentation of supporting calculations for compliance determinations made under § 63.865(a) through (d);

(5) Records of parameter operating limits established for each affected source or process unit;

(6) Records certifying that an NDCE recovery furnace equipped with a dry ESP system is used to comply with the gaseous organic HAP standard in § 63.862(c)(1);

(7) For the bag leak detection system on the hog fuel dryer fabric filter at Cosmo Specialty Fibers' Cosmopolis, Washington facility (Emission Unit no. HD-14), records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken; and

(8) Records demonstrating compliance with the requirement in § 63.864(e)(1) to maintain proper operation of an ESP's AVC.

(d)(1) In the event that an affected unit fails to meet an applicable standard, including any emission limit in § 63.862 or any opacity or CPMS operating limit in § 63.864, record the number of failures. For each failure record the date, start time, and duration of each failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, and the following information:

(i) For any failure to meet an emission limit in § 63.862, record an estimate of the quantity of each regulated pollutant emitted over the emission limit and a description of the method used to estimate the emissions.

(ii) For each failure to meet an operating limit in § 63.864, maintain sufficient information to estimate the quantity of each regulated pollutant emitted over the emission limit. This information must be sufficient to provide a reliable emissions estimate if requested by the Administrator.

(3) Record actions taken to minimize emissions in accordance with § 63.860(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

- 10. Section 63.867 is amended by:
 - a. Removing and reserving paragraph (a)(2);
 - b. Revising paragraph (a)(3);
 - c. Revising paragraph (c); and
 - d. Adding paragraph (d).

The revisions and additions read as follows:

§ 63.867 Reporting requirements.

(a) * * *

(3) In addition to the requirements in subpart A of this part, the owner or operator of the hog fuel dryer at Cosmo Specialty Fibers' Cosmopolis, Washington, facility (Emission Unit no. HD-14) must include analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.864(e)(12) in the Notification of Compliance Status.

* * * * *

(c) *Excess emissions report.* The owner or operator must submit semiannual excess emissions reports containing the information specified in paragraphs (c)(1) through (5) of this section. The owner or operator must submit semiannual excess emission reports and summary reports following the procedure specified in paragraph (d)(2) of this section as specified in § 63.10(e)(3)(v).

(1) If the total duration of excess emissions or process control system parameter exceedances for the reporting period is less than 1 percent of the total reporting period operating time, and CMS downtime is less than 5 percent of the total reporting period operating time, only the summary report is required to be submitted. This report will be titled "Summary Report—Gaseous and Opacity Excess Emissions and Continuous Monitoring System Performance" and must contain the information specified in paragraphs (c)(1)(i) through (x) of this section.

(i) The company name and address and name of the affected facility.

(ii) Beginning and ending dates of the reporting period.

(iii) An identification of each process unit with the corresponding air

pollution control device, being included in the semiannual report, including the pollutants monitored at each process unit, and the total operating time for each process unit.

(iv) An identification of the applicable emission limits, operating parameter limits, and averaging times.

(v) An identification of the monitoring equipment used for each process unit and the corresponding model number.

(vi) Date of the last CMS certification or audit.

(vii) An emission data summary, including the total duration of excess emissions (recorded in minutes for opacity and hours for gases), the duration of excess emissions expressed as a percent of operating time, the number of averaging periods recorded as excess emissions, and reason for the excess emissions (*e.g.*, startup/shutdown, control equipment problems, other known reasons, or other unknown reasons).

(viii) A CMS performance summary, including the total duration of CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period (*e.g.*, monitoring equipment malfunction, non-monitoring equipment malfunction, quality assurance, quality control calibrations, other known causes, or other unknown causes).

(ix) A description of changes to CMS, processes, or controls since last reporting period.

(x) A certification by a certifying official of truth, accuracy and completeness. This will state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(2) [Reserved]

(3) If measured parameters meet any of the conditions specified in § 63.864(k)(1) or (2), the owner or operator of the affected source must submit a semiannual report describing the excess emissions that occurred. If the total duration of monitoring exceedances for the reporting period is 1 percent or greater of the total reporting period operating time, or the total CMS downtime for the reporting period is 5 percent or greater of the total reporting period operating time, or any violations according to § 63.864(k)(2) occurred, information from both the summary report and the excess emissions and continuous monitoring system performance report must be submitted.

This report will be titled "Excess Emissions and Continuous Monitoring System Performance Report" and must contain the information specified in paragraphs (c)(1)(i) through (x) of this section, in addition to the information required in § 63.10(c)(5) through (14), as specified in paragraphs (c)(3)(i) through (vi) of this section. Reporting monitoring exceedances does not constitute a violation of the applicable standard unless the violation criteria in § 63.864(k)(2) and (3) are reached.

(i) An identification of the date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level checks.

(ii) An identification of the date and time identifying each period during which the CMS was out of control, as defined in § 63.8(c)(7).

(iii) The specific identification of each period of excess emissions and parameter monitoring exceedances as described in paragraphs (c)(3)(iii)(A) through (E) of this section.

(A) For opacity:

(1) The total number of 6-minute averages in the reporting period (excluding process unit downtime).

(2) [Reserved]

(3) The number of 6-minute averages in the reporting period that exceeded the relevant opacity limit.

(4) The percent of 6-minute averages in the reporting period that exceed the relevant opacity limit.

(5) An identification of each exceedance by start and end time, date, and cause of exceedance (including startup/shutdown, control equipment problems, process problems, other known causes, or other unknown causes).

(B) [Reserved]

(C) For wet scrubber operating parameters:

(1) The operating limits established during the performance test for scrubbing liquid flow rate and pressure drop across the scrubber (or fan amperage if used for smelt dissolving tank scrubbers).

(2) The number of 3-hour wet scrubber parameter averages below the minimum operating limit established during the performance test, if applicable.

(3) An identification of each exceedance by start and end time, date, and cause of exceedance (including startup/shutdown, control equipment problems, process problems, other known causes, or other unknown causes).

(D) For RTO operating temperature:

(1) The operating limit established during the performance test.

(2) The number of 1-hour and 3-hour temperature averages below the minimum operating limit established during the performance test.

(3) An identification of each exceedance by start and end time, date, and cause of exceedance including startup/shutdown, control equipment problems, process problems, other known causes, or other unknown causes).

(E) For alternative parameters established according to § 63.864(e)(13) or (14) subject to the requirements of § 63.864(k)(1) and (2):

(1) The type of operating parameters monitored for compliance.

(2) The operating limits established during the performance test.

(3) The number of 3-hour parameter averages outside of the operating limits established during the performance test.

(4) An identification of each exceedance by start and end time, date, and cause of exceedance including startup/shutdown, control equipment problems, process problems, other known causes, or other unknown causes).

(iv) The nature and cause of the event (if known).

(v) The corrective action taken or preventative measures adopted.

(vi) The nature of repairs and adjustments to the CMS that was inoperative or out of control.

(4) If a source fails to meet an applicable standard, including any emission limit in § 63.862 or any opacity or CPMS operating limit in § 63.864, report such events in the semiannual excess emissions report. Report the number of failures to meet an applicable standard. For each instance, report the date, time and duration of each failure. For each failure, the report must include a list of the affected sources or equipment, and for any failure to meet an emission limit under § 63.862, provide an estimate of the quantity of each regulated pollutant emitted over the emission limit, and a description of the method used to estimate the emissions.

(5) The owner or operator of an affected source or process unit subject to the requirements of this subpart and subpart S of this part may combine excess emissions and/or summary reports for the mill.

(d) *Electronic reporting.* (1) Within 60 days after the date of completing each performance test (as defined in § 63.2) required by this subpart, the owner or operator must submit the results of the performance test following the procedure specified in either paragraph (d)(1)(i) or (ii) of this section.

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test, the owner or operator must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>)). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site. If the owner or operator claims that some of the performance test information being submitted is confidential business information (CBI), the owner or operator must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (d)(1)(i).

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, the owner or operator must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13 unless the Administrator agrees to or specifies an alternative reporting method.

(2) The owner or operator must submit the notifications required in § 63.9(b) and § 63.9(h) (including any information specified in § 63.867(b)) and semiannual reports to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (<https://cdx.epa.gov/>)). You must upload an electronic copy of each notification in CEDRI beginning with any notification specified in this paragraph that is required after October 11, 2019. The owner or operator must use the

appropriate electronic report in CEDRI for this subpart listed on the CEDRI Web site (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for semiannual reports. If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at all the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted.

(3) If you are required to electronically submit a report through CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(4) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is

due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 11. Section 63.868 is amended by revising paragraphs (b)(2) through (4) to read as follows:

§ 63.868 Delegation of authority.

* * * * *

(b) * * *

(2) Approval of a major change to test method under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f) and as defined in § 63.90.

■ 12. Table 1 to Subpart MM of Part 63 is revised to read as follows:

TABLE 1 TO SUBPART MM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM

General provisions reference	Summary of requirements	Applies to subpart MM	Explanation
63.1(a)(1)	General applicability of the General Provisions	Yes	Additional terms defined in § 63.861; when overlap between subparts A and MM of this part, subpart MM takes precedence.
63.1(a)(2)–(14)	General applicability of the General Provisions	Yes.	
63.1(b)(1)	Initial applicability determination	No	Subpart MM specifies the applicability in § 63.860.
63.1(b)(2)	Title V operating permit—see 40 CFR part 70	Yes	All major affected sources are required to obtain a title V permit.
63.1(b)(3)	Record of the applicability determination	No	All affected sources are subject to subpart MM according to the applicability definition of subpart MM.
63.1(c)(1)	Applicability of subpart A of this part after a relevant standard has been set.	Yes	Subpart MM clarifies the applicability of each paragraph of subpart A of this part to sources subject to subpart MM.
63.1(c)(2)	Title V permit requirement	Yes	All major affected sources are required to obtain a title V permit. There are no area sources in the pulp and paper mill source category.
63.1(c)(3)	[Reserved]	No.	
63.1(c)(4)	Requirements for existing source that obtains an extension of compliance.	Yes.	
63.1(c)(5)	Notification requirements for an area source that increases HAP emissions to major source levels.	Yes.	
63.1(d)	[Reserved]	No.	
63.1(e)	Applicability of permit program before a relevant standard has been set.	Yes.	
63.2	Definitions	Yes	Additional terms defined in § 63.861; when overlap between subparts A and MM of this part occurs, subpart MM takes precedence.
63.3	Units and abbreviations	Yes.	
63.4	Prohibited activities and circumvention	Yes.	
63.5(a)	Construction and reconstruction—applicability	Yes.	
63.5(b)(1)	Upon construction, relevant standards for new sources.	Yes.	
63.5(b)(2)	[Reserved]	No.	
63.5(b)(3)	New construction/reconstruction	Yes.	
63.5(b)(4)	Construction/reconstruction notification	Yes.	
63.5(b)(5)	Construction/reconstruction compliance	Yes.	
63.5(b)(6)	Equipment addition or process change	Yes.	
63.5(c)	[Reserved]	No.	
63.5(d)	Application for approval of construction/reconstruction.	Yes.	
63.5(e)	Construction/reconstruction approval	Yes.	
63.5(f)	Construction/reconstruction approval based on prior State preconstruction review.	Yes.	
63.6(a)(1)	Compliance with standards and maintenance requirements—applicability.	Yes.	
63.6(a)(2)	Requirements for area source that increases emissions to become major.	Yes.	
63.6(b)	Compliance dates for new and reconstructed sources.	Yes.	
63.6(c)	Compliance dates for existing sources	Yes, except for sources granted extensions under 63.863(c).	Subpart MM specifically stipulates the compliance schedule for existing sources.
63.6(d)	[Reserved]	No.	
63.6(e)(1)(i)	General duty to minimize emissions	No	See § 63.860(d) for general duty requirement.
63.6(e)(1)(ii)	Requirement to correct malfunctions ASAP	No.	
63.6(e)(1)(iii)	Operation and maintenance requirements enforceable independent of emissions limitations.	Yes.	
63.6(e)(2)	[Reserved]	No.	
63.6(e)(3)	Startup, shutdown, and malfunction plan (SSMP).	No.	
63.6(f)(1)	Compliance with nonopacity emissions standards except during SSM.	No.	
63.6(f)(2)–(3)	Methods for determining compliance with nonopacity emissions standards.	Yes.	
63.6(g)	Compliance with alternative nonopacity emissions standards.	Yes.	

TABLE 1 TO SUBPART MM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM—Continued

General provisions reference	Summary of requirements	Applies to subpart MM	Explanation
63.6(h)(1)	Compliance with opacity and visible emissions (VE) standards except during SSM.	No.	
63.6(h)(2)–(9)	Compliance with opacity and VE standards	Yes	Subpart MM does not contain any opacity or VE standards; however, § 63.864 specifies opacity monitoring requirements.
63.6(i)	Extension of compliance with emissions standards.	Yes.	
63.6(j)	Exemption from compliance with emissions standards.	Yes.	
63.7(a)(1)	Performance testing requirements—applicability.	Yes.	
63.7(a)(2)	Performance test dates	Yes.	
63.7(a)(3)	Performance test requests by Administrator under CAA section 114.	Yes.	
63.7(a)(4)	Notification of delay in performance testing due to force majeure.	Yes.	
63.7(b)(1)	Notification of performance test	Yes.	
63.7(b)(2)	Notification of delay in conducting a scheduled performance test.	Yes.	
63.7(c)	Quality assurance program	Yes.	
63.7(d)	Performance testing facilities	Yes.	
63.7(e)(1)	Conduct of performance tests	No	See § 63.865.
63.7(e)(2)–(3)	Conduct of performance tests	Yes.	
63.7(e)(4)	Testing under section 114	Yes.	
63.7(f)	Use of an alternative test method	Yes.	
63.7(g)	Data analysis, recordkeeping, and reporting	Yes.	
63.7(h)	Waiver of performance tests	Yes	§ 63.865(c)(1) specifies the only exemption from performance testing allowed under subpart MM.
63.8(a)(1)	Monitoring requirements—applicability	Yes	See § 63.864.
63.8(a)(2)	Performance Specifications	Yes.	
63.8(a)(3)	[Reserved]	No.	
63.8(a)(4)	Monitoring with flares	No	The use of flares to meet the standards in subpart MM is not anticipated.
63.8(b)(1)	Conduct of monitoring	Yes	See § 63.864.
63.8(b)(2)–(3)	Specific requirements for installing and reporting on monitoring systems.	Yes.	
63.8(c)(1)	Operation and maintenance of CMS	Yes	See § 63.864.
63.8(c)(1)(i)	General duty to minimize emissions and CMS operation.	No.	
63.8(c)(1)(ii)	Reporting requirements for SSM when action not described in SSMP.	Yes.	
63.8(c)(1)(iii)	Requirement to develop SSM plan for CMS	No.	
63.8(c)(2)–(3)	Monitoring system installation	Yes.	
63.8(c)(4)	CMS requirements	Yes.	
63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	Yes.	
63.8(c)(6)	Zero and high level calibration check requirements.	Yes.	
63.8(c)(7)–(8)	Out-of-control periods	Yes.	
63.8(d)(1)–(2)	CMS quality control program	Yes	See § 63.864.
63.8(d)(3)	Written procedures for CMS	No	See § 63.864(f).
63.8(e)(1)	Performance evaluation of CMS	Yes.	
63.8(e)(2)	Notification of performance evaluation	Yes.	
63.8(e)(3)	Submission of site-specific performance evaluation test plan.	Yes.	
63.8(e)(4)	Conduct of performance evaluation and performance evaluation dates.	Yes.	
63.8(e)(5)	Reporting performance evaluation results	Yes.	
63.8(f)	Use of an alternative monitoring method	Yes.	
63.8(g)	Reduction of monitoring data	Yes.	
63.9(a)	Notification requirements—applicability and general information.	Yes.	
63.9(b)	Initial notifications	Yes.	
63.9(c)	Request for extension of compliance	Yes.	
63.9(d)	Notification that source subject to special compliance requirements.	Yes.	
63.9(e)	Notification of performance test	Yes.	
63.9(f)	Notification of opacity and VE observations	Yes	Subpart MM does not contain any opacity or VE standards; however, § 63.864 specifies opacity monitoring requirements.

TABLE 1 TO SUBPART MM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM—Continued

General provisions reference	Summary of requirements	Applies to subpart MM	Explanation
63.9(g)(1)	Additional notification requirements for sources with CMS.	Yes.	
63.9(g)(2)	Notification of compliance with opacity emissions standard.	Yes	Subpart MM does not contain any opacity or VE emissions standards; however, § 63.864 specifies opacity monitoring requirements.
63.9(g)(3)	Notification that criterion to continue use of alternative to relative accuracy testing has been exceeded.	Yes.	
63.9(h)	Notification of compliance status	Yes.	
63.9(i)	Adjustment to time periods or postmark deadlines for submittal and review of required communications.	Yes.	
63.9(j)	Change in information already provided	Yes.	
63.10(a)	Recordkeeping requirements—applicability and general information.	Yes	See § 63.866.
63.10(b)(1)	Records retention	Yes.	
63.10(b)(2)(i)	Recordkeeping of occurrence and duration of startups and shutdowns.	No.	
63.10(b)(2)(ii)	Recordkeeping of failures to meet a standard	No	See § 63.866(d) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
63.10(b)(2)(iii)	Maintenance records	Yes.	
63.10(b)(2)(iv)–(v)	Actions taken to minimize emissions during SSM.	No.	
63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions	Yes.	
63.10(b)(2)(vii)–(xiv)	Other CMS requirements	Yes.	
63.10(b)(3)	Records retention for sources not subject to relevant standard.	Yes	Applicability requirements are given in § 63.860.
63.10(c)(1)–(14)	Additional recordkeeping requirements for sources with CMS.	Yes.	
63.10(c)(15)	Use of SSM plan	No.	
63.10(d)(1)	General reporting requirements	Yes.	
63.10(d)(2)	Reporting results of performance tests	Yes.	
63.10(d)(3)	Reporting results of opacity or VE observations.	Yes	Subpart MM does not include any opacity or VE standards; however, § 63.864 specifies opacity monitoring requirements.
63.10(d)(4)	Progress reports	Yes.	
63.10(d)(5)(i)	Periodic startup, shutdown, and malfunction reports.	No	See § 63.867(c)(3) for malfunction reporting requirements.
63.10(d)(5)(ii)	Immediate startup, shutdown, and malfunction reports.	No	See § 63.867(c)(3) for malfunction reporting requirements.
63.10(e)(1)	Additional reporting requirements for sources with CMS—General.	Yes.	
63.10(e)(2)	Reporting results of CMS performance evaluations.	Yes.	
63.10(e)(3)(i)–(iv)	Requirement to submit excess emissions and CMS performance report and/or summary report and frequency of reporting.	No	§ 63.867(c)(1) and (3) require submittal of the excess emissions and CMS performance report and/or summary report on a semi-annual basis.
63.10(e)(3)(v)	General content and submittal dates for excess emissions and monitoring system performance reports.	Yes.	
63.10(e)(3)(vi)	Specific summary report content	No	§ 63.867(c)(1) specifies the summary report content.
63.10(e)(3)(vii)–(viii)	Conditions for submitting summary report versus detailed excess emission report.	No	§ 63.867(c)(1) and (3) specify the conditions for submitting the summary report or detailed excess emissions and CMS performance report.
63.10(e)(4)	Reporting continuous opacity monitoring system data produced during a performance test.	Yes.	
63.10(f)	Waiver of recordkeeping and reporting requirements.	Yes.	
63.11	Control device requirements for flares	No	The use of flares to meet the standards in subpart MM is not anticipated.
63.12	State authority and delegations	Yes.	
63.13	Addresses of State air pollution control agencies and EPA Regional Offices.	Yes.	

TABLE 1 TO SUBPART MM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM—Continued

General provisions reference	Summary of requirements	Applies to subpart MM	Explanation
63.14	Incorporations by reference	Yes.	
63.15	Availability of information and confidentiality ...	Yes.	
63.16	Requirements for Performance Track member facilities.	Yes.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2012-0522; FRL-9968-01-OAR]

RIN 2060-AT14

Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Risk and Technology Review Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of final action on reconsideration.

SUMMARY: This action finalizes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. These final amendments are in response to two petitions for reconsideration filed by industry stakeholders on the rule revisions to the NESHAP for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories that were promulgated on August 19, 2015. We are revising the compliance date by which affected sources must include emissions from oxidation reactors when determining compliance with the total fluoride emission limits for superphosphoric acid (SPA) process lines. In addition, we are revising the compliance date for the monitoring requirements for low-energy absorbers. We are also clarifying one option and adding a new option, to the monitoring requirements for low-energy absorbers.

DATES: This final rule is effective on September 28, 2017.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2012-0522. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open

from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Fairchild, Sector Policies and Programs Division (Mail Code D243-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5167; email address: fairchild.susan@epa.gov.

SUPPLEMENTARY INFORMATION: Acronyms and Abbreviations. A number of acronyms and abbreviations are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined:

- AMP Alternative monitoring plan
- CAA Clean Air Act
- CBI Confidential business information
- CFR Code of Federal Regulations
- EPA U.S. Environmental Protection Agency
- FR Federal Register
- MACT Maximum achievable control technology
- NAICS North American Industry Classification System
- NESHAP National emission standards for hazardous air pollutants
- OMB Office of Management and Budget
- PRA Paperwork Reduction Act
- RTR Risk and technology review
- SPA Superphosphoric acid
- TAC Total annualized cost
- TCI Total capital investment
- TF Total fluoride
- TFI The Fertilizer Institute
- tpy Tons per year
- UMRA Unfunded Mandates Reform Act

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

- I. General Information
 - A. Does this action apply to me?
 - B. How do I obtain a copy of this document and other related information?
 - C. Judicial Review
- II. Background Information
- III. Summary of Final Action on Issues Reconsidered
 - A. Compliance Deadline for Air Oxidation Reactors Used in SPA Lines
 - B. Compliance Deadlines for Revised Low-Energy Absorber Monitoring Provisions
 - C. Monitoring Options for Low-Energy Absorbers
 - D. Restoration of the ±20-Percent Minimum Liquid Flow Rate Variability Allowance
- IV. Impacts Associated With This Final Rule
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)

- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Categories and entities potentially affected by this reconsideration action include those listed in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS ¹ code
Phosphoric Acid Manufacturing Phosphate Fertilizer Production	325312

¹ North American Industry Classification System.

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

B. How do I obtain a copy of this document and other related information?

The docket number for this final action regarding the NESHAP for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories is Docket ID No. EPA-HQ-OAR-2012-0522.

In addition to being available in the docket, an electronic copy of this document will also be available on the Internet. Following signature by the EPA Administrator, the EPA will post a

copy of this final action at <https://www.epa.gov/stationary-sources-air-pollution/phosphate-fertilizer-production-plants-and-phosphoric-acid>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same Web site.

C. Judicial Review

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by November 27, 2017. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Background Information

On June 10, 1999 (64 FR 31358), the EPA promulgated 40 CFR part 63, subpart AA for the Phosphoric Acid Manufacturing source category and 40 CFR part 63, subpart BB for the Phosphate Fertilizer Production source category. On August 19, 2015 (80 FR 50386), the EPA published amended rules for both source categories that took into consideration the technology review and residual risk review required by sections 112(d)(6) and 112(f) of the CAA, respectively. Following promulgation of the August 2015 rule revisions, the EPA received two petitions for reconsideration from The Fertilizer Institute (TFI) and the Phosphate Corporation of Saskatchewan, including: PCS Phosphate Company, Inc.; White Springs Agricultural Chemical, Inc., DBA PCS Phosphate-White Springs; and PCS Nitrogen Fertilizer, L.P., (collectively "PCS"), requesting administrative reconsideration of amended 40 CFR part 63, subpart AA and subpart BB under CAA section 307(d)(7)(B).

In response to the petitions, the EPA reconsidered and requested comment on three distinct issues:

- Compliance deadline for air oxidation reactors used in SPA lines;
- Compliance deadlines for low-energy absorber monitoring provisions; and
- Monitoring options for low-energy absorbers.

The EPA proposed a notice of reconsideration including proposed rule

amendments in the **Federal Register** on December 9, 2016 (81 FR 89026). We received public comments from two parties. Copies of all comments submitted are available at the EPA Docket Center Public Reading Room. Comments are also available electronically through <http://www.regulations.gov> by searching Docket ID No. EPA-HQ-OAR-2012-0522.

In this document, the EPA is taking final action with respect to the reconsideration and proposed amendments. Section III of this preamble summarizes the public comments received on the proposed notice of reconsideration, presents the EPA's responses to the comments, and explains our rationale for the rule revisions published here.

We are also restoring a provision of the 1999 maximum achievable control technology (MACT) rules that was inadvertently omitted from the risk and technology review (RTR) amendments to those rules. That provision, related to compliance monitoring, allowed sources a ± 20 -percent variability in the minimum liquid flow rate to the absorber.

III. Summary of Final Action on Issues Reconsidered

The three reconsideration issues for which amendments are being finalized in this rulemaking are: (1) Compliance deadlines for air oxidation reactors used in SPA lines; (2) compliance deadlines for revised low-energy absorber monitoring provisions; and (3) monitoring options for low-energy absorbers. A fourth issue, which was identified after the close of the public comment period, is also being addressed in this action. This is the restoration of the ± 20 -percent variability allowance for the minimum liquid flow rate to the absorber. Each of these issues is discussed in detail in the following sections of this preamble.

A. Compliance Deadline for Air Oxidation Reactors Used in SPA Lines

In the August 19, 2015, amendments to 40 CFR part 63, subpart AA, the EPA revised the SPA process line definition to include oxidation reactors. The EPA received petitions requesting the compliance schedule be changed to allow more time for affected sources to include emissions from oxidation reactors when determining compliance with the total fluoride (TF) emission limits for SPA process lines. In response to the petitions, on December 9, 2016, we proposed to revise the compliance date from August 19, 2016, to August 19, 2018. We did not receive adverse

comments on this change. Instead, both commenters stated that they supported this change. Therefore, in this action, the EPA is finalizing the compliance date revision as proposed. The compliance date by which affected sources must include emissions from oxidation reactors when determining compliance with the TF emission limits for SPA process lines is August 19, 2018.¹

B. Compliance Deadlines for Revised Low-Energy Absorber Monitoring Provisions

In the August 19, 2015, amendments to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB, the EPA changed the compliance monitoring requirement for low-energy absorbers (*i.e.*, absorbers that are designed to operate with pressure drops of 5 inches of water column or less) to require monitoring of liquid-to-gas ratio in lieu of monitoring influent liquid flow and pressure drop through the absorber. The EPA received petitions requesting the compliance schedule be changed to allow more time for affected sources to comply with these monitoring requirements. In response to the petitions, on December 9, 2016, we proposed to revise the compliance dates from August 19, 2016, to August 19, 2017, to allow owners and operators additional time to obtain and certify the instruments needed to monitor liquid-to-gas ratio. However, in this action, the EPA is revising the compliance dates to no later than August 19, 2018, for existing sources as well as for those sources that commenced construction or reconstruction after December 27, 1996, and on or before August 19, 2015. We are also clarifying that new sources that commence construction or reconstruction after August 19, 2015, must comply with the monitoring requirements for absorbers immediately upon startup.

Both commenters said that the proposed compliance date (*i.e.*, August 19, 2017) for monitoring liquid-to-gas ratio on low-energy absorbers only allows approximately seven months to achieve compliance from the date public comments were due (*i.e.*, January 23, 2017). These commenters asserted that a duration of 7 months may not be sufficient to acquire, engineer, test, and install the requisite technologies. One of the commenters specified that 7 months is not enough time to complete and begin implementing gas flow monitoring plans for at least 20 of their low-energy absorbers. Additionally, the commenter

¹ Refer to finalized footnotes "c" of Table 1 and Table 2 to subpart AA of 40 CFR part 63.

asserted that for at least some of their low-energy absorbers, gas flow meters are likely not feasible due to the saturated (and sometimes supersaturated) conditions of the gas streams that these absorbers handle; therefore, the commenter contended they need more time to assess liquid-to-gas ratio monitoring options and to establish operating limits. The commenter stated that each liquid-to-gas ratio monitoring option requires complicated, time-consuming, and absorber-specific evaluations. For example, to develop regression models, new instrumentation to monitor fan suction pressure and blower amperage must be installed for some absorbers, and facilities need to make changes to their computer programs. Moreover, the commenter stated that once a regression model is developed, they need additional time to establish the liquid-to-gas ratio operating limit by conducting a performance test. This commenter also maintained that for some of their low-energy absorbers they may need to use an Alternative Monitoring Plan (AMP) to comply with the liquid-to-gas ratio monitoring requirements and 7 months may not be enough time to get approval for the AMP. The commenter cited a specific example where the EPA Region is in the tenth month of reviewing one of the company's AMP requests. Additionally, one commenter suggested that the EPA revise the "existing source" definition in 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB to extend the compliance date (for the liquid-to-gas ratio monitoring requirements for low-energy absorbers) to those new sources that were in operation on the date the technology review and residual risk review were proposed.

Based on these comments, we agree that more time beyond what we proposed is needed to achieve compliance with the liquid-to-gas ratio monitoring requirements for low-energy absorbers. To allow time to evaluate all monitoring options, obtain and certify instruments, establish operating limits, and, in certain cases, develop a regression model or AMP, the EPA is finalizing a compliance date that is no later than August 19, 2018.² This extension provides a total of 3 years from promulgation (of the August 19, 2015, amendments to 40 CFR part 63, subparts AA and BB) for sources to comply with the rule, and is the maximum compliance period allowed by the CAA. We also agree with the

commenter that the compliance date should apply to certain new sources. This was an error in the December 9, 2016, proposal as we did not intend for the compliance date to apply to only existing sources. Therefore, in this action, the EPA is correcting this error at footnote b for Table 3 to subpart AA of 40 CFR part 63 and footnote b for Table 3 to subpart BB of 40 CFR part 63 such that the compliance date for the liquid-to-gas ratio monitoring requirements for low-energy absorbers applies to both existing sources and those new sources that commenced construction or reconstruction after December 27, 1996, and on or before August 19, 2015. We are also clarifying that new sources that commence construction or reconstruction after August 19, 2015, must comply with the monitoring requirements for absorbers immediately upon startup. Instead of revising the "existing source" definition as requested by the commenter, we determined it will be clearer and more straightforward to make the corrections in these footnotes.

Furthermore, one commenter requested that the EPA add more compliance options for low-energy absorbers in advance of the compliance date for the liquid-to-gas ratio monitoring requirements. The commenter asserted that footnote b for Table 3 to subpart AA of 40 CFR part 63 and footnote b for Table 3 to subpart BB of 40 CFR part 63 are too narrowly drafted because they do not allow facilities to use liquid-to-gas ratio monitoring or their current monitoring strategies, such as monitoring in accordance with an already approved AMP or an applicable monitoring provision of a permit issued under 40 CFR part 70, in advance of the compliance date. This commenter suggested edits to footnote b for Table 3 to subpart AA of 40 CFR part 63 and footnote b for Table 3 to subpart BB of 40 CFR part 63 (see docket item EPA-HQ-OAR-2012-0522-0097) to allow compliance with any one of the following: (i) The monitoring requirements in Table 3 for absorbers designed and operated with pressure drops of 5 inches of water column or less; (ii) the applicable monitoring provisions of a permit issued under 40 CFR part 70 or an Alternative Monitoring Plan approved pursuant to 40 CFR 63.8(f); or (iii) the installation of continuous parameter monitoring systems (CPMS) for pressure at the gas stream inlet or outlet of the absorber, and monitoring pressure drop through the absorber. We agree with the commenter that facilities should be

allowed to use liquid-to-gas ratio monitoring or their current approved monitoring strategy (in lieu of monitoring pressure drop through the absorber), in advance of the compliance date for the liquid-to-gas ratio monitoring requirements for low-energy absorbers. Therefore, for the most part, we included the commenter's edits to footnote b for Table 3 to subpart AA of 40 CFR part 63 and footnote b for Table 3 to subpart BB of 40 CFR part 63 in the final rules. However, we added language to the commenter's edits to ensure that if an owner or operator were to use a part 70 monitoring provision, it would be a federally enforceable provision. We also split the option to use a part 70 monitoring provision and the option to use an AMP such that it is one or the other. The final rule allows an owner or operator to use liquid-to-gas ratio monitoring or their current approved monitoring strategy (in lieu of monitoring pressure drop through the absorber), in advance of the compliance date for the liquid-to-gas ratio monitoring requirements for low-energy absorbers.

Finally, one commenter requested that the EPA include language in the final rules to authorize compliance with an AMP that is still under review by an EPA Regional office beyond the compliance date for the liquid-to-gas ratio monitoring requirements, provided the AMP request was submitted to the Region more than 30 days in advance of the compliance deadline. The commenter maintained that without this type of category-specific provision, owners or operators are not entitled (based on the existing provision at 40 CFR 63.8(f)(1)) to rely on AMPs in advance of the EPA's approval. The commenter stated that although 40 CFR 63.8(f)(5)(i) calls for the Agency to respond to AMP requests within 30 days of receipt, the EPA sometimes needs more than 30 days to grant or deny such requests. The commenter asserted they are unable to predict or control the response time of the EPA; therefore, they should not be required to carry the risk and uncertainty of relying on an AMP that is still under EPA review after the compliance deadline. The commenter also stated that facility-specific extensions may not be available under CAA section 112(i)(3)(B), which authorizes a 1-year extension if "necessary for the installation of controls." The commenter contended that liquid-to-gas monitoring may require new equipment for some low-energy absorbers, but the new equipment will likely be for absorber

² Refer to finalized footnote b of Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63.

monitoring and not control of pollutants.

We disagree with the commenter's request to authorize compliance with AMPs that are still under the EPA review beyond the compliance date for the liquid-to-gas ratio monitoring requirements. As stated previously, we are revising and finalizing the compliance date for the liquid-to-gas ratio monitoring requirements for low-energy absorbers to no later than August 19, 2018, which is 3 years from promulgation of the final rule, and is the maximum allowed under the CAA for phosphoric acid and phosphate fertilizer manufacturers to comply with the rule. We believe this is an ample amount of time for any outstanding AMPs to be approved. Furthermore, the existing provision at 40 CFR 63.8(f)(1) has been in place for more than 20 years. During this time, the process for review and resolution of AMP requests has functioned satisfactorily within the established timelines. The concern raised by the commenter involves one unique case currently under consideration. We concluded that adopting a blanket exemption from the procedures of 40 CFR 63.8(f) for all owners or operators of the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories is inappropriate. This one unique case is more appropriately handled by the EPA Regional office continuing to review the technical merits of the AMP application and applying enforcement discretion to ensure equitable treatment of the company.

C. Monitoring Options for Low-Energy Absorbers

In response to the petitions the EPA received regarding monitoring requirements for low-energy absorbers, we proposed to clarify an existing monitoring option (*i.e.*, the blower design capacity option) and to add a new option (*i.e.*, the regression model option) to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB. We also proposed language reminding affected entities that they can request an alternative monitoring method under the provisions of 40 CFR 63.8(f) on a site-specific basis. Refer to the preamble to the proposed rule (81 FR 89026) for more details on each of these changes.

With exception of the items discussed in the following paragraphs, commenters stated that they supported these changes. Therefore, unless discussed below, we are finalizing the changes regarding monitoring requirements for low-energy absorbers as proposed.

Blower Design Capacity Option

In response to petitioner requests for clarification of the regulatory language describing the blower design capacity option for determining the gas flow rate through the absorber (for use in monitoring the liquid-to-gas ratio), we clarified in the preamble to the proposed rulemaking how this option can be used. Additionally, we proposed changing the term "design blower capacity" in Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63 to "blower design capacity" and made other minor text edits to these tables in order to use the phrase "gas flow rate through the absorber" more consistently. We also proposed footnote c for Table 3 to subpart AA of 40 CFR part 63 and footnote c for Table 3 to subpart BB of 40 CFR part 63 to add certain site-specific monitoring plan requirements, clarify that the blower design capacity option is intended to establish the maximum possible gas flow through the absorber, and explain that the blower design capacity option can be used regardless of whether the blower is located on the influent or effluent side of the absorber. Finally, we proposed a requirement at 40 CFR 63.608(e) and 40 CFR 63.628(e) to document, in the site-specific monitoring plan, the calculations that were used to make adjustments for pressure drop if blower design capacity is used to establish the maximum possible gas flow rate through an absorber. In this action, the EPA is finalizing, with one exception, all the proposed language regarding the blower design capacity option.

The one change to the proposed language for the blower design capacity option is our addition of language in footnote c to Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63 to clarify that owners and operators must establish the minimum liquid-to-gas ratio operating limit by dividing the minimum liquid flow rate to the absorber determined during a performance test by the maximum possible gas flow rate through the absorber determined using blower design capacity. One commenter requested the EPA include the following additional language to footnote c to Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63: "The maximum design gas flow through the scrubber, or Fmax, shall be determined using the blower design capacity and system pressure drop. During performance testing, the observed liquid-to-gas ratio, L/G, will be determined. The minimum liquid flow will be established by multiplying the

compliance L/G by Fmax." We disagree that the language should be added to footnote c as drafted by the commenter because it introduces a new undefined and unnecessary term "Fmax."

We also disagree because much of the commenter's language is already included elsewhere in the rules,³ and while the commenter's suggested third sentence is not addressed elsewhere, it can be rewritten without the use of a new term, "Fmax." Therefore, instead of using the commenter's suggested third sentence, we are including a new sentence in footnote c for Table 3 to subpart AA of 40 CFR part 63 and footnote c for Table 3 to subpart BB of 40 CFR part 63 to read as follows: "Establish the minimum liquid-to-gas ratio operating limit by dividing the minimum liquid flow rate to the absorber (determined during a performance test) by the maximum possible gas flow rate through the absorber (determined using blower design capacity)." We consider this revised sentence as clarifying how each term in the liquid-to-gas ratio is determined and used.

Regression Model Option

In response to the petitions the EPA received requesting other options to be considered for determining the gas flow rate through the absorber, which is used in monitoring the liquid-to-gas ratio, we proposed to include an option in Table 3 to subpart AA of 40 CFR part 63 and in Table 3 to subpart BB of 40 CFR part 63, that allows facilities to develop and use a regression model to determine gas flow rate through an absorber in lieu of direct measurement or using blower design capacity. We also proposed a requirement in footnote a for Table 4 to subpart AA of 40 CFR part 63 and footnote a for Table 4 to subpart BB of 40 CFR part 63 requiring continuous monitoring of blower amperage, blower static pressure, *i.e.*, fan suction pressure, and any other parameters used in the regression model that are not constants. Finally, to allow the flexibility to use best engineering judgment and calculations, we also proposed an annual requirement at 40 CFR 63.608(f) and 40 CFR 63.628(f) to document, in the site-specific monitoring plan, the calculations that were used to develop the regression model and to require that the site-specific monitoring plan be updated annually to maintain accuracy

³ Existing rule language currently in the rules that the commenter suggested is found at Table 3 to subpart AA of 40 CFR part 63; Table 3 to subpart BB of 40 CFR part 63; 40 CFR 63.605(d); at 40 CFR 63.625(d); at Table 4 to subpart AA of 40 CFR part 63 and at Table 4 to subpart BB of 40 CFR part 63.

and reflect data used in the annual regression model verification.

Both commenters stated that they support the use of a regression model to determine gas flow rate through an absorber, but requested one clarification to the proposed language. The commenters requested that the EPA revise footnote d for Table 3 to subpart AA of 40 CFR part 63 and footnote d for Table 3 to subpart BB of 40 CFR part 63 to clarify whether an emissions performance test is necessary when developing and verifying gas flow regression models. The commenters contended that the EPA should allow facilities to develop and verify gas flow regression models separately from the required annual emissions performance test. One commenter maintained that requiring facilities to conduct a performance test to develop a regression model would waste resources and needlessly complicate the schedule for liquid-to-gas ratio monitoring. The commenter contended that facilities would have to conduct more than one performance test in a year's time to first develop a regression model and then set operating limits for liquid-to-gas ratio. The commenters suggested edits to footnote d for Table 3 to subpart AA of 40 CFR part 63 and footnote d for Table 3 to subpart BB of 40 CFR part 63 (see docket items EPA-HQ-OAR-2012-0522-0097 and EPA-HQ-OAR-2012-0522-0098) to make clear that an emissions performance test is not required to develop and verify gas flow regression models. We agree with the commenters' edits to footnote d as it was our intent to allow facilities the flexibility to develop and verify gas flow regression models (using direct measurements of gas flow rate, for example, via EPA Method 2) either separately from, or in conjunction with, the annual performance test. Therefore, in this action, the EPA is finalizing, with one change, all the proposed language regarding the regression model option. The one change we are making

to the proposed language is that we are revising and clarifying footnote d for Table 3 to subpart AA of 40 CFR part 63 and footnote d for Table 3 to subpart BB of 40 CFR part 63 to convey that direct measurements of gas flow rate used to develop or verify regression models may be collected during, or separately from, the annual performance testing that is required in 40 CFR 63.606(b) for subpart AA or 40 CFR 63.626(b) for subpart BB.

D. Restoration of the ±20-Percent Minimum Liquid Flow Rate Variability Allowance

The June 10, 1999, MACT rules (64 FR 31358) included provisions to account for the variability in absorber (*i.e.*, scrubber) pressure drop and the variability in minimum liquid flow rate to the absorber. Specifically, as a compliance monitoring provision of the 1999 MACT rules, owners/operators are required to conduct a performance test to determine the baseline average value for both the pressure drop and for the minimum liquid flow rate of the absorber, and are then allowed to operate within a range that is within 20 percent of this rate.

The August 19, 2015 (80 FR 50386), RTR final rule included the allowance for the ±20-percent variability in the absorber pressure drop, but did not include the allowance for the ±20-percent variability in the minimum liquid flow rate to the absorber.

Industry brought this omission to our attention after the comment period for this reconsideration rule. We subsequently reviewed the record for the August 2015 RTR final rule and could not find any record of a decision to remove the ±20-percent minimum liquid flow rate variability provision. Therefore, we have concluded that this omission was an inadvertent error in the August 2015 RTR final rule, and we are restoring that provision in these final rules. Subpart AA includes this restored provision at 40 CFR 63.605(d)(1)(ii)(A)

and subpart BB includes this restored provision at 40 CFR 63.625(d)(1)(ii)(A).

IV. Impacts Associated With This Final Rule

This action revises compliance dates specific to oxidation reactors in the Phosphoric Acid Manufacturing source category, and absorber monitoring in both the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. We expect the additional compliance time for oxidation reactors to comply with the rule will have an insignificant effect on a phosphoric acid manufacturing plant's overall emissions.

Specifically, in the reconsideration proposal, the EPA discussed hydrogen fluoride emissions reductions of 0.047 tons per year (tpy) from the oxidation reactor (*i.e.*, a reduction from 0.049 tpy to 0.002 tpy) and TF emissions reductions of 0.14 tpy from the oxidation reactor (*i.e.*, a reduction from 0.147 tpy to 0.007 tpy). The additional 2-year compliance time for oxidation reactors to meet the emission limits in the final rule result in an additional 0.098 tons (196 pounds) of hydrogen fluoride and 0.28 tons (560 pounds) of total fluoride. Hydrogen fluoride emissions from SPA process lines, including oxidation reactors, account for less than 1 percent of all hydrogen fluoride emissions from the source category.

The revisions related to the gas flow calculation that we are finalizing result in capital cost savings of \$88,200 per facility, and capital cost savings of \$1,147,200 industry-wide.⁴ These cost savings are due to our providing alternatives to the requirement to use a gas flow meter for monitoring gas flow at low energy absorbers. In addition to the gas flow meter, we are providing two other monitoring methods as alternative compliance options: (1) A blower design capacity model; and (2) a regression model.

TABLE 2—COST COMPARISON OF DIFFERENT OPTIONS FOR DETERMINING GAS FLOW RATE AT LOW PRESSURE ABSORBERS

Compliance option	Capital costs per facility	Annualized facility costs (2016\$)		Industry Wide Capital Costs ¹	Annualized industry wide costs (2016\$)	
		3%	7%		3%	7%
Blower Design Capacity Model	\$6,400	\$800	\$960	\$83,700	\$10,300	\$12,500
Regression Model	4,200	500	600	54,300	6,700	8,100
Gas Flow Meter	92,400	15,800	18,200	1,201,500	205,900	236,100

¹ Capital costs per facility are rounded values. Industry-wide capital costs are calculated by multiplying the non-rounded values for capital costs per facility by 13 (the total number of facilities in the source category). The resulting product is rounded after calculation.

⁴ For the detailed calculations on these cost savings, refer to "Detailed Costs of Monitoring Gas

Flow Options Worksheet June 2017.xlsx" and "Annualized Cost of Monitoring Options

Worksheet.xlsx" which are available in the docket for this rule.

The costs described in this action are a result of only the final reconsideration notice, and show a cost savings. The costs were calculated at both a 7-percent rate and a 3-percent rate. There is a reduction in estimated annualized costs calculated at both the 7-percent rate and at the 3-percent rate as a result of all 13 affected facilities implementing a lower cost option to monitor the ratio of liquid-to-gas in low energy absorbers, as compared to the cost of that requirement in the rule promulgated in August 2015. We note that the cost savings presented here are not associated with any change in emission limit, do not result in higher hazardous air pollutant emissions, and do not have a negative effect on human health or the environment.

TABLE 3—TOTAL POTENTIAL CAPITAL AND ANNUALIZED SAVINGS FROM MONITORING ALTERNATIVES FOR SUBPARTS AA AND BB [2016\$]

Total capital cost savings	Total annual cost savings (2016\$)
\$1,147,000	\$208,000 (3% discount rate). \$237,000 (7% discount rate).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-anld-executive-orders>.

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0361. With this action, the EPA is finalizing amendments to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance. Therefore, there are no changes to the information collection requirements of the August 19, 2015, final rule, and, consequently, the information collection estimate of

projected costs and hour burden from the final rules have not been revised.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action finalizes amendments to the 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

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

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action finalizes amendments to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation

issues raised by stakeholders, or are being made to allow more time for compliance. We expect the additional compliance time for oxidation reactors will have an insignificant effect on a phosphoric acid manufacturing plant’s overall emissions. Hydrogen fluoride emissions from SPA process lines, including oxidation reactors, account for less than 1 percent of all hydrogen fluoride emissions from the source category. Therefore, the amendments should not appreciably increase risk for any populations.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve new technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The Environmental Justice finding in the August 19, 2015, final rule remains relevant in this action, which finalizes amendments to these rules that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance. We expect the additional compliance time for oxidation reactors will have an insignificant effect on any phosphoric acid manufacturing plant’s overall emissions. Hydrogen fluoride emissions from SPA process lines, including oxidation reactors, account for less than 1 percent of all hydrogen fluoride emissions from the source category. Therefore, the amendments should not appreciably increase the risk for any populations.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: September 13, 2017.

E. Scott Pruitt,
Administrator.

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

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

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

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

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

■ 2. Section 63.605(d)(1)(ii)(A) is revised to read as follows:

§ 63.605 Operating and monitoring requirements.

- * * * * *
- (d) * * *
- (1) * * *
- (ii) * * *

(A) The allowable range for the daily averages of the pressure drop across an absorber and of the flow rate of the absorber liquid to each absorber in the process absorbing system, or secondary voltage for a wet electrostatic

precipitator, is ± 20 percent of the baseline average value determined in paragraph (d)(1)(i) of this section. The Administrator retains the right to reduce the ± 20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ± 10 percent under any instance.

* * * * *

■ 3. Section 63.608 is amended by adding paragraphs (e) and (f) to read as follows:

§ 63.608 General requirements and applicability of general provisions of this part.

* * * * *

(e) If you use blower design capacity to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section calculations showing how you determined the maximum possible gas flow rate through the absorber based on the blower's specifications (including any adjustments you made for pressure drop).

(f) If you use a regression model to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section the calculations that were used to develop the regression model, including the

calculations you use to convert amperage of the blower to brake horsepower. You must describe any constants included in the equations (e.g., efficiency, power factor), and describe how these constants were determined. If you want to change a constant in your calculation, then you must conduct a regression model verification to confirm the new value of the constant. In addition, the site-specific monitoring plan must be updated annually to reflect the data used in the annual regression model verification that is described in Table 3 to this subpart.

Table 1 to Subpart AA of Part 63 [Amended]

■ 4. Table 1 to Subpart AA of Part 63, footnote "c" is amended by removing the text "August 19, 2016," and adding the text "August 19, 2018," in its place.

Table 2 to Subpart AA of Part 63 [Amended]

■ 5. Table 2 to Subpart AA of Part 63, footnote "c" is amended by removing the text "August 19, 2016," and adding the text "August 19, 2018," in its place.

■ 6. Table 3 to subpart AA of part 63 is amended by:

- a. Revising the column headings for "And you must monitor . . ." and "And . . .";
- b. Revising the entry for "Install CPMS for liquid and gas flow at the inlet of the absorber"; and
- c. Adding footnotes "a" through "d" at the end of the table.

The revisions and additions read as follows:

TABLE 3 TO SUBPART AA OF PART 63—MONITORING EQUIPMENT OPERATING PARAMETERS

You must . . .	If . . .	And you must monitor . . . ^a	And . . . ^a
*	*	*	*
Install CPMS for liquid and gas flow at the inlet of the absorber ^b .	Your absorber is designed and operated with pressure drops of 5 inches of water column or less; or. Your absorber is designed and operated with pressure drops of 5 inches of water column or more, and you choose to monitor the liquid-to-gas ratio, rather than only the influent liquid flow, and you want the ability to lower liquid flow with changes in gas flow.	Liquid-to-gas ratio as determined by dividing the influent liquid flow rate by the gas flow rate through the absorber. The units of measure must be consistent with those used to calculate this ratio during the performance test.	You must determine the gas flow rate through the absorber by: Measuring the gas flow rate at the absorber inlet or outlet; Using the blower design capacity, with appropriate adjustments for pressure drop; ^c or Using a regression model. ^d
*	*	*	*

^a To monitor an operating parameter that is not specified in this table (including process-specific techniques not specified in this table to determine gas flow rate through an absorber), you must request, on a site-specific basis, an alternative monitoring method under the provisions of 40 CFR 63.8(f).

^bFor new sources that commence construction or reconstruction after August 19, 2015, the compliance date is immediately upon startup. For existing sources, and new sources that commence construction or reconstruction after December 27, 1996, and on or before August 19, 2015, if your absorber is designed and operated with pressure drops of 5 inches of water column or less, then the compliance date is August 19, 2018. In the interim, for existing sources, and new sources that commence construction or reconstruction after December 27, 1996, and on or before August 19, 2015, with an absorber designed and operated with pressure drops of 5 inches of water column or less, you must comply with one of the following: (i) The monitoring requirements in this Table 3 for absorbers designed and operated with pressure drops of 5 inches of water column or less; (ii) the applicable monitoring provisions included in a permit issued under 40 CFR part 70 to assure compliance with subpart AA; (iii) the applicable monitoring provisions of an Alternative Monitoring Plan approved pursuant to § 63.8(f); or (iv) install CPMS for pressure at the gas stream inlet and outlet of the absorber, and monitor pressure drop through the absorber.

^cIf you select this option, then you must comply with § 63.608(e). The option to use blower design capacity is intended to establish the maximum possible gas flow through the absorber; and is available regardless of the location of the blower (inlet or effluent), as long as the gas flow rate through the absorber can be established. Establish the minimum liquid-to-gas ratio operating limit by dividing the minimum liquid flow rate to the absorber (determined during a performance test) by the maximum possible gas flow rate through the absorber (determined using blower design capacity).

^dIf you select this option, then you must comply with § 63.608(f). The regression model must be developed using direct measurements of gas flow rate, and design fan curves that correlate gas flow rate to static pressure (*i.e.*, fan suction pressure) and brake horsepower of the blower. You must conduct an annual regression model verification using direct measurements of gas flow rate to ensure the correlation remains accurate. Direct measurements of gas flow rate used to develop or verify regression models may be collected during, or separately from, the annual performance testing that is required in § 63.606(b).

■ 7. Table 4 to subpart AA of part 63 is amended by revising the entry for “Influent liquid flow rate and gas stream flow rate” and adding footnote “a” at the end of the table to read as follows:

TABLE 4 TO SUBPART AA OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES

For the operating parameter applicable to you, as specified in Table 3	You must establish the following operating limit	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies		
		Data measurement	Data recording	Data averaging period for compliance
*	*	*	*	*
Influent liquid flow rate and gas stream flow rate.	Minimum influent liquid-to-gas ratio ^a	Continuous	Every 15 minutes ...	Daily.
*	*	*	*	*

^a If you select the regression model option to monitor influent liquid-to-gas ratio as described in Table 3 to this subpart, then you must also continuously monitor (*i.e.*, record every 15 minutes, and use a daily averaging period) blower amperage, blower static pressure (*i.e.*, fan suction pressure), and any other parameters used in the regression model that are not constants.

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

■ 8. Section 63.625(d)(1)(ii)(A) is revised to read as follows:

§ 63.625 Operating and monitoring requirements.

- * * * * *
- (d) * * *
- (1) * * *
- (ii) * * *

(A) The allowable range for the daily averages of the pressure drop across an absorber and of the flow rate of the absorber liquid to each absorber in the process absorbing system, or secondary voltage for a wet electrostatic precipitator, is ±20 percent of the baseline average value determined in paragraph (d)(1)(i) of this section. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source’s level of emissions is near the

value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

* * * * *

■ 9. Section 63.628 is amended by adding paragraphs (e) and (f) to read as follows:

§ 63.628 General requirements and applicability of general provisions of this part.

* * * * *

(e) If you use blower design capacity to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section calculations showing how you determined the maximum possible gas flow rate through the absorber based on the blower’s specifications (including any adjustments you made for pressure drop).

(f) If you use a regression model to determine the gas flow rate through the

absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section the calculations that were used to develop the regression model, including the calculations you use to convert amperage of the blower to brake horsepower. You must describe any constants included in the equations (*e.g.*, efficiency, power factor), and describe how these constants were determined. If you want to change a constant in your calculation, then you must conduct a regression model verification to confirm the new value of the constant. In addition, the site-specific monitoring plan must be updated annually to reflect the data used in the annual regression model verification that is described in Table 3 to this subpart.

■ 10. Table 3 to subpart BB of part 63 is amended by:

- a. Revising the column headings for “And you must monitor . . .” and “And . . .”;

■ b. Revising the entry for “Install CPMS for liquid and gas flow at the inlet of the absorber”; and

■ c. Adding footnotes “a” through “d” at the end of the table.

The revisions and additions read as follows:

TABLE 3 TO SUBPART BB OF PART 63—MONITORING EQUIPMENT OPERATING PARAMETERS

You must . . .	If . . .	And you must monitor . . . ^a	And . . . ^a
*	*	*	*
Install CPMS for liquid and gas flow at the inlet of the absorber ^b .	Your absorber is designed and operated with pressure drops of 5 inches of water column or less; or, Your absorber is designed and operated with pressure drops of 5 inches of water column or more, and you choose to monitor the liquid-to-gas ratio, rather than only the influent liquid flow, and you want the ability to lower liquid flow with changes in gas flow.	Liquid-to-gas ratio as determined by dividing the influent liquid flow rate by the gas flow rate through the absorber. The units of measure must be consistent with those used to calculate this ratio during the performance test.	You must determine the gas flow rate through the absorber by: Measuring the gas flow rate at the absorber inlet or outlet; Using the blower design capacity, with appropriate adjustments for pressure drop; ^c or Using a regression model. ^d
*	*	*	*

^aTo monitor an operating parameter that is not specified in this table (including process-specific techniques not specified in this table to determine gas flow rate through an absorber), you must request, on a site-specific basis, an alternative monitoring method under the provisions of § 63.8(f).

^bFor new sources that commence construction or reconstruction after August 19, 2015, the compliance date is immediately upon startup. For existing sources, and new sources that commence construction or reconstruction after December 27, 1996, and on or before August 19, 2015, if your absorber is designed and operated with pressure drops of 5 inches of water column or less, then the compliance date is August 19, 2018. In the interim, for existing sources, and new sources that commence construction or reconstruction after December 27, 1996, and on or before August 19, 2015, with an absorber designed and operated with pressure drops of 5 inches of water column or less, you must comply with one of the following: (i) The monitoring requirements in this Table 3 for absorbers designed and operated with pressure drops of 5 inches of water column or less; (ii) the applicable monitoring provisions included in a permit issued under 40 CFR part 70 to assure compliance with subpart BB; (iii) the applicable monitoring provisions of an Alternative Monitoring Plan approved pursuant to § 63.8(f); or (iv) install CPMS for pressure at the gas stream inlet and outlet of the absorber, and monitor pressure drop through the absorber.

^cIf you select this option, then you must comply with § 63.628(e). The option to use blower design capacity is intended to establish the maximum possible gas flow through the absorber; and is available regardless of the location of the blower (influent or effluent), as long as the gas flow rate through the absorber can be established. Establish the minimum liquid-to-gas ratio operating limit by dividing the minimum liquid flow rate to the absorber (determined during a performance test) by the maximum possible gas flow rate through the absorber (determined using blower design capacity).

^dIf you select this option, then you must comply with § 63.628(f). The regression model must be developed using direct measurements of gas flow rate, and design fan curves that correlate gas flow rate to static pressure (*i.e.*, fan suction pressure) and brake horsepower of the blower. You must conduct an annual regression model verification using direct measurements of gas flow rate to ensure the correlation remains accurate. Direct measurements of gas flow rate used to develop or verify regression models may be collected during, or separately from, the annual performance testing that is required in § 63.626(b).

■ 11. Table 4 to subpart BB of part 63 is revised to read as follows:

TABLE 4 TO SUBPART BB OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES

For the operating parameter applicable to you, as specified in Table 3 . . .	You must establish the following operating limit during your performance test . . .	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies . . .		
		Data measurement	Data recording	Data averaging period for compliance
Absorbers (Wet Scrubbers)				
Influent liquid flow Influent liquid flow rate and gas stream flow rate.	Minimum inlet liquid flow Minimum influent liquid-to-gas ratio ^a	Continuous	Every 15 minutes . . .	Daily.
		Continuous	Every 15 minutes . . .	Daily.
For the operating parameter applicable to you, as specified in Table 3.	You must establish the following operating limit.	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies . . .		
		Data measurement	Data recording	Data averaging period for compliance.
Pressure drop	Pressure drop range	Continuous	Every 15 minutes . . .	Daily.
Sorbent Injection				
Sorbent injection rate	Minimum injection rate	Continuous	Every 15 minutes . . .	Daily.

TABLE 4 TO SUBPART BB OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES—Continued

For the operating parameter applicable to you, as specified in Table 3	You must establish the following operating limit during your performance test	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies		
		Data measurement	Data recording	Data averaging period for compliance
Sorbent injection carrier gas flow rate	Minimum carrier gas flow rate	Continuous	Every 15 minutes ...	Daily.
Fabric Filters				
Alarm time	Maximum alarm time is not established on a site-specific basis but is specified in § 63.605(f)(9).	Continuous	Each date and time of alarm start and stop.	Maximum alarm time specified in § 63.605(f)(9).
Wet Electrostatic Precipitator				
Secondary voltage	Secondary voltage range	Continuous	Every 15 minutes ...	Daily.

[FR Doc. 2017-20171 Filed 9-27-17; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2017-0213; FRL-9968-68-OAR]

RIN 2060-AT43

Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to correct an editing oversight that led to a potential conflict in a prior rulemaking as to whether or not containers holding two pounds or less of non-exempt substitute refrigerants for use in motor vehicle air conditioning that are not equipped with a self-sealing valve can be sold to persons that are not certified technicians, provided those small cans were manufactured or imported prior to January 1, 2018. This action clarifies that those small cans may continue to be sold to persons that are not certified as technicians under sections 608 or 609 of the Clean Air Act.

DATES: This rule is effective on December 27, 2017 without further notice, unless EPA receives adverse comment by October 30, 2017. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-

OAR-2017-0213, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sara Kemme by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone: (202) 566-0511; or by email: kemme.sara@epa.gov.

SUPPLEMENTARY INFORMATION

I. Why is EPA using a direct final rule?

EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This rule makes a minor change in regulatory text, which is intended to resolve a potential conflict in the current regulatory text

and to ensure that the regulatory text conforms to the EPA’s intention when finalizing the regulatory text at issue. However, in the “Proposed Rules” section of today’s **Federal Register**, we are publishing a separate document that will serve as the proposed rule to make this revision to the regulatory text if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. In this action, EPA is not making, and is not seeking comment on, any changes to the regulations at 40 CFR part 82, subpart F other than the revision discussed in this notice. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on the proposed rule. If no adverse comment is received by October 30, 2017, this direct final rule will be effective on December 27, 2017 without further notice and no further action will be taken on the proposed rule.

II. Does this action apply to me?

Categories and entities potentially affected by this action include entities that distribute or sell small cans of refrigerant for use in motor vehicle air conditioning (MVAC). Regulated entities include, but are not limited to, manufacturers and distributors of small cans of refrigerant (NAICS codes 325120, 441310, 447110) such as automotive parts and accessories stores and industrial gas manufacturers. This list is not intended to be exhaustive, but rather to provide a guide for readers

operations and protect infrastructure and property without COTP permission.

(e) **Enforcement.** The Coast Guard vessels enforcing this section can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz). The cognizant COTP and his or her designated representatives can be contacted at telephone number listed in paragraph (d)(2) of this section.

Dated: August 2, 2017.

Meredith L. Austin,

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

[FR Doc. 2017-17748 Filed 8-21-17; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2007-0113; FRL-9966-66-Region 4]

Air Plan Approval; Georgia: Permit Exemptions and Definitions; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule: withdrawal.

SUMMARY: Due to adverse comments received, the Environmental Protection Agency (EPA) is withdrawing the June 29, 2017, direct final rule that would have approved a revision to the Georgia State Implementation Plan (SIP) concerning changes to existing minor source permitting exemptions and a definition related to minor source permitting exemptions. EPA stated in the direct final rule that if EPA received adverse comments by July 31, 2017, the rule would be withdrawn and not take effect.

DATES: The direct final rule published at 82 FR 29418 on June 29, 2017, is withdrawn, effective August 22, 2017.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Phone number: (404) 562-9089; Email: akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION: On June 29, 2017 (82 FR 29418), EPA published a direct final rulemaking to approve portions of a SIP revision submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (GA EPD), on September 19, 2006, with a clarification submitted on November 6,

2006. The SIP submission included changes to existing minor source permitting exemptions and a definition related to minor source permitting exemptions. On June 29, 2017 (82 FR 29469), EPA also published an accompanying rulemaking proposing to approve the portions of the aforementioned SIP revision in the event that EPA received adverse comments on the direct final rulemaking.

In the direct final rulemaking, EPA explained that the Agency was publishing the rule without prior proposal because the Agency viewed the submittal as a non-controversial SIP amendment and anticipated no adverse comments. Further, EPA explained that the Agency was publishing a separate document in the proposed rules section of the **Federal Register** to serve as the proposal to approve the SIP revision should an adverse comment be filed. EPA also noted that the rule would be effective on August 28, 2017, without further notice unless the Agency received adverse comment by July 31, 2017. EPA explained that if the Agency received such comments, then EPA would publish a document withdrawing the final rule and informing the public that the rule would not take effect. It was also explained that all public comments received would then be addressed in a subsequent final rule based on the proposed rule, and that EPA would not institute a second comment period on this action. The public was advised that if no comments were received that the rule would be effective on August 28, 2017, with no further actions on the proposed rule.

On July 31, 2017, EPA received one set of adverse comments from a single Commenter representing four individual groups. As a result of the comments received, EPA is withdrawing the direct final rule approving changes to existing minor source permitting exemptions and a definition related to minor source permitting exemptions into the Georgia SIP. If EPA determines that it is appropriate to finalize the proposed approval of these changes to the Georgia SIP, EPA will publish a final rule which will include a response to the comments received. In the event that EPA determines that it is not appropriate to finalize the proposed approval related to these changes, EPA may issue a subsequent proposal with a different course of action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Particulate matter, Reporting and recordkeeping requirements.

Dated: August 10, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

■ Accordingly, the amendments to 40 CFR 52.570(c) published on June 29, 2017 (82 FR 29418), which were to become effective August 28, 2017, are withdrawn.

[FR Doc. 2017-17617 Filed 8-21-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2016-0442; FRL-9966-64-OAR]

RIN 2060-AT57

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry: Alternative Monitoring Method

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) published a direct final rule in the **Federal Register** on June 23, 2017 titled National Emission Standards for Hazardous Air Pollutants (NESHAP) From the Portland Cement Manufacturing Industry: Alternative Monitoring Method. This final rule removes the provisions that were added in the June 23, 2017, direct final rule and restores the provisions that were deleted in that rule.

DATES: Effective August 22, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Storey, Sector Policies and Programs Division (D243-04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1103; fax number: (919) 541-5450; and email address: storey.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA taking this action?

On June 23, 2017, the EPA published a direct final rule to amend the National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry (Portland Cement NESHAP) to allow an alternative monitoring method to be used to comply with hydrogen chloride (HCl) emissions standards (82 FR 28562). We stated in that direct final

rule that if we received adverse comment by July 3, 2017, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. At the same time, we published a parallel proposal, which proposed to make the same changes that were made in the direct final rulemaking (82 FR 28616). We subsequently received adverse comment on the direct final rule and the parallel proposal, but were unable to withdraw the direct final rule in a timely manner. In this document, we are taking final action to remove the provisions that were added to the Portland Cement NESHAP in the direct final rule and restoring the provisions that were deleted in that rule. This action will, thus, undo the changes made by the direct final rule. We are concurrently publishing a rule re-proposing and providing additional opportunity for public comment on the same amendment for the Portland Cement NESHAP that was proposed on June 23, 2017.

Although the EPA did provide an opportunity for public comment on the parallel proposal, the EPA also finds that there is “good cause” under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make the amendments discussed in this final rule without prior notice and comment. For this rule, notice and comment is unnecessary because it simply implements an action that the EPA indicated it would take if it received adverse comment on the direct final rule. The record for the provisions being restored is the same record that supported those provisions in the first instance and that was previously subject to notice and comment. These actions are effective as of August 22, 2017.

II. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulation (40

CFR part 63, subpart LLL) and has assigned OMB control number 2060–0416. This action does not change the information collection requirements.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. The rule is not subject to notice and comment requirements because the agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA is aware of one tribally owned Portland cement facility currently subject to 40 CFR part 63, subpart LLL that will be subject to this final rule. However, the provisions of this final rule are not expected to impose new or substantial direct compliance costs on tribal governments since the provisions in this direct final rule are extending the use of an alternative to the HCl monitoring provisions, including an option which provides operational flexibility. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per

the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

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

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: August 11, 2017.

E. Scott Pruitt,
Administrator.

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

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

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

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

Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

■ 2. Section 63.1349 is amended by adding paragraph (b)(6)(v)(H) to read as follows:

§ 63.1349 Performance testing requirements.

* * * * *

(b) * * *
(6) * * *
(v) * * *

(H) Paragraph (b)(6)(v) of this section expires on July 25, 2017 at which time the owner or operator must demonstrate compliance with paragraphs (b)(6)(i), (ii), or (iii).

* * * * *

■ 3. Section 63.1350 is amended by revising paragraph (l)(4) introductory text to read as follows:

§ 63.1350 Monitoring requirements.

* * * * *

(l) * * *

(4) If you monitor continuous performance through the use of an HCl CPMS according to paragraphs (b)(6)(v)(A) through (H) of § 63.1349, for any exceedance of the 30 kiln operating day HCl CPMS average value from the established operating limit, you must:

* * * * *

[FR Doc. 2017-17624 Filed 8-21-17; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 10-51 and 03-123; FCC 17-86]

Structure and Practices of the Video Relay Services Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a four-year rate plan to compensate video relay service (VRS) providers, amends its rules to permit-server based routing for VRS and point-to-point calls, authorizes the continued use of money from the Telecommunications Relay Service (TRS) Fund for Commission-supervised research and development, eliminates rules providing for a neutral video communications service platform, and reinstates the effectiveness of the rule incorporating the VRS Interoperability Profile technical standard.

DATES: Effective September 21, 2017. The compliance date for 47 CFR 64.621(b)(1) is December 20, 2017. The incorporation by reference of certain publication listed in the rules was approved by the Director of the Federal Register as of May 30, 2017.

FOR FURTHER INFORMATION CONTACT: Bob Aldrich, Consumer and Governmental Affairs Bureau at: (202) 418-0996, email Robert.Aldrich@fcc.gov, or Eliot Greenwald, Consumer and Governmental Affairs Bureau at: (202) 418-2235, email Eliot.Greenwald@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order, FCC 17-86, adopted and released on July 6, 2017, in CG Docket Nos. 10-51 and 03-123. The full text of this document will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (844) 432-2272 (videophone), or (202) 418-0432 (TTY).

Congressional Review Act

The Commission sent a copy of document FCC 17-86 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 17-86 does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

VRS Compensation—Allowable Cost Categories

1. In the Further Notice of Proposed Rulemaking (FNPRM), FCC 17-26, published at 82 FR 17613, April 12, 2017, the Commission stated its intention not to reopen questions concerning the categories of expenses

that should be considered allowable costs for VRS compensation. Various parties commenting in this proceeding nonetheless urge that the Commission re-open the matter of allowing costs associated with customer premise equipment (CPE), numbering, outreach, and research and development (R&D). In addition, Sorenson Communications, LLC (Sorenson) raises new concerns about allowing compensation for imputed intellectual property. These issues are beyond the scope of the rulemaking. The Commission has previously considered and disallowed compensation for each of these categories, except intellectual property, which is addressed below.

2. *No reason to reopen previously settled disallowance issues.* No party provides a compelling reason to reopen the above issues in this proceeding, especially in the absence of Administrative Procedure Act (APA) notice. The Commission does not agree that circumstances have changed dramatically and sees no material difference from prior proceedings where these issues were addressed.

3. Even if the issues were not already settled and there was APA notice regarding them, the Commission would not be persuaded by arguments to expand allowable costs. Equalizing all VRS-related costs to a voice telephone user's costs is not part of the Commission's mandate under section 225 of the Act. Congressional intent to equalize either network access rates or equipment costs for TRS and voice service users is not evident in the text of this narrowly drawn provision, its surrounding context, or its legislative history. In 1990, the year of section 225's enactment, all TRS calls took place between individuals who used TTYs and voice users. But the high costs of TTY service rates and equipment were matters of public awareness and were being addressed through state and federal action outside the relay requirements of section 225 of the Act. Regarding service costs, the plain text of this section demonstrates that it solely was intended to prevent relay users from incurring the added costs of routing TRS calls through remote relay centers that lie outside the geographical locations of the parties to a relay call, and nothing more. Congress had knowledge about, and ample opportunity to direct the Commission to equalize telephone service costs for TTY users at the time of section 225's enactment, yet it specifically chose not to do so. Accordingly, the discrepancy between the higher service costs for a broadband connection needed to achieve access to VRS and the costs of

substantially change the agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. (See also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 307(d)(1)), indicating that the good cause provisions in subsection 553(b) of the APA continue to apply to this type of rulemaking under section 307(d) of the CAA.)

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference.

Dated: June 2, 2017.

Sarah Dunham,

Acting Assistant Administrator.

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

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. In § 60.17:

■ a. Redesignate paragraphs (h)(191) through (202), (204), (205), and (207) as follows:

Old paragraph	New paragraph
(h)(191)	(h)(192)
(h)(192)	(h)(193)
(h)(193)	(h)(194)
(h)(194)	(h)(195)
(h)(195)	(h)(196)
(h)(196)	(h)(197)
(h)(197)	(h)(198)
(h)(198)	(h)(199)
(h)(199)	(h)(200)
(h)(200)	(h)(201)
(h)(201)	(h)(204)
(h)(202)	(h)(209)
(h)(204)	(h)(205)
(h)(205)	(h)(207)
(h)(207)	(h)(208)

■ b. Add paragraphs (h)(191) and (h)(202).

The additions read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(191) ASTM D6911–15, Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis, approved January 15, 2015, IBR approved for appendix A–8: Method 30B.

* * * * *

(202) ASTM E617–13, Standard Specification for Laboratory Weights

and Precision Mass Standards, approved May 1, 2013, IBR approved for appendix A–3: Methods 4, 5, 5H, 5I, and appendix A–8: Method 29.

* * * * *

[FR Doc. 2017–12968 Filed 6–22–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2016–0442; FRL–9964–14–OAR]

RIN 2060–AT57

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry: Alternative Monitoring Method

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to amend the National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry. This direct final rule provides a compliance alternative for sources that would otherwise be required to use a hydrogen chloride (HCl) continuous emissions monitoring system (CEMS) to demonstrate compliance with the HCl emissions limit. This compliance alternative is needed due to the current unavailability of the HCl calibration gases used for CEMS quality assurance purposes.

DATES: This rule is effective on July 5, 2017 without further notice, unless the EPA receives significant adverse comment by July 3, 2017. If the EPA receives significant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0442, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Storey, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1103; fax number: (919) 541–5450; and email address: storey.brian@epa.gov.

SUPPLEMENTARY INFORMATION: *Organization of This Document.* The information in this preamble is organized as follows:

- I. General Information
 - A. Why is the EPA using a direct final rule?
 - B. Does this direct final rule apply to me?
 - C. What should I consider as I prepare my comments for the EPA?
- II. What are the amendments made by this direct final rule?
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act (NTTAA)
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act (CRA)

I. General Information

A. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and do not anticipate significant adverse comment. However, in the “Proposed Rules”

section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to amend the National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, if the EPA receives significant adverse comments on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

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

B. Does this direct final rule apply to me?

Categories and entities potentially regulated by this direct final rule include:

Category	NAICS code ¹
Portland cement manufacturing facilities.	327310

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this direct final rule. To determine whether your facility is affected, you should examine the applicability criteria in 40 CFR 63.1340. If you have questions regarding the applicability of any aspect of this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13.

C. What should I consider as I prepare my comments for the EPA?

Do not submit information containing CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2016-0442.

II. What are the amendments made by this direct final rule?

Under the rule published in 2013 (78 FR 10006, February 12, 2013), the owner or operator of a kiln subject to the emission limits for HCl in 40 CFR 63.1343 may demonstrate compliance by one of the following methods:

- Option 1—An owner or operator of a kiln may demonstrate compliance by operating a CEMS meeting the requirements of performance specification (PS) 15, PS-18, or any other PS for HCl CEMS in appendix B to part 60, with compliance based on a 30-kiln operating day rolling average.
- Option 2—If the kiln is controlled using a wet scrubber, tray tower, or dry scrubber, the owner or operator, as an alternative to using a CEMS, may demonstrate compliance with the HCl limit using one of two options, described below.

Under Option 2, a performance test must be conducted by the owner or operator using Method 321. While conducting the Method 321 performance test (note Method 321 is the HCl stack testing performance method required by this rule), the owner or operator must simultaneously measure a control device parameter in order to establish a site-specific parameter limit that must be continuously monitored to determine compliance. If the kiln is controlled using a wet scrubber or tray tower, the owner or operator must also monitor the pressure drop across the scrubber and/or liquid flow rate and pH during the HCl performance test. If the kiln is controlled using a dry scrubber, the sorbent injection rate must be monitored during the performance test. As an alternative under Option 2, the owner or operator may establish sulfur dioxide (SO₂) as the operating parameter by measuring SO₂ emissions using a CEMS simultaneously with the Method 321 test and establishing the site-specific SO₂ limit that must then be continuously monitored to determine compliance with the HCl limit.

The 2013 rule requires that if a source chooses to (or is required to) monitor HCl emissions using a CEMS (Option 1), they must do so in accordance with PS-

15, PS-18, or any other PS for HCl CEMS in appendix B to part 60 of this chapter. (See 40 CFR part 60, appendix B.) Quality assurance procedures for HCl CEMS require that they be capable of reading HCl concentrations that span a range of possible emission levels below as well as above expected HCl emission concentrations. These quality assurance procedures require the use of National Institute of Standards and Technology (NIST)-traceable calibration gases for HCl.

Following our decision to create PS-18 and Procedure 6 for HCl continuous monitoring in 2012, the EPA worked with NIST and commercial gas vendors on development of NIST-traceable HCl gas standards to support the PS-18 in the 2013 rulemaking. While some of the low HCl concentration (<10 parts per million, or ppm) NIST-traceable gases have been available on a limited basis since 2013, the full range of HCl concentrations required to support all HCl emissions monitoring technologies (including integrated path that requires concentrations 100 times higher) are not widely available at this time.

The approach used by NIST in 2013 was to certify the Research Gas Material (RGM) cylinders as primary gas standards. These cylinders contain HCl gas and are provided to NIST by vendors for NIST certification, and subsequently used by the vendors as transfer standards to prepare the Gas Manufacturer Intermediate Standards (GMIS). The GMIS cylinders are then used to produce NIST-traceable gas cylinders that are sold commercially.¹ The initial approach used by NIST to certify the RGM cylinders was not viable in the long term as the instrumentation used by NIST largely depleted the HCl RGM gas volume, leaving little gas in the cylinder for the vendors to use in preparing GMIS materials. Because of this concern, NIST initiated development of an improved RGM certification procedure. The development has been hampered by the challenges presented in handling HCl gas. HCl gas is extremely reactive and difficult to handle in both gas cylinders and analytically. As such, it has taken considerable time for NIST to optimize the analytical equipment and approach to achieve the necessary uncertainty requirements (e.g., <1 percent uncertainty).

In addition, the commercial establishment of NIST-traceable gases is dependent on collaboration between

¹ EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards, U.S. EPA, Office of Research and Development, EPA/600/R-12/531, May 2012.

NIST and the specialty gas vendors. There are a limited number of vendors providing the stable, accurate, low and high concentration cylinder gases to NIST to certify as RGMs. Once the RGMs are available, the specialty gas vendors must complete a series of procedures to establish the certainty of their products which adds to the time to achieve wide commercial availability.

As a result, on July 25, 2016 (81 FR 48356), the EPA provided an additional compliance alternative for sources that would otherwise be required to use an HCl CEMS (Option 1). The alternative was provided for a period of 1 year. In the alternative, the HCl CEMS was still required to be installed and operated, but actual compliance with the HCl emissions limit was determined by a three-run stack test. The HCl CEMS still provided a continuous readout of HCl emissions, but because the CEMS was not calibrated with the required NIST-traceable calibration gases, the HCl measurement was not considered to be sufficiently accurate on an absolute basis for compliance. However, it was found to be sufficient to indicate any relative change in HCl emissions occurring subsequent to the compliance test. Therefore, the HCl CEMS under the compliance alternative functioned as a continuous parameter monitoring system (CPMS), as in the case of the particulate matter (PM) CPMS requirement (see 78 FR 10014–10015, 10019–10020, February 12, 2013).

It is the EPA's understanding that the availability of NIST-traceable calibration gases for HCl has not changed since the compliance alternative approval in 2016. Thus, the EPA intends to extend the use of this compliance alternative until such time as the NIST-traceable calibration gases for HCl become readily available.

Under this extension of the compliance alternative, the owner or operator will demonstrate initial compliance by conducting a performance test using Method 321 and will monitor compliance with an operating parameter limit through use of the HCl CEMS operating as a HCl CPMS. For the HCl CPMS, the owner or operator will use the average HCl CPMS indicated output, typically displayed as parts per million by volume (ppmv), wet basis HCl recorded at in-stack oxygen concentration during the HCl performance test to establish the operating limit. To determine continuous compliance with the operating limit, the owner or operator will record the indicated HCl CPMS output data for all periods when the process is operating and use all the HCl CPMS data, except data obtained during

times of monitor malfunctions. Thus, continuous compliance with the operating limit will be demonstrated by using all valid hourly average data collected by the HCl CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (indicated ppm) on a 30-kiln operating day rolling average basis, updated at the end of each new kiln operating day. An exceedance of the kiln 30-day operating limit would trigger evaluation of the control system operation and resetting the operating limit based on a new correlation with performance testing. For kilns with inline raw mills, performance testing and monitoring HCl to establish the site specific operating limit must be conducted during both raw mill on and raw mill off conditions.

As is the case for the PM CPMS requirements (see 40 CFR 63.1349(b)(1)(i)), this alternative for HCl compliance monitoring includes a scaling factor of 75 percent of the emission standard as a benchmark (2.25 ppmv, dry basis at 7-percent oxygen). Sources that choose this option will conduct a Method 321 test to determine compliance with the HCl emissions standard and during this testing will also monitor their HCl CPMS output in indicated ppm to determine where their HCl CPMS output would intersect 75 percent of their allowed HCl emissions, and set their operating level at that ppm output. This scaling procedure alleviates re-testing concerns for sources that operate well below the emission limit and provides greater operational flexibility while assuring continuous compliance with the HCl emission standard. For sources whose Method 321 compliance tests place them at or above 75 percent of the emission standard, their operating limit is determined by the average of three Method 321 test runs (for sources with no inline raw mill) or the time weighted average of six Method 321 test runs (for kilns with inline raw mills). By adopting a scaling factor as well as the use of 30 days of averaged HCl CPMS measurements, the parametric limit in no way imposes a stringency level higher than the level of the HCl emissions standard and will avoid triggering unnecessary retests for many facilities, especially for the lower-emitting sources.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulation (40 CFR part 63, subpart LLL) and has assigned OMB control number 2060–0416. This action does not change the information collection requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not create any new requirements or burdens and no costs are associated with this direct final action.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA is aware of one tribally owned Portland cement facility currently subject to 40 CFR part 63, subpart LLL that will be subject to this direct final rule. However, the provisions of this direct final rule are not expected to impose new or substantial direct compliance costs on tribal governments since the provisions in this direct final rule are

extending the use of an alternative to the HCl monitoring provisions, including an option which provides operational flexibility. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

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

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: June 19, 2017.

E. Scott Pruitt,
Administrator.

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

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

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

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

Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

§ 63.1349 [Amended]

■ 2. Section 63.1349 is amended by removing paragraph (b)(6)(v)(H).

■ 3. Section 63.1350 is amended by revising paragraph (l)(4) to read as follows:

§ 63.1350 Monitoring requirements.

* * * * *

(l) * * *

(4) If you monitor continuous performance through the use of an HCl CPMS according to § 63.1349(b)(6)(v)(A) through (G), for any exceedance of the 30-kiln operating day HCl CPMS average value from the established operating limit, you must:

* * * * *

[FR Doc. 2017–13185 Filed 6–22–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2017–0002: Internal Agency Docket No. FEMA–8485]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain

management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA’s Community Status Book (CSB). The CSB is available at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

DATES: The effective date of each community’s scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59.

Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.