



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Air Quality

TITLE-SERIES: 45-34

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Emission Standards for Hazardous Air Pollutants

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/28/2020 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Details in Public Notice

DATE WRITTEN COMMENT PERIOD ENDS: 07/28/2020 6:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: SANDRA ADKINS

ADDRESS: WVDEP - DIVISION OF AIR QUALITY

601 57TH STREET SE CHARLESTON WV 25304

EMAIL: dep.comments@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

## PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAPs) of 40 CFR Parts 61 and 63 and 40 CFR Part 65 to the extent referenced in 40 CFR Parts 61 and 63. The rule adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained under 40 CFR Parts 61 and 63. This rule also codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in § 112 (b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants under 40 CFR § 61.01(a).

## SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

### Summary of changes in the rule:

Revisions to the rule incorporate by reference amendments to the NESHAPs promulgated by the EPA under 40 C.F.R. Part 61 and 63 as of June 1, 2020.

Revisions to the rule include the annual incorporation by reference amendments of the NESHAPs promulgated by the EPA under 40 CFR Part 63 as of June 1, 2020, that include: (1) Asbestos - Final Approval for an Alternative Work Practice Standard for Asbestos Cement Pipe Replacement; (2) Asphalt Processing and Asphalt Roofing Manufacturing Residual Risk and Technology Review; (3) Boat Manufacturing and Reinforced Plastic Composites Production Risk and Technology Review; (4) Clay Ceramics Manufacturing; (5) Hydrochloric Acid Production Residual Risk and Technology Review; (6) Mercury and Air Toxics Standards (MATS) Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants; (7) Municipal Solid Waste Landfills Residual Risk and Technology Review; (8) Petroleum Refinery Sector; (9) Solvent Extraction for Vegetable Oil Production Residual Risk and Technology Review; (10) Stationary Combustion Turbines Residual Risk and Technology Review; and (11) Surface Coating of Metal Cans and Surface Coating of Metal Coil Residual Risk and Technology Reviews. Additional information is provided below.

### Statement of circumstances requiring the rule:

As provided in 40 C.F.R. §§ 61.04(b) and 63.12(b)(1), section 112 of the CAA directs the Administrator of the EPA to delegate to each State, when appropriate, the authority to implement and enforce standards and other requirements pursuant to section 112 for stationary sources located in that State. Revisions to this rule are necessary to maintain consistency with current federal regulations and for West Virginia to fulfill its responsibilities under the CAA and continue to be the primary enforcement authority for the national emission standards for hazardous air pollutants promulgated by the EPA under 40 C.F.R. Parts 61 and 63. Revisions to this rule include the annual incorporation by reference updates. Upon authorization and promulgation, 45CSR34 will be submitted to the EPA to fulfill federal obligations under the CAA, including delegations and authorizations.

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(g), updating state rules to comply with federal law requirements.

### Determination of Stringency:

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

### Consultation with the Environmental Protection Advisory Council:

The Environmental Protection Advisory Council received a copy of this proposed rule in advance of the June 23

meeting to discuss this rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed revisions to this rule should not impact revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed revisions to this rule should not impact special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The proposed revisions to this rule should not impact costs of state government beyond that resulting from currently applicable federal requirements, nor should it have an economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0

Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

**E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):**

The proposed revisions to this rule will have a minimal effect on the costs to the Division of Air Quality because they impose no additional requirements beyond current federal requirements.

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

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

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 C.F.R. 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 C.F.R. § 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. -- ~~June 1, 2020.~~

1.4. Effective Date. -- ~~June 1, 2020.~~

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 C.F.R. parts 61, 63 and 65, to the extent referenced in 40 C.F.R. parts 61 and 63, effective June 1, ~~2019~~ 2020.

**§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~~ as amended, 42 U.S.C. § 7401, et seq., ~~as amended~~.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 C.F.R. § 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 C.F.R. 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,

reconstructed, modified, or operated any source subject to the provisions of 40 C.F.R. 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 C.F.R. 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 C.F.R. Parts 61, 63 and 65, to the extent referenced in 40 C.F.R. Parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. Parts 61, 63 and 65, effective June 1, ~~2019~~ 2020, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 C.F.R. §§ 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 C.F.R. Part 63 and any provision related to § 112(r) of the CAA, notwithstanding any requirements of 45CSR30 shall be excluded;

4.1.c. Subparts DDDDDD, LLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWWW, ZZZZZ, HHHHHH, BBBBBB, CCCCCC, WWWWWW, XXXXXX, YYYYYY, ZZZZZZ, BBBBBB, CCCCCC, and DDDDDDD of 40 C.F.R. 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 C.F.R. Part 61 shall be excluded.

#### **§45-34-5. Secretary.**

5.1. Any and all references in 40 C.F.R. 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;

- 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.

stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

### **B. How does this action affect Indian country (18 U.S.C. 1151) in Utah?**

The EPA's approval of Utah's revised PWSS program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country in Utah generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Utah, in part or in full: The Goshute Reservation, the Navajo Indian Reservation, the reservation lands of the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, the Uintah and Ouray Reservation (subject to federal court decisions removing certain lands from Indian country status within the Uintah and Ouray Reservations), and the Washakie Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151. The EPA or eligible Indian tribes, as appropriate, will retain PWSS program responsibilities over public water systems in Indian country.

### **C. Requesting a Hearing**

Any member of the public may request a hearing on this determination within thirty (30) days of this notice. All requests shall include the following information: Name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of interest and information to be submitted at the hearing; and a signature of the interested individual or responsible official, if made on behalf of an organization or other entity. Frivolous or insubstantial requests for a hearing may be denied by the RA.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and in a newspaper of general circulation in the state. A notice will also be sent to both the person(s) requesting the hearing and the state. The hearing notice will include a statement of purpose of the hearing, information regarding time and location for the hearing, and the address and telephone number where interested persons may obtain further information. The RA will issue an order affirming or rescinding the determination upon review of the hearing record.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: May 28, 2019.

**Gregory Sopkin,**

*Regional Administrator, Region 8.*

[FR Doc. 2019-12182 Filed 6-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OAR-2017-0427; FRL-9994-29-OAR]**

**RIN 2060-AT73**

### **National Emission Standards for Hazardous Air Pollutants for Asbestos: Notice of Final Approval for an Alternative Work Practice Standard for Asbestos Cement Pipe Replacement**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; final approval.

**SUMMARY:** This document announces our approval of an alternative work practice (AWP) under the Clean Air Act (CAA) in response to a request to use new technology and work practices developed for removal and replacement of asbestos cement (A/C) pipe, which is regulated under the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Asbestos. This approval specifies the operating conditions, notifications, work practices, disposal, recordkeeping and reporting requirements that must be followed to demonstrate compliance with the NESHAP for Asbestos and the approved AWP.

**DATES:** The AWP request for the use of close tolerance pipe slurrification (CTPS) for replacement of A/C pipes is approved as of June 10, 2019.

**ADDRESSES:** The U.S. Environmental Protection Agency (EPA) has established a docket for this document under Docket ID No. EPA-HQ-OAR-2017-0427. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, Room

3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 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 Mr. Korbin Smith, Sector Policies and Programs Division (D243-04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2416; fax number: (919) 541-4991; and email address: [smith.korbin@epa.gov](mailto:smith.korbin@epa.gov).

For questions about the applicability of this action, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-1395; and email address: [cox.john@epa.gov](mailto:cox.john@epa.gov).

### **SUPPLEMENTARY INFORMATION:**

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

A/C asbestos cement  
ACM asbestos-containing material  
ACPRP asbestos cement pipe replacement project  
ACWM asbestos-containing waste material  
AD applicability determination  
ASTM American Society for Testing and Materials  
ASU Arizona State University  
AWP alternative work practice  
CAA Clean Air Act  
CFR Code of Federal Regulations  
CIPP cured-in-place pipe  
CTPS close tolerance pipe slurrification  
EPA Environmental Protection Agency  
HDD horizontal directional drill  
HEPA high efficiency particulate air  
NESHAP national emission standards for hazardous air pollutants  
OSHA Occupational Safety and Health Administration  
RACM regulated asbestos-containing material, as defined in 40 CFR 61.141  
VE visible emissions, as defined in 40 CFR 61.141

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

- I. Background
  - A. Summary
  - B. How do I obtain a copy of this document and other related information?
  - C. What is the Asbestos NESHAP and how does it regulate removal of A/C pipe?



- D. For A/C pipe replacement, what conventional work practices comport with the Asbestos NESHAP?
- E. How is an AWP approved?
- F. Upon what alternative did the EPA solicit comments?
- II. What comments were received on the AWP, and what are the EPA's responses to them?
- A. Comments Regarding Whether the EPA has Met Its Regulatory Requirements for Alternative Approval and Equivalency Determination
- B. Comments Regarding the Supervisor Requirements for the CTPS AWP
- C. Comments Regarding the Technical Procedure
- D. Comments Regarding the Comparison Between CTPS and Other Pipe Replacement Procedures
- E. Comments Regarding Inspection Requirements
- F. Comments Regarding Training and Certification
- G. Comments Regarding Notifications, Recordkeeping, and Reporting Requirements
- H. Comments Regarding Use of CTPS in Various Soil Types
- I. Comments Regarding Slurry, Its Management, and Disposal
- J. Comments Regarding Future Status of the New Pipe and Skim Coat
- K. Other Comments
- III. What are the EPA's decisions on suggested changes to the AWP?
- A. Changes to the Notification, Reporting, and Recordkeeping Requirements
- B. Clarifications to the Process Description
- C. Conducting a Thorough Inspection of A/C Pipe
- D. Changes to the Sampling and Analysis Requirements
- E. Decontamination Procedures
- F. Clarification to Disposal Requirements
- IV. What is the approved AWP for replacement of A/C pipe?
- A. What are the results of the EPA's review of the CTPS AWP?
- B. What inspection, operation, and maintenance requirements would apply?
- C. What notification, recordkeeping, and reporting requirements would apply?
- D. The CTPS Technique for A/C Pipe Replacement
- E. Sampling, Testing, and Utility Map Notation Requirements
- F. Trackable Pipeline Requirements
- G. Slurry Removal, Containment, Labeling, and Transportation Requirements
- H. Disposal Requirements
- I. Equipment Decontamination or Disposal
- J. Application of Asbestos NESHAP Requirements
- I. Background**
- A. Summary*
- In a **Federal Register** document dated April 25, 2018 (83 FR 18042), the EPA

provided public notice and solicited comment on a request under the CAA's Asbestos NESHAP for the use of an AWP used for replacement of A/C pipes. As explained in the notice, A/C pipes throughout the U.S. are aging and weakening, causing ruptures that waste fresh water; infiltrate and overburden publicly operated treatment works (POTWs); and pollute ground water when wastewater leaks into subsurface soils, streams, lakes, rivers, and oceans.

Because A/C pipes may be located beneath and beside major roadways and structures, and may overlap or lie beneath other utilities (*e.g.*, gas, electricity, cable), their replacement can potentially be problematic, especially in high density residential, industrial, and urban areas. These A/C pipes are potentially subject to regulation under the Asbestos NESHAP when they are replaced.

Categories and entities potentially affected by this action include those listed in Table 1 of this document.

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

NESHAP and source category	NAICS <sup>1</sup> code
Water treatment plants .....	221310
Distribution line, sewer and water, construction, rehabilitation, and repair .....	237110
Sewer main, pipe and connection, construction, rehabilitation, and repair .....	237110
Storm sewer construction, rehabilitation, and repair .....	237110
Irrigation systems construction, rehabilitation, and repair .....	237110
Water main and line construction, rehabilitation, and repair .....	237110
Pipeline rehabilitation contractors .....	237120
Horizontal drilling ( <i>e.g.</i> , underground cable, pipeline, sewer installation) .....	237990
Pipe fitting contractors .....	238220
Power, communication and pipeline right-of-way clearance (except maintenance) .....	238910
Pipeline transportation (except crude oil, natural gas, refined petroleum products) .....	486990
Pipeline terminal facilities, independently operated .....	488999
Pipeline inspection ( <i>i.e.</i> , visual) services .....	541990
Asbestos removal contractors .....	562910
Asbestos abatement services .....	562910

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this final action. To determine whether your asbestos cement (A/C) pipe replacement project (ACPRP) would be affected by this final action, you should examine the applicability criteria in the Asbestos NESHAP (40 CFR part 61, subpart M). If you have any questions regarding the applicability of any aspect of this final action, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

*B. How do I obtain a copy of this document and other related information?*

The docket number for this final action regarding the Asbestos NESHAP is Docket ID No. EPA-HQ-OAR-2017-0427. In addition to being available in the docket, an electronic copy of this document will also be available on the internet. The EPA will post a copy of this final action at <https://www.epa.gov/stationary-sources-air-pollution/asbestos-national-emission-standards-hazardous-air-pollutants> following official Agency signature. Following

publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same website.

*C. What is the Asbestos NESHAP and how does it regulate removal of A/C pipe?*

The Asbestos NESHAP is a set of work practice standards prescribed for the handling, processing, and disposal of asbestos-containing materials (ACM), and designed to minimize the release of asbestos into the atmosphere. Asbestos is a known human carcinogen and the primary route of exposure is through

inhalation of asbestos fibers. The EPA's intention in the Asbestos NESHAP was to distinguish between materials that would readily release asbestos fibers when damaged or disturbed and those materials that were unlikely to result in the release of significant amounts of asbestos fibers. If dry ACM can be crumbled, pulverized, or crushed to powder by hand pressure, it is considered friable. The potential for exposure to asbestos fibers is directly linked to the ACM potential to become friable, and then airborne. More information on the health effects of asbestos may be found at <https://www.epa.gov/asbestos/learn-about-asbestos#effects>. For more information on the Asbestos NESHAP and how it applies to A/C pipe, please see the 1990 Asbestos NESHAP amendments (55 FR 48406, November 20, 1990) and the document published on April 25, 2018 (83 FR 18042).

*D. For A/C pipe replacement, what conventional work practices comport with the Asbestos NESHAP?*

Asbestos Cement pipes are conventionally remediated in one of three ways: Cured-in place pipe (CIPP) lining, abandoned in place, and open trenching. The CIPP lining is used only on pipes that are still in good condition, and strong enough to withstand the daily pressures of their intended use. The CIPP lining is sprayed on the interior of unbroken, inline pipes, and is used to extend the useful life of the pipe. More information on various CIPP linings, formulation, and application is available in the docket to this document. Asbestos cement pipes may also be abandoned in place, with the new pipeline laid in a separate area. The EPA issued an applicability determination (AD) on A/C pipes that are abandoned in place, which is available in the docket for this document.

Open trenching is the practice under which the entire A/C pipe is excavated and open to the ambient air. After excavation, the A/C pipe is wet-cut into 6- and 8-foot sections using a snap cutter or similar tool, wrapped for containment, and removed for disposal. For more information on snap cutters and similar tools, see "Asbestos Pipe Safety Awareness and Compliance" and "Updated Procedures for Cutting and Handling Asbestos Cement Pipe Client Revision City of Richmond Nov 2008," available in the docket for this action. Guidance documents on open trenching work practices that comply with the Asbestos NESHAP have been developed by state and municipal agencies and are included in the docket for this

document for reference. The AWP was compared to open trenching because open trenching was the only conventional work practice that involves the replacement of A/C pipe.

*E. How is an AWP approved?*

As explained at proposal, the 40 CFR part 61 General Provisions include what the EPA must determine in order to approve an alternative means of emission limitation. At 40 CFR 61.12(d)(1) and (2), the General Provisions require that the alternative must achieve a reduction in emissions at least equivalent to the reduction achieved by the work practices required under the existing standard, and that the **Federal Register** document permitting the use of the alternative be published only after notice and an opportunity for a hearing.

Additionally, the Asbestos NESHAP itself contains specific provisions under which the EPA should review applications for prior written approval of an alternative emission control and waste treatment method. 40 CFR 61.150(a)(4) authorizes "[u]se [of] an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in 40 CFR 61.149(c)(2)." Before approval may be granted for an AWP under 40 CFR 61.150(a)(4), 40 CFR 61.149(c)(2) explains that a written application must be submitted to the Administrator demonstrating that the following criteria are met: (1) The alternative method will control asbestos emissions equivalent to currently required methods; (2) the suitability of the alternative method for the intended application; (3) the alternative method will not violate other regulations; and (4) the alternative method will not result in increased water pollution, land pollution, or occupational hazards.

*F. Upon what alternative did the EPA solicit comments?*

As stated in the proposal document at section V. Request for Comments, the EPA solicited comments on all aspects of this request for approval of CTPS as an AWP for the work practice standards specified in 40 CFR part 61, subpart M, the Asbestos NESHAP.

**II. What comments were received on the AWP, and what are the EPA's responses to them?**

The EPA received several comments that resulted in changes to the AWP from proposal. We are responding to some of the most significant comments in this document, including those comments that resulted in changes to

the AWP. Comments not appearing in this document are included in the Responses to Comments Document available in the docket (Docket ID No. EPA-HQ-OAR-2017-0427).

*A. Comments Regarding Whether the EPA Has Met Its Regulatory Requirements for Alternative Approval and Equivalency Determination*

*Comment:* Several commenters stated that the CTPS AWP is a safer and more efficient way to remove and replace A/C pipe, that it was likely to be better than open cut, more economical, and safer for the environment. One commenter added that he and his family have been in the underground pipe replacement business since the mid-1930's and that the CTPS AWP is the safest and most cost-effective way to replace A/C pipes. The commenter further offered his advisory services to the EPA in furtherance of the CTPS AWP. A commenter stated that the CTPS AWP is a less disruptive way to replace and upgrade water and sewer pipes than open trench replacement, and that both the environmental and social impacts of pipe replacement are reduced by the CTPS AWP. The commenter expressed a preference for a trenchless method of pipe replacement in their neighborhood.

*Response:* The EPA agrees that CTPS, at least in certain scenarios, presents a lower potential asbestos exposure than open trenching. Both methods meet the Asbestos NESHAP objective to minimize emissions of asbestos to the air when asbestos is disturbed. The asbestos materials for both methods are maintained in an adequately wet state during removal, transportation, and disposal. We agree with the commenter that the key to protecting the public health, and minimizing releases of asbestos to the atmosphere, is adherence to the work practices. We discussed in 83 FR 18047–48 of the April 25, 2018, document many of the attributes of CTPS, and we agree with the commenter that the CTPS procedure is also less disruptive to the public in general. We also note, as we discuss elsewhere in this document, that any applicable Occupational Safety and Health Administration (OSHA) personal protective equipment requirements (including for employees covered by 40 CFR part 763, subpart G) remain in effect and are not impacted in any way by our approval of this AWP.

*Comment:* The EPA received several comments questioning whether we met the regulatory requirements under both the General Provisions as well as the Asbestos NESHAP for the review and approval of AWP's under 40 CFR part 61

standards. Some commenters stated that the EPA should not approve the requested alternative because, in the commenters' opinion, the alternative did not meet these comparative objectives. One commenter was concerned that the CTPS AWP would not meet the Asbestos NESHAP requirements for the fourth objective (no increased land pollution) because the slurry may leak into the surrounding soils while, by comparison, chunks of A/C pipe can be easily picked up from the soil if broken or damaged during removal. Another commenter stated that, depending on the soil type surrounding the A/C pipe being replaced, the CTPS AWP could increase the amount of asbestos-containing waste material (ACWM) to be disposed.

*Response:* The Asbestos NESHAP authorizes "[u]se [of] an alternative emission control and waste treatment method that has received prior approval by the Administrator." In addressing the four approval criteria listed above, we evaluated (1) if the alternative method will control asbestos emissions equivalent to currently required methods; (2) if the alternative method is suitable for the intended application; (3) if the alternative method will not violate other regulations; and (4) if the alternative method will not result in increased water pollution, land pollution, or occupational hazards.

The Asbestos NESHAP does not prescribe a method for pipe replacement, but requires that the work practices used to remove, contain, and dispose of ACM release no visible emissions (VE) to the outside air (or control emissions). We evaluated the alternative and found that it meets all requirements for no VE, adequate wetting, waste handling, and disposal under the Asbestos NESHAP. Therefore, it satisfies the first criteria, that it controls asbestos emissions equivalently to the work practices of the standard.

Second, the CTPS AWP is specifically designed for the intended application. The primary consideration of the Asbestos NESHAP is to minimize emissions of asbestos to the air, which is accomplished by both open trench methods and by the CTPS AWP.

Third, the CTPS AWP does not violate other regulations, and does not supplant any other requirements pertaining to the removal, containment, transportation, or disposal of ACWM. We note specifically that any applicable OSHA requirements (including for employees covered by 40 CFR part 763, subpart G), which protect workers, remain in full effect.

Fourth, we believe use of the CTPS AWP will not result in increased water pollution, land pollution, or

occupational hazards compared with open-trench and replacement, which is not required by the Asbestos NESHAP, but has been accepted as a NESHAP-compliant method for A/C pipe replacement. We compared the CTPS AWP to open-trench replacement because it is the traditional procedure for A/C pipe replacement. The CTPS AWP only exposes A/C pipe sections that must be removed before replacement using the underground trenchless method. The bentonite clay provides a seal on the inner surface area of the annular space (tunnel) created by the CTPS equipment train and the surrounding soils, thereby trapping the slurry between the pipe perimeter and the soil, while preventing ground water intrusion into this closed space. The slurry is 'squeegeed out' of the close tolerance space between the cavity and the new pipe and is removed at the vertical access points. This results in lowering the exposure potential to workers and the general public, not an increase in the potential exposure. This sealed surface area prevents slurry from contaminating the surrounding soils, and the ACM (which is made nonfriable by the curing process of the cementitious slurry) is not free to migrate to the surface as a result of soil movement, such as frost heaves. See the April 25, 2018, document for more information on frost heaves, and see the document titled, "Bentonite Clay: Properties and Uses," in the docket to this action.

We are including in the docket a study conducted by Arizona State University (ASU) on the use of the horizontal direction drill (HDD) technique to lay underground pipe. While this was not a 'close tolerance' study, it does show that the bentonite clay effectively seals the annular space between the new pipe and the surrounding soil (evaluated in both sandy and clay soils), supports the soils above the vacant space, and prevents migration of soils into the space surrounding the new pipe. See "Evaluation of the Annular Space Region in Horizontal Directional Drilling Installations." Samuel T. Ariaratnam, Ph.D., P.Eng., ASU, 2001. The 2001 ASU study also presents in Section 2.1 an "Introduction to Drilling Fluids and Additives," which explains the properties of bentonite clay and use of both bentonite and drilling fluids in the HDD industry.

Both open trench replacement and the CTPS AWP use water to adequately wet the A/C. Additionally, the CTPS AWP uses drilling fluids and bentonite clay in suspension underground while the equipment train distributes these fluids

within the close-tolerance tunnel. As explained in 83 FR 18045, the purpose of the Asbestos NESHAP is to prevent excessive emissions of asbestos to the ambient air. Because the CTPS AWP conducts most of the pipe removal underground, sealing the cylindrical cavity before and during replacement with bentonite clay, the AWP prevents the migration of asbestos into the surrounding soils, and the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) that remains is both fixed and nonfriable on the new pipe. Additionally, water pollution is reduced when A/C wastewater and storm water pipes in poor condition are replaced, resulting in a reduction in water pollution; and fresh water is conserved when leaking A/C pipes are remediated. For further information on the CTPS process, see the document in the Docket to this rule, titled "Guidelines for Replacing Asbestos Cement Pipe by Close Tolerance Pipe Slurrification (CTPS)," Portland Utilities Construction Corporation, November 2018. While we considered this document during the development of the CTPS AWP, it predates the approval of the AWP. Any owner/operator performing the CTPS AWP must follow the guidelines stated in IV.D of this document.

We believe the use of the CTPS AWP will not result in increased water pollution, land pollution, or occupational hazards compared with open-trench and replacement, which is not required by the Asbestos NESHAP, but has been accepted as a NESHAP-compliant method for A/C pipe replacement. While open trenching exposes the entire length of A/C pipe to the workers and the atmosphere during removal operations, the CTPS AWP exposes A/C pipe only at the trenches at the beginning and end of the project, and at vertical access points. These areas are at the beginning of the ACPRP, the end of the ACPRP, and at a few points in between as determined by the pipe depth, soil type (used to estimate the drag on the line), knuckles, joints, dropped sections of pipe, or broken sections of pipe. Workers are not exposed to the slurry as it is underground during pipe replacement and in containment at both the vertical access points and the vacuum truck. The slurry is contained during transportation, and is disposed of in sealed leak-tight containers. However, if workers' clothing or other materials became contaminated with slurry, it would need to be treated as ACWM and disposed of accordingly (see the definition of ACWM at 40 CFR 61.141).

For this reason, we recommend workers wear disposable coveralls that can be disposed of as ACWM at the end of the ACPRP. We also are clarifying that any applicable OSHA requirements (including for employees covered by 40 CFR part 763, subpart G), which protect workers, remain in full effect. We find that the CTPS AWP will not result in increased occupational hazards compared with open trenching methods.

When replacing an A/C pipe with a new pipe of the same size (size-on-size), the A/C pipe slurry mixture is not significantly impacted by the outer soil composition, and that soil type does not play a significant role in the amount of ACWM to be disposed of when using the CTPS AWP.

The term 'close tolerance' is used to denote that the soil displacement is at a minimum for an HDD technology. The volume of waste generated using the CTPS AWP is less than that generated using open trenching because pipe disposal using open trenching landfills the A/C pipe in its unaltered form, so most of the space is taken up by the interior open space of the pipe. In comparison, CTPS AWP waste has no open, empty spaces, and all ACM waste is compactly disposed in containment.

However, when simultaneously replacing the A/C pipe with a new pipe that has a larger diameter (upsizing), the additional soil from the perimeter of the old pipe is removed with the slurry while pulling the new pipe behind the equipment train. For example, replacing an 8-inch old pipe with a 12-inch new pipe would potentially include the soil within a 2-inch margin of the old pipe. However, this is a matter of pipe size, not soil type; that is, it is dependent upon the size of new pipe in relation to the size of the old pipe being replaced.

The soil displacement would be similar when replacing an A/C pipe with a larger pipe using open trenching and, depending on the condition of the A/C pipe, could result in a similar amount of ACWM to be disposed. For instance, conducting open trenching on an A/C pipe in poor condition could easily result in the contamination of all the surrounding soil. In that case, the soil surrounding the pipe would have to be disposed as ACWM (see 40 CFR 61.150). In such a case, the asbestos contaminating the soils would be in a friable state, rather than in a nonfriable state as it is with the CTPS procedure. We, therefore, think the two methods are generally equivalent in this regard.

We, therefore, believe the CTPS AWP does not result in an increase in water pollution, land pollution, or occupational hazards, and that it is at least equivalent to open trench

replacement procedures for A/C pipe replacement.

*Comment:* A commenter stated that the EPA improperly allowed comparison of the CTPS AWP as demonstrated on a clay pipe, rather than on an A/C pipe, which would have more accurately demonstrated the effectiveness of the alternative. The commenter noted that the slurry from clay pipe does not necessarily re-harden into a non-friable material.

*Response:* The submitted evidence of the CTPS AWP shows that A/C pipe behaves similarly to the way clay pipe behaves (*i.e.*, is ground to a fine powder and suspends in slurry with drilling fluids and bentonite clay) under the CTPS process. The demonstration on clay pipe in Greenville, South Carolina, was used to demonstrate the CTPS procedure to the EPA. The slurry sample that was collected, tested, and shown to withstand compressive strength tests at 72 and 75 pounds per square inch by an independent testing laboratory, was from A/C slurry collected from the CTPS AWP as used at an ACPRP in Tennessee.

*Comment:* A commenter asked if the emission reduction of friable asbestos under the CTPS AWP would be similar or more substantial than that obtained by the work practices for the removal and disposal practices currently required by the rule.

*Response:* We believe the potential for reducing exposure to asbestos using the CTPS AWP is similar or at least equivalent to the requirements of the existing rule. We discussed the environmental benefits of the CTPS AWP in 83 FR 18048. Further, we note that open trenching is not a work practice that is required by the Asbestos NESHAP, but we compared the CTPS process to open trenching because the work practices for open trenching comply with the Asbestos NESHAP requirements, and because open trenching is a replacement process, as opposed to re-lining or abandoning the A/C pipe in place.

*Comment:* We received two comments on the potential for cross-contamination from the slurry. One commenter surmised that worker exposure and potential for carry-home exposure from workers to family members would be greater, as compared to open trench removal methods. This commenter stated, "Anyone who works with slurry understands that this process is inherently messy. Slurry finds holes in its containment vessels, it splashes onto workers when being handled, and gets onto surrounding grounds and equipment even when there are no leaks in the containment process. Slurry dries

on the clothes of workers, on the ground and on the equipment used to manipulate it—all of which needs to be thoroughly cleaned before the project is shut down at the end of each shift." Another commenter added, "When an item contacts the asbestos-containing slurry, it becomes a potential source of future asbestos fiber release if and when the slurry hardens," adding that later decontamination measures increase the potential for exposure to asbestos. This commenter added that aggressive removal techniques such as hammering, abrading, and sawing are often used to remove ACM from surfaces, and that these methods also increase the potential for future exposure when conducted in uncontrolled conditions.

*Response:* As with any activity involving asbestos, precautions must be taken to prevent contamination of workers and equipment. With the exception of the trenches at the beginning and end of the project, and at vertical access points, the slurry is not accessible to workers, because it is an underground replacement process. The slurry is not in contact with workers under normal operating conditions, and all asbestos is maintained in an adequately wet slurry at all points where the slurry contacts the outside air. However, if workers' clothing or other materials became contaminated with slurry, it would need to be treated as ACWM and disposed of accordingly (see the definition of ACWM at 40 CFR 61.141). For this reason, we recommend workers wear disposable coveralls that can be disposed of as ACWM at the end of the ACPRP.

Persons conducting ACPRPs using the CTPS AWP may choose to either decontaminate the equipment so that no ACM remains within or on the equipment after each ACPRP, or may use disposable linings/containers that prevent slurry from coming into direct contact with machinery, that are disposed of as ACWM. We recommend that excess wash water be properly disposed of in containment, or filtered before being allowed to be discharged as wastewater and that the filtrate be placed in containment and disposed of with other ACWM at the disposal facility. All work practices must be consistent with those required by the Asbestos NESHAP. For additional information on decontamination see section III.E below.

We note specifically that any applicable OSHA requirements (including for employees covered by 40 CFR part 763, subpart G), which protect workers, remain in full effect.

Any decontamination effort must comply with the Asbestos NESHAP

work practices, as, for example, any regulated asbestos-containing material (RACM) and ACWM must be kept adequately wet (see 40 CFR 61.145(c)(6) and 40 CFR 61.150(a)(1)). Furthermore, any owner/operator of a subsequent renovation operation that disturbs this asbestos-containing skim coat (the portion of waste slurry that remains on the exterior of the new pipe) above the regulatory threshold would need to comply with the Asbestos NESHAP. Therefore, we disagree with the commenter that the potential for asbestos exposure is greater using CTPS than for open trenching.

#### *B. Comments Regarding the Supervisor Requirements for the CTPS AWP*

*Comment:* The EPA received a comment asking if a trained asbestos supervisor is still required to be onsite during the entire CTPS ACPRP.

*Response:* The onsite supervisor requirements of the NESHAP are not changed in any way under the action to approve the CTPS AWP. See 40 CFR 61.145(c)(8). Therefore, a trained asbestos supervisor must still be onsite during the entire time A/C pipe is being replaced.

#### *C. Comments Regarding the Technical Procedure*

The EPA received a number of comments questioning the effectiveness of CTPS to abate A/C pipe. Some of these commenters made suggestions to improve the work practice.

*Comment:* One commenter suggested that, for excavation of vertical access points, the EPA expand on these requirements. Specifically, the commenter suggested we change the requirement, “the owner/operator must not disturb A/C pipe during the digging out of these access points. Water and suction should be used to uncover as much of the A/C pipe as is needed to begin the CTPS process.” The commenter suggested the following language: “The owner/operator should avoid to the extent feasible, crumbling, pulverizing, or reducing to powder A/C pipe during the excavation of vertical access points. Water and suction, hand digging with shovels, or similar methodologies that do not crumble, pulverize, or reduce to powder A/C pipe should be used to uncover the A/C pipe as is needed to perform the CTPS process.”

*Response:* We accept the commenter’s suggested edits with one minor edit in which we change the first sentence to read “The owner/operator must avoid to the extent feasible, crumbling, pulverizing, or reducing to powder A/C pipe during the excavation of vertical

access points.” We agree that the added specificity better describes how to achieve our intended requirement that A/C pipe not be disturbed during the digging out of these access points, and is consistent with current work practices, which use backhoes to excavate around the trench, but hand shovels, small tools, brooms, and water to expose the A/C pipe at vertical access points. We further note that the language ‘as is needed’ clarifies that digging of the entire trench using hand shovels is not needed, but is used to expose the A/C pipe for removal.

*Comment:* A commenter surmised that the cost of disposal of the slurry would be greater than the cost of disposal of intact A/C pipes because the A/C pipe slurry would present an increase in ACWM volume and waste, and that, by extension, landfill issues, including capacity at existing landfills and disposal costs would be higher than for A/C pipe. This commenter believes the slurry would take up more space in the landfill than whole pipe because the landfill crushes the A/C pipe after it is received, thereby reducing its volume.

*Response:* Cost and increased waste volume are not among the equivalency determination factors that must be weighed by the EPA to determine equivalency with the standard. Increased waste volume is not land pollution because the waste is managed to prevent exposure, which is not the case with land pollution. Because this is an alternative work practice and not a mandated requirement, the relative costs are not at issue.

*Comment:* Two commenters asked questions regarding the applicability of the AWP to the circumstances of the ACPRP, such as preparation of the site and the size of pipe that CTPS may be used to replace.

*Response:* The standard industry practice is to mark existing utilities at the surface using flag markers on yards and soil, and ink on pavement and other impervious surfaces. The size pipe that may be replaced depends upon the size of the equipment train that may be used. At this time, the equipment train is available to install pipes up to 24 inches in diameter. Therefore, at this time, CTPS may be used to replace pipes up to 24 inches in diameter. It is possible that in the future, larger pipe sizes may be able to be replaced using CTPS if equipment trains of sufficient size become available. Large pipe replacement can be completed with CTPS by using a larger HDD rig with the correct drill stem rotation speed.

*Comment:* A commenter suggested that the EPA specify the criteria or specific technique that must be used to

ensure that no ACM contacts the inside of the new pipe.

*Response:* All new pipes are pressure rated and have a seal system that will not allow outside material to come in. All pipe pulling caps are sealed the same way to prevent slurry material from entering the pipe. All drilling fluid pressure is relieved through the slurry relief holes to prevent drilling fluid pressure build up. While this is standard industry practice, and the trenchless industry has used sealed pipe for many years, nevertheless, we are adding these criteria to the description of the AWP to improve the work practice.

*Comment:* Two commenters addressed the issue that a common decontamination technique is to use excess water to wash ACM from all equipment, and that this water would have to be collected and disposed of as ACWM along with any other contaminated materials. A third commenter added that, based on his experience with developing decontamination procedures, decontamination of the vacuum truck would be extremely complicated if asbestos was a contaminant in the debris/sludge. A fourth commenter recommended that the AWP address handling of the slurry residue that may remain in or on the vacuum truck, truck cleaning, and disposal of any wash water.

*Response:* Persons conducting ACPRPs using the CTPS AWP may choose to either decontaminate the equipment so that no ACM remains within or on the equipment after each ACPRP, or may use disposable linings/containers that prevent the slurry from coming into direct contact with machinery, that are then disposed of as ACWM. We recommend that excess wash water be contained and filtered before being allowed to be discharged as wastewater and that the filtrate be placed in containment and disposed of with other ACWM at the disposal facility. All work practices must be consistent with those required by the Asbestos NESHAP. For additional information on decontamination see section III.E below.

#### *D. Comments Regarding the Comparison Between CTPS and Other Pipe Replacement Procedures*

*Comment:* One Commenter stated that the EPA’s statement in the proposal document that no AWP’s for the replacement of A/C pipes have yet been approved, leaves the impression that open trenching and pipe bursting are not approved by the EPA for asbestos emission control in the replacement of

A/C pipes, and that such conduct would be a violation of the Asbestos NESHAP. Another commenter asked if other alternative pipe replacement methods, such as pipe reaming and pipe bursting, are allowed as a result of the approval of the CTPS AWP.

*Response:* No approval is needed for a work practice under the Asbestos NESHAP as long as that work practice comports with the existing requirements of the rule. Where a potential work practice would depart from any part of the existing rule for a regulated activity, 40 CFR 61.12(d) explains how the EPA may approve an AWP, and such approval would be required in advance of using the potential AWP. The EPA has previously determined that when the work practices for open trenching are adhered to, this practice conforms to the work practice requirements of the rule. We have neither approved pipe bursting nor pipe reaming as AWP's to replace A/C pipe. Any ACPRP such as pipe bursting or pipe reaming that exceeds the threshold amounts of RACM would be required to follow the appropriate NESHAP provisions, including the standards for active waste disposal sites at 40 CFR 61.154 and the inactive waste disposal site standards at 40 CFR 61.151 if any RACM is left in the ground.

#### *E. Comments Regarding Inspection Requirements*

The EPA received inquiries regarding what inspection requirements would apply to ensure the work practices were completed correctly.

*Comment:* Two commenters asked the EPA to clarify the work practices to be used when a thorough inspection reveals that sections of the A/C pipe to be replaced have been crushed or are otherwise obstructed so that the CTPS equipment train is unable to encompass all of the A/C pipe it is replacing. The commenter supported the comment with rationale from a letter dated August 7, 2015 (available in the docket), which stated, "As to inspections for asbestos and asbestos containing materials—EPA would expect an owner/operator to follow the steps described in Sections 1 through 5 and Section 8 in ASTM E2356–14 'Standard Practice for Comprehensive Building Asbestos Surveys.'" The commenter explained that the EPA would not accept the Limited Asbestos Screen (*i.e.*, Practice E2308) as a substitute for the Comprehensive Building Asbestos Survey and does not consider the Limited Asbestos Screen as a thorough inspection. The Limited Asbestos Screen may be used to inform a thorough inspection, and can give an

inspector an idea of what structures are most likely to contain ACM. However, its use is not a substitute for an inspection. American Society for Testing and Materials (ASTM) E2356–14, "Standard Practice for Comprehensive Building Asbestos Surveys," is used for building surveys to help determine the presence of asbestos in many different types of building materials.

*Response:* Pipes are specific facility components, not complete buildings. In buildings, some materials are often not known to be asbestos containing until after inspection, sampling, and analysis. With ACPRPs, there are only a few different types of pipes used for water handling, and A/C pipe is readily distinguishable from the other types.

By the time the ACPRP is started, the location of the A/C pipe is known. For both safety and ease, when the A/C pipe to be replaced is a confined space, or is less than 6 feet in diameter, standard industry practice for underground pipe replacement projects is for the owner/operator to use robotic cameras and videography to determine the location of the pipe, including all sections of A/C pipe. The cameras are mounted on robotics that are controlled remotely by the owner/operator. The camera makes a video recording of the interior of the pipe, and records its location within the pipe in feet and inches (or meters and centimeters); stopping and examining all suspicious areas to record the size, depth, and character of any pipe abnormality. This video enables the owner/operator to precisely locate any areas of interest in the pipeline from an above-ground location. This video is then referred to as needed by the owner/operator while conducting the ACPRP and must be made available to the on-site supervisor and/or inspector immediately upon request.

Thus, for the pipe inspection, the positive identification of ACM is accomplished by the remote videography. This is not analogous to ASTM E2356–14, for building inspections which guides the inspector through sampling of suspect ACM building materials (where the presence and/or type of asbestos is not yet known).

A thorough inspection must be conducted as part of the planning of a successful ACPRP. A leaking pipe is not necessarily one that is crushed or otherwise structurally compromised. The EPA's intent is for the owner/operator to use open trenching to remove sections of pipe that are no longer in the area encompassed by the cylindrical volume that the CTPS train will retain in the slurry, or that will

impede the normal passage of the CTPS equipment train through the pipe.

However, it is unlikely that sections of pipe are collapsed in an active pipeline that is being replaced because all pipe most likely has been repaired if there were any collapsed sections. (The gravity sewer would back up if it had collapsed and water would be bursting out of the ground from force main pipes if there was a collapse.)

Once inspection has occurred (which is completed before CTPS is used) the owner/operator knows the location, diameter, and length of A/C pipe sections to be replaced. These inspections identify areas of the pipe that may be compromised (crushed, off-center, broken) and the inspection is compared to existing utility records, the records are updated, and after pipe replacement, the records are saved electronically and/or in paper format for future maintenance activities.

In this final document, we are also clarifying the difference between an inaccessible section of pipe, and an obstructed section of pipe. An inaccessible section of pipe is one that is overlain by buildings or other installments that cannot be moved, and that prevents or significantly impedes access to the pipe and replacement using open trenching procedures. Roads and sidewalks do not necessarily create a situation where a pipe is inaccessible. An obstructed pipe is one that has section(s) that are structurally compromised to the point that they may cause or contribute to a malfunction of the HDD equipment for the CTPS AWP.

The EPA is, therefore, clarifying the above language to indicate what types of situations require removal of the pipe using other techniques before CTPS can be implemented. Obstructions that would impede or prevent the progress of the CTPS equipment train through the pipe passageway must be removed using open trenching or another method compliant with Asbestos NESHAP requirements (such as abandon in-place) before the CTPS AWP can be used. However, when obstructions occur at an inaccessible location (such as beneath a building) a different approach may be needed to complete the ACPRP (such as sealing off the old pipe and rerouting new pipes around the structure, or using HDD to lay a new pipeline beneath the structure).

*Comment:* Citing applicability determination index (ADI) A–150001, commenters asked how a thorough inspection is done. One of these commenters suggested the ASTM E2356–14, "Standard Practice for Comprehensive Building Asbestos Surveys," should be used to

demonstrate that a thorough inspection has taken place. Another commenter stated that the alternative should consider what work practices must be done when crushed or broken pipe, possibly contaminating soil, is found onsite during an ACPRP.

*Response:* As explained in the April 25, 2018, document for the CTPS AWP (83 FR 18042, 18050): “Prior to using the CTPS for an ACPRP, the owner/operator would conduct underground pipe inspections (e.g., by using remote technologies like robotic cameras) and shall identify, locate, and mark onto an underground utility map of the area all identified potential areas of malfunctions, such as changes in pipe type, drops in the line, broken and off-center points, and changes in soil type.”

In a previous AD from the EPA on August 7, 2015, the EPA discussed what constitutes a thorough inspection. In that AD, the EPA stated, “When EPA promulgated the regulations, the Agency elected not to define ‘thorough inspection’ at § 61.145(a) and did not provide a definition at § 61.141. The EPA did not adopt a ‘one-size fits all’ approach in order to accommodate the wide variety of techniques and practices that can be used to locate and identify asbestos and asbestos-containing materials used in the construction industry.”

Additionally, this AD cited an ASTM standard for thorough inspection of buildings and building components. The purpose of these inspections is to identify all ACM in a building or building components, for the purposes of demolition or renovation. The EPA does not see the inspection guidance for buildings as relevant, because its use is to identify ACM in buildings before demolition or renovation where the building materials are unknown. For the CTPS AWP, the pipe has already been identified as asbestos-containing, and the decision to consider using the CTPS AWP as a replacement technique would already be under consideration. Therefore, the inspection guidance for buildings is irrelevant.

In our observation of the demonstrated CTPS AWP in Greenville, South Carolina, the operator of the ACPRP maintained a video of the pipe inspection that was conducted in advance of the actual pipe replacement work, and referred to it periodically during the ACPRP work as that work progressed. We are requiring owners/operators who use the CTPS AWP to save a video of the pipe inspection and make it available at the ACPRP work site for reference as needed by inspectors, owners, and operators during the ACPRP work. The recorded

inspection must be made available for use during the replacement work so that workers can know the exact location of any structurally compromised areas of pipe during the replacement process. The EPA is clarifying that a thorough inspection of the A/C pipe under the CTPS AWP is a visual inspection, conducted using remote robotic technology, of the entire length of pipe to be replaced, and identifies any areas of the pipe that are obstructed to the point that the CTPS equipment train cannot pass without instigating a malfunction as a result of the pipe’s condition. In the event an A/C pipe has been obstructed to the point that the CTPS equipment train cannot pass through, the owner and operator must follow appropriate work practice standards in the Asbestos NESHAP such as open trench or abandon in place techniques.

#### *F. Comments Regarding Training and Certification*

The EPA received several inquiries as to the source and extent of training opportunities for using the CTPS AWP, and what inspection requirements would apply to ensure the work practices were completed correctly.

*Comment:* One commenter asked what training is provided to and required for owners/operators planning to use the CTPS AWP for ACPRPs.

*Response:* The onsite supervisor requirements of the NESHAP are not changed in any way under the action to approve the CTPS AWP; therefore, a trained asbestos supervisor must still be onsite during the entire time A/C pipe is being replaced. Appropriate training and certification should be conducted prior to the use of the CTPS AWP. Additionally, a document titled “Close Tolerance HDD AC Pipe Replacement Process,” is available in the docket.

#### *G. Comments Regarding Notifications, Recordkeeping, and Reporting Requirements*

*Comment:* One commenter asked the EPA to clarify how the notification requirements of 40 CFR 61.145 apply to the CTPS AWP. This commenter suggested that the global positioning system coordinates of the ACPRP using the CTPS AWP be included in the notification form that must be submitted for the project.

*Response:* For any ACPRP using the CTPS AWP, the 6-digit coordinates for the latitude/longitude coordinates must be recorded. We agree with the commenter that this information can be added at no additional burden to the notification and submitted to authorities with the rest of the information in the

notification under 40 CFR 61.145(b) and noted also in the utility records.

*Comment:* A commenter asked if notification practices when using the CTPS AWP should be different than are currently required by the Asbestos NESHAP. The commenter stated that the docket does not include information that justified a different notification practice, that is, when more than 260 linear feet of A/C pipe is replaced. This commenter stated that while the document includes several recordkeeping requirements, it does not describe the purpose of each. The commenter stated that understanding their purpose would provide a clearer idea of what information to collect and how it should be stored. Another commenter stated that they support the application of the other Asbestos NESHAP requirements, including notification requirements.

*Response:* The notification practices of the Asbestos NESHAP are not changing. The standard notification for a renovation or demolition operation includes the location of the activity (40 CFR 61.145(b)(4)). Because ACPRPs are not necessarily located at a specific address (as is a building slated for demolition), the EPA has tailored this existing notification requirement for the location of the ACPRP to be identified using 6-digit latitudinal/longitudinal coordinates. The 6-digit latitude/longitude coordinates of each ACPRP conducted using CTPS AWP are included in the notification so that inspectors can locate and identify pipes that have been replaced using this technique.

In terms of recordkeeping, this final document has updated the requirements for the CTPS AWP after consideration of the comments. Under the CTPS AWP, the owner/operator is required to record waste shipment records (as already required by 40 CFR 61.150(d)), records of the standard operating procedures for the certain key equipment, and malfunction records (if applicable). The owner (typically the state or municipality) is also required to record the certificate from each sample friability test.

The requirement to record waste shipment records is consistent with the NESHAP and accounts for all ACWM. These records are used to certify that the proper steps were taken in disposal of ACWM. Records regarding the standing operating procedure are used to provide consistency through the ACPRP, as well as document equipment used to show compliance with the requirements of the AWP. Malfunction records allow the review of any malfunction events as well as how each malfunction was



addressed. Records of malfunction are important to show the scope of the malfunction and verifying that proper steps were taken to correct the malfunction. Friability test records provide evidence of the friability status of the sample. This is important because it is the determining factor for the regulatory status of the remaining skim coat (the portion of waste slurry that remains on the exterior of the new pipe).

In this final document, the EPA also removed certain recordkeeping requirements that appeared in the April 25, 2018, document. The recordkeeping requirements in section IV.F.1.a–g of the proposal document were removed in the final document: For information on the dates, ACPRP location, and amount of pipe, due to overlap with the existing notification requirements in 40 CFR 61.145(b)(4); for information on the disposal amount, disposal site, and disposal manifest, due to overlap with the existing waste shipment record required by 40 CFR 61.150(d); and for the amount of slurry generated, due to a determination that this detail would not provide significant information in assisting with this AWP. Additionally, the requirement for the ACPRP report was removed, due to a determination that the report would not provide significant information in assisting with this AWP beyond the information already available in the notification and records.

*Comment:* A commenter recommended that the EPA indicate how long the owner/operator of a CTPS AWP process is required to maintain the signed certificate from the friability test, and suggested it be required to be maintained for the lifespan of the newly installed pipe.

*Response:* In the April 25, 2018, document, we did not specify the period of time the signed certificate of pipe replacement should be kept. It is important to know the exact location of all underground structures, but because they are not immediately visible, maps are maintained by the states and municipalities responsible for their maintenance. It is our understanding that state and local agencies responsible for their maintenance already keep such records on a permanent basis. We are clarifying in this final document that the signed certificate of the friability test be kept by the owner (typically the state or municipality) for the life of the pipe. In the event that the pipe being replaced is privately owned, the owner would also be responsible to keep the signed certificate of the friability test for the life of the pipe.

*Comment:* A commenter recommended that the EPA add to the recordkeeping requirements that the owner/operator must make the records available to the air quality regulatory authority within a certain time period upon request. The commenter also recommends that the 2-year retention requirement for the sample of slurry be extended to 5 years.

*Response:* We are adding a requirement to the AWP that records discussed in IV.E of this document, be made available to the regulatory authority within 15 days of request. Additionally, we disagree that the slurry sample should be kept for 5 years; we believe 2 years is an appropriate time period and corresponds to the existing recordkeeping period at 40 CFR 61.150(d).

#### *H. Comments Regarding Use of CTPS in Various Soil Types*

*Comment:* Several commenters asked the EPA to clarify how the soil type influences the setup, use, and effectiveness of CTPS AWP. One commenter asked if the EPA has characterized the loss of slurry when pipes are replaced using the CTPS AWP in different soil types such as sandy soils or saturated soils. Another commenter stated that soil issues such as pH balance and contaminants are likely to impact the ability of the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) to harden.

*Response:* Bentonite clay (also known as sodium bentonite) lines the annular space created by the HDD, and prevents the loss of slurry in the CTPS technique. This lining provides a barrier between soil and pipe, and, due to its expansion properties, supports the horizontal cylindrical space (or tunnel) created as the drill removes the old A/C pipe. The use of bentonite clays in suspension in the drilling fluids accomplishes two objectives: It holds the tunnel open while the equipment train proceeds through, and it prevents the migration of fluids, including A/C pipe in suspension, from migrating outside of the underground cavity. The bentonite clay lining acts as a sealant, providing a barrier between the surrounding soil and any contaminants of that soil, and the new pipe upon which the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) occurs. The composition of the drilling fluids and bentonite clay may be adjusted depending on the soil type, depth (pressure), and pipe size to account for differences in friction and suspended solids in the slurry. The composition is developed on a site-specific basis, and

is formulated according to soil pH, density, depth, void space (compaction and particle size), and abrasiveness. More on the properties of bentonite clay and its uses in underground HDD are available in the docket in the document titled, “Bentonite Clay: Properties and Uses.” More information on the adjustment of bentonite clay in solution and the ratio of bentonite to drilling fluids is available from the 2001 ASU Study, available in the docket, and in training materials.

#### *I. Comments Regarding Slurry, Its Management, and Disposal*

The EPA received several comments asking about the characteristics of the slurry and questioning whether the work practices afford effective management of the slurry.

*Comment:* For the requirements in paragraph 6 of the document proposing the AWP, Slurry Characteristics, a commenter asked the EPA to clarify requirements from guidelines and noted that the requirement to release no VE appears twice in this paragraph.

*Response:* We are clarifying that language to read as follows: “The owner/operator would be required to ensure that the slurry is a homogenous mixture comprised of finely ground A/C pipe, drilling fluids, bentonite clay, and other materials suspended in solution that, when cured (a period of 48–56 hours), re-hardens so that it meets the sample friability test in section IV.E.2 of this document. The slurry must meet the no VE requirements of 40 CFR 61.145 and 61.150.”

*Comment:* A commenter asked the EPA to describe the appearance of the slurry.

*Response:* The slurry looks and behaves like mixed cement during the CTPS process; it cures and hardens (or “sets up”) in 48–56 hours from the time of collection, a slightly longer time than it takes to cure cement. More information on the appearance of the slurry can be found in the docket to this action.

*Comment:* One commenter asked if the slurry qualifies as a new use of asbestos per 40 CFR 763.163. Another commenter asked the EPA to clarify that under no circumstances may the owner/operator use slurry from a CTPS ACPRP as cover material at a landfill.

*Response:* The slurry must be disposed of in a facility authorized to receive ACWM, and it may not be reused or used, including as cover in landfills. Thus, the slurry would not qualify as a new use of asbestos in an asbestos-containing product under the regulation at 40 CFR part 763, subpart I.



*Comment:* One commenter asked what keeps the slurry from hardening on the way to the landfill? The commenter stated if the hardened material contains more than 1-percent asbestos, this would seem to be a violation of the Asbestos NESHAP. A second commenter stated that ACWM must be disposed of as soon as practical. A third commenter asked what is done if the slurry cannot be disposed of before it hardens, and what the disposal implications are, specifically for transportation and disposal, so that the material will not be regulated prior to disposal.

*Response:* The slurry hardens in 48–56 hours. Under 40 CFR 61.150(b), ACWM must be disposed of as soon as practical. Disposal of the slurry should be completed within 24 hours, so that the slurry hardens at the disposal site. If the slurry hardens in the container in which it has been collected, it cannot be removed; the collection container becomes the disposal container. This would be an undesirable outcome from the viewpoint of the owner/operator unless the collection container was intended to be disposable, but would conform with the requirements of the Asbestos NESHAP that all ACWM be contained at disposal. Standard industry practice is to dispose of the slurry at the end of each work day to prevent this outcome.

As we stated in the April 25, 2018, document for the AWP at 83 FR 18049, “The owner/operator would be required to ensure that the slurry remains in an adequately wet state during the slurrification process and remains in containment throughout the removal, transportation, and disposal processes, meeting the requirements of 40 CFR 61.145 and 40 CFR 61.150. The slurry must be contained and in slurry form at the time of disposal in a landfill permitted to accept ACWM and meeting the requirements of 40 CFR 61.154. The slurry must be managed at the disposal site using procedures meeting the requirements of 40 CFR 61.154.”

We disagree with the comment that using the AWP would be a violation of the Asbestos NESHAP. As we stated in the AWP proposal at pages 10846–47, “All ACWM must be kept adequately wet and sealed in leak-tight containers (40 CFR 61.150(a)(1)) or processed into a nonfriable form, such as a nonfriable pellet or other shape (40 CFR 61.150(a)(2)).” We continued on page 18047 that, “The EPA is proposing to consider the slurry that is formed by the CTPS AWP for A/C pipe to be nonfriable once hardened” (as determined by hand pressure testing on a collected sample), and on page 18048,

that, “The EPA is proposing that when the CTPS work practices are adhered to as described in this document, and when the test for friability confirms that the resulting hardened slurry (skim coating) is nonfriable ACM, the resulting material can be regulated as nonfriable ACM.” Note that the slurry must be disposed of in containment.

Thus, disposal of the ACWM from the CTPS process does not differ from the disposal requirements of the Asbestos NESHAP, including the requirement for disposal as soon as practical. Therefore, this is not a violation of the Asbestos NESHAP.

*Comment:* One commenter stated that the vacuum truck is likely to dry the slurry at the top surface, and assuming that the waste is friable, dust is likely to be pulled from this surface and released to the ambient air during the action of the air moving across the top of the debris. Another commenter added that the use of high efficiency particulate air (HEPA) filters, required to be used on the vacuum trucks handling CTPS AWP ACPRPs, would be beyond what is currently required for A/C pipe removal practices.

*Response:* The vacuum trucks are enclosed, and the slurry is not exposed to the elements at the top. We have added technical literature from the underground construction industry to the docket to provide additional information on the types of equipment used throughout the industry to conduct this work. Testing of the slurry indicates the waste is nonfriable. The slurry must be in a wet state at the time of disposal, and creating a slurry of ACWM is one way to maintain adequately wet materials, as stated in the rule at 40 CFR 61.150(a)(1)(i). The use of a HEPA filter is not required for this standard.

Additionally, the no VE requirements of the rule have not been dismissed by approval of this AWP, so if the slurry were to be friable when dry, and if, as the commenter states, the surface of the slurry were to dry as a result of the air passing over the upper surface of the slurry and cause VE, this would be a violation of the rule, and work would have to stop to correct the VE.

*Comment:* A commenter surmised that there will likely be no information about what types or percentage of asbestos is in the slurry or how the skim coat will be regulated.

*Response:* The slurry is categorized as ACM. It is noted in utility records, which are used whenever pipe maintenance is conducted. Presence of ACM is noted, as is the location of each ACPRP using the CTPS AWP. This notation serves to inform future maintenance operators that the skim

coat (the portion of waste slurry that remains on the exterior of the new pipe) is potentially regulated under the Asbestos NESHAP, depending on the amount of ACM to be disturbed. This practice places the relevant information directly into the hands of persons responsible for future utility maintenance work.

*Comment:* A commenter recommended deletions and clarifications to a number of inspection, operation, maintenance, sample collection, testing, transportation, and disposal requirements; the commenter also offered alternative language if these sections are not deleted.

*Response:* We disagree that these sections should be deleted, as they are needed to determine that equipment is maintained, pipelines are thoroughly inspected, waste is properly transported and disposed of, and that the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) is nonfriable and, therefore, nonhazardous as long as it is properly handled in future pipe maintenance work. However, we have reviewed other suggested edits and are rephrasing the requirement for “leak-tight wrapping” to “leak-tight container.”

#### *J. Comments Regarding Future Status of the New Pipe and Skim Coat*

Several commenters asked the EPA to explain the status of the new pipe once it has been installed, and what requirements apply to the asbestos coating of the new pipe.

*Comment:* A commenter asked if the EPA can confirm that the skim coat remaining on the new pipe is nonfriable and adheres to the new pipe.

*Response:* Based on the descriptions of the CTPS train, and observations by EPA personnel of the process in operation, as long as the steps of this AWP are correctly followed, the remaining skim coat (the portion of waste slurry that remains on the exterior of the new pipe) will be nonfriable (not be crumbled, pulverized, or reduced to powder by hand pressure) and adhere to the new pipe. If the slurry sample tests as friable, it is a malfunction, and malfunction requirements apply.

*Comment:* Three commenters stated that future repairs to the new pipe would present the same worker hazards and soil contamination issues that exist with A/C pipe.

*Response:* New undeteriorated A/C pipe is nonfriable, but most ACPRPs are done because deterioration of the pipe has occurred. According to testing conducted on samples of A/C pipe slurry, the skim coat (the portion of waste slurry that remains on the exterior

of the new pipe) is nonfriable ACM. Therefore, the skim coat is not any worse, but in many cases, is in a better condition than the replaced A/C pipe. Thus, the pipe that has been replaced using CTPS (so that a nonfriable ACM skim coat is present) is not uniquely different from undeteriorated A/C pipe, and, therefore, can be treated using similar practices. Moreover, the forces that caused deterioration of the old A/C pipe are no longer acting upon the skim coat, so we continue to believe that the skim coat on the new pipe remains in a nonfriable state. However, because the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) is ACM, it is subject to regulation under the Asbestos NESHAP and those work practice requirements must be followed whenever repairs or maintenance activities that affect a threshold quantity of the pipe's skim coat are conducted.

*Comment:* Because some ACM remains on the exterior of the replacement pipe in the skim coat, one commenter stated "a majority of" should be added to the process description, so that it reads, the CTPS AWP "removes a majority of A/C pipe while replacing it with non-asbestos material."

*Response:* We agree with the commenter that the process description should provide a more representative description of the process. We are revising the process description to read, "the CTPS AWP removes A/C pipe that may be friable and/or in poor condition, while replacing it with non-asbestos pipe and a skim coat (the portion of waste slurry that remains on the exterior of the new pipe) of non-friable ACM."

#### K. Other Comments

The EPA received other comments on the proposed CTPS AWP, and these are addressed in the document, "Responses to Comments on 83 FR 18042 Notification of Request for Comments on the Proposed Approval of an Alternative Work Practice for Asbestos Cement Pipe Replacement," which is available in the docket to this document.

### III. What are the EPA's decisions on suggested changes to the AWP?

The EPA is making several changes to the AWP as a result of comments received on the April 25, 2018, document, as explained below.

#### A. Changes to the Notification, Reporting, and Recordkeeping Requirements

The EPA is tailoring the notification requirements for the CTPS AWP based

on comments received. We are requiring that the 6-digit latitudinal and longitudinal coordinates of each ACPRP conducted using the CTPS AWP be included on the notification because a street address (such as would be included for notification of renovation or demolition of a building) does not necessarily apply to an ACPRP. We believe the 6-digit latitudinal and longitudinal coordinates are analogous to a street address and can be used instead of a street address in the notification at no additional burden to the owner/operator. The latitudinal/longitudinal coordinates can be used by regulatory authorities to locate and inspect the ACPRP effectively to ensure the work practices are conducted properly, ensure the slurry is managed correctly, and verify that all transportation and disposal requirements are followed.

The EPA made changes to the recordkeeping and reporting requirements as a result of comments received on the document. In our April 25, 2018, document, the proposed AWP required owners/operators to include the 6-digit latitudinal/longitudinal coordinates of the ACPRP on the utility record notation. In addition to the utility record notation, the EPA is requiring owners/operators to include the 6-digit latitudinal/longitudinal coordinates of the ACPRP on the notification and on any report generated as a result of a malfunction. The purpose of this requirement is to ensure that environmental regulatory authorities have the correct information on the location of any ACPRP conducted using the CTPS AWP for compliance assurance purposes.

To be consistent with the current requirements of the Asbestos NESHAP and in response to comments, we have changed the proposed recordkeeping and reporting requirements, as well as removed the requirement of an ACPRP report, as discussed in section II.G of this document.

Lastly, the signed friability certificate discussed in section IV.E.2 of this document should be kept by the owner (typically the state or municipality) for the lifespan of the newly installed pipe. The purpose of this requirement is to ensure that the relevant information on ACPRPs remains at the ready access of persons responsible for the maintenance of the pipe.

#### B. Clarifications to the Process Description

The EPA made changes to the AWP as a result of comments received on the document. We are revising the process description to read, "the CTPS AWP

removes A/C pipe that may be friable and/or in poor condition, while replacing it with non-asbestos material and non-friable ACM."

The EPA is also clarifying the difference between pipe that is inaccessible and pipe that is obstructed. An inaccessible length of pipe is one that cannot be directly removed by open trenching due to other structures (such as sidewalks, roadways, thoroughfares, buildings, and underground utilities) in close proximity to the A/C pipe to be replaced. An obstructed length of pipe is one with a section that has dropped or collapsed in a way that precludes passage of the guide line and/or the CTPS HDD line during the replacement process.

Additionally, we are requiring owners/operators of the CTPS AWP to document on the notification that sealed pipe will be used during the ACPRP and that no slurry (which contains ACM) is able to come in contact with the inside of the new pipe.

Lastly, the EPA is clarifying that the original intention of this work practice is for the replacement of a A/C pipe with a pipe of the same diameter. Due to the nature of close tolerance pipe Slurrification, which only uses an HDD chain ¼ inch larger than the diameter of the new pipe being replaced, there would be minimal soil added to the make-up of the slurry. However, if the owner/operator chose to "upsized" (using a new pipe with a larger diameter than the existing A/C pipe), the amount of surrounding soil being added to the slurry mixture would vary. In these situations, it is the responsibility of the owner/operator to make appropriate changes to the recipe of the drilling fluid, resulting in a nonfriable product that passes the friability test discussed in IV.E.2. of this document.

#### C. Conducting a Thorough Inspection of A/C Pipe

The EPA is adding to the thorough inspection requirements that owners/operators of any ACPRP must save a video recording of the inspection and make it available at the ACPRP work site for reference as needed by inspectors, owners, and operators during the ACPRP work. This is the current standard work practice across the underground construction industry.

#### D. Changes to the Sampling and Analysis Requirements

The EPA is requiring that a slurry sample be made available to the air quality regulatory authority within 15 days of the request. In our April 25, 2018, notice we stated that owners/operators must store a slurry sample

from each ACPRP using the CTPS AWP procedure for a period of no less than 2 years. For compliance assurance purposes, we are adding a requirement that this sample must be made available to the air quality regulatory authority for inspection within 15 days of request. We are also clarifying that the slurry sample be kept by the owner (typically the state or municipality). Because the owner is required to maintain storage of ACPRP samples, the air quality regulatory authority should go to the storage site to examine the slurry sample, rather than to request the sample be delivered or mailed; otherwise, the owner would no longer be in custody of the slurry sample for a minimum of 2 years, as required by this AWP.

#### *E. Decontamination Procedures*

Containment of all ACWM is required under the Asbestos NESHAP. The decontamination of equipment used for ACPRPs by the CTPS AWP procedure may generate wastewater bearing asbestos fibers. To achieve containment of this ACWM, we recommend owners/operators conduct decontamination so that all water is contained and filtered before being released to a storm water collection system. For more information on potential decontamination procedures that can be used to control asbestos-contaminated wash water, see "Guidelines for Enhanced Management of Asbestos in Water at Ordered Demolitions," EPA-453/B-16-002a, July 2016, which is available at [www.epa.gov/asbestos](http://www.epa.gov/asbestos) and in the docket to this document.

#### *F. Clarification to Disposal Requirements*

The EPA is clarifying the disposal requirements as a result of comments received on the proposed document. The EPA is prohibiting use of the slurry in any public thoroughfare, in any private use as fill material, as cover material at a landfill, or in any other use. The EPA is clarifying that, in accordance with the Asbestos NESHAP, the slurry must be disposed of as soon as practicable.

### **IV. What is the approved AWP for replacement of A/C pipe?**

#### *A. What are the results of the EPA's review of the CTPS AWP?*

The EPA found that, with some changes, the AWP described in our April 25, 2018, proposed document is at least equivalent to the work practice in the Asbestos NESHAP. The changes to the AWP in the April 25, 2018, proposed document are based on

comments received as previously discussed in sections II and III of this document.

Based upon our review of the proposed AWP request, the demonstrations of the work practice, studies on HDD technology, industry guidelines, and written materials including equipment, materials, slurry characteristics, testing, and waste specifications; we conclude that, by complying with the following list of requirements, this CTPS AWP will achieve emission reductions at least equivalent to emission reductions achieved under 40 CFR 61.145, 40 CFR 61.150, and 40 CFR 61.154, as required by the applicable Asbestos NESHAP, provided that adequate wetting accompanies all vertical access points, access trenches, and manholes to prevent VE, and that the A/C cementitious material resulting from this process is properly handled and contained during and after removal and properly disposed of as required by the Asbestos NESHAP.

The patent related to this process, "Method of Replacing an Underground Pipe Section," is available from the U.S. Patent Office, patent number US8,641,326B2; February 4, 2014, and a copy is available in the docket. That patent deals with the replacement of low-pressure sewer pipes and indicates some parameters that may be different from the work practices in this document, depending on the soil composition, depth of pipe, and serviceable use of the pipe (e.g., a low-pressure sewer, waste water, or fresh water pipe). While this patented process focuses on low-pressure sewer pipes, this AWP is being approved for all underground AC pipe replacement projects that properly follow the steps of the AWP. While this patented process is one used by the company requesting approval of this AWP, an owner/operator may use other methods that comply with the guidelines of this AWP, and are not required to use the patented process.

#### *B. What inspection, operation, and maintenance requirements would apply?*

##### **1. Inspection**

a. Prior to using the CTPS for an ACPRP, the owner/operator must conduct underground pipe inspections (e.g., by using remote technologies like robotic cameras) and shall identify, locate, and mark onto an underground utility map of the area all identified potential areas of malfunctions, such as changes in pipe type, drops in the line,

broken and off-center points, and changes in soil type.

b. Owners/operators of any ACPRP must save a video recording of the inspection and make it available at the ACPRP work site for reference as needed by inspectors, owners, and operators during the ACPRP work.

##### **2. Operation and Maintenance**

The owner/operator of a CTPS method system is required to install, operate, and maintain the drilling head train, CTPS liquid delivery system, and all equipment used to deliver adequate wetting at all vertical access points and cut lengths of pipe in accordance with their written standard operating procedures. Records of the standard operating procedures must be kept in accordance with section IV.C.2.b of this document.

#### *C. What notification, recordkeeping and reporting requirements would apply?*

1. If an underground ACPRP meets the applicability and threshold requirements under the NESHAP, then the Administrator must be notified in advance of the replacement in accordance with the requirements of the Asbestos NESHAP at 40 CFR 61.145(b). The owner/operator must note the location of the ACPRP on the notification form according to its 6-digit latitudinal/longitudinal coordinates. See 40 CFR 61.145(b) for more information on the notification requirements. Also see 40 CFR 61.04 for more information on the appropriate entity(ies) to notify on behalf of the Administrator. The appropriate entity(ies) are the same as the entity(ies) for other typical Asbestos NESHAP notifications under 40 CFR 61.145(b), which vary by jurisdiction as 40 CFR 61.04 explains.

2. The owner/operator is required to record and maintain for a period of 2 years:

a. Waste shipment records as required by 40 CFR 61.150(d);

b. Records of the standard operating procedures for the installation, operation, and maintenance of the drilling head train, CTPS liquid delivery system, and all equipment used to deliver adequate wetting at all vertical access points and cut lengths of pipe; and

c. Malfunction records (if applicable):

i. Records of VE events, including duration, time, and date of any VE event;

ii. Records of when and how each VE event was resolved. Indicate the date and time for each VE period, whether the VE event occurred at an exposed manhole, trench, or other vertical access

point, and the number of openings to the ambient air affected; and

iii. Records of a failed friability test, resulting in a sample that can be crushed, crumbled, or reduced to powder by hand pressure.

3. The owner (typically the state or municipality) is required to record and maintain for the lifetime of the new pipe, and provide to the regulatory authority within 15 days of request, the certificate from each sample friability test as required by section IV.E.2 of this document.

4. Each owner/operator is required to submit a malfunction report to the Administrator after any malfunction occurrence. The malfunction report must include the records in section IV.C.2.c of this document. The malfunction report must be submitted as soon as practical after the occurrence, but in no case later than 30 days. See 40 CFR 61.04 for more information on the appropriate entity(ies) to notify on behalf of the Administrator. The appropriate entity(ies) are the same as the entity(ies) for other typical Asbestos NESHAP notifications or reports, which vary by jurisdiction as 40 CFR 61.04 explains.

#### *D. The CTPS Technique for A/C Pipe Replacement*

1. By complying with the following list of requirements, this AWP will achieve emission reductions at least equivalent to emission reductions achieved under 40 CFR 61.145, 40 CFR 61.150, and 40 CFR 61.154, as required by the applicable Asbestos NESHAP.

#### *2. Pipe at Terminals and Vertical Access Points*

a. At the starting and terminal points, and at designated intervals along the length of pipe replacement, sections of pipe are exposed, and sometimes cut and removed at the vertical access points (e.g., manholes, trenches).

b. The owner/operator must handle all sections of A/C pipe in accordance with 40 CFR 61.145 and 40 CFR 61.150 of the Asbestos NESHAP. Vertical access points (e.g., manholes, trenches) are made at designated intervals along the length of pipe replacement for pressure relief and access to the A/C pipe to be replaced.

c. The distance between vertical access points is a function of the soil type, pipe size, pneumatic pressure on the CTPS head, and frictional drag on the line; and is determined for each project on a case-by-case basis by the owner/operator. Incorrect estimation of the vertical access point locations may result in a malfunction.

d. The owner/operator must avoid to the extent feasible, crumbling, pulverizing, or reducing to powder A/C pipe during the excavation of vertical access points. Water and suction should be used to uncover as much of the A/C pipe as is needed to begin the CTPS process.

e. Appropriate measures must be taken to prevent the slurry from coming into direct contact with the surrounding soils of the terminals and vertical access holes. The EPA recommends the use of plastic sheathing, or another type of barrier to prevent the slurry contacting the surrounding soil.

#### *3. The CTPS Equipment Train*

a. In order to achieve close tolerance and to minimize the thickness of the skim coat (the portion of waste slurry that remains on the exterior of the new pipe), the CTPS technique must use an HDD head train with a slightly larger (approximately 1/4 inch) diameter than the new pipe.

b. The CTPS technology must use a heavy duty cutting and wetting train, made of hardened carbon steel, which is able to be fed directly around the pipe to be replaced.

c. The cutting head must be drawn around the existing pipe and must grind the old A/C pipe to a fine powder using a liquid delivery system as described in section IV.D.4 of this document. In order to adequately grind the existing A/C pipe into a fine powder, the EPA recommends maintaining a minimum speed of 240 revolutions per minute (RPM) for the grinding apparatus.

d. The process must return the A/C pipe to a cementitious slurry that is a homogenous mixture and stays adequately wet through disposal according to the requirements of 40 CFR 61.145.

e. The owner/operator must ensure that the CTPS train pulls the replacement pipe behind it. The new pipe must be sealed to ensure no ACM contacts the inside.

#### *4. Requirements for Liquid Delivery*

a. The CTPS HDD train must be equipped with ports to deliver liquid materials to the drilling head.

b. Drilling fluids must be delivered through these ports to reduce frictional drag on the line, to lubricate the interface along the soil to pipe line, to provide a barrier between the surrounding ground water, soil, and rock and the pipe, and to support the close tolerance cylindrical void during the pipe replacement process.

c. Drilling fluid recipe must consist of a lubrication fluid, a hole sealing fluid

(bentonite clay), and a material suspension fluid.

#### *5. Adequate Wetting and No VE*

a. The owner/operator is required to ensure that no VE are discharged to the air from the slurry.

b. Any opening to the atmosphere along the pipe is a potential source of asbestos emissions to the outside (ambient) air.

c. The owner/operator must ensure that dust suppression equipment (i.e., dust suppression apparatus or manual misting) is placed at each vertical access point. The EPA recommends using amended water to prevent visible emissions at vertical access points.

d. If a new trench is dug to resolve a malfunction, the owner/operator must ensure that the new trench is equipped with dust suppression and follow the procedure in section IV.D.5.a-c of this document.

#### *6. Slurry Characteristics*

a. The owner/operator would be required to ensure that the slurry (including the excess slurry that remains as skim coat) is a homogenous mixture comprised of finely ground A/C pipe, drilling fluids, bentonite clay, and other materials suspended in solution that, when cured (a period of 48–56 hours), re-hardens so that it meets the sample friability test in section IV.E.2 of this document.

b. The slurry must meet the no VE requirements of 40 CFR 61.145 and 40 CFR 61.150.

#### *E. Sampling, Testing, and Utility Map Notation Requirements*

##### *1. Sample Collection*

a. After the slurry has been pumped from the vertical access points, but before disposal, the owner/operator of a CTPS method system is required to collect a 2-inch roughly spherical wet sample of the slurry.

b. A single sample must be collected for each project discharging to a single enclosed tank.

c. The owner/operator must seal the sample in a leak-tight container and allow the sample to harden and dry (usually 48–56 hours).

##### *2. Sample Friability Test and Certification*

a. When the sample is hardened and dry, the owner/operator would be required to attempt to crush the sample by hand.

i. If the sample cannot be crushed, crumbled, or reduced to powder by hand pressure, the owner/operator would be required to certify this as follows: "The hardened slurry sample

from the ACPRP conducted on (date) at (location) could not be crushed, crumbled, or reduced to powder by hand pressure. I am aware it is unlawful to knowingly submit incomplete, false, and/or misleading information and there are significant criminal penalties for such unlawful conduct, including the possibility of fine and imprisonment.” The owner (typically the municipality) would be required to maintain a signed certificate of this statement so that it is available to the EPA Administrator, local, and state agency officials within 15 days of request.

ii. If the sample can be crushed, crumbled, or reduced to powder by hand pressure, the owner/operator would be required to follow the malfunction reporting requirements in section IV.C.4 of this document.

iii. If a malfunction occurs, resulting in friable ACM left along the new pipe, the friable ACM must be retrieved and properly disposed of, or the site must be treated as an active asbestos waste disposal site under 40 CFR 61.154 of the Asbestos NESHAP and, upon closure, must comply with 40 CFR 61.151, including a notation on the deed or similar instrument as required by 40 CFR 61.151(e).

b. The sample that cannot be crumbled, pulverized, or reduced to powder by hand pressure is nonfriable, and the remaining slurry from that pipe replacement operation is likewise nonfriable.

c. After testing, the owner/operator must ensure that the sample is packaged in a leak-tight container for storage, labeled “Asbestos Containing Material. Do not break or damage this sealed package,” dated according to the ACPRP date of generation, stored in a secure location that is inaccessible to the general public (such as a locked storage unit), and is maintained by the owner (typically the state or municipality) for a period of 2 years.

d. After the 2-year retention period, the sample may be disposed of in a landfill authorized to accept ACWM.

e. A sample of the slurry must be made available to the air quality regulatory authority within 15 days of request.

i. Because the owner (typically the state or municipality) is required to maintain storage of ACPRP samples, the air quality regulatory authority should go to the storage site to examine the slurry sample, rather than to request the sample be delivered or mailed, because otherwise, the owner (typically the state or municipality) would no longer be in custody of the slurry sample for a

minimum of 2 years, as required by this AWP.

### 3. Utility Map Notations

a. Owner/operators would be required to note utility maps according to the actual location identified by the 6-digit latitude/longitude coordinates of the newly laid line.

b. Notations would have to be maintained for the life of the new pipe by the owner/operator (e.g., municipality or utility), and would have to be labeled as covered by a skim coat (the portion of waste slurry that remains on the exterior of the new pipe) of ACM for future work.

### F. Trackable Pipeline Requirements

The owner/operator must ensure that the new pipeline is trackable by a locating wire (or other durable trackable material) laid with the new pipe.

### G. Slurry Removal, Containment, Labeling, and Transportation Requirements

1. The slurry is removed at vertical access points using a vacuum attached to a tank (e.g., vacuum truck).

2. The owner/operator would be required to ensure that the slurry remains in an adequately wet state during the slurrification process and in containment throughout the removal, transportation, and disposal processes meeting the requirements of 40 CFR 61.145 and 40 CFR 61.150.

3. All slurry produced as a result of conducting an ACPRP using the CTPS AWP must be labeled and transported in accordance with the corresponding requirements of 40 CFR 61.145 and 40 CFR 61.150 in the Asbestos NESHAP. The only slurry that may remain is the skim coat on the new pipe from that ACPRP. This skim coat is not subject to the removal and disposal requirements (subject to confirmation as nonfriable by the friability test), if left undisturbed in the ground.

### H. Disposal Requirements

The following requirements apply to disposal of the slurry resulting from an ACPRP conducted using the CTPS AWP:

1. The slurry must be disposed of in slurry form and placed in leak tight containers in a landfill authorized to accept ACWM and meeting the requirements of 40 CFR 61.154.

2. The slurry must be managed at the disposal site using procedures meeting the requirements of 40 CFR 61.154.

3. The slurry must not be used in any public thoroughfare, in any private use as fill material, as cover material at a landfill, or in any other use.

4. In accordance with the Asbestos NESHAP, the slurry must be disposed of as soon as practicable.

### I. Equipment Decontamination or Disposal

Persons conducting ACPRPs using the CTPS AWP may choose to either decontaminate the equipment so that no ACM remains within or on the equipment after each ACPRP or may use disposable linings/containers that prevent slurry from coming into direct contact with machinery and are disposed of as ACWM.

As noted in section III.E above, containment of all ACWM is required under the Asbestos NESHAP. The decontamination of equipment used for ACPRPs by the CTPS AWP procedure may generate wastewater bearing asbestos fibers. To achieve containment of this ACWM, we recommend owners/operators conduct decontamination so that all water is contained and filtered before being released to a storm water collection system. For more information on potential decontamination procedures that can be used to control asbestos-contaminated wash water, see “Guidelines for Enhanced Management of Asbestos in Water at Ordered Demolitions,” EPA-453/B-16-002a, July 2016, which is available at [www.epa.gov/asbestos](http://www.epa.gov/asbestos) and in the docket to this document.

### J. Application of Asbestos NESHAP Requirements

Except as noted in section IV.G.3 of this document, all other requirements of the Asbestos NESHAP that apply to renovations, including notification requirements found in 40 CFR 61.145(b), also apply to the CTPS AWP. Additionally, waste handling and disposal requirements found in 40 CFR 61.150 and 40 CFR 61.154 apply to the slurry (except as noted in section IV.G.3 of this document) and any other ACWM that is removed at the ACPRP. This document also uses terminology as defined in 40 CFR 61.141.

It is important to note that projects may not be broken up to avoid regulation under the Asbestos NESHAP, and the EPA has clarified the requirements of the Asbestos NESHAP as they relate to a project on several occasions. The “EPA considers demolitions planned at the same time or as part of the same planning or scheduling period to be part of the same project. In the case of municipalities, a scheduling period is often a calendar year or fiscal year or the term of the contract.” See 60 FR 38725 (July 28, 1995, Footnote 1). As stated in the circumvention section of the 40 CFR

part 61 General Provisions at 40 CFR 61.19, “No owner or operator shall build, erect, install, or use any article, machine, equipment, process, or method, the use of which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous dilutants to achieve compliance with a VE standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.” As the Agency noted in a previous AD,<sup>1</sup> the relevant part of that requirement is the part that discusses the prohibition on the piecemeal carrying out of an operation to avoid coverage by a standard. Therefore, as required by 40 CFR 61.145(a)(4)(iii) and (iv), owners or operators (owner/operator) must predict the combined additive amount of RACM to be removed in the course of the renovation activities (or, in the case of emergency renovations, estimate that amount) over the calendar year to determine the applicability of the standard to a project.

Dated: May 30, 2019.

**Panagiotis Tsirigotis,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 2019-12085 Filed 6-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2018-0097; FRL-9991-65]

### Certain New Chemicals or Significant New Uses; Statements of Findings for November and December 2018

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA

under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from November 1, 2018 to December 31, 2018.

#### FOR FURTHER INFORMATION CONTACT:

*For technical information contact:* Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: 202-564-8469; email address: [schweer.greg@epa.gov](mailto:schweer.greg@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

###### B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2018-0097, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 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 OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

##### II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from November 1, 2018 to December 31, 2018.

##### III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term “conditions of use” is defined in TSCA section 3 to mean “the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.”

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before

<sup>1</sup> Applicability Determination Number A020001. August 30, 2002. From George Czerniak, Chief, Air Enforcement and Compliance Assurance Branch, U.S. EPA Region 5, to Robert Swift. [https://cfpub.epa.gov/adi/index.cfm?fuseaction=home.dsp\\_show\\_file\\_contents&CFID=27301905&CFTOKEN=85118624&id=A020001](https://cfpub.epa.gov/adi/index.cfm?fuseaction=home.dsp_show_file_contents&CFID=27301905&CFTOKEN=85118624&id=A020001).

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[EPA-HQ-OAR-2017-0662; FRL-10005-06-OAR]

RIN 2060-AT34

**National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing 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 Asphalt Processing and Asphalt Roofing Manufacturing source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action to: Correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revise monitoring requirements for a control device used to comply with the particulate matter (PM) standards; add requirements for periodic performance testing; add electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and Notification of Compliance Status (NOCS) reports; and include other technical corrections to improve consistency and clarity. We are making no revisions to the numerical emission limits based on the residual risk analysis or technology review. Although these amendments are not anticipated to result in reductions in emissions of hazardous air pollutants (HAP), they will improve compliance and implementation of the rule.

**DATES:** This final rule is effective on March 12, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of March 12, 2020.

**ADDRESSES:** The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2017-0662. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Tonisha Dawson, Sector Policies and Programs Division (D243-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1454; fax number: (919) 541-4991; and email address: [dawson.tonisha@epa.gov](mailto:dawson.tonisha@epa.gov). For specific information regarding the risk assessment, contact Matthew Woody, 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) 541-1535; fax number: (919) 541-0840; and email address: [woody.matthew@epa.gov](mailto:woody.matthew@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact John Cox, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, WJC South Building (2221A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-1395; and email address: [cox.john@epa.gov](mailto: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:

AEGL acute exposure guideline levels  
APCD air pollution control device  
ASTM American Society for Testing and Materials  
ATSDR Agency for Toxic Substances and Disease Registry  
BACT best available control technology  
CAA Clean Air Act  
CalEPA California Environmental Protection Agency  
CDX Central Data Exchange  
CEDRI Compliance and Emissions Data Reporting Interface  
CFR Code of Federal Regulations  
CRA Congressional Review Act

DCOT digital camera opacity technique  
EPA Environmental Protection Agency  
ERPG Emergency Response Planning Guidelines  
FR Federal Register  
HAP hazardous air pollutant(s)  
HCl hydrogen chloride  
HI hazard index  
HQ hazard quotient  
IARC International Agency for Research on Cancer  
IBR incorporation by reference  
ICR information collection request  
IRIS Integrated Risk Information System  
km kilometer  
LAER lowest achievable emission rate  
MACT maximum achievable control technology  
MIR maximum individual risk  
NAICS North American Industry Classification System  
NESHAP national emission standards for hazardous air pollutants  
NOCS Notification of Compliance Status  
NRDC Natural Resources Defense Council  
NTTAA National Technology Transfer and Advancement Act  
OECA Office of Enforcement and Compliance Assurance  
OEHA Office of Environmental Health Hazard Assessment  
OMB Office of Management and Budget  
PB-HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment  
PM particulate matter  
POM polycyclic organic matter  
PRA Paperwork Reduction Act  
RACT reasonably available control technology  
RBLCACT/BACT/LAER Clearinghouse  
REL reference exposure level  
RFA Regulatory Flexibility Act  
RfC reference concentration  
RTR residual risk and technology review  
SSM startup, shutdown, and malfunction  
THC total hydrocarbons  
TOSHI target organ-specific hazard index  
tpy tons per year  
UMRA Unfunded Mandates Reform Act  
VCS voluntary consensus standards

*Background information.* On May 2, 2019, the EPA proposed results of the RTR and amendments to the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP. In this action, we are finalizing decisions regarding the RTR 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 are available in the *Summary of Public Comments and Responses for Risk and Technology Review for Asphalt Processing and Asphalt Roofing Manufacturing* document, which is available in the docket, Docket ID No. EPA-HQ-OAR-2017-0662. 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 are the Asphalt Processing and Asphalt Roofing Manufacturing source categories and how does the NESHAP regulate HAP emissions from the source categories?
- C. What changes did we propose for the Asphalt Processing and Asphalt Roofing Manufacturing source categories in our May 2, 2019, RTR proposal?

**III. What is included in this final rule?**

- A. What are the final rule amendments based on the residual risk review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?
- B. What are the final rule amendments based on the technology review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?
- C. What are the final rule amendments addressing emissions during periods of SSM?

- D. What other changes have been made to the NESHAP?
- E. What are the effective and compliance dates of the standards?
- IV. What is the rationale for our final decisions and amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?
  - A. Residual Risk Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories
  - B. Technology Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories
  - C. Amendments Addressing Emissions During Periods of SSM
  - D. Technical Amendments to the MACT Standards
- V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
  - A. What are the affected facilities?
  - B. What are the air quality impacts?
  - C. What are the cost impacts?
  - D. What are the economic impacts?
  - E. What are the benefits?
  - F. What analysis of environmental justice did we conduct?
  - G. What analysis of children's environmental health did we conduct?
- VI. Statutory and Executive Order Reviews
  - A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

- B. 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**

Source category	NESHAP	NAICS <sup>1</sup> Code
Asphalt Processing .....	Asphalt Processing and Asphalt Roofing Manufacturing .....	324110
Asphalt Roofing Manufacturing .....	Asphalt Processing and Asphalt Roofing Manufacturing .....	324122

<sup>1</sup> 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/asphalt-processing-and-asphalt-roofing-manufacturing-national>.

Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

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

*C. Judicial Review and Administrative Reconsideration*

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by May 11, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings

brought by the EPA to enforce the requirements.

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



preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (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).<sup>1</sup> For more information on the statutory authority for this rule, see 84 FR 18926, May 2, 2019.

### B. What are the Asphalt Processing and Asphalt Roofing Manufacturing source categories and how does the NESHAP regulate HAP emissions from the source categories?

The EPA promulgated the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP on April 29, 2003 (68 FR 22975). The standards are codified at 40 CFR part 63, subpart LLLLL. The asphalt processing industry consists of facilities that are engaged in the preparation and oxidation of asphalt flux. The asphalt roofing manufacturing industry consists of facilities that are engaged in the production of asphalt roofing products. As of December 15,

2019, there were eight facilities in operation and subject to the MACT standards. Four of the eight facilities are strictly asphalt processing facilities and the other four operate an asphalt roofing manufacturing facility collocated with an asphalt processing facility.

As promulgated in 2003 and amended on May 17, 2005 (70 FR 28360), the NESHAP prescribes MACT standards for asphalt processing and asphalt roofing manufacturing facilities that are major sources of HAP. The MACT standards establish emission limits for PM and total hydrocarbons (THC) as surrogates for total organic HAP. The MACT standards also limit the opacity and visible emissions from certain emission sources. The source categories and the MACT standards are further described in the proposed rule. See 84 FR 18926, 18929 (May 2, 2019).

### C. What changes did we propose for the Asphalt Processing and Asphalt Roofing Manufacturing source categories in our May 2, 2019, RTR proposal?

On May 2, 2019, the EPA published a proposed rule in the **Federal Register** for the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP, 40 CFR part 63, subpart LLLLL, that took into consideration the RTR analyses. We proposed to find that the risks from each of the source categories are acceptable and that additional or revised standards are not required in order to provide an ample margin of safety to protect public health and prevent an adverse environmental effect. See 84 FR 18926, 18929 (May 2, 2019). In addition, pursuant to the technology review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories, we proposed to conclude that no revisions to the current standards are necessary for asphalt loading racks, asphalt storage tanks, blowing stills, coating mixers, saturators (including wet loopers), coaters, sealant applicators, and adhesive applicators. The EPA also proposed to conclude that it is not necessary to promulgate a hydrogen chloride (HCl) emissions standard for blowing stills pursuant to the technology review.

We also proposed the following amendments:

- Revisions to the SSM provisions of the NESHAP in order to ensure consistency with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted source owners and operators from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM;

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

- a provision allowing owners and operators to use manufacturers' specifications to establish the maximum pressure drop across the control device used to comply with the PM standards;
- a provision allowing owners and operators to use the performance test average inlet temperature and apply an operating margin of +20 percent to determine maximum inlet gas temperature of a control device used to comply with the PM standards;
- periodic performance testing (*i.e.*, at least once every 5 years), using the same methods currently required for the initial compliance demonstration, of each air pollution control device (APCD) used to comply with the PM, THC, opacity, or visible emission standards, in addition to the current one-time initial performance testing and ongoing operating limit monitoring;
- a requirement for electronic submittal of performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports;
- IBR of an alternative test method for EPA Test Method 9; and
- several minor editorial and technical changes in the subpart.

In the same document, although we did not propose any rule amendments based on the residual risk or technology reviews, we requested comment on the relationship between the CAA section 112(d)(6) technology review and the CAA section 112(f) residual risk review; specifically, the extent to which findings that underlie a CAA section 112(f) determination should be considered in making any determinations under CAA section 112(d)(6).

### III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112(f)(2) and CAA section 112(d)(6) for the Asphalt Processing and Asphalt Roofing Manufacturing source categories. This action also finalizes other changes to the NESHAP, including corrections and clarifications to regulatory provisions related to emissions during periods of SSM; adding electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports; and other technical corrections to improve consistency and clarity. This action also includes a number of other amendments to the NESHAP generally similar to those proposed in the May 2, 2019, RTR proposal, such as amendments related to monitoring procedures and periodic performance testing, but with some modifications

based on consideration of comments received during the public comment period as described in sections III.D and IV.D of this preamble.

#### *A. What are the final rule amendments based on the residual risk review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?*

This section describes the final actions regarding the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP that the EPA is taking pursuant to CAA section 112(f). The EPA proposed no changes to these NESHAP based on the residual risk reviews conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks due to emissions from the Asphalt Processing and Asphalt Roofing Manufacturing source categories are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

The EPA received two emissions inventory updates for two specific facilities during the public comment period. After considering the updated information, the Agency decided to update certain modeling file records for those two facilities and to reanalyze risk for both source categories, in part because some of the emissions estimates were notably higher than the estimates we used for risk modeling for the proposal and we wanted to confirm that risks were still acceptable. The EPA reanalyzed risk using the same risk assessment methodology used for the proposed rule; however, this did not result in any change to our proposed determination. Based on our analyses (which include the emissions inventory updates received during the public comment period), we find that the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. The EPA is, therefore, not revising the standards under CAA section 112(f)(2) (for NESHAP 40 CFR part 63, subpart LLLLL) based on the residual risk review. See sections IV.A.2 and IV.A.3 of this preamble for discussion of key comments and responses regarding the residual risk review, including details about the emissions inventory updates we received during the public comment period.

#### *B. What are the final rule amendments based on the technology review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?*

The EPA is not finalizing the technology review as proposed

regarding HCl emissions standards for blowing stills. As discussed in section IV.B of this preamble, the EPA determined that it is not appropriate to establish new standards for previously unregulated sources or pollutants as part of the technology review. The Agency is finalizing all required aspects of the technology review as proposed. The EPA has determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for these source categories. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6). Section IV.B.3 of this preamble provides a summary of key comments we received on the technology review and our responses.

#### *C. What are the final rule amendments addressing emissions during periods of SSM?*

The Agency is finalizing, as proposed, changes to the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the EPA is establishing standards in this rule that apply at all times. Table 7 to subpart LLLLL of part 63 (General Provisions applicability table) is being revised to change several references related to requirements that apply during periods of SSM. The EPA eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made changes to the rule to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. The EPA determined that facilities in these source categories can meet the applicable emission standards in the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP at all times, including periods of startup and shutdown. Therefore, the EPA determined that no additional standards are needed to address emissions during these periods. Also, as stated in our proposal, 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 Court in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–10 (2016). The legal rationale and detailed changes for SSM periods that are being finalized in this rule are set forth in the proposed rule. See 84 FR 18945 through 18949.

The EPA is also finalizing a revision to the performance testing requirements at 40 CFR 63.8687(b). This final rule text states that each performance test must be conducted under normal operating conditions; and operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The final rules also require that operators maintain records to document that operating conditions during the test represent normal operations. Section IV.C.3 of this preamble provides a summary of key comments we received on the SSM provisions and our responses.

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

This rule also finalizes, as proposed, revisions to several other NESHAP requirements. The revisions are briefly described in this section (refer to section IV.D of this preamble for further details).

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners and operators of facilities in the Asphalt Processing and Asphalt Roofing Manufacturing source categories submit electronic copies of certain required performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports through the EPA's Central Data Exchange (CDX) website. Performance test and performance evaluation test reports are prepared using the EPA's Electronic Reporting Tool. We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility (*i.e.*, a possible outage in the CDX or Compliance and Emissions Data Reporting Interface (CEDRI) or a force majeure event in the time just prior to a report's due date), as well as the process to assert such a claim. In addition, we are finalizing all revisions that we proposed for clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. These editorial corrections and clarifications are summarized in Table 4 of the proposal. See 54 FR 18951 and 18952. We received no public comment on the editorial corrections and clarifications and these changes are being finalized as proposed.

We are also finalizing amendments in the NESHAP for monitoring pressure drop and temperature of APCDs, and for periodic compliance testing, similar to the proposed amendments, but with

some modifications in response to issues raised in comments on the proposed rulemaking. Regarding pressure drop, instead of using manufacturers' specifications or a performance test to establish only a maximum pressure drop across the control device used to comply with the PM standards as proposed, we are finalizing a requirement that requires owners and operators to establish a pressure drop range (*i.e.*, a minimum and a maximum pressure drop) across the PM control device with the option to either use manufacturers' specifications or a performance test to establish the range. The addition of a minimum limitation to the operating range of the PM control device mirrors the approach in the Asphalt Processing and Asphalt Roofing Manufacturing area source NESHAP, 40 CFR part 63, subpart AAAAAAA, and provides an indication of breakthrough or bypass of the control device, as a drop in the differential pressure below that established by the manufacturer's specification would indicate that potentially either the control device has been inadvertently bypassed (leaking around the filter) or tearing or distortion of the filter has occurred. As stated in the proposal, allowing the use of manufacturers' specifications provides flexibility and alleviates the need for a facility to have to retest the PM control device to reestablish new operating limits due to the inability of a source to "dial in" the differential pressure of their control device for a particular performance test as the differential pressure increases over time as a result of particulate deposition. With regard to monitoring temperature, similar to proposal, the Agency is finalizing a requirement that allows owners and operators to use the performance test average inlet temperature and apply an operating margin of +20 percent to determine maximum inlet gas temperature of a control device used to comply with the PM standards; however, in the final rule, the Agency is clarifying the operating margin applies to temperatures expressed in units of degrees Celsius or degrees Fahrenheit. The EPA acknowledges that the use of Celsius will result in a slightly more conservative temperature range (6.4 degrees Fahrenheit less when compared to the corresponding Fahrenheit range), but it is appropriate to provide the flexibility for facilities to use either temperature scale as either scale will ensure the control devices are operating properly. On the other hand, the application of a 20-percent margin to temperature expressed in absolute

temperature (Rankin or Kelvin scales) would result in too large of an operating limit window. Therefore, we are not allowing the use of an absolute temperature scale. Finally, to ensure ongoing compliance with the standards, the EPA is finalizing requirements for periodic performance testing for each APCD used to comply with the PM, THC, opacity, and visible emission standards, in addition to the current one-time initial performance testing and ongoing operating limit monitoring. The EPA is requiring that the performance tests must be conducted at least once every 5 years, as proposed; however, the Agency is adding language to the final rule text to allow facilities to synchronize their periodic performance testing schedule with a previously conducted emission test provided they can demonstrate to the Administrator's satisfaction that the previously-conducted testing meets the requirements of this rule.

*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 March 12, 2020. The EPA is finalizing three changes that would affect ongoing compliance requirements for this subpart. First, we are changing the requirements for SSM by removing the provisions that provide an exemption from the requirements to meet the standard during SSM periods. Second, we are removing the requirement to develop and implement an SSM plan. Finally, we are adding a requirement that performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports be submitted electronically. From the assessment of the timeframe needed for implementing the entirety of the revised requirements, the EPA proposed a period of 180 days to be the most expeditious compliance period practicable. No opposing comments were received during the public comment period, and the 180-day period is being finalized as proposed. Thus, the compliance date of the final amendments for all affected sources is September 8, 2020.

Also, we are adding requirements to conduct ongoing periodic performance testing every 5 years. The EPA proposed that each existing affected source, and each new and reconstructed affected source that commences construction or reconstruction after November 21, 2001, and on or before March 12, 2020 that uses an APCD to comply with the standards, must conduct the first periodic performance test on or before March 13, 2023 and conduct subsequent

periodic performance tests no later than 60 months thereafter following the previous performance test. The EPA also proposed that owners or operators of each new and reconstructed affected source that commences construction or reconstruction after March 12, 2020 that uses an APCD to comply with the standards, conduct the first periodic performance test no later than 60 months following the initial performance test and conduct subsequent periodic performance tests no later than 60 months thereafter following the previous performance test. If owners or operators used the alternative compliance option specified in 40 CFR 63.8686(b) to comply with the initial performance test, then the EPA proposed that they must conduct the first periodic performance test no later than 60 months following the date they demonstrated to the Administrator that the requirements of 40 CFR 63.8686(b) had been met. These compliance dates are being finalized as proposed; however, based on a comment received during the public comment period, the EPA is including additional language

that allows facilities to synchronize their periodic performance testing schedule with a previously conducted emission test provided they can demonstrate to the Administrator's satisfaction that the previously conducted testing meets the requirements of this rule (refer to section IV.D of this preamble for further details).

#### IV. What is the rationale for our final decisions and amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document, *Summary of Public Comments and Responses for Risk and Technology Review for Asphalt Processing and Asphalt Roofing*

*Manufacturing*, which is available in the docket for this rulemaking.

#### A. Residual Risk Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories

1. What did we propose pursuant to CAA section 112(f) for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

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 May 2, 2019, proposed rule for 40 CFR part 63, subpart LLLLL (84 FR 18926). The key results of the risk assessment for the proposal are presented in Table 2 of this preamble. More detail may be found in the residual risk technical support document, *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2018 Risk and Technology Review Proposed Rule*, which is available in the docket for this rulemaking.

TABLE 2—ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING PROPOSED INHALATION RISK ASSESSMENT RESULTS

Number of facilities <sup>1</sup>	Maximum individual cancer risk (in 1 million) <sup>2</sup>	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI	Maximum screening acute noncancer HQ
	Based on actual emissions level <sup>2,3</sup>	Based on actual emissions level <sup>3</sup>	Based on actual emissions level <sup>3</sup>	Based on actual emissions level <sup>3</sup>	Based on actual emissions level
8 .....	<1	0	0.0007	0.1	HQ <sub>REL</sub> = 4 (formaldehyde).

<sup>1</sup> Number of facilities evaluated in the risk analysis.

<sup>2</sup> Maximum individual excess lifetime cancer risk due to HAP emissions from the source categories.

<sup>3</sup> Actual emissions equal allowable emissions; therefore, actual risks equal allowable risks.

The results of the proposed inhalation risk assessment, as shown in Table 2 of this preamble, indicated that the cancer risk to the individual most exposed is below 1-in-1 million from both actual and allowable emissions, the estimated maximum chronic noncancer target organ-specific hazard index (TOSHI) based on both actual and allowable emissions is 0.1, and the maximum acute noncancer hazard quotient (HQ) is 4 driven by formaldehyde based on the acute reference exposure level (REL). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.0007 excess cancer cases per year, or one case in every 1,430 years.

The maximum lifetime individual cancer risk posed by the eight facilities, based on whole facility emissions, was

estimated to be 9-in-1 million at proposal, with naphthalene and benzene emissions from facility-wide fugitive emissions and nickel compound emissions from flares from the Petroleum Refinery source category driving the risk. At proposal, the maximum chronic noncancer hazard index (HI) posed by whole facility emissions was estimated to be 0.1 (for the respiratory system) and occurred at two facilities.

At proposal, the Agency identified emissions of HAP known to be persistent and bio-accumulative in the environment (PB-HAP): Cadmium compounds, lead compounds, mercury compounds, and polycyclic organic matter (POM) (of which polycyclic aromatic hydrocarbons is a subset). The multipathway risk screening assessment resulted in a maximum Tier 2 cancer

screening value of 2 for POM. The Tier 2 screening values for all other PB-HAP emitted from the source categories (cadmium compounds, lead compounds, and mercury compounds) were less than 1.

The ecological risk screening assessment indicated all modeled points were below the Tier 1 screening threshold based on actual and allowable emissions of PB-HAP and acid gases emitted by the source categories.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the risks posed by the Asphalt Processing and Asphalt Roofing Manufacturing source categories are acceptable (see section IV.B.1 of the proposal preamble, 84 FR 18939, May 2, 2019).

The EPA then considered whether 40 CFR part 63, subpart LLLLLL, provides an ample margin of safety to protect public health and whether, taking into consideration costs, energy, safety, and other relevant factors, standards are required to prevent an adverse environmental effect. In considering whether standards are required 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. The EPA proposed that additional or revised standards for the Asphalt Processing and Asphalt Roofing Manufacturing source categories are not required to provide an ample margin of safety to protect public health. The Agency also proposed that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. See section IV.B.2 of the proposal preamble, 84 FR 18939, May 2, 2019.

2. How did the residual risk review change for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

As part of the final risk assessment, the EPA reanalyzed risks using

emissions inventory updates that were received for two specific facilities during the public comment period. These updates included revised actual emissions, allowable emissions, and acute emissions for numerous pollutants from three different emission units at one facility (*i.e.*, a blowing still and two asphalt storage tanks) and revised formaldehyde acute emission rates from four asphalt storage tanks at another facility. The revised emissions used to reanalyze risks are available in the docket for this rulemaking.

Our assessment of the effects of these changes resulted in no change to the maximum lifetime cancer risk for the source categories (*i.e.*, the cancer risk to the individual most exposed is below 1-in-1 million from both actual and allowable emissions). Also, the maximum chronic noncancer HI for the source categories remains less than 1. The maximum screening level acute HQ decreased from 4 to less than 1. Table 3 summarizes the inhalation risk assessment results for the final rule. For the reanalyzed multipathway screening level assessment, the maximum Tier 2 PB-HAP screening value decreased from 2 to less than 1, based on revised emissions received during the comment period. Finally, the environmental risk screening level assessment indicated all modeled points were below the Tier 1 screening threshold for all PB-HAP and acid gases emitted by the source

category. As described in other sections of this preamble, the updated HAP emissions estimates that we received in the public comments resulted in increased emissions for some HAP and decreased emissions for other HAP. After incorporating the new emissions data and rerunning the risk model, the estimated acute risk levels decreased because the emissions estimates for the acute risk driver HAP (*i.e.*, acrolein and formaldehyde) were revised to lower estimates based on comments. The updated emissions estimates are provided in updated risk input files (*i.e.*, HEM files) which are available in the docket. In summary, the new information and reanalyzed risks did not cause a change to the proposed determination that risks caused by emissions from these source categories are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Additional details of the reanalyzed risks can be found in the *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*, available in the docket for this rulemaking.

TABLE 3—ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING FINAL INHALATION RISK ASSESSMENT RESULTS

Number of facilities <sup>1</sup>	Maximum individual cancer risk (in 1 million) <sup>2</sup>	Estimated population at increased risk of cancer $\geq$ 1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI	Maximum screening acute noncancer HQ
	Based on actual emissions level <sup>2,3</sup>	Based on actual emissions level <sup>3</sup>	Based on actual emissions level <sup>3</sup>	Based on actual emissions level <sup>3</sup>	Based on actual emissions level
8 .....	<1	0	0.0009	0.03	HQ <sub>REL</sub> = 0.5 (arsenic).

<sup>1</sup> Number of facilities evaluated in the risk analysis.

<sup>2</sup> Maximum individual excess lifetime cancer risk due to HAP emissions from the source categories.

<sup>3</sup> Actual emissions equal allowable emissions; therefore, actual risks equal allowable risks.

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

*Comment:* One commenter said that the EPA's risk modeling file does not reflect the correct emission records for their facility (CertainTeed Corp, Shakopee MN), which they provided to the EPA in December 2017. The commenter submitted, in Microsoft Excel format, proposed revisions to the EPA's risk modeling file that mirror the corrections that were submitted to the EPA in December 2017 plus one

additional correction; these revisions include updates to actual, allowable, and acute emissions for three different emission units (*i.e.*, a blowing still and two asphalt storage tanks).

Another commenter explained that they compared "actual allowable" annual emissions of risk-driving HAP (those HAP contributing at least 10 percent of the overall maximum cancer risk and maximum chronic noncancer TOSHI) used in the EPA's risk modeling file against the most recent facility-provided responses to the CAA section

114 information collection request (ICR). The commenter claimed that there are two facilities (110000768312 and 110000347018) that have revisions to the CAA section 114 survey data that have not yet been incorporated into the assessment of chronic hazards and advocated that these facilities' revisions be incorporated into the final risk modeling. The commenter also stated that, other than these revisions, their review did not identify any significant errors in the inputs to the EPA's Human Exposure Model (HEM-3) risk modeling

results. The commenter stated that the EPA overestimated risk for acrolein emissions from a blowing still at Facility 110000768312. The commenter explained that the acrolein maximum hourly emission rate of the blowing still (HEM-3 source ID CESC0001) used in the EPA's risk modeling file should be revised to 0.0146 pounds per hour (0.0639 tpy) in lieu of the value used in the EPA's analysis (*i.e.*, 19.4 tpy). The commenter contended that because this blowing still is the only source of acrolein emissions at this facility, the acute HQ decreases linearly with the emission rate; and the commenter estimated the revised maximum acute HQ to be 0.008. The commenter also noted that with their revisions to the acrolein emission rates, the acute risk driver for the facility becomes formaldehyde, which has a maximum acute HQ of 0.044. The commenter provided an aerial photo of the specific facility and the corresponding acute HQs for acrolein and formaldehyde at HEM-3 polar receptor locations.

A third commenter stated that the EPA must subject CertainTeed's (Facility 110000768312) acrolein emissions to emission limits. The commenter stated that the EPA relied on the acute exposure guideline level (AEGL) value to conclude that an ample margin of safety was already provided, but that all the EPA reports is that the Agency did not "identify any processes, practices, or control technologies" to reduce acrolein emissions. The commenter disagreed with EPA's conclusion that, "acrolein-specific standards . . . are not necessary to provide an ample margin of safety," stating that it is not clear how one follows from the other.

The commenter stated that the EPA is not lost for options under this analysis if control technology and practices fail to provide an ample margin of safety, and that it must go beyond what may suffice for a technology review posture. The commenter argued that the EPA must consider setting emissions limits, rather than performance standards or control requirements, where—as with CertainTeed—a facility's emission levels and performance standards do not provide an ample margin of protection. The commenter alleged that the EPA ignored the fact that its own data show this facility to be the only facility with significant acrolein emissions, and the EPA doesn't bother to ask why this facility is an outlier.<sup>2</sup>

*Response:* The Agency first wants to clarify that one of the commenters revised their comment after the public comment period closed, by naming only one facility (110000768312) (and not Facility 110000347018) as having revisions to the CAA section 114 survey data that had not yet been incorporated into risk modeling (see email from the Asphalt Roofing Manufacturers Association (ARMA) to the EPA dated July 8, 2019, which is available in the docket for this action). Second, regarding the corrected emission records that were provided to the EPA in December 2017 for this facility (110000768312), the 2017 cover letter that was submitted to the EPA requested that the EPA correct the emissions in two specific cells pertaining to chromic acid emissions. The Agency corrected those chromic acid emissions as requested and they are reflected in the modeling file that was used for the proposed risk assessment. However, based on the comments received during the public comment period, we also learned that there were several other emissions data cells in the 2017 CAA section 114 ICR that the facility wanted corrected (*i.e.*, changes to actual, allowable, and acute emissions for three different emission units, including a blowing still and two asphalt storage tanks). The EPA reviewed these revised emissions estimates and determined them to be valid. All of the revisions requested by the facility have been incorporated and correct the emissions originally entered in error. Some of these revisions correct overestimated values (by decreasing pollutant-specific emissions), and the remaining revisions correct underestimated values (by increasing pollutant-specific emissions). We assessed whether all of the revised emissions were reasonable by comparing the revised emissions to other similar emissions sources in the source category. We also confirmed that there were no changes to any stack parameters, dimensions of fugitive sources, coordinates, or other inputs not related to emissions. Using those revised emissions, the EPA reassessed risks from asphalt processing and asphalt roofing manufacturing facilities. The revised emissions did not result in any changes to our proposed determination that risks caused by emissions from these source categories are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. The revised maximum acute HQ screening value is 0.5, based on a REL for arsenic compounds. The two HQ screening

values that were greater than 1 in the risk assessment performed for the proposal (a refined, or off-site, HQ of 4 for formaldehyde and 2 for acrolein, both based on a REL) are now both less than 1 (0.3 and 0.08, respectively, and again based on a REL). Therefore, no pollutant exceeded any acute health benchmark (*i.e.*, REL, AEGL, Emergency Response Planning Guidelines (ERPG)) in our screening-level acute assessment. More details on the revised risk assessment is available in the document, *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*.

*Comment:* One commenter submitted a correction to the EPA's risk modeling file for the formaldehyde maximum emission rate of four asphalt storage tanks (*i.e.*, emission unit IDs T014, T015, T016, and T021) at the Owens Corning Medina County Plant, Facility Registry Service ID 110000388919. The commenter provided calculations showing that the formaldehyde maximum emission rate for each of these four storage tanks should be 0.0429 tpy. Similarly, another commenter attested that the EPA overestimated risk for formaldehyde emissions from these four storage tanks (at Facility 110000388919). Based on the facility corrected values, this commenter estimated the revised maximum acute HQ to be 0.2. The commenter provided an aerial photo of the specific facility and the corresponding acute HQs for formaldehyde at HEM-3 polar receptor locations.

Another commenter argued that EPA's evaluation of potential control options for Owen Corning's formaldehyde emissions is flawed. The commenter disagreed with EPA's conclusion that "additional emissions controls" for storage tanks "are not necessary to provide an ample margin of safety." The commenter stated that EPA's dismissal of formaldehyde controls must be revisited without consideration of costs and instead focus on whether these controls are necessary to provide an ample margin of safety to protect public health.

The commenter noted the EPA's acknowledgement of the HQ of 4 but challenged the EPA's conclusion that eliminating this risk is a "small risk reduction." The commenter stated that it is unclear why the EPA thinks cost-per-ton is the proper metric for the EPA's analysis of cost, when small amounts of highly toxic pollutants can present a significant risk. As an example, the commenter referenced the

<sup>2</sup> Asphalt RRA Attachment\_3—Actual allowable emissions Asphalt HEMInput HAPEmis Grp 1of 1 CatLevel 20171212. Docket ID number EPA-HQ-OAR-2017-0662-0015.

EPA's finding that a moderate amount of emissions of formaldehyde from facilities overall contributed to about 48 percent of increased cancer incidence. The commenter stated that the EPA fails to consider the relevant factors—impact on health, public safety, and the risks posed—in favor of a misleadingly high cost-per-ton estimate.

The commenter further argued that the EPA never explains how the current standards manage to both produce an HQ of 4—a threat to the health of the exposed public—while also providing an ample margin of safety for that same public; the EPA merely concludes that it is so. The commenter stated that the EPA cannot validly explain this conclusion because the two are irreconcilable, and that the EPA can only point to cost, which it is not statutorily allowed to consider.

The commenter added that, even as is, it is unclear why the EPA is even estimating the cost of control in its analysis, claiming the EPA should be able to get actual costs from existing facilities' records, or at minimum, an estimate from an actual control supplier rather than attempting to cobble its own together. The commenter argued that relying on estimates just injects more unnecessary uncertainty into the EPA's analysis.

**Response:** The EPA reviewed the revised emissions estimates for formaldehyde provided during the comment period and determined those emissions were valid. The revised formaldehyde emission rates are based on corrections discovered during a permit review by Owens Corning of four asphalt storage tanks. Previously, the sum of emissions for all individual volatile organic compounds (VOC) for the four asphalt storage tanks exceeded the maximum potential to emit for THC, which is physically impossible and would greatly overestimate risk. Owens Corning revised the formaldehyde emission rates based on the emission factors listed in Jankousky (2003).<sup>3</sup> The emission factors in the Jankousky study were subsequently peer-reviewed and published in a scientific research journal (Trumbore *et al.*, 2005).<sup>4</sup> Using those revised emissions, the EPA reassessed risks from asphalt processing and asphalt roofing manufacturing facilities. The revised emissions did not cause us to change our proposed determination that risks due to

emissions from these source categories are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Based on the reassessment of risk, the maximum acute HQ screening value for the categories is 0.5, based on an REL for arsenic compounds. The HQ screening value of 4 for formaldehyde in the risk assessment performed for the proposal is now less than 1 (0.3). Therefore, no pollutant exceeded any acute health benchmark (*i.e.*, REL, AEGL, ERPG) in our revised screening-level acute assessment. More details on the revised risk assessment is available in the document, *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*.

Regarding the comment about it being unclear why the EPA estimated control costs, as described in the proposed rule preamble, published on May 2, 2019 (84 FR 18926), under the risk review, the EPA follows a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination “considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)<sup>5</sup> of approximately 1 in 10 thousand.” 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health “in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.” *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

As explained in the proposed rule preamble (84 FR 18926), the EPA proposed that risks were acceptable for

Asphalt Processing and Asphalt Roofing Manufacturing. Therefore, the EPA proceeded to the second step (*i.e.*, the ample margin of safety analysis) for these source categories. Consistent with the framework described above, in the RTR proposal, under this second step, the EPA considered all the health information and other factors including costs to determine whether or not any revisions to the standards were warranted under CAA section 112(f)(2). As explained in the proposal preamble and again in this preamble, we did not identify any cost-effective controls or other measures to reduce risks further. Therefore, we proposed that the current standards provide an ample margin of safety and additional or revised standards are not warranted. Furthermore, as described in other sections of this final rule preamble, after considering the public comments and revising some of our analyses, we continue to conclude that risks are acceptable and that the current NESHAP provides an ample margin of safety.

With regard to the derivation of our cost estimates, we used methodologies published in the EPA Air Pollution Control Cost Manual.<sup>6</sup> The EPA Air Pollution Control Cost Manual is widely used by the EPA in developing cost estimates for regulatory standards. The cost algorithms are considered sufficient for determining economic impacts and whether controls are cost effective. The manual's cost algorithms were originally developed from vendor information (and in many cases, this involves contact with hundreds of vendors and the assimilation of large amounts of data) and meant to apply to all situations where the control device can be used. The algorithms can also provide site-specific costs by using site-specific inputs, such as flow rate, pollutants being controlled, temperature, etc. Site-specific costs are often difficult to obtain directly from facilities and are frequently considered proprietary by vendors. We maintain that using the EPA Air Pollution Control Cost Manual to estimate costs for regulatory standards is appropriate. Although industry average prices for certain cost components in our analyses have not been updated to one base year; we updated these component costs to 2017 dollars using the Chemical Engineering Plant Cost Index.

**Comment:** One commenter disagreed with the EPA's use of a “low confidence” Integrated Risk Information System (IRIS) reference concentration

<sup>3</sup> Jankousky, Angela Libby. *Proposed Emission Factors for Criteria Pollutants and Hazardous Air Pollutants from Asphalt Roofing Manufacturing*. ARMA. May 12, 2003.

<sup>4</sup> Trumbore *et al.* *Emission factors for asphalt-related emissions in roofing manufacturing*. October 2005.

<sup>5</sup> Although defined as “maximum individual risk,” MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

<sup>6</sup> Available at: <https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution>.



(RfC) of 0.02 milligrams per cubic meter (mg/m<sup>3</sup>) to assess health risk from HCl. Instead, the commenter argued that the 2000 California Environmental Protection Agency (CalEPA) Office of Environmental Health Hazard Assessment (OEHHHA) value of 9 micrograms per cubic meter (µg/m<sup>3</sup>) (0.009 mg/m<sup>3</sup>) should be used to assess chronic noncancer risk. The commenter explained that the IRIS value was one that IRIS had stated it planned to update when additional data became available, but that update has not occurred, and that, in such circumstances, the EPA's own prioritization policy directs it to use the best available science, which would include the CalEPA OEHHHA value.

The commenter stated that, by not using the CalEPA OEHHHA value, the EPA underestimates the chronic noncancer risk from HCl. Additionally, the commenter asserted that the EPA did not attempt to evaluate the cancer risk for HCl, and that the EPA has not conducted a "complete evaluation and determination under" the "IRIS program for evidence of human carcinogenic potential." The commenter indicated that the Court has held that the EPA must analyze the carcinogenic potential of HCl in order to "base its findings" of no carcinogenic risk "on substantial evidence," *Sierra Club v. EPA*, 895 F.3d 1, 11 (D.C. Cir. 2018), and that, therefore, underestimating HCl emissions impacts the EPA's findings of chronic noncancer and cancer risk. The commenter argued that ignoring the potential for carcinogenic risk from HCl is arbitrary.

**Response:** For the CAA section 112(f)(2) risk reviews, we use dose-response information that has been obtained from various sources and prioritized according to (1) conceptual consistency with the EPA risk assessment guidelines and (2) level of peer review received. The prioritization process is aimed at incorporating into our assessments the best available science with respect to dose-response information. The recommendations are based on the following sources: (1) The EPA, (2) Agency for Toxic Substances and Disease Registry (ATSDR), and (3) CalEPA.<sup>7</sup> In selecting the appropriate chronic noncancer dose-response value for HCl for use in the risk assessment,

in this case, the 1995 EPA IRIS RfC, we followed this prioritization approach, and we reviewed newer values as part of that process. The 1995 EPA IRIS RfC for HCl of 0.02 mg/m<sup>3</sup> was based on the following studies: Sellakumar *et al.*, 1985<sup>8</sup> and Albert *et al.*, 1982.<sup>9</sup> The ATSDR has not established a chronic noncancer dose-response value for HCl. In 2000, CalEPA established a chronic REL of 9 µg/m<sup>3</sup> (9 × 10<sup>-3</sup> mg/m<sup>3</sup>)<sup>10</sup> based on Sellakumar *et al.*, 1985. CalEPA did not use newer data than the EPA in establishing its chronic REL for HCl.

In assessments completed prior to 2000, the EPA assigned confidence ratings (low, medium, high) to the dose-response value (*e.g.*, RfC). The ratings assignment was based generally on the extent and robustness of the database (*e.g.*, number and types of different toxicity test studies, quality of the studies, suitability of the test results for use in dose-response assessment). In the process of assessing the toxicity of a substance, if enough data from relevant studies and of acceptable quality do not exist, the EPA IRIS program does not establish a dose-response value. For HCl, the available data were judged adequate for establishment of an RfC.<sup>11</sup> In recognition of limitations in the overall database and the principal study, the resultant RfC for HCl was given a confidence rating of low.

The EPA IRIS program has not assigned a carcinogenicity weight of evidence classification to HCl. Little research has been conducted on the carcinogenicity of HCl. (79 FR 75639.) There are limited studies on the carcinogenic potential of HCl in humans. Of these, two occupational studies failed to separate potential exposure of HCl from exposure to other substances shown to have carcinogenic activity and are, therefore, not appropriate to evaluate the carcinogenic potential of HCl (Steenland *et al.*, 1988, Beaumont *et al.*, 1986).<sup>12 13</sup> Another

occupational study failed to show evidence of association between exposure to HCl and lung cancer among chemical manufacturing plant employees (Bond *et al.*, 1991).<sup>14</sup> (80 FR 65488.) Consistent with the human data, chronic inhalation studies in animals have reported no carcinogenic responses after chronic exposure to HCl (Albert *et al.*, 1982; Sellakumar *et al.*, 1985).<sup>15 16</sup> (80 FR 65488.) Hydrogen chloride has not been demonstrated to be genotoxic. The genotoxicity literature consists of two studies showing false positive results potentially associated with low pH in the test system (Morita *et al.*, 1992; Cifone *et al.*, 1987).<sup>17 18</sup> (80 FR 65488.)

The International Agency for Research on Cancer (IARC) also classifies agents (chemicals and biologics) as to carcinogenicity. The IARC classifies HCl as "not classifiable as to its carcinogenicity to humans."<sup>19</sup> Of the more than 1,000 agents classified by IARC, no agents are classified as "probably not carcinogenic (IARC) to humans."<sup>20</sup>

The Court decision cited by the commenter, *Sierra Club v. EPA*, 895 F.3d 1 (D.C. Cir. 2018), addressed the basis for setting a health-based emission limit for HCl under section 112(d)(4) of the CAA, and not for making a determination about risk acceptability under section 112(f)(2) of the CAA.

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

As noted in the proposal, the EPA sets standards under CAA section 112(f)(2)

*cancer and exposure to acid mists.* Br. J. of Ind. Med. 45: 766–776.

<sup>13</sup> Beaumont, J.J., J. Leveton, K. Knox, T. Bloom, T. McQuiston, M. Young, R. Goldsmith, N.K. Steenland, D. Brown, W.E. Halperin. 1987. *Lung cancer mortality in workers exposed to sulfuric acid mist and other acid mists.* JNCI 79: 911–921.

<sup>14</sup> Bond G.G., Flores G.H., Stafford B.A., Olsen G.W. *Lung cancer and hydrogen chloride exposure: results from a nested case-control study of chemical workers.* 1991. J Occup Med; 33(9), 958–61.

<sup>15</sup> Albert, R.E., A.R. Sellakumar, S. Laskin, M. Kuschner, N. Nelson and C.A. Snyder. 1982. *Gaseous formaldehyde and hydrogen chloride induction of nasal cancer in rats.* J. Natl. Cancer Inst. 68(4): 597–603.

<sup>16</sup> Sellakumar, A.R., C.A. Snyder, J.J. Solomon and R.E. Albert. 1985. *Carcinogenicity for formaldehyde and hydrogen chloride in rats.* Toxicol. Appl. Pharmacol. 81: 401–406.

<sup>17</sup> Morita, T., T. Nagaki, I. Fukuda, K. Okumura. 1992. *Clastogenicity of low pH to various cultured mammalian cells.* Mutat. Res. 268: 297–305.

<sup>18</sup> Cifone, M.A., B. Myhr, A. Eiche, G. Bolcsfoldi. 1987. *Effect of pH shifts on the mutant frequency at the thymidine kinase locus in mouse lymphoma L5178Y TK<sup>-</sup> cells.* Mutat. Res. 189: 39–46.

<sup>19</sup> IARC Monographs, Volume 54, <https://monographs.iarc.fr/wp-content/uploads/2018/06/mono54.pdf>.

<sup>20</sup> IARC Monographs, July 8, 2019 update. <https://monographs.iarc.fr/agents-classified-by-the-iarc/>.

<sup>7</sup> Documentation of this approach is in the EPA report titled *Risk and Technology (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board: Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing*, June 2009. EPA–452/R–09–006. This approach is also documented in the risk assessment technical support document for the RTR NESHAP rulemaking (and included in the rulemaking docket).

<sup>8</sup> Sellakumar, A.R., C.A. Snyder, J.J. Solomon and R.E. Albert. 1985. *Carcinogenicity for formaldehyde and hydrogen chloride in rats.* Toxicol. Appl. Pharmacol. 81: 401–406.

<sup>9</sup> Albert, R.E., A.R. Sellakumar, S. Laskin, M. Kuschner, N. Nelson and C.A. Snyder. 1982. *Gaseous Formaldehyde and Hydrogen Chloride Induction of Nasal Cancer in Rats.* J. Natl. Cancer Inst. 68(4): 597–603.

<sup>10</sup> Technical Support Document for the Derivation of Non-Cancer Reference Exposure Levels: Appendix D.3, pp. 309–312. (<https://oehha.ca.gov/media/downloads/cnr/appendixd3final.pdf>).

<sup>11</sup> U.S. EPA. 1995. IRIS Chemical Assessment Summary for Hydrogen Chloride. [https://cfpub.epa.gov/ncea/iris/iris\\_documents/documents/subst/0396\\_summary.pdf#nameddest=rfc](https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0396_summary.pdf#nameddest=rfc).

<sup>12</sup> Steenland, K., T. Schnorr, J. Beaumont, W. Halperin, T. Bloom. 1988. *Incidence of laryngeal*



using “a two-step standard-setting approach, with an analytical first step to determine an ‘acceptable risk’ that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual risk (MIR) of “approximately 1-in-10 thousand” (see 54 FR 38045, September 14, 1989). We weigh all health risk measures and factors in the risk acceptability determination, including the cancer MIR, cancer incidence, the maximum cancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties. As described above, in the second step, we also consider other factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.

Since proposal, we reanalyzed risk after incorporating new emissions data that were received for several emission sources at two facilities; however, after revising risk estimates using these new emissions data, determinations regarding risk acceptability, ample margin of safety, and adverse environmental effects have not changed. For the reasons explained in the proposed rule and in section IV.A.2 of this preamble, we determined that the risks from both source categories are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, the EPA is not revising the standards pursuant to CAA section 112(f)(2) based on the residual risk review, and the Agency is readopting the existing standards under CAA section 112(f)(2).

#### *B. Technology Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories*

##### **1. What did we propose pursuant to CAA section 112(d)(6) for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?**

Pursuant to CAA section 112(d)(6), the EPA proposed to conclude that no revisions to the current standards are necessary for asphalt loading racks and asphalt storage tanks in the Asphalt Processing source category and for coaters, saturators, wet loopers, coating mixers, sealant and adhesive applicators, and asphalt storage tanks in the Asphalt Roofing Manufacturing source category. We did not find any developments in practices, processes, and control technologies that could be applied to asphalt loading racks, asphalt

storage tanks, coating mixers, saturators (including wet loopers), coaters, sealant applicators, or adhesive (laminate) applicators and that could be used to reduce emissions from asphalt processing and asphalt roofing manufacturing facilities. The EPA also did not identify any developments in work practices, pollution prevention techniques, or process changes that could achieve emission reductions from these emissions sources.

Also, pursuant to CAA section 112(d)(6), we proposed to conclude that no revisions to the current standards are necessary for blowing stills in the Asphalt Processing source category. We did not identify any developments in practices, processes, or control technologies, nor any developments in work practices, pollution prevention techniques, or process changes to control organic HAP from blowing stills at asphalt processing facilities. However, for owners or operators that use a chlorinated catalyst in the blowing still during asphalt processing, we identified two potential HCl (an inorganic HAP) emission reduction options: (1) Installing a packed bed scrubber at the outlet of the blowing still (or at the outlet of the combustion device controlling organic HAP emissions); and (2) installing a dry sorbent injection and fabric filter at the outlet of the blowing still. In addition, we considered whether it might be feasible for facilities that need to use a catalyst to only use non-chlorinated substitute catalysts. However, we did not identify a viable non-chlorinated catalyst substitute. We also note that the average capital costs for option 1 would be about \$2,480,000 per facility, the average annualized costs would be about \$500,000 per facility, and the average HCl cost would be about \$60,000 per ton. We also determined that the costs for option 2 would be higher than the costs for option 1. Because the estimated risks due to HCl emissions are low and based on the relatively high costs per facility for each of the options, we proposed to conclude that neither of these options is necessary for reducing HCl emissions from blowing stills that use chlorinated catalysts.

In addition, we solicited comment on the relationship between the CAA section 112(d)(6) technology review and the CAA section 112(f) residual risk review. We solicited comment on whether revisions to the NESHAP are “necessary,” as the term is used in CAA section 112(d)(6), in situations where the EPA has determined that CAA section 112(d) standards evaluated pursuant to CAA section 112(f) provide

an ample margin of safety to protect public health and prevent an adverse environmental effect. In other words, we solicited comment on whether it is “necessary” to revise the standards based on developments in technologies, practices, or processes under CAA section 112(d)(6) if remaining risks associated with air emissions from a source category have already been reduced to levels that provide an ample margin of safety under CAA section 112(f). See CAA section 112(d)(6) (“The Administrator shall review and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [CAA section 112] no less often than every 8 years.”).

##### **2. How did the technology review change for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?**

Although the EPA proposed to conduct a technology review for previously unregulated HCl emissions from blowing stills, we are withdrawing all aspects of the technology review proposal for HCl from blowing stills. Furthermore, we are clarifying that setting initial standards for previously unregulated emission points or pollutants is not part of the technology review that is required under CAA section 112(d)(6) (refer to section IV.B.3 of this preamble) and that it would be contrary to the provisions and structure of CAA section 112 to establish such standards for the first time under CAA section 112(d)(6). In short, under the CAA, while the EPA has the discretion (and authority) to set initial standards for previously unregulated emissions at the same time and in the same rulemaking process that it conducts a technology review under CAA section 112(d)(6), setting such initial standards is not part of the technology review required under CAA section 112(d)(6). We are finalizing all remaining aspects of the technology review as proposed.

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

*Comment:* One commenter stated that the EPA has avoided their obligation to “review and revise, as necessary (taking into account developments in practices, processes, and pollution control technologies), emission standards promulgated under this section no less often than every 8 years” (CAA section 112(d)(6)), by refusing to demonstrate that it has completed an effective technology review and has assessed and accounted for developments, which is

unlawful and arbitrary. The commenter said that the EPA did not comply with the CAA section 112(d)(6) requirements in conducting the technology review. The commenter explained that the EPA only reviewed information it already had or technology it already mandated from three sources of information and did not look at state requirements, foreign control methods, different methods or brands of controls to see which was most effective, efficient, or reliable; requirements likely to promote future technological progress; or facility procedures or best practices, such as best practices to mitigate malfunctions. The commenter added that the EPA should have requested information from actual pollution control manufacturers and distributors and provided the information for notice and comment.

**Response:** We disagree with the commenter that the EPA has failed to meet the CAA legal obligation to complete the technology review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories.

With respect to the information underlying this review, in June 2017, the EPA issued an ICR pursuant to CAA section 114, to collect information from facilities that are currently considered to be part of the Asphalt Processing source category and/or Asphalt Roofing Manufacturing source category. The responses to the CAA section 114 ICR reflect air regulations of national, state, and local jurisdictions. Companies completed the survey for their facilities and submitted responses to the EPA by September 30, 2017. As part of the CAA section 114 ICR, the EPA requested information about process equipment, control technologies, point and fugitive emissions, and other aspects of facility operations. Specifically, with regard to the CAA section 112(d)(6) review, the EPA asked each facility to “. . . provide an operation date and a description of any developments in practices, processes, or control technologies that [the facility] implemented after the date [the facility] demonstrated initial compliance with either Subpart LLLLLL or subpart AAAAAA that resulted in an increase or decrease in HAP emissions from the emission unit.” The responses to this question identify requirements likely to promote future technological progress, facility procedures, and best practices. Furthermore, we asked specific questions about APCDs, other methods of control, and compliance methods used by each facility for their blowing stills, asphalt loading racks, asphalt storage tanks, coating mixers, saturators (including wet loopers), coaters, sealant applicators, adhesive (lamine)

applicators, and mineral handling and storage facilities. The EPA reviewed and compared the data received in response to the CAA section 114 ICR to identify developments in practices, processes, and control technologies that have been implemented by asphalt processing and asphalt roofing manufacturing facilities. Based on this analysis, facilities did not report developments in practices, processes, or control technologies. A summary of this analysis is included in *Clean Air Act Section 112(d)(6) Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories Final*, which is available in the docket for this action.

We also reviewed the EPA's Reasonable Available Control Technology (RACT), Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC),<sup>21</sup> which is a database that contains information on the best emission control technologies that have been required by state, local, and territorial air pollution control agencies. The search identified three facilities, and none of these facilities have more stringent emission control requirements than the 40 CFR part 63, subpart LLLLLL, MACT standards. In addition, we conducted site visits to two asphalt processing and asphalt roofing manufacturing facilities subject to the NESHAP (and one asphalt roofing manufacturing facility not subject to the NESHAP). These site visits did not reveal any developments in practices, processes, or control technologies. Furthermore, the EPA reviewed the operating permits for all the asphalt processing and asphalt roofing manufacturing facilities that were major sources and subject to the NESHAP. These operating permits incorporate all relevant local, state, or regional emission limitations, as well as Federal limitations. In almost all cases, the EPA did not find local, state, or Regional emission limitation that could be compared to the emission limitations in the current NESHAP (given unit basis and format differences), and, thus, the EPA did not identify limits that were more stringent than the limits in the current NESHAP,<sup>22</sup> neither did we find any facility using a control technology that was not considered during

development of the NESHAP and reflected in the current standards.

Finally, the EPA is not aware of any advances in emission control technology that are being used elsewhere and that are applicable to these source categories. We are not aware of any applicable advances in emission control technology that are being used in other countries. We did not receive any comments from any air pollution control manufacturers or from the Institute of Clean Air Companies. No commenters provided any data or information on emissions control techniques beyond those techniques that we already have considered in conducting this technology review. It would not be feasible for the EPA to examine different brands of emission controls to see which was most effective, efficient, or reliable, as suggested by the commenter. That information is not currently available to the EPA, and even if it were, it would be difficult, if not impossible, to correlate that information with emissions performance and develop practical regulatory requirements. Instead, the current MACT floors are based on each type of process equipment used at asphalt processing facilities and on asphalt roofing manufacturing lines. The majority of data used for the MACT floor analysis were obtained from responses to a survey distributed by ARMA in 1995. To identify the best performing sources and amount of emission reduction, the level of control for each piece of process equipment was based on the type of control device installed and the operating characteristics of the control device. After the initial compliance demonstration, facilities using add-on controls must comply with operating limits to ensure the add-on controls continue to be properly operated and maintained and achieve the same level of performance as during the performance test. Facilities experiencing deviations from the emission limits or the operating limits must report these deviations to the EPA, and the Agency will then determine on a case-by-case basis whether the deviation constitutes a violation. Also, because of the diversity of factors that could lead to a malfunction in these source categories, it would not be practical for the EPA to prescribe the actions that must be taken to reduce the frequency of malfunctions or to minimize emissions in the event of a malfunction. However, as part of the required deviation record, owners and operators must specify the cause of each deviation, which could include a malfunction period as a cause (e.g., any

<sup>21</sup> RACT/BACT/LAER apply to criteria pollutants only. However, data in the RBLC are not limited to sources subject to RACT, BACT, and LAER requirements. Noteworthy prevention and control technology decisions and information may be included in the database even if they are not related to past RACT, BACT, or LAER decisions.

<sup>22</sup> In one case, we identified a less stringent state-only VOC control efficiency requirement for an incinerator controlling emissions from blowing stills.

malfunction that leads to a deviation from an emission limit, operating limit, opacity limit, or visible emission limit).

*Comment:* One commenter asserted that they had submitted a petition for rulemaking to the EPA, urging the EPA to set an emission standard for HCl from blowing stills that use chlorinated catalyst and to follow CAA section 112(d)(2)–(3) requirements in doing so. The commenter cited *Petition of Natural Resources Defense Council & Sierra Club to Administrator Stephen L. Johnson*, at 13 (January 14, 2009). The commenter contended that the EPA has provided no formal response to that petition for this or any source category and instead used CAA section 112(d)(6) rulemakings to add standards for previously unregulated HAP emissions sources on a source category-by-category basis.<sup>23</sup>

The commenter claimed that the EPA has failed to satisfy the CAA because it has failed to recognize the need to set emission standards for currently unrestricted HAP—such as HCl—which is “necessary” and required by the CAA. The commenter added that, in this rulemaking, the EPA must review and follow the CAA and existing caselaw to ensure it sets a numerical limit for HCl and every other regulated HAP that satisfies CAA section 112(d)(2)–(3) and (d)(6).

The commenter concluded that the best-performing sources emit no HCl and the EPA should have set the floor based on the best-performing sources. The commenter noted that HCl emissions from blowing stills account for 55 percent of emissions and no facility controls these emissions. The commenter pointed out that 37 out of 91 blowing stills at asphalt manufacturing plants use chloride-based catalysts, which cause HCl emissions. The commenter added that the EPA acknowledged that over 12 percent of blowing stills do not use a catalyst that emits HCl. This commenter objected to the EPA’s decision not to regulate HCl emissions and objected to the bases for the EPA’s decision, which include that: (1) Sources do not use control devices, and (2) chlorinated catalysts cannot be

prohibited because doing so would require all manufacturers to use higher-quality asphalt flux feedstock, and higher-quality feedstock is not consistently available to all sources. The commenter cited the decision in *National Lime Association v. EPA*, 233 F.3d 625, at 634 (D.C. Cir. 2000), stating that the EPA had a clear statutory obligation to set emission standards for each listed HAP. The commenter added that the EPA’s assertions, that changes in non-technology factors were not appropriate or viable, cannot justify a no-control floor. The commenter added that the EPA has a statutory obligation to set emission limits regardless of whether the best-performing sources in a given category are currently using air pollution control technology to limit their emissions. The commenter stated that if it fails to set emission limits for each HAP, the EPA will fail to complete the review and revision rulemaking as CAA section 112(d)(6) requires and will violate the Court’s order in *California Communities Against Toxics v. Pruitt*, 241 F. Supp. 3d 199 (D.D.C. 2017).

The commenter asserted that an HCl standard should have been set based on the performance of scrubbers used for other sources, noting specifically scrubbers reflected in the control options for the Hospital, Medical, and Infectious Waste Incinerators New Source Performance Standards. The commenter added that this is a development in practices, processes, and control technologies and the EPA has no valid basis under CAA section 112(d)(6) for not revising the standards to reflect or take this development into account. The commenter added that because the EPA has identified spray dryer absorbers as an additional type of control for HCl, these controls must be evaluated as “developments” that could strengthen emission reductions of HCl. Furthermore, the commenter contended that there are also developments in monitoring of acid gases—particularly HCl. The commenter noted that the EPA has required monitoring of HCl in multiple national standards in recent years, and the EPA should strengthen monitoring in this rule due to these demonstrated developments.

Another commenter argued that because the EPA identified blowing still technologies that emit no HCl, a standard for HCl emissions from new blowing stills should be established at zero. The commenter stated that while the EPA does “not anticipate any air quality impacts” from these emissions, this does not justify allowing emissions greater than the MACT floor.

*Response:* CAA section 112(d)(6) requires the EPA to review and revise,

as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section. We do not agree with the commenter’s assertion that the EPA must establish new standards for unregulated emission points or pollutants as part of a technology review of the existing standards. The EPA reads CAA section 112(d)(6) as a limited provision requiring the Agency to, at least every 8 years, review the emission standards already promulgated in the NESHAP and to revise those standards as necessary taking into account developments in practices, processes, and control technologies. Nothing in CAA section 112(d)(6) directs the Agency, as part of or in conjunction with the mandatory 8-year technology review, to develop new emission standards to address HAP or emission points for which standards were not previously promulgated. As shown by the statutory text and the structure of CAA section 112, CAA section 112(d)(6) does not impose upon the Agency any obligation to promulgate emission standards for previously unregulated emissions.

When the EPA establishes standards for previously unregulated emissions, we would not establish those initial standards pursuant to CAA section 112(d)(6) but instead would establish the standards under one of the provisions that govern initial standard setting—CAA sections 112(d)(2) and (3) or, if the prerequisites are met, CAA section 112(d)(4) or CAA section 112(h). Establishing emissions standards under these provisions of the CAA involves a different analytical approach from reviewing emissions standards under CAA section 112(d)(6).

Though the EPA has discretion (and authority) to develop standards under CAA section 112(d)(2) through (4) and CAA section 112(h) for previously unregulated pollutants at the same time as the Agency completes the CAA section 112(d)(6) review, any such action is not part of the CAA section 112(d)(6) review, and there is no obligation to undertake such actions at the same time as the CAA section 112(d)(6) review. For this rulemaking, we do not have sufficient data to establish an emissions standard that reasonably reflects the performance of the best sources pursuant to the requirements of CAA section 112(d)(2) and (3).<sup>24</sup> We have data from one

<sup>23</sup> The commenter cited the following rulemakings as examples where EPA has added standards for previously unregulated HAP emissions sources for certain emission points: Primary Lead NESHAP, Final Rule, 76 FR 70834 (November 15, 2011); Petroleum Refineries NESHAP, 74 FR 55670 (October 28, 2009); Generic MACT NESHAP, Final Rule, 79 FR 60898 (October 8, 2014); Polymers & Resins Group IV; Pesticide Active Ingredient Production; Polyether Polyols Prod. NESHAP, Final Rule, 79 FR 17340 (March 27, 2014); Polymers & Resins I NESHAP, Final Rule, 76 FR 22566, 22569 (April 21, 2011); and Oil and Gas NESHAP, 77 FR 49490, 49492, 49530 (August 16, 2012).

<sup>24</sup> We also note that, given the currently available information, establishing standards for HCl from blowing stills under CAA section 112(d)(4) or (h) would not be appropriate.

emission test from a single facility and it would take significant time, well beyond the court-ordered deadline for completing this rulemaking, to acquire sufficient additional data and other emissions information and perform the analyses needed to establish an appropriate standard under CAA section 112(d)(2) and (3). Further, given the court-ordered deadline of March 13, 2020, we do not have time to collect the needed data and information. Therefore, it is impracticable for the EPA to establish new standards for previously unregulated emissions as part of this rulemaking.<sup>25</sup>

**Comment:** One commenter contended that the EPA must evaluate and require use of the Digital Camera Opacity Technique (DCOT) as a method for assessing and demonstrating compliance with the opacity limits in the emission standards. The commenter noted that the Agency has required use of the DCOT in the Ferromanganese and Silicomanganese Production NESHAP (40 CFR part 63, subpart XXX) and supported its use because it provides a photographic record of each of the opacity readings, allows for third-party evaluation, and provides better documentation of fugitive emissions. The commenter added that the EPA determined the DCOT is a development in monitoring and will improve the facility's, the EPA's, and the state's ability to assure compliance with the standards. The commenter stated that the EPA noted that the DCOT provides reliable, unbiased opacity readings and required this rather than the human eye-based, visual-only smoke assessment protocol of EPA Method 9. The commenter concluded that because DCOT is a "development" within the meaning of CAA section 112(d)(6), the EPA must take it into account and require use of it in this rule. The commenter contended that failing to do so would also be unlawful, arbitrary, and capricious.

**Response:** We are not finalizing a requirement to use DCOT in place of EPA Method 9 for this rule. The DCOT system, as required in the Ferroalloys rule, uses a handheld American Society for Testing and Materials (ASTM) D7520–16 compliant camera system, which was only available from a single vendor at the time. There are currently

no vendors supplying the portable ASTM D7520–16 compliant systems. The only DCOT systems currently available are customized fixed-location camera systems. We conclude that it is inappropriate to require the fixed location camera systems for this industry due to the relatively high cost associated with emplacing the large number of individual camera units that would be needed, one at each emission point for the intermittent opacity readings, in addition to the difficulty in positioning the fixed location cameras to obtain a suitable background and orientation with the sun and plume throughout the day at existing source locations. Further, the advantage of the DCOT system, as discussed in the preamble of the final Ferroalloys rule, is in having better documentation "... in this specific case where fugitive emissions are driving the risk ...". Fugitive emissions are not the driving risk for the NESHAP for the Asphalt Processing and Asphalt Roofing Manufacturing source categories. Nevertheless, the EPA is not precluding ASTM D7520–16, *Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere*, from being used to comply with the opacity standards in this rule and, as proposed, has included this method with conditions as an acceptable alternative to EPA Method 9.

**Comment:** One commenter stated the EPA should update its regulations regarding asphalt storage tanks to require controls of all storage tanks. The commenter added that the EPA acknowledged that currently 428 out of 540 asphalt storage tanks are controlled using a packed bed scrubber or a thermal incinerator. The remaining 112 are uncontrolled and vent straight to the atmosphere. The commenter stated that the EPA should explain why it is not necessary to extend these control requirements to the remainder of the storage tanks.

**Response:** Based on information received in response to the CAA section 114 ICR, we have determined that there are no uncontrolled asphalt storage tanks that are subject to the requirements for Group 2 storage tanks under the 40 CFR part 63, subpart LLLLL, MACT standards. To clarify, it is true that, based on the CAA section 114 ICR, the EPA initially identified 428 asphalt storage tanks that are fixed roof tanks that vent to either a combustion control device or to a PM control device and another 112 asphalt storage tanks that are fixed roof tanks or horizontal tanks that vent to the atmosphere (uncontrolled). However, we also stated in our proposed technology review that

the 112 uncontrolled asphalt storage tanks are either considered Group 2 under the 40 CFR part 63, subpart LLLLL, MACT standards or operate at an area source of HAP. After additional evaluation, we determined that only 11 of the 112 uncontrolled asphalt storage tanks that we identified from our CAA section 114 ICR could potentially be subject to the requirements for Group 2 storage tanks under the 40 CFR part 63, subpart LLLLL, MACT standards (because the other 101 tanks operate at an area source of HAP and are not subject to the 40 CFR part 63, subpart LLLLL, MACT standards). Of the 11 uncontrolled Group 2 asphalt storage tanks, six are reported as shut down, and after further investigation using responses from an industry-wide ICR on petroleum refineries (refer to section II.C of 79 FR 36886 and 36887), we determined that the remaining five are located at one petroleum refinery, have low vapor pressures (e.g., about 3.38E–05 pounds per square inch), and are subject to either 40 CFR part 60, subpart UU, or 40 CFR part 63, subpart Ka, Kb, or CC (and not 40 CFR part 63, subpart LLLLL). Finally, we want to clarify that Table 1 to 40 CFR part 63, subpart LLLLL, requires that Group 2 tanks be operated such that exhaust gases are limited to 0-percent opacity. Any control device or other method that can meet the 0-percent opacity standard for storage tanks can be used, and it is possible that some facilities may not need a control device to meet the opacity limit.

**Comment:** One commenter noted that in the Petroleum Refinery Sector final rule at 80 FR 75178, 75193, and 75194 (December 1, 2015), the EPA recognized as a "development" the availability of fenceline monitoring technology and methods and, therefore, required all facilities to implement these tools. The commenter added that the use of fenceline monitoring, such as the passive samplers or absorbent tubes that the EPA required using EPA Methods 325A and 325B, reflects an up-to-date method to evaluate leaks of HAP. The commenter noted that although in the Petroleum Refinery Sector Rule the EPA chose the chemical benzene as the analyte, the tools the EPA required for refineries can monitor for other pollutants as well. The commenter added that since 2015, there have been even further "developments" in fenceline monitoring, and local and state jurisdictions have required implementation of real-time fenceline monitoring, using various types of technology selected by the facility from approved methods and presented for

<sup>25</sup> While not related to the technology review, we note that related to the residual risk review, we found the risks associated with the Asphalt Processing and Asphalt Roofing Manufacturing source categories to be acceptable and that the current NESHAP provides an ample margin of safety in the absence of additional CAA section 112(d)(2) and (3) standards for unregulated pollutants. The HCl emissions from blowing stills were included in the residual risk analysis.

public notice and comment. The commenter concluded that the EPA would violate CAA section 112(d)(6) by failing to consider and account for the “developments” in fenceline monitoring, and pollution controls here—particularly where data show significant health risks from emitted pollutants.

*Response:* We are not finalizing any requirements for fenceline monitoring in the final rule. The passive samplers and adsorbent tubes of EPA Methods 325A and 325B are a method of evaluating potential fugitive and area source emissions of VOC and are not suitable for all HAP. Fenceline monitoring, as discussed in the preamble to the proposed Petroleum Refinery rule (79 FR 36920), may identify significant increases in emissions, but small increases in emissions are unlikely to impact the fenceline concentrations. The four refineries subject to the 40 CFR part 63, subpart LLLLL, MACT standards are also subject to 40 CFR part 63, subpart CC, and currently have fenceline monitoring in place under that rule. The potential for fugitive volatile organic HAP emissions at the remaining four subject facilities not collocated at a refinery is vastly lower as a result of the reduced amount of piping and the reduced storage of volatile organic materials. The EPA disagrees with the commenter that the data show significant health risks from emitted pollutants. As noted in the *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*, the maximum cancer risk from category emissions is less than 1-in-1 million, and the maximum whole facility cancer risk is 9-in-1 million, driven by non-category refinery emissions, at a facility which already has fenceline monitoring due to the Petroleum Refinery rule.

*Comment:* We received two comments in response to our request for comments on the relationship between the technology review conducted under CAA section 112(d)(6) and the residual risk analysis under CAA section 112(f)(2) and whether it is necessary for the EPA to amend rules based on CAA section 112(d) to reflect the results of the CAA section 112(d)(6) technology review if the results of the residual risk analysis under CAA section 112(f)(2) show that the current rule provides an ample margin of safety to protect public health and prevent an adverse environmental effect. One commenter argued that the EPA must complete the technology review and propose

standards based on the findings of that review, regardless of the results of the residual risk analysis. Another commenter argued technology reviews need not consider whether to reduce emission limits in response to developments in emission control technologies as long as the health-based ample margin of safety determination remains unchanged. For a more thorough summary of these comments, refer to the comment summary and response document, *Summary of Public Comments and Responses for Risk and Technology Review for Asphalt Processing and Asphalt Roofing Manufacturing*, which is available in the docket for this rulemaking.

*Response:* The EPA is not taking final action on the proposed interpretation that the EPA take into account in the CAA section 112(d)(6) technology review the results of a residual risk analysis under CAA section 112(f)(2). Instead, the EPA is finalizing our determination that no revision to the NESHAP is necessary pursuant to CAA section 112(d)(6) based on our consideration of developments in practices, processes, and control technologies, as explained above. Because we are not relying on the potential interpretation that was discussed in the proposal preamble in our final action, we are not addressing the comments we received regarding the relationship between the technology review conducted under CAA section 112(d)(6) and the residual risk review conducted under CAA section 112(f)(2).

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

The EPA is not finalizing the technology review as proposed with regard to HCl emissions standards for blowing stills. As discussed in section IV.B of this preamble, we determined that it is not appropriate to establish new standards for previously unregulated sources or pollutants under the technology review. Pursuant to CAA section 112(d)(6), we are finalizing all required aspects of the technology review as proposed. For the reasons explained in the proposed rule, we determined that there are no developments in practices, processes, or control technologies that warrant revisions to the standards. We evaluated all of the comments on the EPA’s technology review and we determined no changes to the review are needed. More information concerning our technology review is in the memorandum titled *Clean Air Act Section 112(d)(6) Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories Final*,

in the docket for this action, and in the preamble to the proposed rule (84 FR 18939).

#### C. Amendments Addressing Emissions During Periods of SSM

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

We proposed removing and revising provisions related to SSM that are not consistent with the requirement that standards apply at all times. More information concerning our proposal on SSM can be found in the proposed rule (84 FR 18939).

##### 2. How did the SSM provisions change since proposal?

Since proposal, the SSM provisions have not changed.

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

*Comment:* One commenter disagreed with the EPA’s claims that they have discretion to set standards for malfunctions “where feasible.” The commenter contended that the CAA denies the EPA authority to set malfunction-based standards or exemptions; and cited CAA section 112(d), (h), and CAA section 302(k). The commenter also cited a reconsideration petition for the Refinery Sector Rule, where malfunction standards were developed, that the Court held in abeyance.

*Response:* The EPA disagrees that it lacks the authority to set standards for malfunctions where feasible but notes that the EPA did not propose separate standards for periods of malfunction. The EPA’s approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute. At proposal, we explained our interpretation of CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into the development of CAA section 112 standards, and noted that this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–10 (2016). (84 FR 18946.)

The EPA further explained that “[a]lthough no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible.” (84 FR 18946). We explained that, “[t]he EPA will consider whether circumstances warrant setting work practice standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to

identify the relevant best performing sources and establish a standard for such malfunctions” (84 FR 18946).

The EPA is not finalizing separate standards for periods of malfunction. As explained at proposal, 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 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 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 (84 FR 18946).

*Comment:* One commenter objected to the incorporation of 40 CFR 63.6(e)(1)(ii) because it removes the requirement for a source to correct a malfunction within a specified time period. The commenter stated that the incorporation of this provision into the rule can result in increased emissions; and it is unlikely that this potential increase in emissions was accounted for in the risk assessment conducted by the EPA. The commenter recommended the provision not be incorporated into the final rule, and instead sources should be required to initiate corrective action as soon as practicable but no later than 72 hours from the start of the malfunction.

*Response:* The final rule does not incorporate 40 CFR 63.6(e)(1)(i) and (ii) as they are no longer applicable. The EPA is finalizing as proposed 40 CFR 63.8685(b), which incorporates the general duty to minimize emissions at all times. The finalized regulatory language at 40 CFR 63.8685(b) characterizes what the general duty entails during periods of SSM. Since the EPA is eliminating the SSM exemption and the standards are applicable at all times, there is no need to distinguish among normal operations, startup and

shutdown, and malfunction events in describing the general duty.

*Comment:* One commenter said that because this rulemaking is being conducted on a shorter-than-normal timetable due to judicial deadlines, they did not have sufficient time to adequately study the proposed revisions to SSM requirements and are unable to respond to the EPA’s request for recommendations on possible approaches. The commenter asserted that different emission standards should be adopted to reflect the realities of different operating conditions and reserves the right to propose such standards at a later date. The commenter stated that despite the EPA’s interpretation of the *Sierra Club v. EPA* Court ruling, it is an unsupportable position to require emissions sources undergoing a condition of startup, shutdown or malfunction to comply with an emission standard developed to reflect normal operations. The commenter said that even to the extent that an acceptable work practice standard can be developed for startup and shutdown emissions, the use of “enforcement discretion” during periods of malfunction (when emissions cannot be readily controlled) fails to qualify as an attainable regulatory standard.

The commenter also stated that if the EPA decides to finalize its proposal to eliminate the SSM exemptions, then they support the EPA’s proposed revisions to Table 7 addressing the General Provision requirement to develop an SSM Plan and related provisions. The commenter also agrees with the EPA’s proposed revisions to eliminate requirements that are inappropriate, unnecessary, or redundant consistent with the elimination of SSM provisions.

*Response:* The final rule text at 40 CFR 63.8685(b) sets forth the general duty to minimize emissions, and states that, “[a]t 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 regulatory text further explains that “[t]he 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.” *Id.*

As explained at proposal and as discussed earlier in this preamble (in response to another comment we received), 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 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 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’s 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 Corporation v. EPA*, 830 F.3d 579, 606–610 (2016) (84 FR 18946).

4. What is the rationale for our final approach and final decisions to SSM-related Requirements?

We evaluated all of the comments on the EPA’s proposed amendments to the SSM provisions. For the reasons explained in the proposed rule (84 FR 18939), we determined that these amendments remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. Therefore, we are finalizing the amendments to remove and revise provisions related to SSM, as proposed.

#### D. Technical Amendments to the MACT Standards

1. What other amendments did we propose for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

We proposed to add an option at 40 CFR 63.8689(d) and Table 2 to subpart LLLLL of part 63 to allow the use of

manufacturers' specifications to establish the maximum pressure drop across the control device used to comply with the PM standards. We also proposed to add a footnote to Table 2 to subpart LLLLL of part 63, the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP, to allow owners and operators to use the performance test average inlet temperature and apply an operating margin of +20 percent to determine maximum inlet gas temperature of a control device used to comply with the PM standards. Furthermore, we proposed a requirement at 40 CFR 63.8691(e) that periodic performance tests be conducted at least once every 5 years for each APCD used to comply with the PM, THC, opacity, or visible emission standards.

We also proposed that owners and operators submit electronic copies of required performance test reports, performance evaluation reports, compliance reports, and NOCS reports through the EPA's CDX using the CEDRI, and we proposed two broad circumstances in which we may provide an extension to these requirements. We proposed at 40 CFR 63.8693(h) that an extension may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. We also proposed at 40 CFR 63.8639(i) that an extension may be warranted due to a force majeure event, such as an act of nature, act of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

Finally, we proposed numerous provisions clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. These editorial corrections and clarifications are summarized in Table 4 of the proposal. See 54 FR 18951 and 18952.

## 2. How did the other amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories change since proposal?

Instead of using manufacturers' specifications or a performance test to establish a maximum pressure drop across the control device used to comply with the PM standards as proposed, we are finalizing a requirement that requires owners and operators to establish a pressure drop range (*i.e.*, a minimum and a maximum pressure drop) across the PM control device with the option to either use manufacturers' specifications or a performance test to establish the range. Also, although we are finalizing the proposed requirement that allows

owners and operators to apply an operating margin of +20 percent to the performance test average inlet temperature to determine maximum inlet gas temperature of a control device used to comply with the PM standards, in the final rule, we are clarifying the operating margin applies to temperatures expressed in units of degrees Celsius or degrees Fahrenheit. Furthermore, in the final rule amendments, we have added language to the periodic performance testing requirements to allow facilities to synchronize their periodic performance testing schedule with a previously conducted emission test. Since proposal, the electronic reporting requirements and the technical and editorial corrections in Table 4 of the proposal (see 54 FR 18951 and 18952) have not changed.

## 3. What key comments did we receive on the other amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories, and what are our responses?

*Comment:* One commenter argued that the proposed amendment to 40 CFR 63.8689(d) establishing maximum pressure drop as an operating limit for particulate control devices is not a reliable indicator of continued compliance because holes or other defects in the filter bags will result in decreased pressure drop and an increase in emissions.

*Response:* The EPA agrees that the maximum pressure drop is insufficient in itself to demonstrate ongoing compliance, as malfunctions such as holes, leaks, and even bypass of the control device would not be indicated by an exceedance of the pressure drop maximum. The inclusion of pressure drop minimum, creating an operating range for the pressure drop, provides a more complete indication of filter bank performance. Therefore, to better assure proper operation of the particulate control device, we are requiring in the final rule at item 3 of Table 2 and item 3 of Table 5 that the operating criteria for each particulate control device include both a maximum and minimum pressure drop operating limit as opposed to solely a maximum pressure drop operating limit. The addition of a minimum limitation to the operating range of the PM control device mirrors the approach in the Asphalt Processing and Asphalt Roofing Manufacturing area source NESHAP, 40 CFR part 63, subpart AAAAAA, and provides an indication of breakthrough or bypass of the control device, as a drop in the differential pressure below that established by the manufacturer's

specification would indicate that potentially either the control device has been inadvertently bypassed (leaking around the filter) or possible tearing or distortion of the filter has occurred. As discussed later in this preamble (in response to another comment we received), we are also clarifying in the final rule at item 12 of Table 3 procedures for establishing the maximum and minimum pressure drop operating limits.

*Comment:* Two commenters argued that the proposed amendment to 40 CFR 63.8689(d) allowing the use of manufacturers' recommendations to establish operating limits for particulate control devices is not a reliable indicator of continued compliance.

One commenter said that control system vendors may incorporate components from various manufacturers in their systems and the manufacturers may be unaware of the configuration. The commenter also said that control systems may also be reconfigured from time to time to reflect changes in the manufacturing process or the raw materials used, and manufacturers are unable to predict these changes. Similarly, another commenter asserted that the revisions change the limit from a demonstrated point to an assumed point of compliance. The commenter stated that manufacturer specifications may show where a control device should operate within compliance but are not sufficient to show whether a device is operating within compliance.

One commenter contended that the change was proposed in response to industry's claim that tests to capture the maximum pressure drop and gas temperature are difficult due to their dependence on ambient temperature and operating life of the filter. The commenter added that the EPA previously acceded to industry requests for pressure limits but concluded that temperature was too important in evaluating emissions, because emissions are temperature dependent. The commenter added that the EPA made the change based on cost and cited the EPA's cost memorandum, which reports that the switch will save industry nearly half a million dollars, primarily by avoiding having to change out its filters as often. The commenter concluded that industry asked the EPA to save it some money by loosening its standards, and the EPA complied.

A commenter said that the EPA neither cites any authority, nor supplies a reasoned explanation to demonstrate how this change satisfies the CAA. The commenter added that the EPA may not change the standards without demonstrating how the revised standard



satisfies CAA section 112(d)(2) through (3) and the EPA has no authority to weaken the existing standard under CAA section 112(d)(6) or otherwise. The commenter concluded that the EPA may not use cost to set or weaken floor standards under CAA section 112(d)(3) or to weaken standards below the “maximum achievable degree of emission reduction” under CAA section 112(d)(2).

A commenter alleged that the EPA failed to provide the emission and health impacts of the revisions or the scientific or engineering basis for the decision. The commenter added that the EPA did not explain how or whether it validated industry claims that actually running tests created difficulties due to scheduling, whether this change risks an increase in malfunctions or emissions, the impact on the effectiveness of filters when not switching them more frequently, and why manufacturer specifications are sufficient to fit facilities that may vary in their ambient conditions, in their equipment, and in their production. The commenter added that by not providing these analyses, the EPA has deprived the public of the opportunity to file meaningful comments on the change, which is a violation of notice-and-comment rulemaking.

**Response:** The EPA agrees that for some control technologies, manufacturers’ specifications may not be sufficient to determine operating limits; however, manufacturers’ specifications in conjunction with the periodic performance tests are sufficient to demonstrate compliance for the operation of filter banks such as those used in this source category (where the replaceable parts are limited to the filters themselves and the induced draft fan). Specifically, the EPA disagrees that the use of manufacturers’ specifications for the maximum pressure drop is not a reliable indicator of filter bank performance at the upper end of filter bank pressure drop. The EPA further disagrees that the use of manufacturers’ specifications in setting the maximum pressure drop is a loosening of the standard. The efficiency of a filter bank increases as the pressure drop increases through use because the deposition of material on the filter forms a layer of dust that decreases the effective pore size and increases capture efficiency. The purpose of a maximum pressure drop as a regulatory limit in the case of a filter bank is to prevent overloading of the filter, which may eventually cause breakthrough or result in structural damage to the filter or a possible bypass of the control device. The use of manufacturers’ specifications as an

option for setting the operating range allows for a facility to remain in compliance with the operating limits when the filter is replaced, because that is the moment at which the pressure drop of a properly functioning filter bank is the lowest. As stated in our proposal, allowing use of manufacturers’ specifications to establish operating limits provides flexibility and alleviates the need for a facility to have to retest the PM control device to reestablish new operating limits due to the inability of a source to “dial in” the differential pressure of their control device for a particular performance test as the differential pressure increases over time as a result of particulate deposition. Finally, as discussed previously in this preamble (in response to another comment), we are requiring in the final rule at item 3 of Table 2 and item 3 of Table 5 that the operating criteria for each particulate control device include both a maximum and minimum pressure drop as opposed to solely a maximum pressure drop operating limit. Therefore, in consideration of this comment and in order to provide additional flexibility, we are clarifying in the final rule at 40 CFR 63.8689(d) that facilities may either use the manufacturers’ specifications or a performance test to set each operating limit. For example, facilities may choose to establish the minimum pressure drop operating limit using the manufacturer’s specifications and choose to establish the maximum pressure drop operating limit using a performance test. In this example, the facility could use the performance test to demonstrate that it can still meet the emission limit beyond the maximum pressure drop recommended by the manufacturer’s specifications.

**Comment:** One commenter supported allowing facilities a 20-percent margin of compliance on the average inlet temperature of a PM control device other than a thermal oxidizer. The commenter stated that it is typically necessary to schedule tests at least 1 to 2 months in advance to assure the availability of stack testing contractors. The commenter also agreed with the EPA that it is impractical to schedule testing at times of the year when maximum temperatures will occur because ambient temperatures cannot be precisely predicted in advance. The commenter stated that they appreciate that the EPA recognizes the variations in operating conditions that facilities may routinely experience consistent with the proper operation of such control devices within the manufacturer’s specifications. However, the commenter

suggested that the EPA clarify this 20-percent allowance applies to temperatures expressed in units of degrees Fahrenheit because the application of a 20-percent margin to temperature expressed in other units of measure would not result in the same temperature.

On the contrary, two other commenters opposed allowing facilities a 20-percent margin of compliance on the average inlet temperature of a PM control device other than a thermal oxidizer.

One commenter disagreed with the EPA’s claims that the change addresses the high impact of ambient conditions on the inlet temperature and removes some of the scheduling uncertainty while still accounting for the temperature dependence of emissions. The commenter contended that the difficulty industry faces is in trying to capture the maximum gas inlet temperature at which they can achieve compliance, which is the maximum point at which that facility can show it can operate while being in compliance. The commenter contended that the 20-percent extra allowance for temperature is a malfunction buffer and the EPA is statutorily barred from creating a malfunction exemption, and they cited *Sierra Club v. EPA*, 551 F.3d 1019, 1028 (D.C. Cir. 2008) (citing CAA sections 112 and 302(k)).

Additionally, the commenter contended that the EPA did not include an analysis that explains why it chose to add the 20-percent margin for temperature limits, the impact that this will have, and why this change to its prior standards is justified by the best available science. The commenter asserted that the EPA needs to also cite its authority for the proposed change, demonstrate how its proposal stays within the bounds of that authority, and explain and show its work, so that the public can evaluate and comment on it. Similarly, another commenter said the 20-percent extra allowance for temperature is unsupported by any data.

A commenter stated that where condensable PM, including high boiling point asphalt components, is present, control efficiency is affected by the vapor pressure of the components, and emissions will increase at higher temperatures. The commenter suggested that facilities that are unable to maintain the operating limits established during a successful performance test conducted in the winter should be required to conduct an additional performance test in the summer to establish a seasonal operating limit. Further, the commenter said that there is no rationale to allow a 20-percent margin for facilities that



have conducted their performance tests in the summer. Additionally, the commenter pointed out that it is unclear whether the risk assessment included these potentially increased emissions (of condensable PM due to higher control device operating temperatures) and called attention to the statement in the preamble (84 FR 18952) that no air quality impacts are anticipated. The commenter said this statement in the preamble incorrectly ignores the increased emissions due to higher control device operating temperatures that would be allowed in the proposed amendments.

*Response:* The EPA disagrees with the commenter's assessment that the proposed 20-percent extra allowance on the inlet gas temperature limit of the PM control device is a malfunction buffer. Malfunction is defined in 40 CFR 63.2 as "any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded." The potential temperature exceedance being addressed by this provision is not a failure to operate in a normal or usual manner, but a normal variation of inlet temperature in accordance with natural temperature variation. The temperature at the inlet to these PM control devices is highly dependent on the "sweep" air from the process area, a non-temperature controlled environment. The inlet temperature, thus, swings over the course of a day and through the seasons based upon the ambient temperature. Facilities are not equipped to modulate the inlet temperature. The issue facilities face is not one of testing in the winter and, thus, being out of compliance in the summer, as there is no lower temperature limit being set and facilities are not testing in the winter, but of trying to accurately predict the hottest day of the next 5 summer weeks in advance to be sure that the temperature at the inlet is at its peak during the test event. An 85 degrees Fahrenheit day instead of an anticipated 95 degrees Fahrenheit day is sufficient to cause potential issues in the setting of maximum temperature limitations, as facilities do not have a mechanism for controlling the inlet temperature. The EPA has used operating margins in the setting of control device operating parameter limits for certain other rules such as 40 CFR part 63, subparts AA and BB, NESHAP for Phosphoric Acid

Manufacturing Plants and Phosphate Fertilizers Production Plants, respectively, where the daily average differential pressure across an absorber and the flow rate of the liquid to each absorber or the secondary voltage for a wet electrostatic precipitator is  $\pm 20$  percent of the baseline average; 40 CFR part 63, subpart LLL, NESHAP for the Portland Cement Manufacturing Industry, where the temperature of the inline kiln/raw mill during startup/shutdown may exceed the temperature limit by 10 percent; and 40 CFR part 63, subpart RRR, NESHAP for Secondary Aluminum Production, where the flow rate of the capture/collection system indicators is maintained at greater than 90 percent of the flow rate measured during the performance test.

The EPA anticipates no increases in emissions as a result of the change in the mechanism of determining the maximum allowable inlet temperature. As discussed above, facilities have no control over the inlet temperature; the temperature of the sweep air to a large extent defines the inlet temperature. Facilities will not be increasing the inlet operating temperature as a result of this change but will be better able to schedule their periodic performance test as a result. Facilities will likely continue to aim to perform their performance tests at the highest temperature possible in order to best insulate themselves from potentially exceeding their maximum temperature limit as a result of higher ambient temperatures. The inclusion of the periodic performance test will also help ensure that emissions are maintained below the emission limit through the recurring measurement of actual emissions.

The EPA agrees that a clarification of which temperature scale the temperature is to be determined is necessary because the application of a 20-percent margin to temperature expressed in units other than degrees Celsius or degrees Fahrenheit would result in too large of an operating limit window (e.g., although 305 Kelvin is equal to about 90 degrees Fahrenheit, 20 percent of 305 Kelvin is very different from 20 percent of 90 degrees Fahrenheit). Therefore, the EPA is specifying in the final rule at item 12 of Table 3 that the temperature must be measured in units of degrees Celsius or degrees Fahrenheit. We acknowledge that the use of Celsius will result in a slightly more conservative temperature range (6.4 degrees Fahrenheit less when compared to the corresponding Fahrenheit range), but want to ensure the flexibility of either temperature scale for facilities.

*Comment:* One commenter pointed out that Table 3 to the proposed rule does not specify a required frequency for the EPA Method 22 visible emissions test. The commenter suggested EPA Method 22 should be conducted daily because it serves to ensure continued satisfactory performance of the emissions capture system. The commenter said that defects in the capture system and duct work leading to a control device should not be allowed to persist for 5 years before initiating corrective action.

*Response:* The EPA disagrees with the commenter that the frequency for EPA Method 22 evaluations is not specified in the rule. Table 3 to 40 CFR part 63, subpart LLLLL, presents the Requirements for Performance Tests; the frequency of these tests, after the initial Performance Test, is set in 40 CFR 63.8691(e). The EPA is clarifying that the visible emissions and opacity tests are included in the periodic performance tests by removing the phrase "during the initial compliance period described in 63.8686" from the appropriate rows in Table 4 to 40 CFR part 63, subpart LLLLL (Initial and Continuous Compliance With Emissions Limitations), dealing with opacity and visible emissions measurements. The inclusion of the EPA Method 22 visible emissions measurement during the performance test documents that, during the performance test, the emissions capture system was operating correctly and that emissions directed to the control device are maximized. The addition of a daily EPA Method 22 evaluation is not necessary. The requirement to limit visible emissions from the capture system is applicable at all times, and the continuing operation of the emissions capture system outside of the performance test is governed by the general duty to operate and maintain any affected source including the air pollution control equipment in a manner consistent with safety and good air pollution control practices.

*Comment:* One commenter supported the EPA's proposal to require performance testing within 3 years of publication and every 5 years thereafter, to ensure compliance. Another commenter said the requirement to perform testing once every 5 years is redundant with existing requirements. The commenter contended that facilities subject to the current NESHAP are subject to title V permitting, and many title V permits now require re-testing once every 5 years consistent with the title V renewal cycle.

*Response:* The EPA is finalizing the requirement that the performance tests must be conducted at least once every

5 years, as proposed; however, we are adding language to the final rule text at 40 CFR 63.8691(e)(1) to clarify that facilities are allowed to synchronize their periodic performance testing schedule with a previously conducted emission test, such as a test associated with title V permit renewal, provided the facility can demonstrate to the Administrator's satisfaction that the testing meets the requirements of 40 CFR 63.8686(b).

*Comment:* One commenter suggested that if the EPA will not reconsider the regulation requiring periodic testing every 5 years, then the EPA should propose an approach that allows testing to be curtailed after a facility demonstrates repeated compliance in successive testing events.

*Response:* The EPA is not revising the proposed rule to incorporate a reduction in testing frequency greater than 5 years. The EPA has, in some other rules, included a provision that allows for a reduction in the frequency of testing from annual to a 3 or 5-year period after multiple demonstrations of compliance. The 5-year interval for testing in this rule between performance tests would require at least 15 years to demonstrate a trend. Due to the timeframe of recurrent testing (once every 5 years) being promulgated in this rule, the EPA concludes that allowance for a reduced testing frequency is not warranted.

*Comment:* One commenter declared that the requirement for periodic testing is overly broad and fails to acknowledge both the costs incurred (direct and indirect) and whether additional testing would result in any environmental benefit. The commenter said the proposed rule would require performance testing of each control device used to comply with NESHAP standards for PM, THC, opacity, or visible emissions but argued that NESHAP regulations typically require testing only for the control devices on larger sources, not all control devices. The commenter recommended that for smaller control devices, opacity controls (e.g., mist eliminators), and flares, it should be adequate to operate and maintain each control device as recommended by the manufacturer. The commenter pointed out that petroleum refineries are not required to do any periodic testing for flares subject to the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC). The commenter said that by focusing on only the largest emission sources, there is a clear environmental benefit from the testing, much less disruption to operations, and much less cost incurred by the operator. To the extent the EPA requires some periodic testing, the commenter

recommended that the testing requirement exclude opacity and visible emission control devices, the testing requirement exclude flares, and the periodic testing should focus only on the largest emitting source, where risk is determined to be higher or above some specified threshold.

*Response:* The EPA is finalizing the testing requirements as proposed. The EPA disagrees with the commenter's assertion that the NESHAP regulations typically require testing only for larger emissions sources. The periodic performance test on all sources (small and large) provides a demonstration that the control devices associated with these sources are continuing to operate as designed. The operation of mist eliminators is not merely to control opacity, but also to control emissions of the PM and organic compounds which cause the opacity. The visible emissions tests of the emissions capture system are integral to determining if the overall capture and control system are operating as designed. The commenter indicates that the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC) does not have periodic testing for flares; however, the Petroleum Refineries NESHAP includes robust continuous monitoring requirements associated with flares that are not present in the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP (40 CFR part 63, subpart LLLL).

*Comment:* One commenter argued that the net cost benefit that the EPA presents in its justification for added performance testing requirements is significantly overstated and may become a net burden. The commenter suggested the EPA develop more accurate estimates of testing costs to provide a more realistic estimate of the cost impact for the subject facilities. The commenter stated the EPA's cost estimate for performance testing assumes that each source to be tested has an existing emissions point that can actually be sampled, but this may not always be the case, and the costs of adding a stack, sampling ports, and/or sample platforms and ladders should be included. Additionally, the commenter said the EPA's performance test cost estimates for thermal oxidizers treating vent gas from blowing stills are too low. The commenter argued that the EPA underestimated the number of thermal oxidizer/blowing still tests required, and a test on a thermal oxidizer treating vent gas from one or more blowing stills typically requires testing over 3 separate workdays because only one test run can be completed in a typical workday. The commenter stated that blowing stills operate using a batch process that takes

up to 6 hours, and to assure the test measurements are representative of the batch cycle, testing is performed for the duration of a batch. The commenter said the cost for testing one thermal oxidizer associated with one or more blowing stills, with each test run covering an entire batch cycle of up to 6 hours, is \$44,000. Using this value, the commenter estimated total testing costs to be \$172,600 from an asphalt roofing facility that has five reactors controlled by two different thermal oxidizers which discharge to separate stacks. The commenter applied the increased blowing still/thermal oxidizer costs to the number of tests required for the four facilities that do not already have 5-year testing requirements under their respective state title V programs, and showed that the nationwide cost impact is \$309,100 rather than the EPA's estimate of \$138,800. The commenter said their cost estimate was more than double the estimate the EPA provided in Appendix A of the Cost Impacts memorandum. The commenter said their cost estimate is greater than the EPA's estimated cost savings of \$221,100 from proposed changes in monitoring requirements, resulting in a net cost burden rather than net cost benefit.

*Response:* The EPA agrees that further review of the costs is warranted and based on this review, we have revised our proposed cost impacts analysis. All sources required to be tested have existing initial performance testing requirements and so have already been tested at least once. Therefore, the additional costs for adding a stack, sampling ports, and/or sample platforms and ladders have not been added to the burden of this rule because we have assumed these items already exist (due to the existing initial performance testing requirements). However, the EPA agrees that, based on the longer run time duration for the blowing stills, the initial cost estimates for these tests was low. Therefore, we revised our cost impacts analysis to reflect the commenter's recommended higher blowing still/thermal oxidizer testing costs (i.e., \$44,000). We also revised the number of thermal oxidizer/blowing still tests required for one facility. Our revised analysis (even after considering the information provided by this commenter) still results in a net cost savings rather than a net cost burden as suggested by the commenter. We estimate that the final amendments will result in a nationwide net cost savings of \$132,000 (2017\$) over the 5-year period following promulgation of the amendments. For further information on

the costs and cost savings associated with the final amendments, see the memoranda, *Cost Impacts of Asphalt Processing and Asphalt Roofing Manufacturing Risk and Technology Review Final* and *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, which are available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the other amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

We evaluated all of the comments on the EPA's proposed amendments for this subpart including the proposed technical and editorial corrections. For the reasons explained in the proposed rule (84 FR 18939), and in sections III.D and IV.D.3 of this preamble, we are finalizing these amendments.

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

### A. What are the affected facilities?

There are four asphalt processing facilities, plus another four asphalt processing facilities collocated with asphalt roofing manufacturing facilities, currently operating as major sources of HAP. As such, eight facilities are subject to the final amendments. A complete list of facilities that are currently subject to the MACT standards is available in Appendix A of the memorandum titled *Clean Air Act Section 112(d)(6) Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories Final*, in Docket ID No. EPA-HQ-OAR-2017-0662.

### B. What are the air quality impacts?

Because we are not establishing new numerical emission limits and are not requiring additional controls, no air quality impacts are expected as a result of the final amendments to the rule. Requiring periodic performance testing has the potential to reduce excess emissions from sources using poorly performing add-on controls, even though facilities are required to be in compliance at all times.

The final amendments will have no effect on the energy needs of the affected facilities in either source category and would, therefore, have no indirect or secondary air emissions impacts.

### C. What are the cost impacts?

We revised our proposed cost impacts analysis based on a comment received during the public comment period (see section IV.D.3 of this preamble). We

estimate that the final amendments will result in a nationwide net present value of net cost savings of \$132,000 (2017\$) over the 5-year period following promulgation of amendments (2019–2023). The equivalent annualized value of these net cost savings is \$32,000 per year when costs are discounted at a 7-percent discount rate. Because periodic performance testing would be required every 5 years, we estimated and summarized the cost savings over a 5-year period. The costs associated with the final amendments are related to recordkeeping and reporting labor costs and periodic performance testing. The requirement for periodic testing of once every 5 years results in an estimated increase in the present value of costs of about \$252,000 over the 5-year period in addition to an estimated present value of costs of about \$4,000 for reviewing the final amendments. However, the changes to the monitoring requirements for PM control devices result in an estimated present value of cost savings of about \$388,000 over the 5-year period. Therefore, overall, we estimate the net present value of net cost savings of about \$132,000 for the 5-year period. The final amendments to the monitoring requirements are projected to alleviate some need for asphalt roofing manufacturing facilities to have to retest the PM control device for the sole purpose of reestablishing new temperature and pressure drop operating limits and to allow facilities to extend filter replacement by 3 months. For further information on the costs and cost savings associated with the final amendments, see the memoranda, *Cost Impacts of Asphalt Processing and Asphalt Roofing Manufacturing Risk and Technology Review Final* and *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, which are available in the docket for this action.

### D. What are the economic impacts?

As noted earlier, we estimated a nationwide cost savings associated with the final requirements over the 5-year period following promulgation of these amendments. This cost savings is not expected to have adverse economic impacts. For further information on the economic impacts associated with the final requirements, see the memorandum, *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, which is available in the docket for this action.

### E. What are the benefits?

The EPA is not finalizing changes to emissions limits, and we estimate the final changes (*i.e.*, changes to SSM, monitoring, recordkeeping, reporting) are not economically significant. Because these final amendments are not considered economically significant, as defined by Executive Order 12866, and because no emissions reductions were estimated, we did not estimate any benefits from reducing emissions.

### F. What analysis of environmental justice did we conduct?

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

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

Results of the demographic analysis indicate that, for six of the 11 demographic groups, African American, Native American, other and multiracial, ages 0–17, ages 18–64, and below the poverty level, the percentage of the population living within 5 km of facilities in the source categories is greater than the corresponding national percentage for the same demographic groups. When examining the risk levels of those exposed to emissions from asphalt processing and asphalt roofing manufacturing facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Asphalt Processing and Asphalt Roofing Manufacturing Source*

*Categories Operations*, available in the docket for this action.

*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 concludes, based on the results of the risk assessment, that the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the risk report, *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*, available in the docket for this action.

**VI. Statutory and Executive Order Reviews**

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

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

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

*B. Executive Order 13771: Reducing Regulations 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. See document titled *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, which is available in the docket for this action.

*C. Paperwork Reduction Act (PRA)*

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 2598.02. 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 EPA is not revising the numerical emission limitation requirements for this subpart. The EPA is finalizing a requirement to conduct control device performance testing no less frequently than once every 5 years. The EPA has also revised the SSM provisions of the rule and is requiring the use of electronic data reporting for future performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports. This information would be collected to assure compliance with 40 CFR part 63, subpart LLLLL.

*Respondents/affected entities:*

Owners or operators of asphalt processing facilities and asphalt roofing manufacturing facilities.

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

*Estimated number of respondents:* Eight (total).

*Frequency of response:* Initial, semiannual, and annual.

*Total estimated burden:* 69 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$95,900 (per year), which includes \$88,400 annualized capital and 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.

*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 document, *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, available in the docket for this action.

*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. None of the eight asphalt processing and asphalt roofing manufacturing facilities that have been identified as being affected by this final action are owned or operated by tribal governments or located within tribal lands. 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 concludes, based on the results of the risk assessment, that the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. This action's health and risk assessments are contained in section IV.A of this preamble.

*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 rulemaking involves technical standards. As discussed in the preamble of the proposal, the EPA conducted searches for the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute. We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 3A, 5A, 9, 10, 22, and 25A of 40 CFR part 60, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's

reference method, the EPA reviewed it as a potential equivalent method.

The EPA incorporates by reference ASTM D7520–16, “Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere,” with conditions as an acceptable alternative to EPA Method 9. We note that this version of the method (*i.e.*, ASTM D7520–16) is a newer version than what we proposed (*i.e.*, ASTM D7520–2013). The same proposed conditions apply to this newer version; therefore, we are finalizing these conditions, as proposed. The method provides procedures for determining the opacity of a plume, using digital imagery and associated hardware and software. During the DCOT certification procedure outlined in Section 9.2 of ASTM D7520–16, the owner or operator or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand). The owner or operator must also have standard operating procedures in place, including daily or other frequency quality checks, to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520–16. The owner or operator must follow the recordkeeping procedures outlined in 40 CFR 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEG formatted images used for opacity and certification determination. The owner or operator or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15-percent opacity of any one reading, and the average error must not exceed 7.5-percent opacity. This approval does not provide or imply a certification or validation of any vendor’s hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software, and operator in accordance with ASTM D7520–16 and this letter is on the facility, DCOT operator, and DCOT vendor. This method is available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See <https://www.astm.org/>.

The EPA decided not to include 11 other VCS; these methods are impractical as alternatives because of the lack of equivalency, documentation, validation date, and other important technical and policy considerations.

The search and review results have been documented and are in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing*, which is available in the docket for this action.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

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

The EPA concludes, based on the results of an analysis of demographic factors, 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 IV.A of this preamble and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Asphalt Processing and Asphalt Roofing Manufacturing Source Categories Operations*, available in the docket for this action.

*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: January 30, 2020.

**Andrew R. Wheeler,**  
Administrator.

For the reasons set forth in the preamble, the EPA is amending 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.*

**Subpart A—General Provisions**

■ 2. Section 63.14 is amended by revising paragraph (h)(102) to read as follows:

**§ 63.14 Incorporations by reference.**

\* \* \* \* \*

(h) \* \* \*

(102) ASTM D7520–16, Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere, approved April 1, 2016, IBR approved for § 63.1625(b) and table 3 to subpart LLLLL.

\* \* \* \* \*

**Subpart LLLLL—National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing**

■ 3. Section 63.8681 is amended by revising paragraph (a) and removing and reserving paragraph (f) to read as follows:

**§ 63.8681 Am I subject to this subpart?**

(a) You are subject to this subpart if you own or operate an asphalt processing facility or an asphalt roofing manufacturing facility, as defined in § 63.8698, that is a major source as defined in § 63.2, or is located at, or is part of a major source as defined in § 63.2.

\* \* \* \* \*

■ 4. Section 63.8683 is amended by revising paragraphs (c) introductory text and (d) to read as follows:

**§ 63.8683 When must I comply with this subpart?**

\* \* \* \* \*

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a (or part of a) major source as defined in § 63.2, then the following requirements apply:

\* \* \* \* \*

(d) You must meet the notification requirements in § 63.8692 according to the schedules in §§ 63.8692 and 63.9(a) through (f) and (h). Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

■ 5. Section 63.8684 is amended by revising the section heading to read as follows:

**§ 63.8684 What emission limitations and operating limits must I meet?**

■ 6. Section 63.8685 is amended by revising paragraphs (a) through (c) to read as follows:

**§ 63.8685 What are my general requirements for complying with this subpart?**

(a) Before September 9, 2020, you must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction. On and after September 9, 2020, you must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

(b) Before September 9, 2020, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). On and after September 9, 2020, at all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(c) Before September 9, 2020, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). On and after September 9, 2020, a startup, shutdown, and malfunction plan is not required.

\* \* \* \* \*

■ 7. Section 63.8686 is amended by:

- a. Revising the section heading;
- b. Revising paragraphs (a) and (b)(3); and
- c. Adding paragraph (b)(4).

The revisions and addition read as follows:

**§ 63.8686 By what date must I conduct initial performance tests or other initial compliance demonstrations?**

(a) For existing affected sources, you must conduct initial performance tests no later than 180 days after the compliance date that is specified for your source in § 63.8683 and according to the provisions in § 63.7(a)(2).

(b) \* \* \*

(3) The control device and process parameter values established during the previously-conducted emission test are used to demonstrate continuous compliance with this subpart; and

(4) The previously-conducted emission test was completed within the last 60 months.

\* \* \* \* \*

■ 8. Section 63.8687 is amended by revising paragraph (b) and removing and reserving paragraph (c) to read as follows:

**§ 63.8687 What performance tests, design evaluations, and other procedures must I use?**

\* \* \* \* \*

(b) Each performance test must be conducted under normal operating conditions and under the conditions specified in Table 3 to this subpart. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the 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.

\* \* \* \* \*

■ 9. Section 63.8688 is amended by revising paragraphs (f) and (h) to read as follows:

**§ 63.8688 What are my monitoring installation, operation, and maintenance requirements?**

\* \* \* \* \*

(f) As an option to installing the CPMS specified in paragraph (a) of this section, you may install a continuous emissions monitoring system (CEMS) or a continuous opacity monitoring system (COMS) that meets the applicable requirements in § 63.8 according to Table 7 to this subpart and the applicable performance specifications of 40 CFR part 60, appendix B.

\* \* \* \* \*

(h) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1)(ii), (c)(3), (c)(4)(ii), and (c)(7) and (8);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with §§ 63.8693 and 63.8694 and the general requirements of § 63.10(e)(1) and (e)(2)(i).

\* \* \* \* \*

■ 10. Section 63.8689 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

**§ 63.8689 How do I demonstrate initial compliance with the emission limitations?**

\* \* \* \* \*

(b) Except as specified in paragraph (d) of this section, you must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8687 and Table 3 to this subpart.

\* \* \* \* \*

(d) For control devices used to comply with the particulate matter standards in Table 1 to this subpart, you may establish any of the operating limits for pressure drop range (*i.e.*, a minimum and a maximum pressure drop) across the control device using manufacturers' specifications in lieu of complying with paragraph (b) of this section.

■ 11. Section 63.8690 is amended by revising paragraph (b) to read as follows:

**§ 63.8690 How do I monitor and collect data to demonstrate continuous compliance?**

\* \* \* \* \*

(b) Before September 9, 2020, except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating including periods of startup, shutdown, and malfunction when the affected source is operating. On and after September 9, 2020, you must monitor and collect data at all times in accordance with § 63.8685(b), except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

\* \* \* \* \*

■ 12. Section 63.8691 is amended by:

- a. Revising the section heading;
- b. Revising paragraphs (a), (b), and (d); and
- c. Adding paragraph (e).

The revisions and addition read as follows:

**§ 63.8691 How do I conduct periodic performance tests and demonstrate continuous compliance with the emission limitations and operating limits?**

(a) You must demonstrate continuous compliance with each operating limit in Table 2 to this subpart that applies to you according to the procedures specified in Table 5 to this subpart, and you must conduct performance tests as specified in paragraph (e) of this section.

(b) Before September 9, 2020, you must report each instance in which you did not meet each operating limit in Table 5 to this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8693. On and after September 9, 2020, you must report each instance in which you did not meet each operating limit in Table 5 to this subpart that applies to you, except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

\* \* \* \* \*

(d) Before September 9, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). On and after September 9, 2020, this paragraph (d) no longer applies.

(e) For each control device used to comply with the PM, THC, opacity, or visible emission standards of this subpart, you must conduct periodic performance tests using the applicable procedures specified in § 63.8687 and Table 4 to this subpart to demonstrate compliance with § 63.8684(a), and to confirm or reestablish the operating limits required by § 63.8684(b). You must conduct periodic performance tests according to the schedule specified in paragraphs (e)(1) through (3) of this section.

(1) Except as specified in paragraph (e)(3) of this section, for each existing

affected source, and for each new and reconstructed affected source that commences construction or reconstruction after November 21, 2001 and on or before March 12, 2020, you must conduct the first periodic performance test on or before March 13, 2023. As an alternative to the first periodic performance test, you may use the results of a previously-conducted emission test to demonstrate compliance with the emission limitations in this subpart, such as tests for renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, if you demonstrate to the Administrator's satisfaction that it meets the requirements of § 63.8686(b)(1) through (4). The subsequent periodic performance tests must be conducted no later than 60 months thereafter following the previous performance test.

(2) Except as specified in paragraph (e)(3) of this section, for each new and reconstructed affected source that commences construction or reconstruction after March 12, 2020, you must conduct the first periodic performance test no later than 60 months following the initial performance test required by § 63.8689. If you used the alternative compliance option specified in § 63.8686(b) to comply with the initial performance test, then you must conduct the first periodic performance test no later than 60 months following the date you demonstrated to the Administrator that the requirements of § 63.8686(b) had been met.

(3) If an affected source is not operating on the dates the periodic performance test is required to be conducted as specified in paragraph (e)(1) or (2) of this section, then you are not required to restart the affected source for the sole purpose of complying with paragraph (e)(1) or (2) of this section. Instead, upon restart of the affected source, you must conduct the first periodic performance test within 60 days of achieving normal operating conditions but no later than 180 days from startup. You must conduct subsequent periodic performance tests no later than 60 months thereafter following the previous performance test.

■ 13. Section 63.8692 is amended by revising paragraphs (a), (e), and (f) to read as follows:

**§ 63.8692 What notifications must I submit and when?**

(a) You must submit all the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(f), and 63.9(b) through (f) and (h) that apply to you by the dates specified in these sections,

except as provided in paragraphs (b) through (f) of this section.

\* \* \* \* \*

(e) If you are required to conduct a performance test, design evaluation, opacity observation, visible emission observation, or other compliance demonstration as specified in Table 3 or 4 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). You must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). On and after September 9, 2020, you must submit all subsequent Notification of Compliance Status reports to EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), then submit a complete report, including information claimed to be CBI, to EPA. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described earlier in this paragraph (e). You may assert a claim of EPA system outage or force majeure for failure to timely comply with the reporting requirement in this paragraph (e) provided you meet the requirements outlined in § 63.8693(h) or (i), as applicable.

(f) If you are using data from a previously-conducted emission test to serve as documentation of conformance with the emission standards and operating limits of this subpart as specified in § 63.8686(b), you must submit the test data in lieu of the initial performance test results with the Notification of Compliance Status required under paragraph (e) of this section.

■ 14. Section 63.8693 is amended by:

- a. Adding paragraph (b)(6);
- b. Revising paragraphs (c)(4) and (5), (d) introductory text, (d)(1) through (4), and (d)(6);
- c. Adding paragraph (d)(13);
- d. Revising paragraph (f); and
- e. Adding paragraphs (g) through (i).

The revisions and additions read as follows:



**§ 63.8693 What reports must I submit and when?**

\* \* \* \* \*

(b) \* \* \*

(6) On and after September 9, 2020, you must submit all compliance reports to EPA via the CEDRI, which can be accessed through EPA's CDX (<https://cdx.epa.gov/>). You must use the appropriate electronic report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to EPA. The report must be generated using the appropriate form on the CEDRI website or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described earlier in this paragraph (b)(6). You may assert a claim of EPA system outage or force majeure for failure to timely comply with the reporting requirement in this paragraph (b)(6) provided you meet the requirements outlined in § 63.8693(h) or (i), as applicable.

(c) \* \* \*

(4) Before September 9, 2020, if you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i). On and after September 9, 2020, this paragraph (c)(4) no longer applies.

(5) For each reporting period, you must include in the compliance report the total number of deviations that occurred during the reporting period. If there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) in § 63.8684 that apply to you, then you must include a statement that there were no deviations from the emission limitations during the reporting period.

(d) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and visible emission limit) in § 63.8684, you must include in the compliance report the information in paragraphs (c)(1) through (6) of this section, and the information in paragraphs (d)(1) through (13) of this section.

(1) The start date, start time, and duration of each malfunction.

(2) For each instance that the CPMS, CEMS, or COMS was inoperative, except for zero (low-level) and high-level checks, the start date, start time, and duration that the CPMS, CEMS, or COMS was inoperative; the cause (including unknown cause) for the CPMS, CEMS, or COMS being inoperative; and descriptions of corrective actions taken.

(3) For each instance that the CPMS, CEMS, or COMS was out-of-control as specified in § 63.8(c)(7), the start date, start time, and duration that the CPMS, CEMS, or COMS was out-of-control, including the information in § 63.8(c)(8).

(4) Before September 9, 2020, the start date, start time, and duration of the deviation, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after September 9, 2020, the start date, start time, and duration of the deviation including a description of the deviation and the actions you took to minimize emissions in accordance with § 63.8685(b). You must also include:

(i) A list of the affected sources or equipment for which the deviation occurred;

(ii) The cause of the deviation (including unknown cause, if applicable); and

(iii) Any corrective actions taken to return the affected unit to its normal or usual manner of operation.

\* \* \* \* \*

(6) Before September 9, 2020, a breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after September 9, 2020, a breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

\* \* \* \* \*

(13) On and after September 9, 2020, for each deviation from an emission limitation in § 63.8684, you must include an estimate of the quantity of

each regulated pollutant emitted over any emission limitation in § 63.8684, and a description of the method used to estimate the emissions.

\* \* \* \* \*

(f) On and after September 9, 2020, within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (f)(1) through (3) of this section.

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

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

(3) *CBI.* If you claim some of the information submitted under paragraph (f)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to EPA. The file must be generated through the use of EPA's ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described in paragraph (f)(1) of this section.

(g) On and after September 9, 2020, within 60 days after the date of completing each continuous monitoring system (CMS) performance evaluation (as defined in § 63.2) as specified in your site-specific monitoring plan, you must submit the results of the performance evaluation following the procedures specified in paragraphs (g)(1) through (3) of this section.



(1) *Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by EPA's ERT as listed on EPA's ERT website at the time of the evaluation.*

Submit the results of the performance evaluation to EPA via CEDRI, which can be accessed through EPA's CDX. The data must be submitted in a file format generated through the use of EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on EPA's ERT website.

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

(3) *CBI.* If you claim some of the information submitted under paragraph (g)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to EPA. The file must be generated through the use of EPA's ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described in paragraph (g)(1) of this section.

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

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

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

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as

possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

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

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

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

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

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

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

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

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

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

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

(3) You must provide to the Administrator:

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

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

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

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

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

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

■ 15. Section 63.8694 is amended by revising paragraph (a)(2) and adding paragraph (e) to read as follows:

**§ 63.8694 What records must I keep?**

(a) \* \* \*

(2) Before September 9, 2020, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. On and after September 9, 2020, this paragraph (a)(2) no longer applies.

\* \* \* \* \*

(e) Any records required to be maintained by this part that are submitted electronically via 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 EPA as part of an on-site compliance evaluation.

■ 16. Section 63.8697 is amended by revising paragraph (b)(1) to read as follows:

**§ 63.8697 Who implements and enforces this subpart?**

\* \* \* \* \*

(b) \* \* \*

(1) Approval of alternatives to the requirements in §§ 63.8681, 63.8682, 63.8683, 63.8684, 63.8685, 63.8686, 63.8687, 63.8688, 63.8689, 63.8690, and 63.8691.

\* \* \* \* \*

■ 17. Section 63.8698 is amended by revising definitions of "Adhesive applicator," "Deviation," and "Sealant applicator" to read as follows:

**§ 63.8698 What definitions apply to this subpart?**

\* \* \* \* \*

*Adhesive applicator* means the equipment that uses open pan-type application (e.g., a roller partially submerged in an open pan of adhesive) to apply adhesive to roofing shingles for

producing laminated or dimensional roofing shingles.

\* \* \* \* \*

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

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

(2) Fails to meet any term or condition that is adopted to implement an

applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Before September 9, 2020, fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart. On and after September 9, 2020, this paragraph (3) no longer applies.

\* \* \* \* \*

*Sealant applicator* means the equipment that uses open pan-type application (e.g., a roller partially submerged in an open pan of sealant) to apply a sealant strip to a roofing product. The sealant strip is used to seal overlapping pieces of roofing product after they have been applied.

\* \* \* \* \*

■ 18. Table 1 to subpart LLLLL of part 63 is amended by revising row 1 and footnote b to read as follows:

TABLE 1 TO SUBPART LLLLL OF PART 63—EMISSION LIMITATIONS

For—	You must meet the following emission limitation—
1. Each blowing still, Group 1 asphalt loading rack, and Group 1 asphalt storage tank at existing, new, and reconstructed asphalt processing facilities; and each Group 1 asphalt storage tank at existing, new, and reconstructed asphalt roofing manufacturing lines; and each coating mixer, saturator (including wet looper), coater, sealant applicator, and adhesive applicator at new and reconstructed asphalt roofing manufacturing lines.	a. Reduce total hydrocarbon mass emissions by 95 percent, or to a concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen; b. Route the emissions to a combustion device achieving a combustion efficiency of 99.5 percent; c. Route the emissions to a combustion device that does not use auxiliary fuel achieving a total hydrocarbon (THC) destruction efficiency of 95.8 percent; d. Route the emissions to a boiler or process heater with a design heat input capacity of 44 megawatts (MW) or greater; e. Introduce the emissions into the flame zone of a boiler or process heater; or f. Route emissions to a flare meeting the requirements of § 63.11(b).
* * * * *	* * * * *

<sup>b</sup> The opacity limit can be exceeded for one consecutive 15-minute period in any 24-hour period when the storage tank transfer lines are being cleared. During this 15-minute period, the control device must not be bypassed. If the emissions from the asphalt storage tank are ducted to the saturator control device, the combined emissions from the saturator and storage tank must meet the 20 percent opacity limit (specified in 3.a of Table 1 to this subpart) during this 15-minute period. At any other time, the opacity limit applies to Group 2 asphalt storage tanks.

■ 19. Table 2 to subpart LLLLL of part 63 is amended by revising rows 3 and 4 and footnotes a and c to read as follows:

TABLE 2 TO SUBPART LLLLL OF PART 63—OPERATING LIMITS

For—	You must <sup>a</sup>
3. Control devices used to comply with the particulate matter standards..	a. Maintain the 3-hour average <sup>b</sup> inlet gas temperature at or below the operating limit established during the performance test; and b. Maintain the 3-hour average <sup>b</sup> pressure drop across the device <sup>c</sup> within the operating range limits (i.e., at or above a minimum pressure drop and at or below a maximum pressure drop) established during the performance test, or as an alternative, established according to the manufacturer's specifications as specified in § 63.8689(d).
4. Other control devices that are neither a combustion device nor a control device used to comply with the particulate matter emission standards.	Maintain the approved monitoring parameters within the operating limits established during the performance test.

<sup>a</sup> The operating limits specified in Table 2 to this subpart are applicable if you are monitoring control device operating parameters to demonstrate continuous compliance. If you are using a CEMS or COMS, you must maintain emissions below the value established during the initial performance test.

<sup>b</sup> A 15-minute averaging period can be used as an alternative to the 3-hour averaging period for this parameter.

<sup>c</sup> As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 to this subpart can monitor the voltage to the ESP. If this option is selected, the ESP voltage must be maintained at or above the operating limit established during the performance test.

■ 20. Table 3 to subpart LLLLL of part 63 is amended by revising rows 1, 7, and 11 through 13 and footnotes a and c and adding footnotes d through f to read as follows:

TABLE 3 TO SUBPART LLLLL OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS <sup>a b</sup>

For—	You must—	Using—	According to the following requirements—
1. All particulate matter, total hydrocarbon, carbon monoxide, and carbon dioxide emission tests.	a. Select sampling port's location and the number of traverse points.	i. EPA test method 1 or 1A in appendix A to part 60 of this chapter.	A. For demonstrating compliance with the total hydrocarbon percent reduction standard, the sampling sites must be located at the inlet and outlet of the control device prior to any releases to the atmosphere. B. For demonstrating compliance with the particulate matter mass emission rate, THC destruction efficiency, THC outlet concentration, or combustion efficiency standards, the sampling sites must be located at the outlet of the control device prior to any releases to the atmosphere.
7. All opacity tests .....	Conduct opacity observations ..	EPA test method 9 in appendix A to part 60 of this chapter, or ASTM D7520–16 <sup>d f</sup> .	Conduct opacity observations for at least 3 hours and obtain 30, 6-minute averages.
11. Each combustion device .....	Establish a site-specific combustion zone temperature operating limit.	Data from the CPMS and the applicable performance test method(s).	You must collect combustion zone temperature data every 15 minutes during the entire period of the 3-hour performance test, and determine the average combustion zone temperature over the 3-hour performance test by computing the average of all of the 15-minute readings.
12. Each control device used to comply with the particulate matter emission standards.	Establish a site-specific inlet gas temperature operating limit; and if not complying with § 63.8689(d), also establish site-specific limits for the pressure drop range ( <i>i.e.</i> , a minimum and a maximum pressure drop) across the device <sup>e</sup> .	Data from the CPMS and the applicable performance test method(s).	You must collect the inlet gas temperature and pressure drop <sup>b</sup> data every 15 minutes during the entire period of the 3-hour performance test, and determine the average inlet gas temperature and pressure drop <sup>c</sup> over the 3-hour performance test by computing the average of all of the 15-minute readings. The inlet gas temperature operating limit is set at +20 percent of the test run average inlet gas temperature measured in units of degrees Celsius or degrees Fahrenheit. The maximum (or minimum) pressure drop is set as the maximum (or minimum) average pressure drop of the performance test runs which demonstrated compliance with the applicable emission limit.
13. Each control device that is neither a combustion device nor a control device used to comply with the particulate matter emission standards.	Establish site-specific monitoring parameters.	Process data and data from the CPMS and the applicable performance test method(s).	You must collect monitoring parameter data every 15 minutes during the entire period of the 3-hour performance test, and determine the average monitoring parameter values over the 3-hour performance test by computing the average of all of the 15-minute readings.

<sup>a</sup> For initial performance tests, as specified in § 63.8686(b), you may request that data from a previously-conducted emission test serve as documentation of conformance with the emission standards and operating limits of this subpart.

<sup>b</sup> Performance tests are not required if: (1) The emissions are routed to a boiler or process heater with a design heat input capacity of 44 MW or greater; or (2) the emissions are introduced into the flame zone of a boiler or process heater.

<sup>c</sup> As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 to this subpart can monitor the voltage to the ESP.

<sup>d</sup> If you use ASTM D7520–16 in lieu of EPA test method 9, then you must comply with the conditions specified in this footnote. During the digital camera opacity technique (DCOT) certification procedure outlined in Section 9.2 of ASTM D7520–16, you or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand). You must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520–16. You must follow the record keeping procedures outlined in § 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination. You or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of any one reading and the average error must not exceed 7.5 percent opacity. This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software and operator in accordance with ASTM D7520–16 and this letter is on the facility, DCOT operator, and DCOT vendor.

<sup>e</sup> You may conduct two separate performance tests to establish the operating limits for pressure drop range (*i.e.*, one performance test to establish a minimum pressure drop operating limit and one performance test to establish a maximum pressure drop operating limit); however, you may choose to establish either, or both, the minimum and maximum pressure drop operating limits using the requirements of § 63.8689(d) in lieu of the requirements specified in this Table.

<sup>f</sup> Incorporated by reference, see § 63.14.

■ 21. Table 4 to subpart LLLLL of part 63 is amended by revising the table

heading, the fourth column heading, and rows 4 and 5 to read as follows:

TABLE 4 TO SUBPART LLLLL OF PART 63—INITIAL AND CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

For—	For the following emission limitation—	You have demonstrated compliance if—
4. Each saturator (including wet loop) and coater at an existing, new, or reconstructed asphalt roofing manufacturing line.	a. Limit visible emissions from the emissions capture system to 20 percent of any period of consecutive valid observations totaling 60 minutes.  b. Limit opacity emissions to 20 percent .....	The visible emissions, measured using EPA test method 22 in appendix A to part 60 of this chapter, for any period of consecutive valid observations totaling 60 minutes do not exceed 20 percent.  The opacity, measured using EPA test method 9 in appendix A to part 60 of this chapter, for each of the first 30 6-minute averages does not exceed 20 percent.

TABLE 4 TO SUBPART LLLLL OF PART 63—INITIAL AND CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS—Continued

For—	For the following emission limitation—	You have demonstrated compliance if—
5. Each Group 2 asphalt storage tank at existing, new, and reconstructed asphalt processing facilities and asphalt roofing manufacturing lines.	Limit exhaust gases to 0 percent opacity .....	The opacity, measured using EPA test method 9 in appendix A to part 60 of this chapter, for each of the first 30 6-minute averages does not exceed 0 percent.

\* \* \* \* \*

■ 22. Table 5 to subpart LLLLL of part 63 is amended by revising rows 3 and 4 and footnotes a and d to read as follows:

TABLE 5 TO SUBPART LLLLL OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS <sup>a</sup>

For—	For the following operating limit—	You must demonstrate continuous compliance by—
* * *	* * *	* * *
3. Control devices used to comply with the particulate matter emission standards.	<p>a. Maintain the 3-hour<sup>c</sup> average inlet gas temperature at or below the operating limit established during the performance test; and</p> <p>b. Maintain the 3-hour<sup>c</sup> average pressure drop across device<sup>d</sup> within the operating range limits that were established pursuant to § 63.8689(b) and/or (d).</p>	<p>i. Passing the emissions through the control device; and</p> <p>ii. Collecting the inlet gas temperature and pressure drop<sup>d</sup> data according to § 63.8688(b) and (c); and</p> <p>iii. Reducing inlet gas temperature and pressure drop<sup>d</sup> data to 3-hour<sup>c</sup> averages according to calculations in Table 3 to this subpart; and</p> <p>iv. Maintaining the 3-hour<sup>c</sup> average inlet gas temperature within the level established during the performance test; and</p> <p>v. Maintaining the 3-hour<sup>c</sup> average pressure drop across device<sup>d</sup> within the level established pursuant to § 63.8689(b) and/or (d).</p>
4. Other control devices that are neither a combustion device nor a control device used to comply with the particulate matter emission standards.	a. Maintain the monitoring parameters within the operating limits established during the performance test.	<p>i. Passing the emissions through the devices;</p> <p>ii. Collecting the monitoring parameter data according to § 63.8688(d); and</p> <p>iii. Reducing the monitoring parameter data to 3-hour<sup>c</sup> averages according to calculations in Table 3 to this subpart; and</p> <p>iv. Maintaining the monitoring parameters within the level established during the performance test.</p>

<sup>a</sup> The operating limits specified in Table 2 to this subpart and the requirements specified in Table 5 to this subpart are applicable if you are monitoring control device operating parameters to demonstrate continuous compliance. If you use a CEMS or COMS to demonstrate compliance with the emission limits, you are not required to record control device operating parameters. However, you must maintain emissions below the value established during the initial performance test. Data from the CEMS and COMS must be reduced as specified in §§ 63.8690 and 63.8(g)(1) through (4).

<sup>c</sup> A 15-minute averaging period can be used as an alternative to the 3-hour averaging period for this parameter.

<sup>d</sup> As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 to this subpart can monitor the voltage to the ESP. If this option is selected, the ESP voltage must be maintained at or above the operating limit established during the performance test.

■ 23. Table 6 to subpart LLLLL of part 63 is amended by revising rows 4, 5, and 6 and adding row 7 to read as follows:

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

You must submit—	The report must contain—	You must submit the report—
* * *	* * *	* * *
4. Notification of compliance status .....	The information in § 63.9(h)(2) through (5), as applicable.	According to the requirements in §§ 63.8692(e) and 63.9(h)(2) through (5), as applicable.

TABLE 6 TO SUBPART LLLLL OF PART 63—REQUIREMENTS FOR REPORTS—Continued

You must submit—	The report must contain—	You must submit the report—
5. A compliance report .....	<p>a. A statement that there were no deviations from the emission limitations during the reporting period, if there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) that apply to you.</p> <p>b. If there were no periods during which the CPMS, CEMS, or COMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS, CEMS, or COMS was out-of-control during the reporting period.</p> <p>c. If you have a deviation from any emission limitation (emission limit, operating limit, opacity limit, and visible emission limit), the report must contain the information in § 63.8693(c) and (d).</p> <p>d. Before September 9, 2020, if you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). On and after September 9, 2020, this paragraph no longer applies.</p>	<p>Semiannually according to the requirements in § 63.8693(b).</p> <p>Semiannually according to the requirements in § 63.8693(b).</p> <p>Semiannually according to the requirements in § 63.8693(b).</p> <p>Semiannually according to the requirements in § 63.8693(b).</p>
6. An immediate startup, shutdown, and malfunction report if you have a startup, shutdown, or malfunction during the reporting period before September 9, 2020, and actions taken were not consistent with your startup, shutdown, and malfunction plan. On and after September 9, 2020, this paragraph no longer applies.	The information in § 63.10(d)(5)(ii) .....	By fax or telephone within 2 working days after starting actions inconsistent with the plan followed by a letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.
7. Performance test report .....	The information in § 63.7 .....	Within 60 days after completion of the performance test according to the requirements in § 63.8693(f).

■ 24. Table 7 to subpart LLLLL of part 63 is amended by:

■ a. Removing the entry for § 63.6(e)(1) and adding entries in numerical order for §§ 63.6(e)(1)(i), 63.6(e)(1)(ii), and 63.6(e)(1)(iii);

■ b. Revising the entries for §§ 63.6(e)(3), 63.6(f)(1), 63.6(h)(1), and 63.7(e)(1);

■ c. Adding an entry in numerical order for § 63.7(e)(4);

■ d. Removing the entry for § 63.8(c)(1);

■ e. Revising the entries for §§ 63.8(c)(1)(i), 63.8(c)(1)(ii), 63.8(c)(1)(iii), and 63.8(d);

■ f. Removing the entry for § 63.10(b)(2)(i)-(v);

■ g. Adding entries in numerical order for §§ 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv), and 63.10(b)(2)(v); and

■ h. Revising the entry for § 63.10(d)(5).  
The revisions and additions read as follows:

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

Citation	Subject	Brief description	Applies to subpart LLLLL
* * *	* * *	* * *	* * *
§ 63.6(e)(1)(i) .....	Operation & Maintenance .....	Operate to minimize emissions at all times.	Yes before September 9, 2020. No on and after September 9, 2020. See § 63.8685(b) for general duty requirement.
§ 63.6(e)(1)(ii) .....	Operation & Maintenance .....	Correct malfunctions as soon as practicable.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.6(e)(1)(iii) .....	Operation & Maintenance .....	Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.

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

Citation	Subject	Brief description	Applies to subpart LLLLL
* * *	* * *	* * *	* * *
§ 63.6(e)(3) .....	Startup, Shutdown, and Malfunction (SSM) Plan (SSMP).	1. Requirement for SSM and startup, shutdown, malfunction plan. 2. Content of SSMP.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.6(f)(1) .....	Compliance Except During SSM ..	You must comply with emission standards at all times except during SSM.	Yes before September 9, 2020. No on and after September 9, 2020.
* * *	* * *	* * *	* * *
§ 63.6(h)(1) .....	Compliance with Opacity/VE Standards.	You must comply with opacity/VE emission limitations at all times except during SSM.	Yes before September 9, 2020. No on and after September 9, 2020.
* * *	* * *	* * *	* * *
§ 63.7(e)(1) .....	Conditions for Conducting Performance Tests.	1. Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM. 2. Not a violation to exceed standard during SSM.	Yes before September 9, 2020. No on and after September 9, 2020. See § 63.8687.
* * *	* * *	* * *	* * *
§ 63.7(e)(4) .....	Conduct of performance tests .....	Administrator's authority to require testing under section 114 of the Act.	Yes.
* * *	* * *	* * *	* * *
§ 63.8(c)(1)(i) .....	Routine and predictable CMS malfunction.	1. Keep parts for routine repairs readily available. 2. Reporting requirements for CMS malfunction when action is described in SSM plan.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.8(c)(1)(ii) .....	CMS malfunction not in SSP plan	Keep the necessary parts for routine repairs if CMS.	Yes.
§ 63.8(c)(1)(iii) .....	Compliance with Operation and Maintenance Requirements.	Develop a written startup, shutdown, and malfunction plan for CMS.	Yes before September 9, 2020. No on and after September 9, 2020.
* * *	* * *	* * *	* * *
§ 63.8(d) .....	CMS Quality Control .....	1. Requirements for CMS quality control, including calibration, etc. 2. Must keep quality control plan on record for the life of the affected source. 3. Keep old versions for 5 years after revisions.	Yes.
* * *	* * *	* * *	* * *
§ 63.10(b)(2)(i) .....	Records related to Startup and Shutdown.	Occurrence of each of operation (process equipment).	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.10(b)(2)(ii) .....	Recordkeeping Relevant to Malfunction Periods and CMS.	Occurrence of each malfunction of air pollution equipment.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.10(b)(2)(iii) .....	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Maintenance on air pollution control equipment.	Yes.
§ 63.10(b)(2)(iv) .....	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Actions during startup, shutdown, and malfunction.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.10(b)(2)(v) .....	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Actions during startup, shutdown, and malfunction.	Yes before September 9, 2020. No on and after September 9, 2020.
* * *	* * *	* * *	* * *
§ 63.10(d)(5) .....	Startup, Shutdown, and Malfunction Reports.	Contents and submission .....	Yes before September 9, 2020. No on and after September 9, 2020.
* * *	* * *	* * *	* * *

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**BILLING CODE 6560-50-P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2016-0447 and EPA-HQ-OAR-2016-0449; FRL-10006-04-OAR]

RIN 2060-AT12

### National Emission Standards for Hazardous Air Pollutants: Boat Manufacturing and Reinforced Plastic Composites Production Risk and Technology Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action finalizes the residual risk and technology reviews (RTR) conducted for the Boat Manufacturing and the Reinforced Plastic Composites Production source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action addressing emissions during periods of startup, shutdown, and malfunction (SSM) and amending provisions regarding electronic reporting of performance test and performance evaluation results and semiannual reports. These final amendments include removal of regulatory language that is inconsistent with the requirement that the standards apply at all times, inclusion of language requiring electronic reporting of performance test and performance evaluation results and semiannual reports, and an amendment to the Reinforced Plastic Composites Production NESHAP to clarify that mixers that route to a capture and control device system with at least 95-percent efficiency overall are not required to have covers. The numeric emission limits of the standards for both source categories remain unchanged.

**DATES:** This final rule is effective on March 20, 2020.

**ADDRESSES:** The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0447 for the Boat Manufacturing NESHAP and Docket ID No. EPA-HQ-OAR-2016-0449 for the Reinforced Plastic Composites Production NESHAP. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, e.g., confidential business information

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

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Dr. Tina Ndoh, Sector Policies and Programs Division (D234-04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1516; fax number: (919) 541-4991; and email address: [ndoh.tina@epa.gov](mailto:ndoh.tina@epa.gov). For specific information regarding the risk modeling methodology, contact Mr. James Hirtz, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0881; fax number: (919) 541-0840; and email address: [hirtz.james@epa.gov](mailto:hirtz.james@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, (Mail Code 2221A), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-1395; and email address: [cox.john@epa.gov](mailto: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:

BMC bulk molding compound  
 CAA Clean Air Act  
 CDX Central Data Exchange  
 CEMS continuous emission monitoring system  
 CRA Congressional Review Act  
 EPA Environmental Protection Agency  
 ERT Electronic Reporting Tool  
 HAP hazardous air pollutants(s)  
 HQ hazard quotient  
 ICR Information Collection Request

MACT maximum achievable control technology  
 MIR maximum individual risk  
 NAICS North American Industry Classification System  
 NESHAP national emission standards for hazardous air pollutants  
 NTTAA National Technology Transfer and Advancement Act  
 OMB Office of Management and Budget  
 PRA Paperwork Reduction Act  
 RFA Regulatory Flexibility Act  
 RIN Regulatory Information Number  
 RTR risk and technology review  
 SSM startup, shutdown, and malfunction  
 TOSHI target organ specific health index  
 tpy tons per year  
 UMRA Unfunded Mandates Reform Act

*Background information.* On May 17, 2019 (84 FR 22642), the EPA proposed revisions to the Boat Manufacturing NESHAP and the Reinforced Plastic Composites Production 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 the *Summary of Public Comments and Responses for the Risk and Technology Reviews for Boat Manufacturing NESHAP and Reinforced Plastic Composite NESHAP*, Docket ID No. EPA-HQ-OAR-2016-0447 for Boat Manufacturing and EPA-HQ-OAR-2016-0449 for Reinforced Plastic Composites Production. A "track changes" version of the regulatory language that incorporates the changes in this action is available in the docket for each rule.

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

- I. General Information
  - A. Does this action apply to me?
  - B. Where can I get a copy of this document and other related information?
  - C. Judicial Review and Administrative Reconsideration
- II. Background
  - A. What is the statutory authority for this action?
  - B. What are the source categories and how does the NESHAP regulate HAP emissions from the source categories?
  - C. What changes did we propose for the source categories in our May 17, 2019, proposal?
- III. What is included in these final rules?
  - A. What are the final rule amendments based on the risk review for the source categories?
  - B. What are the final rule amendments based on the technology review for the source categories?



- C. What are the final rule amendments addressing emissions during periods SSM?
- D. What are the final rule amendments for electronic reporting for the source categories?
- E. What are the effective and compliance dates for the Boat Manufacturing and Reinforced Plastic Composites Production source categories?
- F. What are the electronic reporting requirements?
- G. What are the final rule amendments regarding covers for mixers that route to a control device system?
- IV. What is the rationale for our final decisions and amendments for the Boat Manufacturing and Reinforced Plastic Composites Production source categories?
  - A. Residual Risk Reviews
  - B. Technology Reviews for the Boat Manufacturing and Reinforced Plastic Composites Production Source Categories
  - C. SSM Provisions
  - D. Electronic Reporting Provisions
  - E. Work Practice Standards for Controlled-Spray Training
- V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
  - A. What are the affected facilities?
  - B. What are the air quality impacts?
  - C. What are the cost impacts?
  - D. What are the economic impacts?
  - E. What are the benefits?
  - F. What analysis of environmental justice did we conduct?
  - G. What analysis of children's environmental health did we conduct?
- VI. Statutory and Executive Order Reviews
  - A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. 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	NAICS <sup>1</sup> Code
Boat Manufacturing .....	336612
Reinforced Plastic Composites Production .....	326113
	326121
	326122
	326130
	326140
	326191
	327110
	327991
	332321
	332420
	333132
	333415
	333611
	333924
	334310
	335311
	335313
	335932
	336111
	336211
	336213
	336214
	336320
	336413
	336510
	337110
	337125
	337127
	337215
	339920
	339991

<sup>1</sup> 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 categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of 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/boat-manufacturing-national-emission-standards-hazardous-air> for

the Boat Manufacturing NESHAP, and <https://www.epa.gov/stationary-sources-air-pollution/reinforced-plastic-composites-production-national-emission-standards-hazardous-air> for the Reinforced Plastic Composites Production NESHAP. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

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

### C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by May 19, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

## II. Background

### A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. “Major sources” are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as 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).<sup>1</sup> For more information on the statutory authority for this rule, see the *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology* memorandum (Docket ID Item No. EPA–HQ–OAR–2016–0447–0080).

### B. What are the source categories and how does the NESHAP regulate HAP emissions from the source categories?

1. What is the Boat Manufacturing source category and how does the current NESHAP regulate its HAP emissions?

The EPA promulgated the Boat Manufacturing NESHAP on August 22, 2001 (66 FR 44218). The standards are codified at 40 CFR part 63, subpart VVVV (40 CFR 63.5680). The boat manufacturing industry consists of facilities that manufacture fiberglass and aluminum boats. The source category covered by this MACT standard currently includes 93 facilities.

The following processes and operations are found at boat manufacturing facilities: Fiberglass boat manufacturing and assembly operations, fabric and carpet adhesive operations,

and aluminum boat surface coating operations. See the proposal for this action for additional detail on the processes at boat manufacturing facilities (84 FR 22645, May 17, 2019). The Boat Manufacturing NESHAP regulates organic HAP from sources that manufacture aluminum recreational boats or any type of fiberglass boats. For the purposes of these standards, recreational boats are defined as a vessel which, by design and construction, is intended by the manufacturer to be operated primarily for pleasure, or to be leased, rented, or chartered to another for the latter’s pleasure (rather than for commercial or military purposes). The Boat Manufacturing NESHAP applies to the following operations: All open molding operations including pigmented gel coat, clear gel coat, production resin, tooling resin, and tooling gel coat; all closed molding resin operations; resin and gel coat mixing and operations; resin and gel coat application equipment cleaning operations; carpet and fabric adhesive operations; aluminum hull and deck coating operations, including solvent wipe-down operations; and paint spray gun cleaning operations on aluminum recreational boats. The NESHAP regulates HAP emissions by setting HAP content limits for the resins and gel coats used at each regulated open molding resin and gel coat operation. Regulated entities can comply with the HAP limits by averaging emissions, using compliant materials, or using add-on controls.

2. What is the Reinforced Plastic Composites Production source category and how does the current NESHAP regulate its HAP emissions?

The EPA promulgated the Reinforced Plastic Composites Production NESHAP on April 21, 2003 (68 FR 19375) and amended the standards on August 25, 2005 (70 FR 50118). The standards are codified at 40 CFR part 63, subpart WWW (40 CFR 63.5780). The reinforced plastic composites production industry consists of facilities that manufacture reinforced and non-reinforced plastic composite products and the production of plastic molding compounds used in the production of plastic composites products. The source category covered by this MACT standard currently includes 448 facilities.

The Reinforced Plastic Composites Production NESHAP applies to the following operations: Open molding, closed molding, centrifugal casting, continuous lamination, continuous casting, polymer casting, pultrusion, sheet molding compound

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

manufacturing, bulk molding compound (BMC) manufacturing, mixing, cleaning of equipment used in reinforced plastic composites manufacture, HAP-containing materials storage, and repair operations on manufactured parts (40 CFR 63.5790). Most existing major sources are required to incorporate pollution-prevention techniques in their production processes. These techniques include the following: Using raw materials containing low amounts of regulated HAP; non-atomized resin application; and covering open resin baths and tanks.

*C. What changes did we propose for the source categories in our May 17, 2019, proposal?*

On May 17, 2019, the EPA published proposed rules in the **Federal Register** for the Boat Manufacturing NESHAP, 40 CFR part 63, subpart VVVV, and the Reinforced Plastic Composites Production NESHAP, 40 CFR part 63, subpart WWWW, that took into consideration the RTR analyses. In the proposed rule, we proposed that the risks due to emissions of air toxics from these source categories under the current standards are acceptable and that the standards provide an ample margin of safety to protect public health, and, therefore, no additional emission reductions are necessary. For the technology reviews, we did not identify any developments in practices, processes, or control technologies, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6). We did, however, solicit comments on the feasibility and associated cost of revising the NESHAP to include a work practice standard that would require controlled-spray operator training.

Additionally, the EPA proposed amendments to provisions addressing emissions during periods of SSM and to provisions regarding electronic reporting of performance test and performance evaluation results and semiannual reports, and proposed an amendment to the Reinforced Plastic Composites Production NESHAP to clarify that mixers that route to a capture and control device system with at least 95-percent efficiency overall are not required to have covers.

**III. What is included in these final rules?**

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Boat Manufacturing and Reinforced Plastic Composites Production source categories. This actions also finalizes

other changes to the NESHAP, including:

- Amending provisions addressing emissions during periods of SSM;
- Amending provisions regarding electronic reporting of performance test and performance evaluation results and semiannual reports; and
- An amendment to the Reinforced Plastic Composites Production NESHAP to clarify that mixers that route to a capture and control device system with at least 95-percent efficiency overall are not required to have covers.

*A. What are the final rule amendments based on the risk review for the source categories?*

This section introduces the final amendments to the Boat Manufacturing and Reinforced Plastic Composites Production NESHAP being promulgated pursuant to CAA section 112(f). Consistent with the proposed findings for these NESHAP, the EPA is finalizing our determination that the risks due to emissions of air toxics from these source categories under the current standards are acceptable and that the standards provide an ample margin of safety to protect public health. The EPA proposed no changes to these two subparts based on the risk reviews conducted pursuant to CAA section 112(f). The EPA received no new data or other information during the public comment period that causes us to change that proposed determination. Therefore, we are not requiring additional controls under CAA section 112(f)(2) for either of the two subparts in this action, and we are not making any changes to the existing standards under CAA section 112(f)(2). In other words, we are readopting the standards for both subparts.

*B. What are the final rule amendments based on the technology review for the source categories?*

Consistent with the proposed findings for these NESHAP, we determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for either of these source categories. Therefore, we are not finalizing any revisions to the MACT standards under CAA section 112(d)(6).

*C. What are the final rule amendments addressing emissions during periods SSM?*

We are finalizing the proposed amendments to the Boat Manufacturing NESHAP (40 CFR part 63, subpart VVVV) and the Plastic Composites Production NESHAP (40 CFR part 63, subpart WWWW) to remove and revise

the provisions related to SSM. In its 2008 decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. As detailed in section IV.D and IV.I of the proposal preamble for these NESHAP (84 FR 22660 and 22668, May 17, 2019), Table 8 to subpart VVVV of part 63 and Table 15 to subpart WWWW of part 63 (General Provisions applicability tables) are being revised to require that the standards apply at all times. We also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made other harmonizing changes to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. We determined that facilities in both of these source categories can meet the applicable emission standards in the Boat Manufacturing NESHAP and the Plastic Composites Production NESHAP at all times, including periods of startup and shutdown. Therefore, the EPA determined that no additional standards are needed to address emissions during these periods. The legal rationale and explanation of the changes to the SSM requirements are set forth in the proposed rules. See 84 FR 22660 through 22662 and 22668 through 22669, May 17, 2019.

Further, the EPA is not implementing standards for malfunctions. As discussed in sections IV.D and IV.I of the May 17, 2019, proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. For these source categories, it is unlikely that a malfunction would result in a violation of the standards, and no comments were submitted that would suggest otherwise. Refer to section IV.D and IV.I of the May 17, 2019, proposal preamble for further discussion of the EPA's rationale for the decision not to set standards for malfunctions, as well as a discussion of the actions a source could take in the unlikely event that a source fails to

comply with the applicable CAA section 112(d) standards as a result of a malfunction event, given that administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

The EPA is finalizing a revision to the performance testing requirements at 40 CFR 63.5765 and 63.5912. The final performance testing provisions prohibit performance testing during SSM for demonstrating compliance as these conditions are not representative of normal operating conditions. The final rules also require that operators maintain records to document that operating conditions during performance tests represent normal conditions.

*D. What are the final rule amendments for electronic reporting for the source categories?*

The EPA is finalizing electronic reporting requirements that apply to owners and operators of facilities subject to the Boat Manufacturing NESHAP and the Plastic Composites Production NESHAP. Owners and operations are required to submit electronic copies of performance test reports and performance evaluation reports and semiannual reports through the EPA's Central Data Exchange (CDX), using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, available in the dockets for both rules at Docket ID Item Nos. EPA-HQ-OAR-2016-0447-0082 and EPA-HQ-2016-0449-0047. The final rule requires that performance test and performance evaluation report results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website<sup>2</sup> at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format using the attachment module of the ERT. For semiannual reports, the final rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed template for these reports

is included in the dockets for this rulemaking (Docket ID Item Nos. EPA-HQ-OAR-2016-0447-0082 and EPA-HQ-OAR-2016-0449-0047). Electronic reporting requirements are discussed further in section IV.D and V.D of this preamble.

*E. What are the effective and compliance dates for the Boat Manufacturing and Reinforced Plastic Composites Production source categories?*

The revisions to the MACT standards being promulgated in this action are effective on March 20, 2020.

The EPA is finalizing rule revisions that require affected sources in the Boat Manufacturing and Reinforced Plastic Composites Production source categories that commenced construction or reconstruction on or before May 17, 2019, to comply with all the amendments, including the electronic format for submitting performance test and performance evaluation results and compliance reports, no later than 180 days after the effective date of the final rule. Affected sources that commence construction or reconstruction after May 17, 2019, must comply with all requirements of the subpart, including the amendments being finalized, no later than the effective date of the final rule or upon startup, whichever is later, with the exception of the electronic format for submitting compliance reports. Affected sources that commence construction or reconstruction after May 17, 2019, must comply with all requirements for the electronic format for submitting compliance reports no later than 180 days after the effective date of the final rule or upon startup, whichever is later. The EPA's rationale for these compliance deadlines appears in the proposal preamble (84 FR 22664 and 22670, May 17, 2019). All affected facilities for the Boat Manufacturing source category must continue to meet the current requirements of 40 CFR part 63, subpart VVVV, and for the Plastic Composites Production source category must continue to meet the current requirements of 40 CFR part 63, subpart WWWV, until the applicable compliance date of the amended rule.

*F. What are the electronic reporting requirements?*

The EPA is requiring owners and operators of boat manufacturing and reinforced plastic composites production facilities to submit electronic copies of certain required performance test reports, performance evaluation reports, and periodic reports through the EPA's CDX using the CEDRI. The final rule requires that

performance test and performance evaluation test results be submitted using the ERT. For the periodic compliance reports, the final rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. The final version of the templates for these reports will be located on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/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. For a more thorough discussion of electronic reporting, see the memorandum on e-reporting, available in Docket ID Item No. EPA-HQ-OAR-2016-0447 and EPA-HQ-OAR-2016-0449.

*G. What are the final rule amendments regarding covers for mixers that route to a control device system?*

In this action, we are finalizing an amendment to Table 4 to 40 CFR part 63, subpart WWWV, to clarify that mixers that route emissions to a capture and control device system that is at least 95-percent efficient overall are not required to have covers. In the 2003 NESHAP rulemaking, we determined that MACT for existing sources was pollution prevention measures (for mixing and BMC manufacturing operations) and that MACT for new sources was 95-percent control. We also considered whether the new source MACT floor for mixing operations should be incorporation of the pollution prevention measures (in this case covering the mixers) combined with 95-percent control. We determined that the best controlled facilities which route emissions to a 95-percent efficient control device do not also incorporate the best pollution prevention

<sup>2</sup> <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

techniques. Therefore, we concluded that combining the pollution prevention requirements with the 95-percent control requirements would result in an overall control level that exceeds the levels at the best controlled facilities (66 FR 40332, August 2, 2001). However, the text in table 4 of the regulation did not directly address whether mixers that capture and control emissions by 95 percent overall need to have covers. We have added text in line 6 of table 4 to clarify that covers are not required for mixers that fully capture and route emissions to a control device with at least 95-percent efficiency.

#### IV. What is the rationale for our final decisions and amendments for the Boat Manufacturing and Reinforced Plastic Composites Production source categories?

For each issue, this section provides a description of what we proposed and

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

##### A. Residual Risk Review

##### 1. What did we propose pursuant to CAA section 112(f)?

##### a. Boat Manufacturing (40 CFR Part 63, subpart VVVV) Source Category

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in section IV.A of the proposed rule preamble (84 FR 22658, May 17, 2019). The results of this

review are presented briefly below in Table 2 of this preamble. Additional detail is provided in the residual risk technical support document titled *Residual Risk Assessment for the Boat Manufacturing Source Category in Support of the 2018 Risk and Technology Review Proposed Rule*, which is available in the Boat Manufacturing Docket (Docket ID No. EPA-HQ-OAR-2016-0447).

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR THE BOAT MANUFACTURING SOURCE CATEGORY

	Cancer MIR (in 1 million)		Cancer incidence (cases per year)	Population with risk of 1-in-1 million or greater	Population with risk of 10-in-1 million or greater	Max chronic noncancer hazard index (HI) (actuals and allowables)
	Based on actual emissions	Based on allowable emissions				
Source Category ....	0.2 (nickel compounds, ethyl benzene, tetrachloroethene).	0.3 (nickel compounds, ethyl benzene, tetrachloroethene).	0.00001	0	0	HI < 1.
Whole Facility .....	0.4 (naphthalene) .....	.....	0.00004	0	0	HI = 1.

The EPA proposed that the risks from the Boat Manufacturing source category were acceptable based on the health risk information and factors discussed in section IV.C of the proposal for this rulemaking (84 FR 22658, May 17, 2019). As explained in section II.A of the proposal preamble, the EPA sets standards under CAA section 112(f)(2) using “a two-step standard-setting approach, with an analytical first step to determine an ‘acceptable risk’ that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual risk (MIR) of approximately 1-in-10 thousand (84 FR 22644, May 17, 2019).”

For the Boat Manufacturing source category, the risk analysis indicates that the cancer risks to the individual most exposed is 0.2-in-1 million based on actual emissions and is 0.3-in-1 million based on allowable emissions. These risks are considerably less than 100-in-1 million (or 1-in-10 thousand), which is the presumptive upper limit of acceptable risk. The Benzene NESHP explained that “a MIR of approximately one in 10 thousand should ordinarily be

the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability (54 FR 38057, September 14, 1989). The risk analysis also shows very low cancer incidence (0.00001 cases per year for actual emissions and 0.00002 cases per year for allowable emissions). Based on our analysis, we did not identify potential for adverse chronic noncancer health effects; all target organ specific health indexes (TOSHIs) were less than 1. The acute noncancer risks based on actual emissions are not greater than a hazard quotient (HQ) of 1 for styrene. Therefore, we find there is little potential concern of acute noncancer health impacts from actual emissions. In addition, the risk assessment indicates no significant potential for multipathway health effects or ecological effects. For all the reasons stated, the risk from the Boat Manufacturing source category were found to be acceptable.

Under the ample margin of safety analysis, we evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied in this source category to further reduce the risks (or potential risks) due to emissions of HAP, considering all of the health risks and other health information considered in the risk acceptability determination described above. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of our MACT rule review to determine whether there are any cost-effective controls or other measures that would reduce emissions further and would be necessary to provide an ample margin of safety to protect public health.

Our risk analysis indicated the risks from the Boat Manufacturing source category are low for both cancer and noncancer health effects, and, therefore, any risk reductions from further available control options would result in minimal health benefits. As noted in section IV.C of the proposal preamble,

no additional control measures were identified for reducing HAP emissions from the Boat Manufacturing source category (84 FR 22660, May 17, 2019). Thus, we proposed that the Boat Manufacturing NESHAP provides an ample margin of safety to protect health and we are not making any changes to the existing standards under CAA section 112(f)(2).

b. Reinforced Plastic Composites Production (40 CFR Part 63, subpart WWWW) Source Category

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in section IV.F of the proposed rule preamble (84 FR 22664, May 17, 2019). The results of this

review are presented briefly below in Table 3 of this preamble. Additional detail is provided in the residual risk technical support document titled *Residual Risk Assessment for the Reinforced Plastic Composites Production Source Category in Support of the 2018 Risk and Technology Review Proposed Rule*, which is available in the Boat Manufacturing Docket (Docket ID No. EPA-HQ-OAR-2016-0449).

TABLE 3—INHALATION RISK ASSESSMENT SUMMARY FOR THE REINFORCED PLASTIC COMPOSITES PRODUCTION SOURCE CATEGORY

	Cancer MIR (in 1 million)		Cancer incidence (cases per year)	Population with risk of 1-in-1 million or greater	Population with risk of 10-in-1 million or greater	Max chronic noncancer hazard index (HI) (actuals and allowables)
	Based on actual emissions	Based on allowable emissions				
Source Category ....	4 (formaldehyde, ethyl benzene).	4 (formaldehyde, ethyl benzene).	0.001	1,500	0	HI = 1.
Whole Facility .....	20 ..... (cadmium, 7-12-dimethylbenz [a]anthracene, nickel, formaldehyde).	.....	0.001	4,500	800	HI = 1.

The EPA proposed that the risks from the Reinforced Plastic Composites Production source category were acceptable based on the health risk information and factors discussed in section IV.G of the proposal for this rulemaking (84 FR 22666, May 17, 2019). As explained in section II.A of the proposal preamble, the EPA sets standards under CAA section 112(f)(2) using “a two-step standard-setting approach, with an analytical first step to determine an ‘acceptable risk’ that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand (84 FR 22644, May 17, 2019).”

For the Reinforced Plastic Composites Production source category, the risk analysis indicates that the cancer risks to the individual most exposed is 4-in-1 million based on actual emissions and is 4-in-1 million based on allowable emissions. These risks are considerably less than 100-in-1 million (or 1-in-10 thousand), which is the presumptive upper limit of acceptable risk. The risk analysis also shows very low cancer incidence (0.001 cases per year for actual emissions and 0.001 cases per year for allowable emissions). We did not identify potential for adverse chronic noncancer health effects; the TOSHIs were equal to 1. The results of the acute screening analysis estimate a maximum acute noncancer HQ of 3 based on the acute recommended exposure limit for styrene. The

maximum off-site concentration for this HAP was also compared to EPA’s Acute Exposure Guideline Levels (AEGL–1) and Emergency Response Planning Guideline (ERPG–1) levels and, in all cases, the HQ was less than 1, below the level at which mild, reversible effects would be anticipated. This information, in addition to the conservative (health protective) assumptions built into the screening assessment, leads us to conclude that adverse effects from acute exposure to emissions of this HAP from this category are not anticipated. In addition, the risk assessment indicates no significant potential for multipathway health effects or ecological effects. Considering all the health risk information and factors discussed above, we proposed that the risks from the Reinforced Plastic Composites Production source category are acceptable.

Under the ample margin of safety analysis, we evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied in this source category to further reduce the risks (or potential risks) due to emissions of HAP, considering all of the health risks and other health information considered in the risk acceptability determination described above. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of our

MACT rule review to determine whether there are any cost-effective controls or other measures that would reduce emissions further and would be necessary to provide an ample margin of safety to protect public health.

Our risk analysis indicated the risks from the Reinforced Plastic Composites Production source category are low for both cancer and noncancer health effects, and, therefore, any risk reductions from further available control options would result in minimal health benefits. As noted in section IV.H of the proposal preamble, no additional control measures were identified for reducing HAP emissions from sources in the Reinforced Plastic Composites Production source category (84 FR 22667, May 17, 2019). Thus, we proposed that the Reinforced Plastic Composites Production NESHAP provides an ample margin of safety to protect health and we are not making any changes to the existing standards under CAA section 112(f)(2).

2. How did the risk review change for these source categories?

The EPA has not changed any aspect of the risk assessment for either of these two source categories as a result of public comments received on the May 2019 proposal.

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

The EPA 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) for either source category. Generally, the comments that did not support the proposed determinations that the risks are acceptable and that the existing standards provide an ample margin of safety also asserted that changes to the underlying risk assessment methodology were needed. For example, one commenter stated that the EPA should lower the acceptability benchmark and not assume that risks below 100-in-1 million are inherently acceptable, include emissions from outside of the source categories in question in the risk assessment, and assume that pollutants with noncancer health risks have no safe level of exposure. Generally, the comments that were supportive of the proposed determinations of the residual risk review agreed with our underlying risk assessment methodology and data inputs and asked for the rule to be finalized as soon as possible to provide regulatory certainty. After review of all the comments received, we decided not to make any changes to the residual risk review. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses on Proposed Rule* (84 FR 22642, May 17, 2019), available in the dockets for these actions (Docket ID Nos. EPA-HQ-OAR-2016-0447 and EPA-HQ-OAR-2016-0449).

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

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

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rule, we determine that the risks from the Boat Manufacturing and Reinforced Plastic Composites Production source categories are acceptable, and that the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not revising either subpart to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).

#### *B. Technology Reviews for the Boat Manufacturing and Reinforced Plastic Composites Production Source Categories*

1. What did we propose pursuant to CAA section 112(d)(6)?

Based on our review, the EPA did not identify any developments in practices, processes, or control technologies for the Boat Manufacturing and Reinforced Plastic Composites Production source categories, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6). Brief summaries of the EPA’s findings in conducting the technology review of Boat Manufacturing and Reinforced Plastic Composites Production source categories were included in the preamble to the proposed rule (84 FR 22642, 22660, 22667, May 17, 2019), and detailed discussions of the EPA’s technology review and findings were included in the memorandum, *Technology Review for Boat Manufacturing and Reinforced Plastic Composites Production Source Category*, June 1, 2018, which can be found in the dockets for both source categories (Docket ID Nos. EPA-OAR-HQ-2016-0447 and EPA-HQ-OAR-2016-0449).

2. How did the technology reviews change?

The EPA is making no changes to the conclusions of the technology review and is finalizing the results of the technology reviews for the Boat Manufacturing and Reinforced Plastic Composites Production source categories as proposed.

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

The EPA received one comment on the proposed technology review for the Boat Manufacturing source category. This commenter supported our proposed determination that no revisions were warranted under CAA section 112(d)(6) for the Boat Manufacturing source category. No comments were received on the technology review for the Reinforced Plastic Composites source category.

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

As we received no adverse comments on our proposed technology reviews or the proposed determinations based on those reviews, we are finalizing the reviews as proposed and making no changes to the standards pursuant to CAA section 112(d)(6). The rationale for and results of our technology reviews are explained in the preamble to the proposed rules (84 FR 22660 and 22667, May 17, 2019).

#### *C. SSM Provisions*

1. What did we propose for SSM?

In the May 17, 2019, action, the EPA proposed amendments to the Boat Manufacturing NESHAP and the Reinforced Plastic Composites Production NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the proposed amendments for the elimination of SSM exemption provisions is in the preamble to the proposed rules (84 FR 22660 and 22668, May 17, 2019).

2. What changed since proposal?

The EPA is finalizing the SSM provisions as proposed with no changes (84 FR 22660 and 22668, May 17, 2019).

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

We received several comments in support of the proposed SSM amendments for the Boat Manufacturing and Reinforced Plastic Composites source categories. One commenter also stated that the proposed amendments will have no impact on the Boat Manufacturing industry.

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

For the reasons explained in the proposed rule and after evaluation of the comments on the proposed amendments to the SSM provisions for



the Boat Manufacturing NESHAP and the Reinforced Plastic Composites Production NESHAP, we are finalizing the proposed revisions related to SSM that are inconsistent with the requirement that the standards apply at all times. More information concerning the proposed amendments to the SSM provisions is in the preamble for each of the proposed rules (84 FR 22660 and 22668, May 17, 2019).

#### *D. Electronic Reporting Provisions*

##### 1. What did we propose?

In the May 17, 2019, action, we proposed that owners and operators of facilities subject to the Boat Manufacturing NESHAP and the Reinforced Plastic Composites NESHAP submit electronic copies of performance test and performance evaluation results and semiannual reports through the EPA's CDX, using the CEDRI Interface. A description of the electronic submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)*, August 8, 2018, in the dockets for Boat Manufacturing (Docket ID No. EPA-OAR-HQ-2016-0447) and Reinforced Plastic Composites (Docket ID No. EPA-HQ-OAR-2016-0449). The proposed rule requirement would replace the current rule requirement to submit these notifications and reports to the Administrator at the appropriate address listed in 40 CFR 63.13. The proposed rule requirement would not affect submittals required by state air agencies. The proposed compliance schedule language in 40 CFR 63.5765(c) and 63.5912(c) for submission of semiannual compliance reports gives facilities 181 days after the final rule is published to begin electronic reporting or 1 year after the 40 CFR part 63, subparts VVVV and WWWW, semiannual compliance report template for both source categories is available in CEDRI, whichever is later.

##### 2. What changed since proposal?

The EPA is finalizing the electronic reporting provisions as proposed with no changes (84 FR 22662 and 22669, May 17, 2019).

##### 3. What key comments did we receive on the electronic reporting provisions and what are our responses?

The EPA received several comments that were generally supportive of the proposed electronic reporting requirements. One commenter stated that the proposed electronic reporting

requirements will reduce "regulatory burden imposed on this sector by helping to minimize waste of resources and streamline operations."

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

For the reasons explained in the proposed rule and after evaluation of the comments on the proposed amendments, the EPA is requiring owners and operators of facilities subject to the Boat Manufacturing NESHAP and the Reinforced Plastic Composites Production NESHAP to submit electronic copies of performance test and performance evaluation results and semiannual reports through the EPA's CDX, using CEDRI. The rationale for the proposed amendments to the electronic reporting provisions is in the preamble to the proposed rule (84 FR 22662 and 22669, May 17, 2019). This rationale also supports our determination to finalize these requirements as proposed.

#### *E. Work Practice Standards for Controlled-Spray Training*

##### 1. What did we propose for a controlled-spray operator training program?

The EPA requested comment on the potential costs and benefits of revising the Boat Manufacturing NESHAP and/or the Reinforced Plastic Composites Production NESHAP to include a controlled-spray training program for operations where styrene-containing resins and gel coats are sprayed onto an open mold. We specifically asked for feedback on whether this practice is widely used in industry, whether significant HAP reductions can be achieved industry-wide and whether HAP reductions could be applicable to all open mold production operations. A more detailed description of the potential revisions and amendatory rule text were provided in the dockets for both rulemakings (Docket ID Item Nos. EPA-OAR-HQ-2016-0447-0079 and EPA-OAR-HQ-2016-0049-0044).

##### 2. What changed since proposal?

For reasons described below, the EPA has decided not to add provisions requiring a controlled-spray operator training program for styrene-containing resins and gel coats sprayed onto an open mold.

##### 3. What key comments did we receive on the work practice standards and what are our responses?

*Comment:* The EPA received mixed comments on the inclusion of a work practice standard for controlled-spray operator training. Some commenters

argued that EPA was obligated to include a training program, while other commenters objected to the inclusion of such a program. One commenter argued that EPA must adopt controlled spray training as a technological development based on the statutory requirements of CAA section 112(d)(6). A commenter also argued that the program must be included in the final rule as a measure for reducing emissions and therefore reducing health risk to satisfy the 'ample margin of safety' requirements under CAA section 112(f)(2). Other commenters objected to the inclusion of the controlled spray-training program, arguing that it would achieve no additional environmental benefit and would impose unwarranted regulatory burden. Some commenters also asserted that requirements to weigh overspray of resins and gel coats does not provide any additional environmental benefit and is overly burdensome.

*Response:* The EPA has decided not to add a work practice for controlled spray operator training to either the Boat Manufacturing NESHAP and/or the Reinforced Plastic Composites Production NESHAP. The EPA acknowledges that a controlled-spray training could be considered a potential development in practices. Even if the agency were to conclude it is a development, however, no changes to these NESHAP would be warranted. We do not have enough information at this time to conclude that a controlled-spray program implemented for boat manufacturing and reinforced plastic composites production facilities would result in environmental benefits and we cannot quantify the burden on affected facilities. The EPA did not receive any additional information regarding potential environmental benefits or costs associated with such a program for these source categories during the comment period. For these reasons, the EPA has concluded, based on the available information, that even if the spray operator training program were found to be a development, changes to the standards would not be required under CAA section 112(d)(6).

Under the ample margin of safety analysis, the EPA analyzes whether there are any cost-effective controls or other measures that would reduce emissions further and would be necessary to provide an ample margin of safety to protect public health. The EPA is not able, based on the information currently available to it, to conclude that the controlled-spray operator training program would be cost effective for either source category or that it would have any environmental benefit. As such, the EPA has concluded, based



on the available information on the cost and feasibility of the program and considering all of the health risks and other health information considered in the risk acceptability determination, that the program is not needed to provide an ample margin of safety.

4. What is the rationale for our final decision with regard to the work practice standards?

The EPA could not determine that requiring a work practice standard for controlled-spray operator training in the NESHAP for the Boat Manufacturing and Reinforced Plastic Composites Production source categories would provide an environmental benefit, and, therefore, could not determine if such programs would be cost effective. The EPA did not receive any information regarding the potential costs of revising the Boat Manufacturing NESHAP and/or the Reinforced Plastic Composites Production NESHAP to include controlled-spray training as a work practice standard during the comment period for both regulatory actions. Given this uncertainty for program costs and benefits, we have also determined that the controlled-spray operator training program is not needed to provide an ample margin of safety.

For these reasons, the EPA has decided not to add work practice standards for controlled-spray operator training to either the Boat Manufacturing NESHAP and/or the Reinforced Plastic Composites Production NESHAP.

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

### *A. What are the affected facilities?*

The EPA estimates that there are 93 boat manufacturing facilities that are subject to the Boat Manufacturing NESHAP affected by the proposed amendments to 40 CFR part 63, subpart VVVV, and 448 reinforced plastic composites production facilities subject to the Reinforced Plastic Composites Production NESHAP, affected by the proposed amendments to 40 CFR part 63, subpart WWWW. The basis of our estimates of affected facilities are provided in the memorandum, *Emissions Data for the National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing and the National Emission Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production*, which is available in the respective dockets for this action. We are not currently aware of any planned or potential new or

reconstructed manufacturing facilities in either of the source categories.

### *B. What are the air quality impacts?*

All major sources in the two source categories would be required to comply with the relevant emission standards at all times without the SSM exemption. We were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

### *C. What are the cost impacts?*

The one-time cost associated with reviewing the revised rules and becoming familiar with the electronic reporting requirements is estimated to be \$446,448 (2016\$); the one-time cost is composed of \$75,629 for the Boat Manufacturing source category (93 facilities), and \$370,819 for the Reinforced Plastic Composites Production source category (448 facilities). The total cost per facility in the Boat Manufacturing source category is estimated to be \$399 per facility to review the final rule requirements and \$414 per facility to become familiar with the electronic reporting requirements. The total cost per facility in the Reinforced Plastic Composites Production source category is estimated to be \$414 per facility to review the final rule requirements and \$414 per facility to become familiar with the electronic reporting requirements. All other costs associated with notifications, reporting, and recordkeeping are assumed to be unchanged because the facilities in each source category are currently required to comply with notification, reporting, and recordkeeping requirements, and will continue to be required to comply with those requirements. The number of personnel-hours required to develop the materials in support of reports required by the NESHAP remain unchanged.

### *D. What are the economic impacts?*

The cost per facility for all of the facilities in both source categories to review the proposed rule requirements and to become familiar with the electronic reporting requirements are less than 1 percent of annual sales revenues. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

In addition, the EPA prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as

defined by the U.S. Small Business Administration. As result of our small business screening, we have identified 73 out of the 93 facilities in the Boat Manufacturing NESHAP as small entities, while 309 out of the 448 facilities in the Reinforced Plastic Composites Production NESHAP are small entities. For both industries, the costs associated with becoming familiar with the proposed rule requirements and to become familiar with the electronic reporting requirements are less than 1 percent of their annual sales revenues. Therefore, there are no significant economic impacts on a substantial number of small entities from these proposed amendments.

### *E. What are the benefits?*

The EPA does not anticipate reductions in HAP emissions as a result of the proposed amendments to the Boat Manufacturing NESHAP or the Reinforced Plastic Composites Production NESHAP. Because these proposed amendments are not considered economically significant, as defined by Executive Order 12866, and because no emission reductions were estimated, we did not estimate any health benefits from reducing emissions.

### *F. What analysis of environmental justice did we conduct?*

The EPA performed a demographic analysis for each source category, which is an assessment of risks to individual demographic groups, of the population close to the facilities (within 50 kilometers (km) and within 5 km). In our analysis, we evaluated the distribution of HAP-related cancer risks and noncancer hazards from the Boat Manufacturing source category and the Reinforced Plastic Composites Production source category across different social, demographic, and economic groups within the populations living near operations identified as having the highest risks.

Results of the demographic analysis performed for the Boat Manufacturing source category indicate that, for seven of the 11 demographic groups, Hispanic or Latino, minority, people living below the poverty level, linguistically isolated people, adults without a high school diploma, adults 65 years of age or older, and African Americans that reside within 5 km of facilities in the source category is greater than the corresponding national percentage for the same demographic groups. When examining the risk levels of those exposed to emissions from boat manufacturing facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic

noncancer TOSHI greater than 1, and that risks are acceptable for all populations.

The results of the Reinforced Plastic Composites Production source category demographic analysis indicate that populations residing within 50 km of facilities in the source category for three of the 11 demographic groups; minority populations, people living below the poverty level, ages 0 to 17, and adults without a high school diploma is greater than the corresponding national percentage for the same demographic groups. However, emissions from the source category expose approximately 1,600 people to a cancer risk at or above 1-in-1 million, but no cancer risk greater than 4-in-1 million (Docket ID Item No. EPA-HQ-OAR-2016-0449-0228). When examining the demographics for those exposed to cancer risks greater than 1-in-1 million from reinforced plastic composites production facilities, we find that four of the 10 demographic groups; African American, ages 0 to 17, over 25 without a high school diploma, and people below the poverty level are exposed to a cancer risk at or above 1-in-1 million. For chronic noncancer risks, no one is exposed to a chronic noncancer TOSHI greater than 1. A review of all risks from this source category is considered acceptable for all populations.

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

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections IIIA. and IV.A and B of the proposal for this rule (84 FR 22684 through 22660, May 17, 2019) and are further documented in the *Residual Risk Assessment for the Boat Manufacturing Source Category in Support of the 2018 Risk and Technology Review Proposed Rule*, and the *Residual Risk Assessment for the Surface Coating of Reinforced Plastic Composites Production Source Category in Support of the 2018 Risk and Technology Review Proposed Rule* (Docket ID Item No. EPA-HQ-OAR-2016-0447-0035 and Docket ID Item No. EPA-HQ-OAR-2016-0449-0014).

**VI. Statutory and Executive Order Reviews**

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

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

This action is not a significant regulatory action and was, therefore, not submitted to 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 Information Collection Request (ICR) documents that the EPA prepared has been assigned EPA ICR number 1966.09 for the Boat Manufacturing source category and 1976.09 for the Reinforced Plastic Composites Production source category. You can find a copy of these ICR documents in the dockets for these rules, and they are briefly summarized here. The information collection requirements are not enforceable until OMB approves them. A brief summary of the information collection requirements for Boat Manufacturing and the Reinforced Plastic Composites Production categories is provided in sections VI.C.1 and VI.C.2 of this preamble.

**1. Boat Manufacturing**

We are finalizing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart VVVV, in the form of eliminating the SSM plan and reporting requirements; including reporting requirements for deviations in the semiannual report; and including the requirement for electronic submittal of reports. In addition, the number of facilities subject to the standards changed since the original ICR was finalized.

*Respondents/affected entities:* The respondents to the recordkeeping and reporting requirements are owners or operators of boat manufacturing facilities subject to 40 CFR part 63, subpart VVVV.

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

*Estimated number of respondents:* 93 facilities.

*Frequency of response:* The frequency of responses varies depending on the burden item. Responses include one-time review of rule amendments, reports

of periodic performance tests, and semiannual compliance reports.

*Total estimated burden:* The annual recordkeeping and reporting burden for responding facilities to comply with all the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 7,914 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* The annual recordkeeping and reporting cost for responding facilities to comply with all the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be \$816,500 (rounded, per year). There are no estimated capital and operation and maintenance (O&M) costs.

**2. Reinforced Plastic Composites Production**

We are finalizing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart WWWW, in the form of eliminating the SSM plan and reporting requirements; including reporting requirements for deviations in the semiannual report; and including the requirement for electronic submittal of reports. In addition, the number of facilities subject to the standards changed since the original ICR was finalized.

*Respondents/affected entities:* The respondents to the recordkeeping and reporting requirements are owners or operators of reinforced plastic composites production facilities subject to 40 CFR part 63, subpart WWWW.

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

*Estimated number of respondents:* 448 facilities.

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

*Total estimated burden:* The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 38,125 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* The annual recordkeeping and reporting cost for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be \$3,933,400 (rounded, per year). There are no estimated capital and O&M costs.

#### *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. The small entities subject to the requirements of this action include small businesses engaged in either the Boat Manufacturing or Reinforced Plastic Composites Production source categories. The Agency has determined that 73 boat manufacturing facilities and 309 reinforced plastic composites production facilities are small entities, and that these small entities may experience an impact of less than 1 percent of annual sales. Additional discussion of the cost impacts can be found in section V.D of this preamble.

#### *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. No tribal facilities are known to be engaged in the Boat Manufacturing or Reinforced Plastic Composites Production source categories and would not 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 III.A and IV.A and B of the proposal for this rule (84 FR 22684 through 22660, May 17, 2019).

#### *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 has determined 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 sections IV.A, IV.B, IV.F, and IV.G of the proposal preamble (84 FR 22658 through 22667, May 17, 2019). For both source categories, the risks were found to be acceptable for all populations, including minority populations, low-income populations, and/or indigenous people.

#### *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: February 25, 2020.

**Andrew R. Wheeler,**  
Administrator.

For the reasons set forth in the preamble, 40 CFR part 63 is amended as follows:

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

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

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

#### **Subpart VVVV—National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing**

##### **§ 63.5764 [Amended]**

■ 2. Section 63.5764 is amended by removing paragraph (e).

■ 3. Section 63.5765 is added to read as follows:

##### **§ 63.5765 How do I submit my reports?**

(a) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (a)(1) through (3) of this section.

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

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

(3) Confidential business information (CBI). If you claim some of the information submitted under paragraph (a)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to

the EPA via the EPA's CDX as described in paragraph (a)(1) of this section.

(b) Within 60 days after the date of completing each continuous monitoring system (CMS) performance evaluation as defined in § 63.2, you must submit the results of the performance evaluation following the procedures specified in paragraphs (b)(1) through (3) of this section.

(1) Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation. Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

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

(3) Confidential business information. If you claim some of the information submitted under paragraph (a)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (a)(1) of this section.

(c) For sources that commence construction or reconstruction before or on May 17, 2019, you must submit to the Administrator semiannual compliance reports of the information required in § 63.5764(c) and (d) beginning on September 16, 2020. For sources that commence construction or reconstruction after May 17, 2019, you must submit to the Administrator

semiannual compliance reports of the information required in § 63.5764(c) and (d) beginning on March 20, 2020, or upon startup, whichever is later.

(d) If you are required to submit reports following the procedure specified in this paragraph (d), beginning on September 16, 2020, you must submit all subsequent reports to the EPA via CEDRI, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). You must use the appropriate electronic report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website or an alternate electronic file consistent with the XML schema listed on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (d).

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

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

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

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

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

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

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

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

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

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

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

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

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

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

(3) You must provide to the Administrator:

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

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

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

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

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

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

■ 4. Section 63.5767 is amended by revising paragraph (d) to read as follows:

**§ 63.5767 What records must I keep?**

\* \* \* \* \*

(d) If your facility has an add-on control device, you must keep the records of any failures to meet the applicable standards, including the date, time, and duration of the failure; a list of the affected add-on control device and actions taken to minimize emissions, 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; control device performance tests; and continuous monitoring system performance evaluations.

■ 5. Section 63.5770 is amended by adding paragraph (e) to read as follows:

**§ 63.5770 In what form and for how long must I keep my records?**

\* \* \* \* \*

(e) 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.

■ 6. Section 63.5779 is amended by:

■ a. Removing the definition for "Deviation"; and

■ b. Adding definitions for "Deviation after", "Deviation before", "Shutdown", and "Startup" in alphabetical order.

The additions read as follows:

**§ 63.5779 What definitions apply to this subpart?**

\* \* \* \* \*

*Deviation after* September 16, 2020, means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

*Deviation before* September 17, 2020 means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

\* \* \* \* \*

*Shutdown* after September 16, 2020, means the cessation of operation of the add-on control devices.

\* \* \* \* \*

*Startup* after September 17, 2020, means the setting in operation of the add-on control devices.

\* \* \* \* \*

■ 7. Table 8 to subpart VVVV of part 63 is revised to read as follows:

**Table 8 to Subpart VVVV of Part 63—Applicability of General Provisions (40 CFR part 63, subpart A) to Subpart VVVV**

As specified in § 63.5773, you must comply with the applicable requirements of the General Provisions according to the following table:

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.1(a) .....	General Applicability .....	Yes	Area sources are not regulated by subpart VVVV.
§ 63.1(b) .....	Initial Applicability Determination .....	Yes	
§ 63.1(c)(1) .....	Applicability After Standard Established .....	Yes	
§ 63.1(c)(2) .....	.....	Yes .....	
§ 63.1(c)(3) .....	.....	No .....	[Reserved].
§ 63.1(c)(4)–(5) .....	.....	Yes	
§ 63.1(d) .....	.....	No .....	[Reserved].
§ 63.1(e) .....	Applicability of Permit Program .....	Yes	
§ 63.2 .....	Definitions .....	Yes .....	Additional definitions are found in § 63.5779.
§ 63.3 .....	Units and Abbreviations .....	Yes	
§ 63.4(a) .....	Prohibited Activities .....	Yes	
§ 63.4(b)–(c) .....	Circumvention/Severability .....	Yes	
§ 63.5(a) .....	Construction/Reconstruction .....	Yes	[Reserved].
§ 63.5(b) .....	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes	
§ 63.5(c) .....	.....	No .....	
§ 63.5(d) .....	Application for Approval of Construction/Reconstruction.	Yes	
§ 63.5(e) .....	Approval of Construction/Reconstruction .....	Yes	
§ 63.5(f) .....	Approval of Construction/Reconstruction Based on prior State Review.	Yes	
§ 63.6(a) .....	Compliance with Standards and Maintenance Requirements—Applicability.	Yes	

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.6(b) .....	Compliance Dates for New and Reconstructed Sources.	Yes .....	§ 63.695 specifies compliance dates, including the compliance date for new area sources that become major sources after the effective date of the rule.
§ 63.6(c) .....	Compliance Dates for Existing Sources .....	Yes .....	§ 63.5695 specifies compliance dates, including the compliance date for existing area sources that become major sources after the effective date of the rule.
§ 63.6(d) .....	.....	No .....	[Reserved].
§ 63.6(e)(1)–(2) .....	Operation and Maintenance Requirements .....	No .....	Operating requirements for open molding operations with add-on controls are specified in § 63.5725.
§ 63.6(e)(3) .....	Startup, Shut Down, and Malfunction Plans .....	No .....	Only sources with add-on controls must complete startup, shutdown, and malfunction plans.
§ 63.6(f) .....	Compliance with Nonopacity Emission Standards.	Yes	
§ 63.6(g) .....	Use of an Alternative Nonopacity Emission Standard.	Yes	
§ 63.6(h) .....	Compliance with Opacity/Visible Emissions Standards.	No .....	Subpart VVVV does not specify opacity or visible emission standards.
§ 63.6(i) .....	Extension of Compliance with Emission Standards.	Yes	
§ 63.6(j) .....	Exemption from Compliance with Emission Standards.	Yes	
§ 63.7(a)(1) .....	Performance Test Requirements .....	Yes	
§ 63.7(a)(2) .....	Dates for performance tests .....	No .....	§ 63.5716 specifies performance test dates.
§ 63.7(a)(3) .....	Performance testing at other times .....	Yes	
§ 63.7(b)–(h) .....	Other performance testing requirements .....	Yes	
§ 63.8(a)(1)–(2) .....	Monitoring Requirements—Applicability .....	Yes .....	All of § 63.8 applies only to sources with add-on controls. Additional monitoring requirements for sources with add-on controls are found in § 63.5725.
§ 63.8(a)(3) .....	.....	No .....	[Reserved].
§ 63.8(a)(4) .....	.....	No .....	Subpart VVVV does not refer directly or indirectly to § 63.11.
§ 63.8(b)(1) .....	Conduct of Monitoring .....	Yes	
§ 63.8(b)(2)–(3) .....	Multiple Effluents and Multiple CMS .....	Yes .....	Applies to sources that use a CMS on the control device stack.
§ 63.8(c)(1)(i) and (iii) .....	CMS Operation and Maintenance .....	No .....	References to startup, shutdown, malfunction are not applicable.
§ 63.8(c)(1)–(4) .....	CMS Operation and Maintenance .....	Yes .....	Except those provisions in § 63.8(c)(1)(i) and (iii) as noted above.
§ 63.8(c)(5) .....	Continuous Opacity Monitoring Systems (COMS).	No .....	Subpart VVVV does not have opacity or visible emission standards.
§ 63.8(c)(6)–(8) .....	CMS Calibration Checks and Out-of-Control Periods.	Yes	
§ 63.8(d) .....	Quality Control Program .....	Yes .....	Except those provisions of § 63.8(d)(3) regarding a startup, shutdown, malfunction plan as noted below
§ 63.8(d)(3) .....	Quality Control Program .....	No .....	No requirement for a startup, shutdown, malfunction plan.
§ 63.8(e) .....	CMS Performance Evaluation .....	Yes	
§ 63.8(f)(1)–(5) .....	Use of an Alternative Monitoring Method .....	Yes	
§ 63.8(f)(6) .....	Alternative to Relative Accuracy Test .....	Yes .....	Applies only to sources that use continuous emission monitoring systems (CEMS).
§ 63.8(g) .....	Data Reduction .....	Yes	
§ 63.9(a) .....	Notification Requirements—Applicability .....	Yes	
§ 63.9(b) .....	Initial Notifications .....	Yes	
§ 63.9(c) .....	Request for Compliance Extension .....	Yes	
§ 63.9(d) .....	Notification That a New Source Is Subject to Special Compliance Requirements.	Yes	
§ 63.9(e) .....	Notification of Performance Test .....	Yes .....	Applies only to sources with add-on controls.
§ 63.9(f) .....	Notification of Visible Emissions/Opacity Test ..	No .....	Subpart VVVV does not have opacity or visible emission standards.
§ 63.9(g)(1) .....	Additional CMS Notifications—Date of CMS Performance Evaluation.	Yes .....	Applies only to sources with add-on controls.
§ 63.9(g)(2) .....	Use of COMS Data .....	No .....	Subpart VVVV does not require the use of COMS.
§ 63.9(g)(3) .....	Alternative to Relative Accuracy Testing .....	Yes .....	Applies only to sources with CEMS.
§ 63.9(h) .....	Notification of Compliance Status .....	Yes	
§ 63.9(i) .....	Adjustment of Deadlines .....	Yes	
§ 63.9(j) .....	Change in Previous Information .....	Yes	

Citation	Requirement	Applies to subpart VVVV	Explanation
§ 63.10(a) .....	Recordkeeping/Reporting—Applicability .....	Yes	§§ 63.567 and 63.5770 specify additional recordkeeping requirements.
§ 63.10(b)(1) .....	General Recordkeeping Requirements .....	Yes .....	
§ 63.10(b)(2)(i), (iii), (vi)–(xiv).	General Recordkeeping Requirements .....	Yes	
§ 63.10(b)(2)(ii), (iv), (v) .....	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods.	No	§ 63.5686 specifies applicability determinations for non-major sources. Applies only to sources with add-on controls.
§ 63.10(b)(3) .....	Recordkeeping Requirements for Applicability Determinations.	Yes .....	
§ 63.10(c)(1)–(14) .....	Additional Recordkeeping for Sources with CMS.	Yes .....	
§ 63.10(c)(15) .....	Additional Recordkeeping for Sources with CMS.	No .....	No requirement for a startup, shutdown, malfunction plan.
§ 63.10(d)(1) .....	General Reporting Requirements .....	Yes .....	§ 63.5764 specifies additional reporting requirements.
§ 63.10(d)(2) .....	Performance Test Results .....	Yes .....	§ 63.5764 specifies additional requirements for reporting performance test results.
§ 63.10(d)(3) .....	Opacity or Visible Emissions Observations .....	No .....	Subpart VVVV does not specify opacity or visible emission standards.
§ 63.10(d)(4) .....	Progress Reports for Sources with Compliance Extensions.	Yes	Applies only to sources with add-on controls. Applies only to sources with add-on controls. Applies only to sources with add-on controls.
§ 63.10(d)(5) .....	Startup, Shutdown, and Malfunction Reports ....	No .....	
§ 63.10(e)(1) .....	Additional CMS Reports—General .....	Yes .....	
§ 63.10(e)(2) .....	Reporting Results of CMS Performance Evaluations.	Yes .....	Applies only to sources with add-on controls. Subpart VVVV does not specify opacity or visible emission standards.
§ 63.10(e)(3) .....	Excess Emissions/CMS Performance Reports	Yes .....	
§ 63.10(e)(4) .....	COMS Data Reports .....	No .....	
§ 63.10(f) .....	Recordkeeping/Reporting Waiver .....	Yes	Facilities subject to subpart VVVV do not use flares as control devices. § 63.5776 lists those sections of subpart A that are not delegated.
§ 63.11 .....	Control Device Requirements—Applicability ....	No .....	
§ 63.12 .....	State Authority and Delegations .....	Yes .....	
§ 63.13 .....	Addresses .....	Yes	
§ 63.14 .....	Incorporation by Reference .....	Yes	
§ 63.15 .....	Availability of Information/Confidentiality .....	Yes	

**Subpart WWWW—National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production**

■ 8. Section 63.5835 is amended by:

- a. Revising paragraph (b); and
- b. Removing paragraph (d).

The revision reads as follows:

**§ 63.5835 What are my general requirements for complying with this subpart?**

\* \* \* \* \*

(b) You must be in compliance with all organic HAP emissions limits in this subpart that you meet using add-on controls at all times.

\* \* \* \* \*

■ 9. Section 63.5900 is amended by:

- a. Revising paragraph (c); and
- b. Removing paragraphs (d) and (e).

The revision reads as follows:

**§ 63.5900 How do I demonstrate continuous compliance with the standards?**

\* \* \* \* \*

(c) You must meet the organic HAP emissions limits and work practice standards that apply to you at all times.

■ 10. Section 63.5910 is amended by:

■ a. Removing and reserving paragraph (c)(4); and

■ b. Revising paragraphs (d) introductory text and (e) and (h).

The revisions read as follows:

**§ 63.5910 What reports must I submit and when?**

\* \* \* \* \*

(d) For each deviation from an organic HAP emissions limitation or operating limit and for each deviation from the requirements for work practice standards that occurs at an affected source where you are not using a CMS to comply with the organic HAP emissions limitations or work practice standards in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (3) of this section and in paragraphs (d)(1) and (2) of this section.

\* \* \* \* \*

(e) For each deviation from an organic HAP emissions limitation (*i.e.*, emissions limit and operating limit) occurring at an affected source where you are using a CMS to comply with the organic HAP emissions limitation in this subpart, you must include the information in paragraphs (c)(1) through

(3) of this section and in paragraphs (e)(1) through (6) of this section.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out of control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

\* \* \* \* \*

(h) Submit compliance reports based on the requirements in §§ 63.5910 and 63.5912 and table 14 to this subpart, and not based on the requirements in § 63.999.

\* \* \* \* \*

■ 11. Section 63.5912 is added to read as follows:

**§ 63.5912 How do I submit my reports?**

(a) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (a)(1) through (3) of this section.

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

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

(3) Confidential business information (CBI). If you claim some of the information submitted under paragraph (a)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (a)(1) of this section.

(b) Within 60 days after the date of completing each continuous monitoring system (CMS) performance evaluation as defined in § 63.2, you must submit the results of the performance

evaluation following the procedures specified in paragraphs (b)(1) through (3) of this section.

(1) Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation. Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

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

(3) Confidential business information (CBI). If you claim some of the information submitted under paragraph (a)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (a)(1) of this section.

(c) For sources that commence construction or reconstruction before or on May 17, 2019, you must submit to the Administrator semiannual compliance reports of the information required in § 63.5910(c), (d), (e), (f), and (i) beginning on September 16, 2020. For sources that commence construction or reconstruction after May 17, 2019, you must submit to the Administrator semiannual compliance reports of the information required in § 63.5910(c), (d), (e), (f), and (i) beginning on March 20, 2020, or upon startup, whichever is later.

(d) If you are required to submit reports following the procedure

specified in this paragraph (d), beginning on September 17, 2020, you must submit all subsequent reports to the EPA via CEDRI, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). You must use the appropriate electronic report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website or an alternate electronic file consistent with the XML schema listed on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (d).

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

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

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

(3) The outage may be planned or unplanned.

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

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

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



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

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

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

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

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

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

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

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should

have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

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

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

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

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

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

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

#### **§ 63.5915 [Amended]**

■ 12. Section 63.5915 is amended by removing and reserving paragraph (a)(2).

■ 13. Section 63.5920 is amended by adding paragraph (e) to read as follows:

#### **§ 63.5920 In what form and how long must I keep my records?**

\* \* \* \* \*

(e) 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.

■ 14. Section 63.5935 is amended by adding the definitions for "Deviation after", "Deviation before", "Shutdown", and "Startup" in alphabetical order to read as follows:

#### **§ 63.5935 What definitions apply to this subpart?**

\* \* \* \* \*

*Deviation after September 16, 2020,* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

*Deviation before September 17, 2020,* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

\* \* \* \* \*

*Shutdown after September 16, 2020,* means the cessation of operation of the add-on control devices.

\* \* \* \* \*

*Startup after September 17, 2020,* means the setting in operation of the add-on control devices.

\* \* \* \* \*

■ 15. Table 4 of subpart WWWW of part 63 is revised to read as follows:

#### **Table 4 to Subpart WWWW of Part 63—Work Practice Standards**

As specified in § 63.5805, you must meet the work practice standards in the following table that apply to you:

For . . .	You must . . .
1. A new or existing closed molding operation using compression/injection molding.	Uncover, unwrap or expose only one charge per mold cycle per compression/injection molding machine. For machines with multiple molds, one charge means sufficient material to fill all molds for one cycle. For machines with robotic loaders, no more than one charge may be exposed prior to the loader. For machines fed by hoppers, sufficient material may be uncovered to fill the hopper. Hoppers must be closed when not adding materials. Materials may be uncovered to feed to slitting machines. Materials must be recovered after slitting.

For . . .	You must . . .
2. A new or existing cleaning operation .....	Not use cleaning solvents that contain HAP, except that styrene may be used as a cleaner in closed systems, and organic HAP containing cleaners may be used to clean cured resin from application equipment. Application equipment includes any equipment that directly contacts resin.
3. A new or existing materials HAP-containing materials storage operation.	Keep containers that store HAP-containing materials closed or covered except during the addition or removal of materials. Bulk HAP-containing materials storage tanks may be vented as necessary for safety.
4. An existing or new SMC manufacturing operation .....	Close or cover the resin delivery system to the doctor box on each SMC manufacturing machine. The doctor box itself may be open.
5. An existing or new SMC manufacturing operation .....	Use a nylon containing film to enclose SMC.
6. All mixing or BMC manufacturing operations <sup>1</sup> .....	Use mixer covers with no visible gaps present in the mixer covers, except that gaps of up to 1 inch are permissible around mixer shafts and any required instrumentation. Mixers where the emissions are fully captured and routed to a 95 percent efficient control device are exempt from this requirement.
7. All mixing or BMC manufacturing operations <sup>1</sup> .....	Close any mixer vents when actual mixing is occurring, except that venting is allowed during addition of materials, or as necessary prior to adding materials or opening the cover for safety. Vents routed to a 95 percent efficient control device are exempt from this requirement.
8. All mixing or BMC manufacturing operations <sup>1</sup> .....	Keep the mixer covers closed while actual mixing is occurring except when adding materials or changing covers to the mixing vessels.
9. A new or existing pultrusion operation manufacturing parts that meet the following criteria: 1,000 or more reinforcements or the glass equivalent of 1,000 ends of 113 yield roving or more; and have a cross sectional area of 60 square inches or more that is not subject to the 95-percent organic HAP emission reduction requirement.	<ul style="list-style-type: none"> <li>i. Not allow vents from the building ventilation system, or local or portable fans to blow directly on or across the wet-out area(s),</li> <li>ii. Not permit point suction of ambient air in the wet-out area(s) unless that air is directed to a control device,</li> <li>iii. Use devices such as deflectors, baffles, and curtains when practical to reduce air flow velocity across the wet-out area(s),</li> <li>iv. Direct any compressed air exhausts away from resin and wet-out area(s),</li> <li>v. Convey resin collected from drip-off pans or other devices to reservoirs, tanks, or sumps via covered troughs, pipes, or other covered conveyance that shields the resin from the ambient air,</li> <li>vi. Cover all reservoirs, tanks, sumps, or HAP-containing materials storage vessels except when they are being charged or filled, and</li> <li>vii. Cover or shield from ambient air resin delivery systems to the wet-out area(s) from reservoirs, tanks, or sumps where practical.</li> </ul>

<sup>1</sup> Containers of 5 gallons or less may be open when active mixing is taking place, or during periods when they are in process (i.e., they are actively being used to apply resin). For polymer casting mixing operations, containers with a surface area of 500 square inches or less may be open while active mixing is taking place.

■ 16. Table 14 of subpart WWWW of part 63 is revised to read as follows:

**Table 14 to Subpart WWWW of Part 63—Requirements for Reports**

As required in § 63.5910(a), (b), (g), and (h), you must submit reports on the schedule shown in the following table:

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report .....	<ul style="list-style-type: none"> <li>a. A statement that there were no deviations during that reporting period if there were no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) that apply to you and there were no deviations from the requirements for work practice standards in Table 4 to this subpart that apply to you. If there were no periods during which the CMS, including CEMS, and operating parameter monitoring systems, was out of control as specified in § 63.8(c)(7), the report must also contain a statement that there were no periods during which the CMS was out of control during the reporting period.</li> <li>b. The information in § 63.5910(d) if you have a deviation from any emission limitation (emission limit, operating limit, or work practice standard) during the reporting period. If there were periods during which the CMS, including CEMS, and operating parameter monitoring systems, was out of control, as specified in § 63.8(c)(7), the report must contain the information in § 63.5910(e).</li> </ul>	<p>Semiannually according to the requirements in § 63.5910(b).</p> <p>Semiannually according to the requirements in § 63.5910(b).</p>

■ 17. Table 15 of subpart WWWW of part 63 is revised to read as follows:

**Table 15 to Subpart WWWW of Part 63—Applicability of General Provisions (Subpart A) to Subpart WWWW of Part 63**

As specified in § 63.5925, the parts of the General Provisions which apply to you are shown in the following table:

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
§ 63.1(a)(1) .....	General applicability of the general provisions	Yes .....	Additional terms defined in subpart WWWW of part 63, when overlap between subparts A and WWWW of this part, subpart WWWW of part 63 takes precedence.
§ 63.1(a)(2) through (4) .....	General applicability of the general provisions	Yes	
§ 63.1(a)(5) .....	Reserved .....	No	Subpart WWWW of part 63 clarifies the applicability in §§ 63.5780 and 63.5785.
§ 63.1(a)(6) .....	General applicability of the general provisions	Yes	
§ 63.1(a)(7) through (9) .....	Reserved .....	No	
§ 63.1(a)(10) through (14) ..	General applicability of the general provisions	Yes	
§ 63.1(b)(1) .....	Initial applicability determination .....	Yes .....	Subpart WWWW of part 63 clarifies the applicability of each paragraph of subpart A to sources subject to subpart WWWW of part 63.
§ 63.1(b)(2) .....	Reserved .....	No	
§ 63.1(b)(3) .....	Record of the applicability determination .....	Yes	
§ 63.1(c)(1) .....	Applicability of this part after a relevant standard has been set under this part.	Yes .....	
§ 63.1(c)(2) .....	Title V operating permit requirement .....	Yes .....	All major affected sources are required to obtain a title V operating permit. Area sources are not subject to subpart WWWW of part 63.
§ 63.1(c)(3) and (4) .....	Reserved .....	No	
§ 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 under this part.	Yes	Subpart WWWW of part 63 defines terms in § 63.5935. When overlap between subparts A and WWWW of part 63 occurs, you must comply with the subpart WWWW of part 63 definitions, which take precedence over the subpart A definitions.
§ 63.2 .....	Definitions .....	Yes .....	
§ 63.3 .....	Units and abbreviations .....	Yes .....	
§ 63.4 .....	Prohibited activities and circumvention .....	Yes .....	
§ 63.5(a)(1) and (2) .....	Applicability of construction and reconstruction	Yes .....	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.5(b)(1) .....	Relevant standards for new sources upon construction.	Yes .....	
§ 63.5(b)(2) .....	Reserved .....	No	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.5(b)(3) .....	New construction/reconstruction .....	Yes .....	
§ 63.5(b)(4) .....	Construction/reconstruction notification .....	Yes .....	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.5(b)(5) .....	Reserved .....	No	
§ 63.5(b)(6) .....	Equipment addition or process change .....	Yes .....	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.5(c) .....	Reserved .....	No	
§ 63.5(d)(1) .....	General application for approval of construction or reconstruction.	Yes .....	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.5(d)(2) .....	Application for approval of construction .....	Yes	
§ 63.5(d)(3) .....	Application for approval of reconstruction .....	No	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.5(d)(4) .....	Additional information .....	Yes	
§ 63.5(e)(1) through (5) .....	Approval of construction or reconstruction .....	Yes	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.5(f)(1) and (2) .....	Approval of construction or reconstruction based on prior State preconstruction review.	Yes	
§ 63.6(a)(1) .....	Applicability of compliance with standards and maintenance requirements.	Yes	

The general provisions reference . . .	That addresses . . .	And applies to subpart WWW of part 63 . . .	Subject to the following additional information . . .
§ 63.6(a)(2) .....	Applicability of area sources that increase HAP emissions to become major sources.	Yes	
§ 63.6(b)(1) through (5) .....	Compliance dates for new and reconstructed sources.	Yes .....	Subpart WWW of part 63 clarifies compliance dates in § 63.5800.
§ 63.6(b)(6) .....	Reserved .....	No	
§ 63.6(b)(7) .....	Compliance dates for new operations or equipment that cause an area source to become a major source.	Yes .....	New operations at an existing facility are not subject to new source standards.
§ 63.6(c)(1) and (2) .....	Compliance dates for existing sources .....	Yes .....	Subpart WWW of part 63 clarifies compliance dates in § 63.5800.
§ 63.6(c)(3) and (4) .....	Reserved .....	No	
§ 63.6(c)(5) .....	Compliance dates for existing area sources that become major.	Yes .....	Subpart WWW of part 63 clarifies compliance dates in § 63.5800.
§ 63.6(d) .....	Reserved .....	No	
§ 63.6(e)(1) .....	Operation and maintenance requirements .....	Yes .....	Except portions of § 63.6(e)(1)(i) and (ii) specific to conditions during startup, shutdown, or malfunction.
§ 63.6(e)(3) .....	SSM plan and recordkeeping .....	No	
§ 63.6(f)(1) .....	Compliance except during periods of startup, shutdown, and malfunction.	No .....	Subpart WWW of part 63 requires compliance at all times.
§ 63.6(f)(2) and (3) .....	Methods for determining compliance .....	Yes	
§ 63.6(g)(1) through (3) .....	Alternative standard .....	Yes	
§ 63.6(h) .....	Opacity and visible emission Standards .....	No .....	Subpart WWW of part 63 does not contain opacity or visible emission standards.
§ 63.6(i)(1) through (14) .....	Compliance extensions .....	Yes	
§ 63.6(i)(15) .....	Reserved .....	No	
§ 63.6(i)(16) .....	Compliance extensions .....	Yes	
§ 63.6(j) .....	Presidential compliance exemption .....	Yes	
§ 63.7(a)(1) .....	Applicability of performance testing requirements.	Yes	
§ 63.7(a)(2) .....	Performance test dates .....	No .....	Subpart WWW of part 63 initial compliance requirements are in § 63.5840.
§ 63.7(a)(3) .....	CAA Section 114 authority .....	Yes	
§ 63.7(b)(1) .....	Notification of performance test .....	Yes	
§ 63.7(b)(2) .....	Notification rescheduled performance test .....	Yes	
§ 63.7(c) .....	Quality assurance program, including test plan	Yes .....	Except that the test plan must be submitted with the notification of the performance test.
§ 63.7(d) .....	Performance testing facilities .....	Yes	
§ 63.7(e) .....	Conditions for conducting performance tests ....	Yes .....	Performance test requirements are contained in § 63.5850. Additional requirements for conducting performance tests for continuous lamination/casting are included in § 63.5870. Conditions specific to operations during periods of startup, shutdown, and malfunction in § 63.7(e)(1) do not apply.
§ 63.7(f) .....	Use of alternative test method .....	Yes	
§ 63.7(g) .....	Performance test data analysis, recordkeeping, and reporting.	Yes	
§ 63.7(h) .....	Waiver of performance tests .....	Yes	
§ 63.8(a)(1) and (2) .....	Applicability of monitoring requirements .....	Yes	
§ 63.8(a)(3) .....	Reserved .....	No	
§ 63.8(a)(4) .....	Monitoring requirements when using flares .....	Yes	
§ 63.8(b)(1) .....	Conduct of monitoring exceptions .....	Yes	
§ 63.8(b)(2) and (3) .....	Multiple effluents and multiple monitoring systems.	Yes	
§ 63.8(c)(1) .....	Compliance with CMS operation and maintenance requirements.	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit. Except references to SSM plans in § 63.8(c)(1)(i) and (iii).
§ 63.8(c)(2) and (3) .....	Monitoring system installation .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(c)(4) .....	CMS requirements .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(c)(5) .....	Continuous Opacity Monitoring System (COMS) minimum procedures.	No .....	Subpart WWW of part 63 does not contain opacity standards.
§ 63.8(c)(6) through (8) .....	CMS calibration and periods CMS is out of control.	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
§ 63.8(d)(1)–(2) .....	CMS quality control program, including test plan and all previous versions.	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(d)(3) .....	CMS quality control program, including test plan and all previous versions.	Yes .....	Except references to SSM plans in § 63.8(d)(3).
§ 63.8(e)(1) .....	Performance evaluation of CMS .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(2) .....	Notification of performance evaluation .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(3) and (4) .....	CMS requirements/alternatives .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(5)(i) .....	Reporting performance evaluation results .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(5)(ii) .....	Results of COMS performance evaluation .....	No .....	Subpart WWWW of part 63 does not contain opacity standards.
§ 63.8(f)(1) through (3) .....	Use of an alternative monitoring method .....	Yes	
§ 63.8(f)(4) .....	Request to use an alternative monitoring method.	Yes	
§ 63.8(f)(5) .....	Approval of request to use an alternative monitoring method.	Yes	
§ 63.8(f)(6) .....	Request for alternative to relative accuracy test and associated records.	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(g)(1) through (5) .....	Data reduction .....	Yes	
§ 63.9(a)(1) through (4) .....	Notification requirements and general information.	Yes	
§ 63.9(b)(1) .....	Initial notification applicability .....	Yes	
§ 63.9(b)(2) .....	Notification for affected source with initial startup before effective date of standard.	Yes	
§ 63.9(b)(3) .....	Reserved .....	No	
§ 63.9(b)(4)(i) .....	Notification for a new or reconstructed major affected source with initial startup after effective date for which an application for approval of construction or reconstruction is required.	Yes	
§ 63.9(b)(4)(ii) through (iv) ..	Reserved .....	No	
§ 63.9(b)(4)(v) .....	Notification for a new or reconstructed major affected source with initial startup after effective date for which an application for approval of construction or reconstruction is required.	Yes .....	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.9(b)(5) .....	Notification that you are subject to this subpart for new or reconstructed affected source with initial startup after effective date and for which an application for approval of construction or reconstruction is not required.	Yes .....	Existing facilities do not become reconstructed under subpart WWWW of part 63.
§ 63.9(c) .....	Request for compliance extension .....	Yes	
§ 63.9(d) .....	Notification of special compliance requirements for new source.	Yes	
§ 63.9(e) .....	Notification of performance test .....	Yes	
§ 63.9(f) .....	Notification of opacity and visible emissions observations.	No .....	Subpart WWWW of part 63 does not contain opacity or visible emission standards.
§ 63.9(g)(1) .....	Additional notification requirements for sources using CMS.	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.9(g)(2) .....	Notification of compliance with opacity emission standard.	No .....	Subpart WWWW of part 63 does not contain opacity emission standards.
§ 63.9(g)(3) .....	Notification that criterion to continue use of alternative to relative accuracy testing has been exceeded.	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.9(h)(1) through (3) .....	Notification of compliance status .....	Yes	
§ 63.9(h)(4) .....	Reserved .....	No	
§ 63.9(h)(5) and (6) .....	Notification of compliance status .....	Yes	
§ 63.9(i) .....	Adjustment of submittal deadlines .....	Yes	
§ 63.9(j) .....	Change in information provided .....	Yes	
§ 63.10(a) .....	Applicability of recordkeeping and reporting .....	Yes	
§ 63.10(b)(1) .....	Records retention .....	Yes	

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
§ 63.10(b)(2)(i) through (v)	Records related to startup, shutdown, and malfunction.	No	
§ 63.10(b)(2)(vi) through (xi)	CMS records, data on performance tests, CMS performance evaluations, measurements necessary to determine conditions of performance tests, and performance evaluations.	Yes	
§ 63.10(b)(2)(xii) .....	Record of waiver of recordkeeping and reporting.	Yes	
§ 63.10(b)(2)(xiii) .....	Record for alternative to the relative accuracy test.	Yes	
§ 63.10(b)(2)(xiv) .....	Records supporting initial notification and notification of compliance status.	Yes	
§ 63.10(b)(3) .....	Records for applicability determinations .....	Yes	
§ 63.10(c)(1) .....	CMS records .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.10(c)(2) through (4) .....	Reserved .....	No	
§ 63.10(c)(5) through (8) .....	CMS records .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.10(c)(9) .....	Reserved .....	No	
§ 63.10(c)(10) through (14) .....	CMS records .....	Yes .....	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.10(c)(15) .....	CMS records .....	No	
§ 63.10(d)(1) .....	General reporting requirements .....	Yes	
§ 63.10(d)(2) .....	Report of performance test results .....	Yes	
§ 63.10(d)(3) .....	Reporting results of opacity or visible emission observations.	No .....	Subpart WWWW of part 63 does not contain opacity or visible emission standards.
§ 63.10(d)(4) .....	Progress reports as part of extension of compliance.	Yes	
§ 63.10(d)(5) .....	Startup, shutdown, and malfunction reports .....	No	
§ 63.10(e)(1) through (3) .....	Additional reporting requirements for CMS .....	Yes .....	This section applies if you have an add-on control device and elect to use a CEM to demonstrate continuous compliance with an emission limit.
§ 63.10(e)(4) .....	Reporting COMS data .....	No .....	Subpart WWWW of part 63 does not contain opacity standards.
§ 63.10(f) .....	Waiver for recordkeeping or reporting .....	Yes	
§ 63.11 .....	Control device requirements .....	Yes .....	Only applies if you elect to use a flare as a control device.
§ 63.12 .....	State authority and delegations .....	Yes	
§ 63.13 .....	Addresses of state air pollution control agencies and EPA Regional offices.	Yes	
§ 63.14 .....	Incorporations by reference .....	Yes	
§ 63.15 .....	Availability of information and confidentiality .....	Yes	

[FR Doc. 2020-04661 Filed 3-19-20; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 54**

[WC Docket Nos. 18-143, 10-90, 14-58; DA 20-133; FRS 16538]

**The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications**

AGENCY: Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** In this document, the Wireline Competition Bureau (the Bureau) establishes procedures for the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 Competition (PR-USVI Stage 2 Competition, Stage 2 Competition, or the Competition).

**DATES:** The PR-USVI Stage 2 Competition applications will not be due earlier than 30 days following the announcement of the application form's approval from the Office of Management and Budget. The Bureau will release a public notice announcing the application deadline.

**FOR FURTHER INFORMATION CONTACT:**

Alexander Minard, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Bureau's Public Notice in WC Docket Nos. 18-143, 10-90, 14-58; DA 20-133, released on February 5, 2020. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: <https://www.fcc.gov/document/uniendo-puerto-rico-fund-and-connect-usvi-fund-procedures-pn>.

## The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Wray Municipal Airport, Wray, CO, to within 1 mile each side of the 180° bearing extending from the 6.5 mile radius to 11 miles south of the airport and 2 miles each side of the 360° bearing extending from the 6.5 mile radius to 10.8 miles north of the airport. Additionally, this action removes Class E airspace extending upward from 1,200 feet above the surface at Wray Municipal Airport, Wray, CO. This airspace is wholly contained within the Denver en route airspace area and duplication is not necessary.

## Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

### ANM CO E5 Wray, CO

Wray Municipal Airport  
(Lat. 40°06′01″ N, long. 102°14′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the airport, and within 1 mile each side of the 180° bearing extending from the 6.5 mile radius to 11 miles south of the airport, and within 2 miles each side of the 360° bearing extending from the 6.5 mile radius to 10.8 miles north of the Wray Municipal Airport.

Issued in Seattle, Washington, on October 18, 2019.

**Shawn M. Kozica,**

*Group Manager, Operations Support Group,  
Western Service Center.*

[FR Doc. 2019–23318 Filed 10–31–19; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA–HQ–OAR–2013–0290; FRL–10001–21–OAR]

RIN 2060–AT25

### National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action finalizes certain amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Clay Ceramics Manufacturing source category. The final amendments are being issued in response to a petition for reconsideration filed by an affected

industry (Kohler Company) on the final rule promulgated on October 26, 2015, as well as our review of the 2015 rule with respect to certain other issues raised by Kohler. This action revises the temperature monitoring methodology used to demonstrate continuous compliance with the dioxin/furan (D/F) emissions limit of the final rule. In addition, we are addressing concerns raised by Kohler regarding visible emissions (VE) monitoring of tunnel kiln stacks for continuous compliance with particulate matter (PM) and mercury (Hg) emission limitations. This action also amends the requirements for weekly visual inspections of system ductwork and control device equipment for water curtain spray booths. Lastly, this action amends the NESHAP to include provisions for emissions averaging, makes technical corrections, and adds certain definitions.

**DATES:** This final rule is effective on November 1, 2019.

**ADDRESSES:** The U.S. Environmental Protection Agency (EPA) has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2013–0290. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy form at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue 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:** 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](mailto:storey.brian@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:

BSCP brick and structural clay products  
 CAA Clean Air Act  
 CBI Confidential Business Information  
 CFR Code of Federal Regulations  
 D/F dioxins/furans  
 EJ environmental justice  
 EPA U.S. Environmental Protection Agency  
 HAP hazardous air pollutant(s)  
 Hg mercury  
 HON Hazardous Organic NESHAP  
 lb pounds  
 NAICS North American Industry Classification System  
 NESHAP national emission standards for hazardous air pollutants  
 No. number  
 NTTAA National Technology Transfer and Advancement Act  
 OMB Office of Management and Budget  
 PM particulate matter  
 POC products of combustion  
 PRA Paperwork Reduction Act  
 RFA Regulatory Flexibility Act  
 UMRA Unfunded Mandates Reform Act  
 U.S. United States  
 U.S.C. United States Code  
 v. versus  
 VE visible emissions

**Background information.** On August 20, 2018, the EPA proposed revisions to the Clay Ceramics Manufacturing NESHAP. In this action, we are finalizing revisions to the rule. The EPA briefly summarizes the more significant comments we received regarding the proposed rule that have resulted in changes to the final rule, and we provide our responses in this preamble. A more comprehensive summary of the public comments on the proposal and the EPA's responses to those comments is available in the *National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Amendments—Background Information*

*for Final Rule: Summary of Public Comments and Responses.* 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:

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

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this final action. Table 1 is not intended to be exhaustive but rather provides a guide for readers regarding the entities that this final action is likely to affect. The final amendments will be directly applicable to the affected sources. Federal, state, local and tribal government entities would not be affected by this final action. 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) and *Documentation for Developing the Initial Source Category List* (see EPA-450/3-91-030), the Clay Products Manufacturing source category as originally listed included any facility engaged in manufacturing of clay products such as brick, vitrified clay pipe, structural clay tile, and clay refractories. The Clay Products Manufacturing source category has since been replaced by the Brick and Structural Clay Products (BSCP) Manufacturing source category and the Clay Ceramics Manufacturing source category (see 67 FR 47894, July 22, 2002).

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

Category	NAICS code <sup>1</sup>	Examples of potentially regulated entities
Industry .....	327120	Ceramic wall and floor tile manufacturing facilities (Clay Ceramics Manufacturing NESHAP).
	327110	Vitreous plumbing fixtures (sanitaryware) manufacturing facilities (Clay Ceramics Manufacturing NESHAP).
Federal government .....	.....	Not affected.
State/local/tribal government .....	.....	Not affected.

<sup>1</sup> North American Industry Classification System.

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

In addition to being available in the docket, an electronic copy of this final action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at [https://](https://www.epa.gov/stationary-sources-air-pollution/brick-and-structural-clay-products-national-emission-standards)

[www.epa.gov/stationary-sources-air-pollution/brick-and-structural-clay-products-national-emission-standards](https://www.epa.gov/stationary-sources-air-pollution/brick-and-structural-clay-products-national-emission-standards). Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final amendments and key technical documents at this same website.

A redline version of the regulatory language that incorporates the changes in this final action is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2013-0290).



### 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 31, 2019. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

## II. Background

### A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the CAA as amended (42 U.S.C. 7412 and 7607(d)(7)(B)).

### B. What actions preceded these final amendments?

The initial NESHAP for Clay Ceramics Manufacturing was published in the **Federal Register** on May 16, 2003 (68

FR 26690), and codified at 40 CFR part 63, subpart KKKKK, pursuant to section 112 of the CAA. These standards were challenged and subsequently vacated by the United States Court of Appeals for the District of Columbia Circuit in 2007. See *Sierra Club v. EPA*, 479 F.3d 875, 876 (D.C. Cir. 2007). Following the 2007 vacatur of the 2003 rule, the EPA collected additional data and information to support new standards for the clay ceramics industry. This information is contained in the docket at <https://www.regulations.gov/> (see Docket ID No. EPA-HQ-OAR-2013-0290). On December 18, 2014, the EPA proposed the new NESHAP for Clay Ceramics Manufacturing (79 FR 75622). The EPA received additional data and comments during the public comment period. These data and comments were considered and analyzed and, where appropriate, revisions to the NESHAP were made. The NESHAP for Clay Ceramics Manufacturing was finalized on October 26, 2015 (80 FR 65470).

On December 23, 2015, Kohler Company (Kohler) petitioned the EPA for reconsideration of the final rule for Clay Ceramics Manufacturing (Docket ID No. EPA-HQ-OAR-2013-0290-0316). On August 20, 2018, we proposed revisions to the Clay Ceramics Manufacturing NESHAP based on the information provided by Kohler in their petition and information collected by the EPA (83 FR 42066). Public comments were received on the proposal requesting some changes to the proposed revisions. This action finalizes the revisions to the NESHAP and, where deemed appropriate, incorporates the requested changes. The intent of these amendments is to provide flexibility to the clay ceramics manufacturing industry, while maintaining the emissions and operational standards of the NESHAP.

## III. Summary of the Final Amendments

The EPA is issuing the following amendments to 40 CFR part 63, subpart KKKKK, in response to Kohler's petition for reconsideration on the October 26, 2015, final rule (80 FR 65470):

- Revise the temperature monitoring methodology used to demonstrate continuous compliance with the D/F emissions limits from sanitaryware first-fire tunnel kilns;

- Provide an alternative to the monitoring provisions for VE from tunnel kiln exhaust stacks;

- Amend the requirements for weekly visual inspections of system ductwork and control device equipment for water curtain spray booths;

- Define cooling stacks in the rule and differentiate cooling stacks from kiln exhaust stacks for compliance purposes; and

- Include provisions to allow emissions averaging for emissions from existing tunnel kilns and glaze spray booths and make associated revisions to the definition of affected source and recordkeeping and reporting requirements.

We are finalizing all the amendments listed above as proposed except for the provisions to allow emissions averaging. A description of the changes made to the emissions averaging provisions since proposal along with the rationale for those changes is provided in section IV of this preamble.

This final rule achieves meaningful burden reduction by providing regulated facilities with the ability to use existing monitoring equipment and removing the requirements for periodic inspections that we have determined are not necessary to demonstrate compliance. We also more clearly identify which stacks are cooling stacks; thus, avoiding the possibility that a source might be required to perform an emission test on a stack that emits only cooling air. Finally, this action provides additional compliance flexibility for sources to meet certain emissions limits by averaging; thereby, simplifying compliance. All of these actions should reduce the overall burden to the regulated sources.

This action is limited to the specific issues raised in the petition for reconsideration, plus some minor technical corrections. There are no changes to emission limits as a result of these final amendments. Technical corrections are being issued as proposed to correct inaccuracies that were promulgated in the final rule, replace text that might be considered confusing, and correct outdated information. These changes are described in Table 2 of this preamble.

TABLE 2—TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART KKKKK

Table to subpart KKKKK	Description of correction
40 CFR 63.8635(g)(1) .....	Update the addresses for EPA websites.
Table 2, item 3 .....	To avoid confusion, revise the description of the operating limit for carbon flow rate.

TABLE 2—TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART KKKKK—Continued

Table to subpart KKKKK	Description of correction
Table 2, items 10 and 11 .....	Revise the block period for average operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.
Table 4, item 8 .....	In the measurement of carbon flow rate data, include data from the Hg and D/F performance test data for tunnel or roller kilns equipped with an activated carbon injection system.
Table 4, items 11 and 12 .....	Revise the block average for operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.
Table 6, items 2.a.ii, 2.b.ii, 2.c.ii, 3.a.ii, 3.b.ii, 3.c.ii, 4.a.ii, 4.b.ii, 4.c.ii, 5.a.ii, 5.b.ii, 6.a.ii, 7.a.ii, 8.a.ii, 9.a.ii, 10.a.ii, 11.a.ii, 12.a.ii, 12.b.ii, 12.c.ii, 13.a.ii, 13.b.ii, 13.c.ii, 14.a.ii, 14.b.ii, 14.c.ii, 15.a.ii, 15.b.ii, 16.a.ii, 17.a.ii, 18.a.ii, 19.a.ii, 20.a.ii, and 21.a.ii.	To avoid confusion, remove mention of the specific block period and simply refer to “the period of the initial performance test.”
Table 7, items 10 and 11 .....	Revise the block average for operating temperature for spray dryers and floor tile press dryers from 3-hour to 4-hour to align with the test run length for EPA Method 23.

#### IV. Rationale for Changes to the Proposed Amendments

##### A. Visible Emissions Monitoring of Tunnel Kiln Exhaust

In its petition for reconsideration, Kohler stated that the EPA failed to adequately respond to Kohler’s public comments regarding VE monitoring in the Agency’s response to comments document and in the preamble for the final rule. In their comments on the December 18, 2014, proposal, Kohler had argued that VE monitoring is not a useful parameter to assess kiln operation nor to assess hazardous air pollutant (HAP) emissions. Kohler requested that the EPA open a new public comment period to reconsider and respond to Kohler’s concerns. In response to the petition, we proposed amendments to 40 CFR 63.8620 in the Clay Ceramics Manufacturing NESHAP, adding a new paragraph (e)(2) which provided an alternative to VE testing that allowed sources to demonstrate compliance by maintaining the kiln temperature profile within acceptable parameters and, for any incidence where the kiln exceeds its temperature profile, monitor VE at each kiln stack as specified.

In public comments on the proposed amendments, a commenter questioned Kohler’s assertion about VE monitoring and recommended that the EPA define what a “temperature profile” is and clarify what it means to “maintain” it v. “exceed” it. In response to this comment, we are finalizing amendments to 40 CFR 63.8620(e)(2), the operating limits table (Table 2), and the continuous compliance table (Table 7) to clarify that the owner or operator will be required to maintain their kiln operating temperature within the range of acceptable temperatures (*i.e.*, a temperature profile) established for each

kiln and product. For any incident where the kiln is operating outside of its acceptable temperature range (*i.e.*, exceeding its temperature profile) for the product being fired, the owner or operator will be required to record the incident as a deviation, and perform corrective action in accordance with the facility’s operation, maintenance, and monitoring (OM&M) plan.

##### B. Weekly Visual Inspections of Water Curtain Spray Booths

In its petition for reconsideration, Kohler requested that the EPA reconsider the frequency of visual inspection requirements for system ductwork and control device equipment for water curtain spray booths. In response to the petition, we proposed amendments to the operating limits table (Table 2) and the continuous compliance table (Table 7) to remove the requirement to conduct weekly visual inspections of the system ductwork and control equipment for leaks for all glaze spray operations equipped with water curtains.

In public comments on the proposal, one commenter stated that if the EPA is relying on operator observations of visible particulate on the product to determine when there is a leak in the spray booth ductwork, the rule should require operators to log such incidents and report them as deviations when they occur. We recognize the commenter’s concerns and agree that if there is an indication of particulate in the glaze of the product, then it is likely there is a failure in the ductwork requiring corrective action, and, therefore, this would be considered a deviation. We are finalizing amendments to Table 7 to require owners or operators to record as deviations any observations of particulates or other impurities getting

into the glaze that has been sprayed onto a piece of ware and perform corrective action in accordance with the facility’s OM&M plan.

##### C. Emissions Averaging

In its petition for reconsideration, Kohler requested that the EPA allow the use of emissions averaging as a compliance option in the Clay Ceramics Manufacturing NESHAP for existing tunnel kilns and glaze spray booths. In response to the petition, we proposed amendments to 40 CFR 63.8595 in the Clay Ceramics Manufacturing NESHAP that included alternative emissions averaging limits for the following:

- PM and Hg, in units of pounds per ton (lb/ton) of fired product for existing floor tile roller kilns;
- PM and Hg in units of lb/ton of fired product for existing wall tile roller kilns;
- PM and Hg, in units of lb/ton of greenware fired for existing first-fired sanitaryware tunnel kilns;
- PM and Hg, in units of lb/ton of first-fired glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying; and
- PM, in units of lb/ton of first-fire glaze sprayed (dry weight basis), for existing sanitaryware manual, spray machine, or robot glaze applications.

The proposed conditions required for emissions averaging included the following: (1) Emissions averaging would only be permitted between individual sources at a single existing affected source; (2) emissions averaging would only be permitted between individual sources subject to the Clay Ceramics Manufacturing NESHAP; (3) emissions averaging would not be permitted between two or more different affected sources; (4) emissions averaging would not be permitted between two or more sources in different subcategories;

(5) new sources could not use emissions averaging; and (6) averaged emissions could not exceed 90 percent of the applicable emission limit, which translates to a discount factor of 1.1 applied to actual emissions.

The emissions averaging provisions that we proposed were based, in part, on the emissions averaging provisions in the Hazardous Organic NESHAP (HON). The legal basis and rationale for the HON emissions averaging provisions were provided in the preamble to the final HON (59 FR 19425, April 22, 1994).

In public comments on the proposal, two commenters requested that the EPA remove the requirement that averaged emissions cannot exceed 90 percent of the applicable emission limit, and a third commenter stated that no justification was provided for the selection of 90 percent (instead of an alternate value, such as 80 or 99 percent). While averaging should only be permitted if it can be demonstrated that the total quantity of any HAP will not be greater than it could be if each individually affected unit complied separately with the applicable standard, one commenter stated this requirement can be demonstrated without the “90 percent of the limit” safety factor. The commenter noted that the EPA has allowed emissions averaging across similar emission units in other NESHAP, such as the Reinforced Plastics Composites NESHAP (40 CFR part 63, subpart WWWW), and stated that similar logic for averaging should be applied to this subpart to eliminate the unnecessary factor.

In response to these comments, we have re-evaluated whether a discount factor is appropriate for the emissions averaging provisions in this subpart and have concluded that a discount factor is not necessary here. The issues faced in the HON, where a discount factor of 1.1 was applied to the emissions averaging calculation, included significant differences in toxicity of the various HAP and a situation where facilities were applying emissions controls. This is not the case here. All facilities are meeting the relevant standards in this subpart without added controls and are using pollution prevention where needed. Accordingly, a straight average, without any discount factor, is appropriate in this situation. This straight-average approach is consistent with other rules, such as the Reinforced Plastic Composites NESHAP. Therefore, the EPA has decided not to include a discount factor in 40 CFR 63.8595(h), Equation 9, and 40 CFR 63.8620, Equation 10 to calculate the average weighted emissions.

In addition, a commenter noted that the proposed emissions averaging provisions prohibited emissions averaging of new sources but did not prohibit emissions averaging of reconstructed sources. The commenter stated that reconstructed sources should not be allowed to use the emissions averaging provisions. We agree with the commenter, and in the final amendments the EPA has revised 40 CFR 63.8595(h)(1) to indicate that neither new nor reconstructed sources can be included in the emissions averaging.

Finally, we note that Equations 9 through 11 were all proposed to be added to 40 CFR 63.8595(h). However, one commenter noted an apparent discrepancy between Equation 9 and Equation 10, and it appears that the commenter misunderstood that Equation 9 is intended to determine initial compliance based on an initial performance test, while Equation 10 is intended to determine ongoing compliance based on the latest performance test. Equation 11 is also used for ongoing compliance and is intended to determine the 12-month rolling average of the monthly weighted average emission rates. Therefore, in the final amendments, Equations 10 and 11 have been moved to 40 CFR 63.8620, the section that describes how to demonstrate continuous compliance.

#### **V. Summary of Cost, Environmental, and Economic Impacts**

This action will have no cost, environmental, energy, or economic impacts beyond those impacts presented in the October 26, 2015, final rule for Clay Ceramics Manufacturing and may result in a cost savings due to the changes in monitoring and testing requirements discussed in section III of this preamble. The technical corrections are cost neutral.

#### **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 not a significant regulatory action and was, therefore, not submitted to the OMB for review.

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

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by providing additional regulatory flexibilities.

##### **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 regulation (40 CFR part 63, subpart KKKKK) and has assigned OMB control number 2060–0513. 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. 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 final rule will not impose any additional requirements on small entities, only alternatives to existing requirements. 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 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.

##### **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 neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The final amendments impose no requirements on 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 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 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 the docket. (See *EJ Screening Report for Clay Ceramics*, Docket ID Item No. EPA–HQ–OAR–2013–0290–0241.)

*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 practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 10, 2019.

**Andrew R. Wheeler,**  
*Administrator.*

For the reasons set out in the preamble, 40 CFR part 63 is amended as follows:

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

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

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

**Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing**

- 2. Section 63.8595 is amended by:
  - a. Revising paragraph (c);
  - b. Redesignating paragraph (h) as paragraph (i);
  - c. Adding a new paragraph (h); and
  - d. Revising newly redesignated paragraphs (i) introductory text and (i)(1) introductory text.

The revisions and addition read as follows:

**§ 63.8595 How do I conduct performance tests and establish operating limits?**

\* \* \* \* \*

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart. Stacks to be tested at sanitaryware manufacturing facilities shall be limited to products of combustion (POC) stacks and not include cooling stacks.

\* \* \* \* \*

(h)(1) As an alternative to meeting the requirements of § 63.8555 for PM or

mercury, if you have more than one existing source in any subcategories located at your facility, you may demonstrate compliance by emissions averaging, if your averaged emissions are no higher than the applicable emission limit, according to the procedures in this section. You may not include new or reconstructed sources in an emissions average.

(2) For a group of two or more existing sources in the same subcategory that each vent to a separate stack, you may average PM or mercury emissions among existing units to demonstrate compliance with the limits in Table 1 to this subpart as specified in paragraph (h)(2)(i) through (iv) of this section, if you satisfy the requirements in paragraphs (h)(3) and (4) of this section.

(i) You may average across existing sources in the same kiln type and size category (e.g., roller or tunnel kilns, large or small kilns) and the same subcategory (e.g., sanitaryware manual or spray machine or robot glaze application) where applicable;

(ii) You may not include a unit in the emissions average if the unit shares a common stack with units in other subcategories;

(iii) You may not include spray dryers or press dryers in the emissions average; and

(iv) You may not average between different types of pollutants.

(3) The averaged emissions rate from the existing sources participating in the emissions averaging option must not exceed the limits in Table 1 to this subpart at all times the affected units are subject to numeric emission limits following the compliance date specified in § 63.8545.

(4)(i) You must demonstrate initial compliance using the maximum process rate and the results of the initial performance tests.

(ii) You must use Equation 9 of this section to demonstrate that the PM or mercury emissions from all existing units participating in the emissions averaging option for that pollutant do not exceed the emission limits in Table 1 to this subpart.

$$ER_i = \sum_{i=1}^n (E_i \times P_{max\ i}) \div \sum_{i=1}^n P_{max\ i} \quad (\text{Eq. 9})$$

Where:

ER<sub>i</sub> = Average weighted emissions for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for

existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry

weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton)

of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual, spray machine, or robot glaze applications.

$E_i$  = Emission rate (as determined during the initial compliance demonstration) of PM or mercury from unit  $i$ , in units of kilograms (pounds) per megagram (ton). Determine the emission rate for PM or mercury by performance testing according to Table 4 to this subpart using the applicable equation in paragraph (f) of this section.

$P_{\max i}$  = Maximum process rate for unit  $i$ , in units of megagrams per hour (tons per hour).

$n$  = Number of units participating in the emissions averaging option.

(5) You must develop and submit upon request to the applicable Administrator for review and approval, an implementation plan for emissions averaging according to the following procedures and requirements in paragraphs (h)(5)(i) through (iv) of this section.

(i) If requested, you must submit the implementation plan no later than 180 days before the date that the facility intends to demonstrate compliance using the emissions averaging option.

(ii) You must include the information contained in paragraphs (h)(5)(ii)(A) through (D) of this section in your implementation plan for all emission sources included in an emissions average:

(A) The identification of all existing sources in the averaging group, including for each either the applicable HAP emissions level or the control technology installed and the date on which you are requesting emissions averaging to commence;

(B) The specific control technology or pollution prevention measure to be used for each source in the averaging group and the date of its installation or application. If the pollution prevention measure reduces or eliminates emissions from multiple sources, the owner or operator must identify each source;

(C) The test plan for the measurement of emissions in accordance with the requirements in this section; and

(D) The operating parameters to be monitored for each control system or device consistent with § 63.8555 and Table 2 to this subpart, and a description of how the operating limits will be determined.

(iii) If submitted upon request, the Administrator shall review and approve or disapprove the plan according to the following criteria:

(A) Whether the content of the plan includes all of the information specified in paragraph (h)(5)(ii) of this section; and

(B) Whether the plan presents sufficient information to determine that compliance will be achieved and maintained.

(iv) The applicable Administrator shall not approve an emissions averaging implementation plan containing any of the following provisions:

(A) Any averaging between emissions of differing pollutants or between differing sources; or

(B) The inclusion of any emission source other than an existing unit in the same subcategories.

(i) For each affected source that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

\* \* \* \* \*

■ 3. Section 63.8620 is amended by:

■ a. Redesignating paragraphs (e) introductory text and (e)(1) through (3) as paragraphs (e)(1) introductory text and (e)(1)(i) through (iii), respectively;

■ b. Revising newly redesignated paragraph (e)(1) introductory text; and

■ c. Adding new paragraph (e)(2) and paragraphs (f) and (g).

The revision and additions read as follows:

**§ 63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?**

\* \* \* \* \*

(e)(1) *Visible emissions testing.* You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for visible emissions (VE) from tunnel or roller kilns that are uncontrolled or equipped with DIFF, DLS/FF, or other dry control device by monitoring VE at each kiln stack according to the requirements in paragraphs (e)(1)(i) through (iii) of this section.

\* \* \* \* \*

(2) *Alternative to VE testing.* You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for kiln temperature profile for tunnel or roller kilns that are uncontrolled or equipped with DIFF, DLS/FF, or other dry control device by maintaining the kiln operating temperature within the range of acceptable temperatures (*i.e.*, temperature profile) established for each kiln and product. For any incidence where the kiln is operating outside of its acceptable temperature range (*i.e.*, exceeds its temperature profile) for the product being fired, you must record the incident as a deviation, and perform the necessary corrective action in accordance with your OM&M plan to return the kiln to the acceptable operating temperature for the product being fired. To confirm the kiln has returned to the acceptable temperature range, you will monitor VE at the kiln stack according to the requirements in paragraphs (e)(2)(i) through (iii) of this section.

(i) Perform VE observations at the stack of each kiln operating outside of its temperature profile according to the procedures of Method 22 of 40 CFR part 60, appendix A-7. The duration of each Method 22 test must be at least 15 minutes.

(ii) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A-7, you must continue to perform corrective action until VE are no longer observed.

(iii) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A-7, you must report these deviations by following the requirements in § 63.8635.

(f) Following the compliance date, you must demonstrate compliance with the emissions averaging provision under this subpart on a continuous basis by meeting the requirements of paragraphs (f)(1) through (3) of this section.

(1)(i) After the initial compliance demonstration described in § 63.8595(h)(4), you must demonstrate compliance on a monthly basis determined at the end of every month (12 times per year) according to paragraph (f)(1)(ii) of this section. The first monthly period begins on the compliance date specified in § 63.8545.

(ii) For each calendar month, you must use Equation 10 of this section to calculate the average weighted emission rate for that month.

$$ER_i = \sum_{i=1}^n (E_i \times P_{month\ i}) \div \sum_{i=1}^n P_{month\ i} \quad (\text{Eq. 10})$$

Where:

$ER_i$  = Average weighted emissions for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton) of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual,

spray machine, or robot glaze applications, for that calendar month.

$E_i$  = Emission rate (as determined during the most recent compliance demonstration) of PM or mercury from unit  $i$ , in units of kilograms (pounds) per megagram (ton). Determine the emission rate for PM or mercury by performance testing according to Table 4 to this subpart using the applicable equation in § 63.8595(f).

$P_{month\ i}$  = The process rate for that calendar month for unit  $i$ , in units of megagrams (tons).

$n$  = Number of units participating in the emissions averaging option.

$$E_{avg} = \sum_{i=1}^n ER_i \div 12 \quad (\text{Eq. 11})$$

Where:

$E_{avg}$  = 12-month rolling average emission rate for PM or mercury, in units of kilograms (pounds) per megagram (ton) of fired product for existing floor tile roller kilns and wall tile roller kilns, greenware fired for existing first-fired sanitaryware tunnel kilns, and first-fire glaze sprayed (dry weight basis) for existing tile glaze lines with glaze spraying and average weighted emissions for PM, in units of kilograms (pounds) per megagram (ton) of first-fire glaze sprayed (dry weight basis) for existing sanitaryware manual, spray machine, or robot glaze applications.

$ER_i$  = Monthly weighted average, for calendar month "i," in units of kilograms (pounds) per megagram (ton), as calculated by paragraph (f)(1)(ii) of this section.

(3) For each existing unit participating in the emissions averaging option, you must comply with the continuous compliance requirements in Table 7 to this subpart.

(g) Any instance where you fail to comply with the continuous monitoring

requirements in paragraphs (f)(1) through (3) of this section is a deviation.

■ 4. Section 63.8630 is amended by revising paragraph (c) introductory text and adding paragraph (c)(4) to read as follows:

**§ 63.8630 What notifications must I submit and when?**

\* \* \* \* \*

(c) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 6 to this subpart, your Notification of Compliance Status as specified in Table 9 to this subpart must include the information in paragraphs (c)(1) through (4) of this section.

\* \* \* \* \*

(4) Identification of whether you plan to demonstrate compliance by emissions averaging. If you plan to demonstrate compliance by emissions averaging, report the emissions level that was being achieved or the control

(2) Until 12 monthly weighted average emission rates have been accumulated, calculate and report only the average weighted emission rate determined under paragraph (f)(1)(ii) of this section for each calendar month. After 12 monthly weighted average emission rates have been accumulated, for each subsequent calendar month, use Equation 11 of this section to calculate the 12-month rolling average of the monthly weighted average emission rates for the current calendar month and the previous 11 calendar months.

technology employed on December 28, 2015.

\* \* \* \* \*

■ 5. Section 63.8635 is amended by:

■ a. Revising paragraphs (c) introductory text and (c)(4)(iii)(C);

■ b. Adding paragraph (c)(9); and

■ c. Revising paragraph (g)(1).

The revisions and addition read as follows:

**§ 63.8635 What reports must I submit and when?**

\* \* \* \* \*

(c) The compliance report must contain the information in paragraphs (c)(1) through (9) of this section.

\* \* \* \* \*

(4) \* \* \*

(iii) \* \* \*

(C) Based on the information recorded under paragraphs (c)(4)(iii)(A) and (B) of this section, compute the annual percent of affected source operating uptime during which the control device was offline for routine maintenance using Equation 12 of this section.

$$RM = \frac{DT_p + DT_c}{SU_p + SU_c} (100) \quad (\text{Eq. 12})$$

Where:

$RM$  = Annual percentage of affected source uptime during which control device was offline for routine control device maintenance.

$DT_p$  = Control device downtime claimed under the routine control device maintenance alternative standard for the previous semiannual compliance period.

$DT_c$  = Control device downtime claimed under the routine control device maintenance alternative standard for the current semiannual compliance period.

$SU_p$  = Affected source uptime for the previous semiannual compliance period.

$SU_c$  = Affected source uptime for the current semiannual compliance period.

\* \* \* \* \*

(9) If you plan to demonstrate compliance by emissions averaging, certify the emissions level achieved or the control technology employed is no less stringent than the level or control technology contained in the notification of compliance status in § 63.8630(c)(4), including all necessary documentation

to support this certification, such as inputs to Equations 9 through 11 of this subpart.

\* \* \* \* \*

(g) \* \* \*

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (<https://www.epa.gov/electronicreporting-air-emissions/electronicreporting-tool-ert>) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>.) Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage

media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (g)(1).

\* \* \* \* \*

■ 6. Section 63.8640 is amended by revising paragraph (c) introductory text and adding paragraph (c)(11) to read as follows:

**§ 63.8640 What records must I keep?**

\* \* \* \* \*

(c) You must also maintain the records listed in paragraphs (c)(1) through (11) of this section.

\* \* \* \* \*

(11) If you elect to average emissions consistent with § 63.8595(h), you must additionally keep a copy of the emissions averaging implementation plan required in § 63.8595(h)(5), all calculations required under § 63.8595(h), including monthly records of process rate, as applicable, and monitoring records consistent with § 63.8620(f).

■ 7. Section 63.8665 is amended by adding definitions for “Cooling stack,”

“Emissions averaging sources,” and “Products of combustion (POC) stack” in alphabetical order to read as follows:

**§ 63.8665 What definitions apply to this subpart?**

\* \* \* \* \*

*Cooling stack* means a stack (release point) installed on the cooling zone of a tunnel kiln to release air used to cool down the fired product from its maximum temperature to room temperature. A cooling stack does not release any air from the firing zone of the tunnel kiln.

\* \* \* \* \*

*Emissions averaging sources* means, for purposes of the emissions averaging provisions of § 63.8595(h), the collection of all existing ceramic tile roller kilns, sanitaryware tunnel kilns, ceramic tile glaze lines using glaze spraying, and sanitaryware glaze spray booths, within a kiln type and size category and within a subcategory.

\* \* \* \* \*

*Products of combustion (POC) stack* means a stack (release point) installed on the front end of the firing zone of a tunnel kiln to release air used to heat the greenware from room temperature to its maximum temperature.

\* \* \* \* \*

■ 8. Table 1 to subpart KKKKK is revised to read as follows:

**TABLE 1 TO SUBPART KKKKK OF PART 63—EMISSION LIMITS**

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you:

For each . . .	You must meet the following emission limits . . .
1. Collection of all tunnel or roller kilns at facility.	HF and HCl emissions must not exceed 62 kilograms per hour (kg/hr) (140 pounds per hour (lb/hr)) HCl equivalent, under the health-based standard, as determined using Equations 4 and 5 of this subpart.
2. Existing floor tile roller kiln . . . . .	a. PM emissions must not exceed 0.063 kilogram per megagram (kg/Mg) (0.13 pound per ton (lb/ton)) of fired product. b. Hg emissions must not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 2.8 nanograms per kilogram (ng/kg) of fired product.
3. Existing wall tile roller kiln . . . . .	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product. b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.
4. Existing first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired. b. Hg emissions must not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired. c. Dioxin/furan emissions must not exceed 3.3 ng/kg of greenware fired.
5. Existing tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis). b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).
6. Existing sanitaryware manual glaze application.	PM emissions must not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis).
7. Existing sanitaryware spray machine glaze application.	PM emissions must not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis).
8. Existing sanitaryware robot glaze application.	PM emissions must not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
9. Existing floor tile spray dryer . . . . .	Dioxin/furan emissions must not exceed 19 ng/kg of throughput processed.
10. Existing wall tile spray dryer . . . . .	Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.
11. Existing floor tile press dryer . . . . .	Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.
12. New or reconstructed floor tile roller kiln.	a. PM emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product. b. Hg emissions must not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 1.3 ng/kg of fired product.

TABLE 1 TO SUBPART KKKKK OF PART 63—EMISSION LIMITS—Continued

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you:

For each . . .	You must meet the following emission limits . . .
13. New or reconstructed wall tile roller kiln.	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product. b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.
14. New or reconstructed first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired. b. Hg emissions must not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired. c. Dioxin/furan emissions must not exceed 0.99 ng/kg of greenware fired.
15. New or reconstructed tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis). b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).
16. New or reconstructed sanitaryware manual glaze application.	PM emissions must not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis).
17. New or reconstructed sanitaryware spray machine glaze application.	PM emissions must not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis).
18. New or reconstructed sanitaryware robot glaze application.	PM emissions must not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis).
19. New or reconstructed floor tile spray dryer.	Dioxin/furan emissions must not exceed 0.071 ng/kg of throughput processed.
20. New or reconstructed wall tile spray dryer.	Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.
21. New or reconstructed floor tile press dryer.	Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.
22. Collection of emissions averaging sources.	PM emissions must not exceed the applicable emission limit, under the emissions averaging option, as determined using Equations 9 through 11 of this subpart.
23. Collection of emissions averaging sources.	Hg emissions must not exceed the applicable emission limit, under the emissions averaging option, as determined using Equations 9 through 11 of this subpart.

■ 9. Table 2 to subpart KKKKK is revised to read as follows:

TABLE 2 TO SUBPART KKKKK OF PART 63—OPERATING LIMITS

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

For each . . .	You must . . .	Or you must . . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; and b. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting (on a per ton of throughput basis) at or above the level established during the performance test for continuous injection systems in which compliance was demonstrated.	i. Maintain no VE from the DIFF or DLS/FF stack; or ii. Maintain your kiln operating temperature within the range of acceptable temperatures ( <i>i.e.</i> , temperature profile established for each kiln and product).
2. Tunnel or roller kiln equipped with a WS.	a. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test in which compliance was demonstrated; and b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests in which compliance was demonstrated.	
3. Tunnel or roller kiln equipped with an ACI system.	Maintain the 3-hour block average carbon flow rate at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests in which compliance was demonstrated.	



TABLE 2 TO SUBPART KKKKK OF PART 63—OPERATING LIMITS—Continued

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

For each . . .	You must . . .	Or you must . . .
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Maintain the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	i. Maintain your kiln operating temperature within the range of acceptable temperatures ( <i>i.e.</i> , temperature profile established for each kiln and product.
5. Tunnel or roller kiln with no add-on control.	a. Maintain no VE from the stack; and  b. Maintain the kiln process rate at or below the kiln process rate determined according to § 63.8595(g)(1) if your total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart; and  c. Maintain the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	i. Maintain no VE from the FF stack.
6. Glaze spray operation equipped with a FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	
7. Glaze spray operation equipped with a WS.	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test in which compliance was demonstrated; and  b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test in which compliance was demonstrated.	
8. Glaze spray operation equipped with a water curtain.	a. Conduct daily inspections to verify the presence of water flow to the wet control system; and  b. Conduct annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment.	
9. Glaze spray operation equipped with baffles.	Conduct an annual visual inspection of the baffles to confirm the baffles are in place.	
10. Spray dryer .....	Maintain the average operating temperature for each 4-hour block period at or above the average temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
11. Floor tile press dryer .....	Maintain the average operating temperature for each 4-hour block period at or below the average temperature established during the dioxin/furan performance test in which compliance was demonstrated.	

■ 10. Table 4 to subpart KKKKK is revised to read as follows:

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Tunnel or roller kiln .....	a. Select locations of sampling ports and the number of traverse points.  b. Determine velocities and volumetric flow rate.	Method 1 or 1A of 40 CFR part 60, appendix A–1.  Method 2 of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.  You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
2. Glaze spray operation .....	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	You may use Method 26 of 40 CFR part 60, appendix A–8, as an alternative to using Method 26A of 40 CFR part 60, appendix A–8, when no acid PM ( <i>e.g.</i> , HF or HCl dissolved in water droplets emitted by sources controlled by a WS) is present. ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see § 63.14) may be used as an alternative to Methods 26 and 26A.
	e. Measure HF and HCl emissions.	i. Method 26A of 40 CFR part 60, appendix A–8; or	
		ii. Method 320 of appendix A of this part.	
	f. Measure PM emissions ..	i. Method 5 of 40 CFR part 60, appendix A–3; or	When using Method 320 of appendix A of this part, you must follow the analyte spiking procedures of section 13 of Method 320 of appendix A of this part, unless you can demonstrate that the complete spiking procedure has been conducted at a similar source. ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see § 63.14) may be used as an alternative to Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte.
		ii. Method 29 of 40 CFR part 60, appendix A–8.	
	g. Measure Hg emissions	Method 29 of 40 CFR part 60, appendix A–8.	
	h. Measure dioxin/furan emissions.	Method 23 of 40 CFR part 60, appendix A–7.	ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14) may be used as an alternative to Method 29 (portion for Hg only).
	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	
3. Spray dryer or floor tile press dryer.	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.
			You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14) may be used as an alternative to Method 29 (portion for Hg only).
	e. Measure PM emissions	Method 5 of 40 CFR part 60, appendix A–3.	
	f. Measure Hg emissions (tile glaze spray operations only).	Method 29 of 40 CFR part 60, appendix A–8.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
4. Tunnel or roller kiln with no add-on control.	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	
	e. Measure dioxin/furan emissions.	Method 23 of 40 CFR part 60, appendix A–7.	
	a. Establish the operating limit(s) for kiln process rate if the total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart.	HCl-equivalent limit in Table 1 to this subpart and emissions and production data from the HF/HCl/Cl <sub>2</sub> performance test.	Using the procedures in § 63.8595(g)(1), you must determine the maximum process rate(s) for your kiln(s) that would ensure total facility maximum potential HCl-equivalent emissions remain at or below the HCl-equivalent limit in Table 1 to this subpart. The maximum process rate(s) would become your site-specific process rate operating limit(s).
5. Tunnel or roller kiln that is complying with PM and/or Hg production-based emission limits.	b. Establish the operating limit for kiln operating temperature.	i. Data from the kiln operating temperature measurement device during the dioxin/furan performance test.	(1) You must continuously measure the kiln operating temperature during three 4-hour test runs and, from a 12-hour block of time consisting of 1-hour increments, calculate the following two values: (a) The standard deviation of the 12 1-hour temperature measurements (refer to Note 1). (b) 1 percent of the 12-hour block average. (2) You must decide which of the two values would provide the greatest variability ( <i>i.e.</i> , the highest value), and then add this value to the 12-hour block average measured during the compliance testing. The result is the maximum temperature at which your kiln may operate during normal operations.
	Determine the production rate during each PM/Hg test run in order to determine compliance with PM and/or Hg production-based emission limits.	Production data collected during the PM/Hg performance tests ( <i>e.g.</i> , the number of ceramic pieces and weight per piece in the kiln during a test run divided by the amount of time to fire a piece).	You must measure and record the production rate, on a ton of throughput processed basis, of the affected kiln for each of the three test runs.
6. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the HF/HCl performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting, on a per ton of throughput basis, for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs. The average of the three test runs establishes your minimum site-specific feed rate operating limit.
7. Tunnel or roller kiln equipped with a WS.	a. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the HF/HCl performance test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid pH operating limit.
	b. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the HF/HCl and PM performance tests.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating level. If different average wet scrubber liquid flow rate values are measured during the HF/HCl and PM tests, the highest of the average values become your site-specific operating limit.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
8. Tunnel or roller kiln equipped with an ACI system.	Establish the operating limit for the average carbon flow rate.	Data from the carbon flow rate measurement conducted during the Hg and dioxin/furan performance tests.	You must measure the carbon flow rate during each test run, determine and record the block average carbon flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded carbon flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific activated carbon flow rate operating limit.
9. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	a. Establish the operating limit for kiln operating temperature.	i. Data from the kiln operating temperature measurement device during the dioxin/furan performance test.	(1) You must continuously measure the kiln operating temperature during three 4-hour test runs and, from a 12-hour block of time consisting of 1-hour increments, calculate the following two values: (a) The standard deviation of the 12 1-hour temperature measurements (refer to Note 1). (b) 1 percent of the 12-hour block average (2) You must decide which of the two values would provide the greatest variability ( <i>i.e.</i> , the highest value), and then add this value to the 12-hour block average measured during the compliance testing. The result is the maximum temperature at which your kiln may operate during normal operations.
10. Glaze spray operation equipped with a WS.	a. Establish the operating limit for the average scrubber pressure drop.  b. Establish the operating limit for the average scrubber liquid flow rate.	Data from the pressure drop measurement device during the PM performance test.  Data from the flow rate measurement device during the PM performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. The average of the three test runs establishes your minimum site-specific pressure drop operating limit.  You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating limit.
11. Spray dryer .....	Establish the operating limit for operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 4-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your minimum site-specific operating limit.
12. Floor tile press dryer .....	Establish the operating limit for operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 4-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your maximum site-specific operating limit.

Note 1: The standard deviation of the 12 1-hour temperature measurements is calculated as follows:

$$\sigma = \sqrt{\frac{1}{N} \times \sum_{i=1}^N (x_i - \mu)^2} \quad (\text{Eq. 13})$$

Where:  
 $\sigma$  = standard deviation

$x_i$  = each 1-hour temperature measurement  
 $\mu$  = mean of all 12 1-hour measurements  
 $N$  = 12 measurements

■ 11. Table 6 to subpart KKKKK is revised to read as follows:

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
1. Collection of all tunnel or roller kilns at the facility.	a. HF, HCl, and Cl <sub>2</sub> emissions must not exceed 62 kg/hr (140 lb/hr) HCl equivalent.	i. You measure HF and HCl emissions for each kiln using Method 26 or 26A of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see § 63.14); or Method 320 of appendix A of this part or its alternative, ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see § 63.14); and ii. You calculate the HCl-equivalent emissions for HF for each kiln using Equation 4 to this subpart; and iii. You sum the HCl-equivalent values for all kilns at the facility using Equation 5 to this subpart; and iv. The facility total HCl-equivalent does not exceed 62 kg/hr (140 lb/hr).
2. Existing floor tile roller kiln .....	a. PM emissions must not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product.  b. Hg emissions must not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product.  c. Dioxin/furan emissions must not exceed 2.8 ng/kg of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product; and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.063 kg/Mg (0.13 lb/ton) of fired product.  i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product.  i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 2.8 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 2.8 ng/kg of fired product.
3. Existing wall tile roller kiln .....	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.  b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.  c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.  i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.  i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.22 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.22 ng/kg of fired product.
4. Existing first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired; and

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
	<p>b. Hg emissions must not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired.</p> <p>c. Dioxin/furan emissions must not exceed 3.3 ng/kg of greenware fired.</p>	<p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.17 kg/Mg (0.34 lb/ton) of greenware fired.</p> <p>i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired; and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of greenware fired.</p> <p>i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 3.3 ng/kg of greenware fired; and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 3.3 ng/kg of greenware fired.</p>
5. Existing tile glaze line with glaze spraying.	<p>a. PM emissions must not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis).</p> <p>b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.93 kg/Mg (1.9 lb/ton) of first-fire glaze sprayed (dry weight basis).</p> <p>i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>
6. Existing sanitaryware manual glaze application.	a. PM emissions must not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis).	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 18 kg/Mg (35 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>
7. Existing sanitaryware spray machine glaze application.	a. PM emissions must not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis).	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 6.2 kg/Mg (13 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>
8. Existing sanitaryware robot glaze application.	a. PM emissions must not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis).	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 4.5 kg/Mg (8.9 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>
9. Existing floor tile spray dryer .....	a. Dioxin/furan emissions must not exceed 19 ng/kg of throughput processed.	<p>i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 19 ng/kg of throughput processed; and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 19 ng/kg of throughput processed.</p>

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
10. Existing wall tile spray dryer . . . .	a. Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.058 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.058 ng/kg of throughput processed.
11. Existing floor tile press dryer . . . .	a. Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.024 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.024 ng/kg of throughput processed.
12. New or reconstructed floor tile roller kiln.	a. PM emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product.
	b. Hg emissions must not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 2.0 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 1.3 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 1.3 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 1.3 ng/kg of fired product.
13. New or reconstructed wall tile roller kiln.	a. PM emissions must not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.19 kg/Mg (0.37 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 1.1 E–04 kg/Mg (2.1 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 0.22 ng/kg of fired product.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.22 ng/kg of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.22 ng/kg of fired product.

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
14. New or reconstructed first-fire sanitaryware tunnel kiln.	<p>a. PM emissions must not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired.</p> <p>b. Hg emissions must not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired.</p> <p>c. Dioxin/furan emissions must not exceed 0.99 ng/kg of greenware fired.</p>	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired; and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.048 kg/Mg (0.095 lb/ton) of greenware fired.</p> <p>i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired; and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 6.1 E–05 kg/Mg (1.3 E–04 lb/ton) of greenware fired.</p> <p>i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.99 ng/kg of greenware fired; and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.99 ng/kg of greenware fired.</p>
15. New or reconstructed tile glaze line with glaze spraying.	<p>a. PM emissions must not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis).</p> <p>b. Hg emissions must not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 0.31 kg/Mg (0.61 lb/ton) of first-fire glaze sprayed (dry weight basis).</p> <p>i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which Hg emissions did not exceed 8.0 E–05 kg/Mg (1.6 E–04 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>
16. New or reconstructed sanitaryware manual glaze application.	a. PM emissions must not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis).	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 2.0 kg/Mg (3.9 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>
17. New or reconstructed sanitaryware spray machine glaze application.	a. PM emissions must not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis).	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 1.6 kg/Mg (3.2 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>
18. New or reconstructed sanitaryware robot glaze application.	a. PM emissions must not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis).	<p>i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in § 63.8595(f)(2), do not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis); and</p> <p>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which PM emissions did not exceed 1.2 kg/Mg (2.3 lb/ton) of first-fire glaze sprayed (dry weight basis).</p>



TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
19. New or reconstructed floor tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.071 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.071 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.071 ng/kg of throughput processed.
20. New or reconstructed wall tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.058 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.058 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.058 ng/kg of throughput processed.
21. New or reconstructed floor tile press dryer.	a. Dioxin/furan emissions must not exceed 0.024 ng/kg of throughput processed.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.024 ng/kg of throughput processed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the period of the initial performance test during which dioxin/furan emissions did not exceed 0.024 ng/kg of throughput processed.
22. Existing, new, or reconstructed sanitaryware shuttle kiln.	a. Minimize HAP emissions .....	i. Use natural gas, or equivalent, as the kiln fuel; and ii. Develop a designed firing time and temperature cycle for the sanitaryware shuttle kiln. You must either program the time and temperature cycle into your kiln or track each step on a log sheet; and iii. Label each sanitaryware shuttle kiln with the maximum load (in tons) of greenware that can be fired in the kiln during a single firing cycle; and iv. Develop maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles.

■ 12. Table 7 to subpart KKKKK is revised to read as follows:

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF.	i. If you use a bag leak detection system, as prescribed in § 63.8450(e), initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; and	(1) Performing VE observations of the DIFF or DLS/FF stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the DIFF or DLS/FF stack; or (2) Maintaining your kiln operating temperature within the range of acceptable temperatures ( <i>i.e.</i> , temperature profile for each kiln and product; for any incidence where the kiln is operating outside of its acceptable temperature range ( <i>i.e.</i> , exceeds its temperature profile) for the product being fired, performing VE observations of the DIFF or DLS/FF stack as specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and observing no VE from the DIFF or DLS/FF stack.

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
2. Tunnel or roller kiln equipped with a WS.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with WS.	<p>ii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&amp;M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the HF/HCl performance test in which compliance was demonstrated.</p> <p>i. Collecting the scrubber liquid pH data according to § 63.8600(a); reducing the scrubber liquid pH data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test in which compliance was demonstrated; and</p> <p>ii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests in which compliance was demonstrated.</p>	
3. Tunnel or roller kiln equipped with an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with ACI system.	Collecting the carbon flow rate data according to § 63.8600(a); reducing the carbon flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average carbon flow rate for each 3-hour block period at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests in which compliance was demonstrated.	
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 4 of Table 2 to this subpart for kilns intending to comply with dioxin/furan emission limit without an ACI system.	Collecting the operating temperature data according to § 63.8600(a); and maintaining the operating temperature at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to a 12-hour block average; and maintaining the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.
5. Tunnel or roller kiln with no add-on control.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 5 of Table 2 to this subpart for tunnel or roller kilns with no add-on control.	i. Performing VE observations of the stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A-7; and maintaining no VE from the stack; and	(1) Maintaining your kiln operating temperature within the range of acceptable temperatures ( <i>i.e.</i> , temperature profile established for each kiln and product for any incidence where the kiln is operating outside of its acceptable temperature range ( <i>i.e.</i> , exceeds its temperature profile) for the product being fired, performing VE observations of the DIFF or DLS/FF stack as specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A-7; and observing no VE from the DIFF or DLS/FF stack.

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
		ii. If your last calculated total facility maximum potential HCl-equivalent was not at or below the health-based standard in Table 1 to this subpart, collecting the kiln process rate data according to § 63.8600(a); reducing the kiln process rate data to 3-hour block averages according to § 63.8600(a); maintaining the average kiln process rate for each 3-hour block period at or below the kiln process rate determined according to § 63.8595(g)(1); and iii. Collecting the operating temperature data according to § 63.8600(a); and maintaining the operating temperature at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
6. Glaze spray operation equipped with a FF.	Each emission limit in Table 1 to this subpart and each operating limit in Item 6 of Table 2 to this subpart for glaze spray operations equipped with a FF.	If you use a bag leak detection system, initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action.	(1) Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to a 12-hour block average; and maintaining the average operating temperature for each 12-hour block period at or below the highest operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.
7. Glaze spray operation equipped with a WS.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 7 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to § 63.8600(a); reducing the scrubber pressure drop data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test in which compliance was demonstrated; and ii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test in which compliance was demonstrated.	Performing VE observations of the FF stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the FF stack.
8. Glaze spray operation equipped with a water curtain.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 8 of Table 2 to this subpart for kilns equipped with a water curtain.	i. Conducting daily inspections to verify the presence of water flow to the wet control system; and	

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
9. Glaze spray operation equipped with baffles.	Each emission limit in Table 1 to this subpart and each operating limit in Item 9 of Table 2 to this subpart for kilns equipped with baffles.	<ul style="list-style-type: none"> <li>ii. Conducting annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment; and</li> <li>iii. Recording as deviations any observations of particulates or other impurities getting into the glaze that has been sprayed onto a piece of ware and completing corrective actions in accordance with your OM&amp;M plan.</li> </ul>	
10. Spray dryer .....	Each emission limit in Table 1 to this subpart and each operating limit in Item 10 of Table 2 to this subpart for spray dryers.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to 4-hour block averages according to § 63.8600(a); maintaining the average operating temperature for each 4-hour block period at or above the average operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
11. Floor tile press dryer.	Each emission limit in Table 1 to this subpart and each operating limit in Item 11 of Table 2 to this subpart for floor tile press dryers.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to 4-hour block averages according to § 63.8600(a); maintaining the average operating temperature for each 4-hour block period at or below the average operating temperature established during the dioxin/furan performance test in which compliance was demonstrated.	
12. Sanitaryware shuttle kiln.	a. Minimize HAP emissions.	<ul style="list-style-type: none"> <li>i. Maintaining records documenting your use of natural gas, or an equivalent fuel, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and</li> <li>ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.8665; and</li> <li>iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.8635(g); and</li> <li>iv. Using a designed firing time and temperature cycle for each sanitaryware shuttle kiln; and</li> <li>v. For each firing load, documenting the total tonnage of greenware placed in the kiln to ensure that it is not greater than the maximum load identified in Item 1.a.iii of Table 3 to this subpart; and</li> <li>vi. Following maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles; and</li> </ul>	

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table:

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .	Or by . . .
		vii. Developing and maintaining records for each sanitaryware shuttle kiln, as specified in § 63.8640.	

[FR Doc. 2019–22812 Filed 10–31–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA–HQ–OPP–2018–0047; FRL–10000–79]

#### Isotianil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of isotianil in or on banana. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective November 1, 2019. Objections and requests for hearings must be received on or before December 31, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the

#### SUPPLEMENTARY INFORMATION).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0047, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, P.E., Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main

telephone number: (703) 305–7090; email address: [RDfRNotices@epa.gov](mailto:RDfRNotices@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

###### B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl). To access the OCSPP test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines."

###### C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0047 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or

before December 31, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0047, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

##### II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 11, 2018 (83 FR 15528) (FRL–9975–57), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8656) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide isotianil in or on banana at 0.01 parts per million (ppm). That document referenced a summary of the petition prepared by

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
		1.0E0 lb/TBtu or 1.1E–2 lb/GWh.	LEE Testing for 90 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.

<sup>1</sup> For LEE emissions testing for total PM, total HAP metals, individual HAP metals, HCl, and HF, the required minimum sampling volume must be increased nominally by a factor of 2.

<sup>2</sup> Gross output.

<sup>3</sup> Incorporated by reference, see § 63.14.

<sup>4</sup> You may not use the alternate SO<sub>2</sub> limit if your EGU does not have some form of FGD system and SO<sub>2</sub> CEMS installed.

[FR Doc. 2020–07878 Filed 4–14–20; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA–HQ–OAR–2018–0417; FRL–10006–80–OAR]

RIN 2060–AT74

### National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production 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 Hydrochloric Acid (HCl) Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, in this action we are finalizing amendments to add electronic reporting; address periods of startup, shutdown, and malfunction (SSM); and establish work practice standards for maintenance activities pursuant to the Clean Air Act (CAA). We are making no revisions to the numerical emission limits based on the risk analysis or technology review. Although these amendments are not anticipated to result in reductions in emissions of hazardous air pollutants (HAP), they will result in improved monitoring, compliance and implementation of the rule.

**DATES:** This final rule is effective on April 15, 2020.

**ADDRESSES:** The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0417. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Nathan Topham, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0483; fax number: (919) 541–4991; and email address: [topham.nathan@epa.gov](mailto:topham.nathan@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](mailto:hollingsworth.terri@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania

Ave. NW, Washington, DC 20460; telephone number: (202) 564–7042; and email address: [mia.marcia@epa.gov](mailto:mia.marcia@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  
CDX Central Data Exchange  
Cl<sub>2</sub> chlorine  
ERT Electronic Reporting Tool  
HAP hazardous air pollutant(s)  
HCl hydrochloric acid  
HI hazard index  
HQ hazard quotient  
IARC International Agency for Research on Cancer  
ICR Information Collection Request  
MACT maximum achievable control technology  
MIR maximum individual risk  
NAAQS National Ambient Air Quality Standards  
NESHAP national emission standards for hazardous air pollutants  
NTTAA National Technology Transfer and Advancement Act  
RFA Regulatory Flexibility Act  
RTR Risk and Technology Review  
TOSHI target organ-specific hazard index  
UMRA Unfunded Mandates Reform Act

*Background information.* On February 4, 2019, the EPA proposed the results of the RTR for the HCl NESHAP and proposed amendments to add electronic reporting and address periods of SSM. In the proposal, the EPA also solicited public comments regarding maintenance activities. 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 *Summary of Public Comments and*

*Responses for Risk and Technology Review for Hydrochloric Acid Production*, in Docket ID No. EPA–HQ–OAR–2018–0417. 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 HCl Production source category and how does the NESHAP regulate HAP emissions from the source category?
  - C. What changes did we propose for the HCl Production source category in our February 4, 2019, proposal?
- III. What is included in this final rule?
  - A. What are the final rule amendments based on the risk review for the HCl Production source category?
  - B. What are the final rule amendments based on the technology review for the HCl Production source category?
  - C. What are the final rule amendments pursuant to section 112(d)(2) and (3) for the HCl Production source category?
  - D. What are the final rule amendments addressing emissions during periods of SSM?
  - E. What other changes have been made to the NESHAP?
  - F. What are the effective and compliance dates of the standards?
- IV. What is the rationale for our final decisions and amendments for the HCl Production source category?
  - A. Residual Risk Review for the HCl Production Source Category
  - B. Technology Review for the HCl Production Source Category
  - C. Amendments Addressing Emissions During Periods of SSM
  - D. Other 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 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.* 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 <sup>1</sup> code
HCl production and fume silica production.	HCl Production.	325180

<sup>1</sup> 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/hydrochloric-acid-production-national-emission-standards-hazardous>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

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

## C. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by June 15, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

## II. Background

### A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. “Major sources” are those that

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

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

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them “as necessary (taking into account developments in practices, processes, and control technologies)” no less frequently than every 8 years, pursuant

to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).<sup>1</sup> For more information on the statutory authority for this rule, see 84 FR 1570, February 4, 2019.

#### *B. What is the HCl Production source category and how does the NESHAP regulate HAP emissions from the source category?*

The EPA promulgated the HCl Production NESHAP on April 17, 2003 (68 FR 19075). The standards are codified at 40 CFR part 63, subpart NNNNN. The HCl production industry consists of facilities that produce a liquid HCl product from a gas stream containing HCl through absorption.

The HCl production facility is the basic unit defined in the NESHAP. Specifically, the rule defines an HCl production facility as the collection of unit operations and equipment associated with the production of liquid HCl product. The production of liquid HCl product occurs through the absorption of gaseous HCl into either water or an aqueous HCl solution. The HCl production facility includes HCl storage tanks (as defined in 40 CFR 63.9075), HCl transfer operations that load the HCl product into a tank truck, rail car, ship, or barge, and equipment leaks. A plant site could have several separate and distinct HCl production facilities. The affected source includes all HCl production facilities at the same site. An HCl production facility begins at the point where a gaseous stream containing HCl enters an absorber and ends at the point where the liquid HCl product is loaded into a tank truck, rail car, ship, or barge, at the point the HCl product enters another process on the

plant site, or at the point the HCl product leaves the plant site via pipeline. The source category covered by this MACT standard currently includes 19 facilities.

The 2003 NESHAP established emissions limitations for existing and new process vents, storage tanks, transfer operations, and equipment leaks. The NESHAP includes numerical emissions limitations for process vents, HCl storage tanks, and HCl transfer operations as well as work practice standards for equipment leaks.

#### *C. What changes did we propose for the HCl Production source category in our February 4, 2019, proposal?*

On February 4, 2019, the EPA published a proposed rule in the **Federal Register** for the HCl Production NESHAP, 40 CFR part 63, subpart NNNNN, that took into consideration the RTR analyses and proposed no changes to the NESHAP based on our CAA section 112(f) and 112(d)(6) (RTR) reviews. In addition, we proposed to add electronic reporting and to remove exemptions for periods of SSM. Finally, we sought public comments on work practice standards for maintenance activities.

We proposed revisions to the SSM provisions of the standards to ensure that they are consistent with the Court decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008). 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.

#### **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 HCl Production source category and the EPA's decision that revisions to the NESHAP are not necessary under the risk review or technology review because the NESHAP protects public health with an ample margin of safety and protects against an adverse environmental effect. We did not identify any developments in practices, processes, or control technologies under the technology review that warrant revisions to the MACT standards for this source category. However, this action finalizes other changes to the NESHAP, including removal of exemptions for periods of SSM, and the addition of electronic reporting requirements. This action also reflects changes to the

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



February 2019 proposal in consideration of comments received during the public comment period related to work practice standards for maintenance activities described in section IV of this preamble.

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

This section describes the final actions regarding the HCl Production NESHAP that the EPA is taking pursuant to CAA section 112(f). The EPA proposed no changes to the NESHAP based on the risk review conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks caused by emissions from HCl production are acceptable, and that the standards provide an ample margin of safety to protect public health and that more stringent standards are not necessary to prevent an adverse environmental effect.

The EPA is, therefore, not revising the standards under CAA section 112(f)(2) (for NESHAP 40 CFR part 63, subpart NNNNN) based on the residual risk review and is readopting the existing standards under CAA section 112(f)(2). See *Summary of Public Comments and Responses for the Risk and Technology Review for the Hydrochloric Acid Production Source Category*, available in the docket for this action, for discussion of key comments and responses regarding the residual risk review.

*B. What are the final rule amendments based on the technology review for the HCl Production 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 pursuant to section 112(d)(2) and (3) for the HCl Production source category?*

In the February 4, 2019, proposal, the Agency sought comments on maintenance provisions recommended by industry prior to proposal to address the anticipated removal of SSM exemptions from the NESHAP. A company that owns multiple HCl production facilities and a trade association representing HCl producers commented that removing the SSM exemption would create uncertainty regarding how emissions from intermittent planned maintenance activities would be regulated.

Commenters stated that equipment is cleaned and cleared of chemicals prior to opening to the atmosphere for maintenance activities. The commenters recommended work practice standards in lieu of numerical emissions standards for maintenance activities due to the impracticality of capturing and measuring these emissions.

In this final rule, based on consideration of public comments, the EPA is adding work practice standards for maintenance vents to ensure emissions from these activities are subject to standards. As discussed in section IV.D of this preamble, we determined that it is impractical to measure the extremely small amounts of HCl and chlorine (Cl<sub>2</sub>) that could be emitted after opening these “maintenance vents” to the atmosphere and that these emissions could be adequately addressed through work practice standards.

*D. What are the final rule amendments addressing emissions during periods of SSM?*

The Agency is finalizing, as proposed, changes to the HCl Production NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club v. EPA*, 551 F.3d 1019 (DC Cir. 2008), the EPA is establishing standards in this rule that apply at all times. Table 7 to Subpart NNNNN of Part 63 (General Provisions applicability table) is being revised to change several references related to requirements that apply during periods of SSM. The EPA eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made changes to the rule to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. Other than the periods of maintenance activities described above which will be covered by work practice standards, the EPA determined that facilities in this source category can meet the applicable emission standards in the HCl Production NESHAP at all times, including periods of startup and shutdown. Also, as stated in our proposal, 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 Court in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (2016). The legal rationale and detailed changes for SSM periods that are being finalized in this rule are set forth in the preamble to the proposed

rule. See 84 FR 1584 through 1587 (February 4, 2019) and discussed below.

1. 40 CFR 63.9005 General Duty

We are finalizing, as proposed, revisions to the General Provisions table (Table 7) entry for 40 CFR 63.6(e)(1)(i) by changing the “yes” in column 3 to a “no.” Section 63.6(e)(1)(i) describes the general duty to minimize emissions 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. The EPA is adding general duty regulatory text at 40 CFR 63.9005(b) that reflects the general duty to minimize emissions during all periods of operation.

The EPA is also revising the General Provisions table (Table 7) entry for 40 CFR 63.6(e)(1)(ii) by changing the “yes” in column 3 to a “no.” This provision requires malfunctions to be corrected as quickly as practicable and minimize emissions consistent with safety and good air pollution control practices. 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 63.9005(b).

2. SSM Plan

As proposed, the EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.6(e)(3) by changing the “yes” in column 3 to a “no.” 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 proposing to remove 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 the same incentive to plan for and achieve compliance as they do during periods of normal operation and, thus, planning requirements specific for SSM are no longer necessary.

3. Compliance with Standards

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.6(f)(1) by changing the “yes” in column 3 to a “no.” 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 40 CFR 63.6(f)(1) and held that the CAA requires a standard to apply continuously. Consistent with *Sierra*

*Club*, the EPA is revising standards in this rule to apply at all times.

#### 4. 40 CFR 63.9020 Performance Testing

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.7(e)(1) by changing the “yes” in column 3 to a “no.” Section 63.7(e)(1) describes performance testing requirements. The EPA is instead adding a performance testing requirement at 40 CFR 63.9020(a)(3). The performance testing requirements we are adding differ from the General Provisions performance testing provisions in several respects. Specifically, the new performance testing requirements do not include the language in 40 CFR 63.7(e)(1) restating the SSM exemption. However, we are including similar language that precludes startup and shutdown periods from being considered “representative” for purposes of performance testing. We are including language in 40 CFR 63.9020(a)(3), similar to that in 40 CFR 63.7(e)(1), providing that performance tests conducted under this subpart should not be conducted during malfunctions. This is because conditions during malfunctions are 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 records an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available upon request by the Administrator such records “as may be necessary to determine the condition of the performance test,” but does not specifically require the information to be recorded. The regulatory text the EPA is adding in 40 CFR 63.9020(a)(3) includes the record requirements in 40 CFR 63.7(e)(1) and also makes explicit the requirement to record the information.

#### 5. Monitoring

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the “yes” in column 3 to a “no.” The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of the removal of the SSM exemption and 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 7) entry

for 40 CFR 63.8(d)(3) by changing the “yes” in column 3 to a “no.” 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 63.9005(d)(5) 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 § 63.8(d)(2).”

#### 6. 40 CFR 63.9055 Recordkeeping

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.10(b)(2)(i) by changing the “yes” in column 3 to a “no.” Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recordkeeping provisions are no longer necessary because the EPA is finalizing, as proposed, that recordkeeping and reporting applicable to normal operations will apply during 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 recordkeeping for startup and shutdown periods separate from the requirement that applies during normal operation.

We are revising the General Provisions table (Table 7) entry for 40 CFR 63.10(b)(2)(ii) by changing the “yes” in column 3 to a “no.” Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is adding such requirements to 40 CFR 63.9055. The regulatory text we are adding differs from that in the General Provisions; the General Provisions require 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 finalizing, as proposed, that this requirement applies 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 63.9055 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 which the source failed to meet, 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 7) entry for 40 CFR 63.10(b)(2)(iv) by changing the “yes” in column 3 to a “no.” When applicable, the provision requires sources to record actions taken during SSM events when those 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 in 40 CFR 63.9055.

We are revising the General Provisions table (Table 7) entry for 40 CFR 63.10(b)(2)(v) by changing the “yes” in column 3 to a “no.” 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.

#### 7. 40 CFR 63.9050 Reporting

The EPA is revising the General Provisions table (Table 7) entry for 40 CFR 63.10(d)(5) by changing the “yes” in column 3 to a “no.” Section 63.10(d)(5) describes the reporting requirements for SSM events. To replace the General Provisions reporting requirement, the EPA is adding reporting requirements to 40 CFR 63.9050(c)(5). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as stand-alone reports. We are adding language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required in 40 CFR 63.9050. 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 limit, 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 finalizing 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.

The amendments 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. 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 7) entry for 40 CFR 63.10(d)(5)(ii) by changing the “yes” in column 3 to a “no.” Section 63.10(d)(5)(ii) describes an immediate report for SSM events 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 SSM event were not consistent with an SSM plan, because such plans will no longer be required.

We are revising the General Provisions table (Table 7) entry for 40 CFR 63.10(c)(15) by changing the “yes” in column 3 to a “no.” The EPA is finalizing, as proposed, 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) will no longer be available to satisfy the requirements of 40 CFR 63.10(c)(10) through (12).

The EPA is also finalizing a revision to the performance testing requirements at 40 CFR 63.9020(a)(2) through (3). This final rule text states that each performance test must be conducted under normal operating conditions; and operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The final rules also require that operators maintain records to document

that operating conditions during the test represent normal operations.

Section IV.C.3 of this preamble provides a summary of key comments we received on the SSM provisions and our responses.

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

This rule also finalizes, as proposed, revisions to several other NESHAP requirements. The revisions are briefly described in this section (refer to section IV.D of this preamble for further details).

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners or operators of facilities in the HCl Production source category submit electronic copies of certain required performance test results and reports, performance evaluation reports, compliance reports, and Notice of Compliance Status (NOCS) reports through the EPA’s Central Data Exchange (CDX) website. Performance test and performance evaluation test reports are prepared using the EPA’s Electronic Reporting Tool (ERT). We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility (*i.e.*, a possible outage in the CDX or Compliance and Emissions Data Reporting Interface (CEDRI) or a *force majeure* event in the time just prior to a report’s due date), as well as the process to assert such a claim. In addition, we are finalizing all proposed revisions for clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. No public comment has been received on the editorial corrections and clarifications, and these changes are being finalized as proposed. See 84 FR 1594 and 1596 (February 4, 2019).

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

The revisions to the MACT standards being promulgated in this action are effective on April 15, 2020. Existing affected sources and new affected sources that commenced construction or reconstruction on or before February 4, 2019, must comply with the amendments no later than 180 days after April 15, 2020. Affected sources that commence construction or reconstruction after February 4, 2019, must comply with all requirements of 40 CFR part 63, subpart NNNNN, including the amendments being finalized, no later than the effective date of the final rule or upon startup,

whichever is later. The EPA is finalizing four changes that affect ongoing compliance requirements for this subpart. First, we are changing the requirements for SSM by removing the provisions that provide an exemption from the requirements to meet the standard during SSM periods. Second, we are removing the requirement to develop and implement an SSM plan. Third, we are adding work practice standards for maintenance vents. Finally, we are adding a requirement that performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports be submitted electronically. From the assessment of the timeframe needed for implementing the entirety of the revised requirements, the EPA proposed a period of 180 days to be the most expeditious compliance period practicable. The EPA received public comments from owners of HCl production facilities requesting more than 180 days for electronic reporting requirements to go into effect. Thus, the compliance date of the final amendments for all existing sources and new sources that commenced construction or reconstruction on or before February 4, 2019, will be October 13, 2020 for all revisions other than the electronic reporting requirements, which will be April 16, 2021 or when final electronic reporting templates for subpart NNNNN are finalized, whichever is later. The compliance date of the final amendments for new sources that commence construction or reconstruction after February 4, 2019, will be April 15, 2020.

### **IV. What is the rationale for our final decisions and amendments for the HCl Production source category?**

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

#### *A. Residual Risk Review for the HCl Production Source Category*

##### **1. What did we propose pursuant to CAA section 112(f) for the HCl Production 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 February 4, 2019, proposed rule for 40 CFR part 63, subpart NNNNN (84 FR 1582). The results of the risk assessment for the proposal are presented briefly in Table

2 of this preamble. More detail may be found in the residual risk technical support document, *Residual Risk Assessment for the Hydrochloric Acid Production Source Category in Support*

of the 2018 Risk and Technology Review Proposed Rule, which is available in the docket for this rulemaking.

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR HYDROCHLORIC ACID PRODUCTION SOURCE CATEGORY

	Cancer MIR <sup>1</sup> (in 1 million)		Cancer incidence (cases per year)	Population with cancer risk of 1-in-1 million or more	Population with cancer risk of 10-in-1 million or more	Max chronic noncancer HI <sup>2</sup> actuals (and allowables)
	Based on actual emissions	Based on allowable emissions				
Source Category .....	0	0	0	0	0	0.2 (2)
Whole Facility .....	600	.....	0.09	980,000	130,000	6

<sup>1</sup> Maximum individual risk.

<sup>2</sup> Hazard index.

The results of the inhalation cancer risk assessment, as shown in Table 2 of this preamble, indicate there is no quantifiable cancer risk posed by the source category since the two HAP emitted from the HCl Production source category are not known or suspected carcinogens. Neither the EPA nor the International Agency for Research on Cancer (IARC) has evaluated the weight of evidence with respect to human carcinogenicity for Cl<sub>2</sub>. However, IARC has determined that HCl is not classifiable as a human carcinogen. Likewise, the total estimated cancer incidence is 0 (zero) excess cancer cases per year and no people are estimated to have cancer risk associated with this source category. The maximum modeled chronic noncancer target-organ-specific hazard index (TOSHI) value for the source category based on actual emissions is estimated to be 0.2, driven by emissions of Cl<sub>2</sub> from process vents. The target organ affected is the respiratory system. The maximum modeled chronic noncancer TOSHI increases when based on allowable emissions, with a TOSHI as high as 2 (respiratory) driven by Cl<sub>2</sub> emissions from process vents at two facilities. Based on allowable emissions, 300 people are estimated to have a noncancer HI above 1 at these two facilities.

The screening and refined analyses for acute impacts were based on an estimate of peak hourly actual emissions. To estimate the peak hourly emission rates from the annual average rates, a default multiplier of 10 was used for emission points in the source category. The choice of a default multiplier of 10 is discussed in section III.C.3.c of this preamble. The results of the acute refined analysis indicate that the maximum off-facility-site acute hazard quotient (HQ) is 0.7, based on

the reference exposure level value for HCl, and occurs at one facility.

No HAP known to be persistent and bio-accumulative in the environment (cadmium, dioxins, polycyclic organic matter, mercury, arsenic, and lead) are emitted from this source category. Therefore, a multi-pathway assessment is not warranted. The only environmental HAP emitted by facilities in this source category is HCl. Results of the analysis for HCl indicate that, based on actual emissions, the maximum annual off-site concentration is below all ecological benchmarks for all facilities. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

All health risk factors were weighed, including those shown in Table 2 of this preamble, in our risk acceptability determination and the EPA proposed that the risks posed by the HCl Production source category are acceptable (see section IV.B.1 of proposal preamble, 84 FR 1570, February 4, 2019).

The EPA then considered whether 40 CFR part 63, subpart NNNNN, provides an ample margin of safety to protect public health and whether, taking into consideration costs, energy, safety, and other relevant factors, and to prevent an adverse environmental effect. In considering whether standards are required to provide an ample margin of safety to protect public health, the same risk factors were considered as for the acceptability determination along with costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. As discussed in the proposal preamble (84 FR 1570, February 4, 2019), after considering all the factors mentioned above, the EPA proposed that additional emissions

controls for the HCl Production source category are not required to provide an ample margin of safety to protect public health. The Agency also proposed that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. See sections IV.B.2 and 3 of the proposal preamble, 84 FR 1570, February 4, 2019.

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

The EPA did not receive any public comments or data that caused the Agency to change our emissions estimates, risk assessment methods, or decisions regarding acceptability and ample margin of safety from those presented in the proposal. Therefore, the EPA did not rerun the risk modeling analyses. At proposal, we determined that risks due to the HCl Production source category are acceptable, no revisions are needed to provide an ample margin of safety, and more stringent standards are not necessary to prevent an adverse environmental effect. Upon consideration of the comments received, we are finalizing our determination that the current standards provide an ample margin of safety and it is not necessary to set a more stringent standard to prevent an adverse environmental effect. More details regarding the risk assessment can be found in the *Residual Risk Assessment for the Hydrochloric Acid Production Source Category in Support of the 2019 Risk and Technology Review Final Rule*, available in the docket for this rulemaking.

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

The EPA received mixed public comments on the risk review, with some

commenters supportive of our methodology and proposed decisions while others disagreed. Examples from commenters on suggested changes to the EPA's risk assessment methodology included that the EPA should lower its presumptive limit of acceptability for cancer risks to below 100-in-1 million, include emissions outside of the source categories in question in the risk assessment, and assume that pollutants with noncancer health risks have no safe level of exposure. After review of all the comments received, it was determined that no changes were necessary. The comments and specific responses can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Review for the Hydrochloric Acid Production Source Category*, available in the docket for this action.

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

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

As noted above, the EPA did not receive any comments that resulted in a change to the risk estimates for the source category. After considering all comments regarding the EPA's risk review methodology and proposed decisions, the EPA has determined to finalize its proposed determinations regarding risk acceptability, ample margin of safety, and adverse environmental effects. For the reasons explained in the proposed rule, in section IV.A.2 of this preamble, and in the EPA's Response to Comment document for this final rule, the EPA determines that the risks from the source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, the

EPA is not revising the standards pursuant to CAA section 112(f)(2) based on the residual risk review, and the Agency is readopting the existing standards under CAA section 112(f)(2).

At proposal, the EPA sought public comments on the use of the updated ethylene oxide cancer risk value for regulatory purposes.<sup>2</sup> We received a number of comments related to this request and as stated in the proposal for the Miscellaneous Organic NESHAP RTR proposal, we are incorporating those comments into the record for that rulemaking and plan to respond to them in the final RTR rulemaking for that source category. See 84 FR 69187, December 17, 2019.<sup>3</sup> We also note that the Agency is taking action to address emissions of ethylene oxide in a number of ways as described in the proposal preamble. See 84 FR 1584, February 4, 2019.

#### B. Technology Review for the HCl Production Source Category

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

Pursuant to CAA section 112(d)(6), the EPA proposed to conclude that no revisions to the current standards are necessary for the HCl Production source category. No developments were found in practices, processes, and control technologies that could be applied to HCl production facilities.

##### 2. How did the technology review change for the HCl Production source category?

We have not changed any aspect of the technology review since the February 4, 2019, RTR proposal for the HCl Production source category.

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

The comments and our specific responses can be found in the comment summary and response document titled *Summary of Public Comments and Responses for the Risk and Technology*

<sup>2</sup> The EPA did so because the assessment of facility-wide risks, undertaken to provide context for the source category risk, indicated that the maximum facility-wide cancer MIR was 600-in-1 million, mainly driven by ethylene oxide emissions from a variety of industrial processes, none of which are part of this source category. See 84 FR 1583, February 4, 2019.

<sup>3</sup> The EPA held a public hearing on March 27, 2019, in Washington, DC, at which time a number of speakers spoke to the use of the updated ethylene oxide cancer risk value for regulatory purposes. A transcript of that hearing has been placed in the docket for this rulemaking and, as well, will be incorporated by reference in the docket for the rulemaking for the Miscellaneous Organic NESHAP RTR (Docket ID No. EPA-HQ-OAR-2018-0746).

*Review for Hydrochloric Acid Production*, which is available in the docket for this action.

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

Pursuant to CAA section 112(d)(6), we are finalizing the technology review as proposed. For the reasons explained in the proposed rule, we determined that there are no developments in practices, processes, or control technologies that warrant revisions to the standards. We evaluated all of the comments on the EPA's technology review and, for the reasons stated in our responses to those comments, we determined no changes to the review are needed.

#### C. Amendments Addressing Emissions During Periods of SSM

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

We proposed removing and revising provisions related to SSM that are not consistent with the requirement that standards apply at all times. More information concerning our proposal on SSM can be found in the proposed rule (84 FR 1584, February 4, 2019).

##### 2. How did the SSM provisions change since proposal?

Since proposal, the SSM provisions have not changed.

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

The comments and our specific responses can be found in the comment summary and response document titled *Summary of Public Comments and Responses for the Risk and Technology Review for Hydrochloric Acid Production*, which is available in the docket for this action.

##### 4. What is the rationale for our final approach and final decisions to SSM-related requirements?

We evaluated all of the comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the preamble to the proposed rule (84 FR 1584, February 4, 2019) and our response to comment document, we are removing the provisions related to SSM that are not consistent with the requirement that the standards apply at all times, and are finalizing revised requirements for periods of SSM, as proposed.

#### D. Other Amendments

1. What other amendments did we propose for the HCl Production source category?

We proposed that owners or operators submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports through the EPA's CDX using the CEDRI. For initial notifications, initial startup reports, annual compliance certifications, and deviation reports, the proposed rule would require that owners or operators use the appropriate spreadsheet template to submit information to CEDRI. We also proposed two broad circumstances in which we may provide extension to these requirements. We proposed at 40 CFR 63.9050(m) that an extension may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. We also proposed at 40 CFR 63.9050(n) that an extension may be warranted due to a *force majeure* event, such as an act of nature, act of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The Agency sought public comment on whether there was a need to address equipment that is opened during regular maintenance activities, in light of the proposed removal of the SSM exemptions, and if these maintenance activities should be addressed via work practice standards. See 84 FR 1589, February 4, 2019. Prior to the February 4, 2019, proposal, industry representatives expressed concerns about the regulatory status of certain equipment opened to the atmosphere during periods for maintenance, given that they believed the activities previously were exempted under the SSM provisions.

2. How did the other amendments for the HCl Production source category change since proposal?

We are finalizing as proposed the requirements for owners or operators to submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports electronically. We also are finalizing, as proposed, the provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility.

After considering the public comments received regarding maintenance activities that occur during startup and shutdown, the EPA is

finalizing a requirement for equipment designated as "maintenance vents" to be thoroughly purged of HCl and Cl<sub>2</sub> prior to opening that equipment to the atmosphere. We have added paragraph (f) to 40 CFR 63.9040 with requirements for equipment that owners/operators designate as a maintenance vent. Owners or operators must demonstrate that equipment served by a maintenance vent contains less than 20 pounds of residual HCl or Cl<sub>2</sub> prior to opening that equipment to the atmosphere.

3. What key comments did we receive on the other amendments for the HCl Production source category and what are our responses?

We received one comment providing input on the proposed requirement for owners and operators of HCl production facilities to submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports.

*Comment:* One commenter stated that the EPA must not finalize the proposed electronic reporting extension provisions because the definition of a *force majeure* event is too broad, the provisions do not set a firm deadline to request an extension of the reporting deadline, and the decision to allow an extension is solely within the discretion of the Administrator. The commenter urged that the proposed provisions are unlawful and arbitrary because they would create a broad and vague mechanism that a facility owner or operator could use to evade binding emission standards by evading the binding compliance reporting deadlines set to assure compliance with those standards. The commenter further stated that the EPA should not import the concept of "*force majeure*" into any part of the CAA, as to do so is a variation of the prior malfunction exemptions that are unlawful under the CAA. The commenter also noted that the EPA has provided that there are no known issues with submission of ERT-formatted performance test and evaluation reports in CEDRI (per the Petroleum Refinery NESHAP), thus, there is no rational basis for providing the proposing reporting extensions. At a minimum, the commenter requested that the EPA set a new firm deadline to assure that the extension request allows only a temporary period when the facility need not report, such as a 10-day extension, rather than an open-ended extension without a deadline.

*Response:* The commenter states that the brief case-by-case extension of report submittal deadlines is a "reporting exemption." This is not the

case. The proposed provisions the commenter questions are in paragraphs 40 CFR 63.9050(m) and (n).

There is no exception or exemption to reporting, much less an exemption from compliance with the numerical emission standards, only a method for requesting an extension of the reporting deadline. Reporters are required to justify their request and identify a reporting date. There is no predetermined timeframe for the length of extension that can be granted, as this is something best determined by the Administrator (*i.e.*, the EPA Administrator or delegated authority as defined in 40 CFR 63.2) when reviewing the circumstances surrounding the request. Different circumstances may require a different length of extension for electronic reporting. For example, a tropical storm may delay electronic reporting for a day, but a Hurricane Katrina scale event may delay electronic reporting much longer, especially if the facility has no power, and, as such, the owner or operator has no ability to access electronically stored data or to submit reports electronically. The Administrator will be the most knowledgeable of the events leading to the request for extension and will assess whether an extension is appropriate, and, if so, a reasonable length for the extension. The Administrator may even request that the report be sent in hard copy until electronic reporting can be resumed. While no new fixed duration deadline is set, the regulation requires that the report be submitted electronically as soon as possible after the CEDRI outage or after the *force majeure* event resolves.

The concept of *force majeure* has been implemented by the EPA in this context since May 2007 within the CAA requirements through the performance test extensions provided in 40 CFR 60.8(a)(1) and 63.7(a)(4). Like the performance test extensions, the approval of a requested extension of an electronic reporting deadline is at the discretion of the Administrator.

The EPA disagrees that the ability to request a reporting extension "would create a broad and vague mechanism" that owners and operators "could use to evade binding emissions standards" or evade "binding compliance reporting deadlines" for emissions standards. While reporting is an important mechanism for the EPA and air agencies to assess whether owners and operators are in compliance with emissions standards, reporting obligations are separate from (*i.e.*, in addition to) requirements that an owner or operator be in compliance with an emissions standard. The commenter references

deadlines set forth in the CAA for demonstrating initial compliance following the effective date of emission standards, which differs from deadlines for submitting reports. There are no such deadlines stated in the CAA for report due dates, meaning the EPA has discretion to establish reporting schedules, and also discretion to allow a mechanism for extension of those schedules on a case-by-case basis. In fact, under the commenter's reasoning, if the statutory deadlines for compliance with standards were read to strictly apply to continuing reporting requirements, no such reporting could be required after 3 years from the promulgation of the standards. This would not be a reasonable result. Reporting deadlines are often different from compliance deadlines. Rules under 40 CFR part 60 and 63 typically allow months following an initial compliance deadline to conduct testing and submit reports, but compliance with standards is required upon the compliance date.

Additionally, the ability to request a reporting extension does not apply to a broad category of circumstances; on the contrary, the scope for submitting an extension request for an electronic report is very limited in that claims can only be made for an event outside of the owner's or operator's control that occurs in the 5 business days prior to the reporting deadline. The claim must then be approved by the Administrator, and in approving such a claim, the Administrator agrees that something outside the control of the owner or operator prevented the owner or operator from meeting its reporting obligation. In no circumstance does this electronic reporting extension allow for the owner or operator to be out of compliance with the underlying emissions standards. If the Administrator determines that a facility has not acted in good faith to reasonably report in a timely manner, the Administrator can reject the claim and find that the failure to report timely is a deviation from the regulation. CEDRI system outages are infrequent, but the EPA knows when they occur and whether a facility's claim is legitimate. *Force majeure* events (e.g., natural disasters impacting a facility) are also usually well-known events.

Finally, the EPA disagrees that the existing statistics on the use of CEDRI and e-reporting precludes the need for a provision to account for an outage of the CEDRI system. Prudent management of electronic data systems builds in allowances for unexpected, non-routine delays, such as occurred on July 1, 2016, and October 20–23, 2017, and is consistent with the already-existing

provisions afforded for unexpected, non-routine delays in performance testing [see 40 CFR 60.8(a)(1) and (2) and 40 CFR 63.7(a)(4)]. For both electronic reporting and performance testing, owners or operators are to conduct and complete their activities within a short window of time. The EPA believes it is prudent to allow owners or operators to make *force majeure* claims for situations beyond their reasonable control. The EPA also disagrees that incidental issues with questions on completing the form or the procedures for accessing CEDRI for which the CEDRI Helpdesk is available, are conditions that would be considered either *force majeure* or a CEDRI system outage. The existence of the Helpdesk for answering questions on procedures in submitting reports to CEDRI have no impact on the availability of CEDRI in such a circumstance. The purpose of these requests for extensions are to accommodate owners and operators in cases where they cannot successfully submit a report electronically for reasons that are beyond their control and occur during a short window of time prior to the reporting deadline. The extension is not automatic, and the Administrator retains the right to accept or reject the request. The language was added as part of the standard electronic reporting language based on numerous comments received on the proposal for the Electronic Reporting and Recordkeeping Requirements for the New Source Performance Standards (80 FR 15100, March 20, 2015). As such, we have determined that no changes to the electronic reporting requirements are necessary in the final rule.

*Comment:* Two commenters requested that the EPA address small and intermittent levels of HCl and Cl<sub>2</sub> emissions that could occur during maintenance activities. According to the commenters, these activities were previously not subject to the NESHAP due to the SSM exemptions included in the HCl Production NESHAP. The commenters state that lines and equipment used in this source category are routinely cleared and cleaned of chemicals. The frequency of these activities varies depending on the facility, but plants may be shut down annually for scheduled maintenance. The equipment is purged free of materials and washed with water, and in some cases, it is further purged with air to a control device. Even in these scenarios after washing and purging, when the equipment is opened to the atmosphere, there may be some small trace levels of HCl and/or Cl<sub>2</sub> that could be present and potentially emitted. The

commenters claim that it would be significantly burdensome for every vent with these small amounts of HCl or Cl<sub>2</sub> emissions to be addressed by the rule's requirements for process vents. The commenters state that this could trigger costly controls, testing, monitoring, and recordkeeping/reporting obligations for trace emissions.

The commenters suggest two courses of action for the EPA to address emissions from maintenance activities and vents through which emissions occur during these periods. These suggestions are, (1) adding a definition for maintenance vent to the list of sources excluded from process vent standards, or (2) adding a work practice standard that applies to maintenance vents, similar to work practices added in other recent NESHAP amendments in which the SSM exemptions were removed.

The commenters state that removing the SSM exemption creates uncertainty regarding whether any emissions from a maintenance vent, regardless of magnitude, may become subject to the standard. The commenters also add that planned maintenance activities typically occur on an annual basis. The commenters state that they believe the best performing sources in the category drain and purge lines prior to performing maintenance activities. The commenters state that should the EPA choose to regulate emissions from these maintenance activities, setting a numerical emission limit would be impractical because the type and size of equipment being maintained differs between facilities. Furthermore, the commenters assert that measuring emissions from these maintenance activities would be impractical due to the small magnitude of emissions and their short duration.

*Response:* Upon consideration of the public comments submitted, the EPA is finalizing a definition for maintenance vents and work practice standards that minimize the potential for emissions from maintenance activities that occur during periods of startup or shutdown. We agree with the commenters that it is impractical to measure the small levels of HCl or Cl<sub>2</sub> that could be emitted from these pieces of equipment during intermittent maintenance activities. Furthermore, we agree with the commenters that cleaning and purging equipment to a control device prior to opening that equipment during maintenance activities represents the performance of the best performing sources in the industry.

Additional comments on the proposed electronic reporting requirements and other amendments



discussed in this section and our specific responses to those comments can be found in the memorandum titled *Summary of Public Comments and Responses for the Risk and Technology Review for Hydrochloric Acid Production*, available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the other amendments to the HCl Production source category?

We considered the comments on the EPA's proposed amendments to require electronic reporting initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports. For the reasons explained in the proposed rule, and in our responses to those comments, we are establishing electronic reporting, as proposed. These amendments will increase the ease and efficiency of data submittal and improve data accessibility. More information concerning the proposed requirement for owners and operators of HCl production facilities to submit electronic copies of certain notifications and reports is in the preamble to the proposed rule (84 FR 1593, February 4, 2019) and the document, *Summary of Public Comments and Responses for the Risk and Technology Review for Hydrochloric Acid Production*, available in the docket for this action. Therefore, we are finalizing our approach for submission of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports as proposed. We are, however, allowing facilities up to 1 year from publication of the final rule or 1 year from finalization of the electronic reporting templates for owners/operators of HCl production facilities to use electronic reporting. Furthermore, after considering public comments, we are finalizing work practice standards for periods of maintenance activities.

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

### A. What are the affected facilities?

There are 19 HCl production facilities currently operating as major sources of HAP subject to the final amendments. A complete list of facilities that are currently subject to the MACT standards is available in the memorandum titled *Industry Characterization for the Hydrochloric Acid Production NESHAP Residual Risk and Technology Review Final*, available in Docket ID No. EPA-HQ-OAR-2018-0417.

### B. What are the air quality impacts?

Because the EPA is not revising the emission limits, we do not anticipate any quantifiable air quality impacts as a result of these amendments. However, we determined that the final requirements, including the work practice standards for maintenance activities, are at least as stringent as the current rule requirements. The work practice standards include requirements for facilities to clear equipment of HCl and Cl<sub>2</sub> before it is opened to the atmosphere. These requirements will minimize emissions during these periods.

### C. What are the cost impacts?

The cost impacts from these final amendments are net savings in costs to affected HCl production facilities due to revised recordkeeping and reporting requirements. One way to present cost estimates is in present value (PV terms). The PV for these proposed amendments is equal to an estimated cost savings of \$55,341 at a discount rate of 3 percent and a cost savings of \$44,911 at a discount rate of 7 percent, discounted to 2020. The equivalent annualized value, which is an annualized value consistent with the PV estimates, is equal to \$7,649 at a discount rate of 3 percent and \$7,029 at a discount rate of 7 percent (2016 dollars). The time period over which these estimates are calculated includes the 5-year period following promulgation of these amendments. These calculations are documented in the *Economic Impact Analysis for the Hydrochloric Acid Production RTR Final*, which is available in the docket for this rulemaking.

### D. What are the economic impacts?

As noted earlier, we estimated a nationwide cost savings associated with the final requirements over the 5-year period following promulgation of these amendments. This cost savings will not yield adverse economic impacts to affected entities or markets. For further information on the economic impacts associated with the final requirements, see the memorandum, *Economic Impact Analysis for Hydrochloric Acid Production NESHAP RTR Final*, which is available in the docket for this action.

### E. What are the benefits?

The EPA is not finalizing changes to emissions limits, and we estimate the final changes (*i.e.*, changes to SSM, monitoring, recordkeeping and reporting, and the addition work practices for maintenance activities) are not economically significant. Because these final amendments are not considered economically significant, as

defined by Executive Order 12866 and because no emissions reductions were estimated, we did not estimate any benefits from reducing emissions.

### F. What analysis of environmental justice did we conduct?

As discussed in the preamble to the proposed rule, to examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the HCl Production source category across different demographic groups within the populations living near facilities. When examining the risk levels of those exposed to emissions from HCl production facilities, we found that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

The documentation for this decision is contained in section IV.A of the preamble to the proposed rule and the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Hydrochloric Acid Production*, which is available in the docket for this action.

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

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the risk report, *Residual Risk Assessment for the Hydrochloric Acid Production Source Category in Support of the 2020 Risk and Technology Review Final Rule*, available in the docket for this action.

## VI. Statutory and Executive Order Reviews

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

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

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



*B. Executive Order 13771: Reducing Regulations 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)*

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2032.11. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is finalizing amendments that revise provisions pertaining to emissions during periods of SSM; add requirements for electronic reporting of certain notifications and reports and performance test results; and make other minor clarifications and corrections. This information will be collected to assure compliance with the HCl Production NESHAP.

*Respondents/affected entities:* Owners or operators of HCl production facilities.

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

*Estimated number of respondents:* 19 (assumes no new respondents over the next 3 years).

*Frequency of response:* Initially, occasionally, and annually.

*Total estimated burden:* 22,000 hours (per year) to comply with all of the requirements in the NESHAP. Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$2,700,000 (per year), including \$162,000 annualized capital or operation and maintenance costs, to comply with all of the requirements in the NESHAP.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities 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 among the 14 ultimate parent companies impacted by this proposed action given the Small Business Administration small business size definition for this industry (1,000 employees or greater for NAICS 325180), and no significant economic impact on any of these entities.

*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. None of the HCl production facilities that have been identified as being affected by this final action are owned or operated by tribal governments or located within tribal lands. 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 the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections IV.A of this preamble and the document, *Residual Risk Assessment for the Hydrochloric Acid Production Source Category in Support of the 2020 Risk and Technology Review Final Rule*, which is available 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 action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, the Agency identified no such standards. A thorough summary of the search conducted and results are included in the memorandum titled *Voluntary Consensus Standard Results for Hydrochloric Acid Production Residual Risk and Technology Review*, which is available in the docket for this action.

*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 IV.A of this preamble and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Hydrochloric Acid Production Facilities*, available in the docket for this action.

*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, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 12, 2020.

**Andrew R. Wheeler,**  
Administrator.

For the reasons set forth in the preamble, the EPA is amending 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.*

### Subpart NNNNN—National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

■ 2. Section 63.8985 is amended by revising paragraph (f) to read as follows:

#### § 63.8985 Am I subject to this subpart?

\* \* \* \* \*

(f) An HCl production facility is not subject to this subpart if all of the gaseous streams containing HCl and chlorine (Cl<sub>2</sub>) from HCl process vents, HCl storage tanks, and HCl transfer operations are recycled or routed to another process for process purpose, prior to being discharged to the atmosphere.

■ 3. Section 63.9005 is amended by revising paragraphs (a) through (c) and (d)(4) through (6) to read as follows:

#### § 63.9005 What are my general requirements for complying with this subpart?

(a) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, you must be in compliance with the emission limitations and work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction. After October 13, 2020, for each such source you must be in compliance with the emission limitations in this subpart at all times. For new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, you must be in compliance with the emissions limitations in this subpart at all times.

(b) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction

commenced after February 4, 2019, at all times you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(c) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). For each such source, a startup, shutdown, and malfunction plan is not required after October 13, 2020. No startup, shutdown, and malfunction plan is required for any new or reconstructed source for which construction or reconstruction commenced after February 4, 2019.

(d) \* \* \*

(4) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, ongoing operation and maintenance (O&M) procedures in accordance with the general requirements of §§ 63.8(c)(1) and (3), (c)(4)(ii), and (c)(7) and (8), and 63.9025. After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, ongoing operation and maintenance (O&M) procedures in accordance with the general requirements of §§ 63.8(c)(1)(ii), (c)(3), (c)(4)(ii), and (c)(7) and (8), and 63.9025.

(5) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d). After October

13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d) except for the requirements related to startup, shutdown, and malfunction plans referenced in § 63.8(d)(3). The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (*i.e.*, superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

(6) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c) and (e)(1) and (e)(2)(i). After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c)(1) through (14) and (e)(1) and (e)(2)(i).

■ 4. Section 63.9020 is amended by revising paragraphs (a)(2) and (3) to read as follows:

#### § 63.9020 What performance tests and other procedures must I use?

(a) \* \* \*

(2) Before October 13, 2020, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, you must conduct each performance test under representative conditions according to the requirements in § 63.7(e)(1) and under the specific conditions that this subpart specifies in Table 3. After October 13, 2020 for each such source, and after April 15, 2020 for new and reconstructed sources for which construction or reconstruction commenced after February 4, 2019, you

must conduct each performance test under conditions representative of normal operations. 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.

(3) You may not conduct performance tests during periods of startup, shutdown, or malfunction.

\* \* \* \* \*

■ 5. Section 9025 is amended by revising paragraph (a)(3) to read as follows:

**§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?**

(a) \* \* \*

(3) For at least 75 percent of the operating hours in a 24-hour period, you must have valid data (as defined in your site-specific monitoring plan) for at least 4 equally spaced periods each hour.

\* \* \* \* \*

■ 6. Section 63.9030 is amended by revising paragraph (c) to read as follows:

**§ 63.9030 How do I demonstrate initial compliance with the emission limitations and work practice standards?**

\* \* \* \* \*

(c) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, you must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9045(f) and (g). After October 13, 2020 for such sources, and after April 15, 2020 for new or reconstructed sources which commence construction or reconstruction after February 4, 2019, you must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in §§ 63.9045(f) and (g) and 63.9050(d).

■ 7. Section 63.9040 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

**§ 63.9040 How do I demonstrate continuous compliance with the emission limitations and work practice standards?**

\* \* \* \* \*

(e) For existing sources and for new or reconstructed sources which

commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). After October 13, 2020 for such sources, and after April 15, 2020 for new and reconstructed sources which commence construction or reconstruction after February 4, 2019, the exemptions for periods of startup, shutdown, and malfunction in § 63.6(e) no longer apply.

(f) An owner or operator may designate a process vent as a maintenance vent if the vent is only used as a result of startup or shutdown, of equipment where equipment is emptied, depressurized, degassed or placed into service. The owner or operator does not need to designate a maintenance vent as a HCl process vent, HCl storage tank vent, or an HCl transfer operation. The owner or operator must comply with the applicable requirements in paragraphs (f)(1) and (2) of this section for each maintenance vent by October 13, 2020 or the date of startup for new and reconstructed sources, whichever is later, unless an extension is requested in accordance with the provisions in § 63.6(i).

(1) Prior to venting to the atmosphere, process liquids must be removed from the equipment as much as practical and the equipment must be washed with water or purged with air or otherwise depressurized to a control device, fuel gas system, or back to the process to remove the HCl and Cl<sub>2</sub> until the equipment served by the maintenance vent contains less than 20 pounds of HCl or Cl<sub>2</sub>.

(2) For maintenance vents complying with the requirements in paragraph (f)(1) of this section, the owner or operator shall demonstrate the mass of HCl or Cl<sub>2</sub> in the equipment served by the maintenance vent is less than 20 pounds for each maintenance activity based on the equipment size and contents after considering any contents drained or purged from the equipment. Equipment size may be determined from equipment design specifications. Equipment contents may be determined using process knowledge. The owner or operator must maintain records for five years of the number of maintenance activities for which maintenance vent

provisions are used during each reporting period.

■ 8. Section 63.9045 is amended by revising paragraph (f) to read as follows:

**§ 63.9045 What notifications must I submit and when?**

\* \* \* \* \*

(f) You must submit the Notification of Compliance Status, including the performance test results, within 180 calendar days after the applicable compliance dates specified in § 63.8995.

\* \* \* \* \*

■ 9. Section 63.9050 is amended by revising paragraph (a), (c)(4) and (5), (d) introductory text, and (f) introductory text and adding paragraphs (g) through (n) to read as follows:

**§ 63.9050 What reports must I submit and when?**

(a) You must submit a compliance report that includes the information in paragraphs (c) through (e) of this section, as applicable, as specified in table 6 to this subpart.

\* \* \* \* \*

(c) \* \* \*

(4) For existing sources and for new or reconstructed sources for which construction or reconstruction commenced after April 17, 2003, but before February 5, 2019, before October 13, 2020, if you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). A startup, shutdown, and malfunction plan and the information in § 63.10(d)(5)(i) is not required after October 13, 2020.

(5) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, if there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.

\* \* \* \* \*

(d) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (CMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (c)(1) through (6) of this section and the following information in paragraphs (d)(1) through (9) of this section and § 63.10(e)(3)(vi). This includes periods of startup, shutdown, and malfunction.

\* \* \* \* \*

(f) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, for each startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan you must submit an immediate startup, shutdown and malfunction report. Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to paragraphs (f)(1) and (2) of this section. An immediate startup, shutdown, and malfunction report is not required after October 13, 2020.

\* \* \* \* \*

(g) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (g)(1) through (3) of this section.

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

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* Submit the results of the performance test as an attachment in the ERT.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (g)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/

OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (g)(1) of this section.

(h) Within 60 days after the date of completing each CMS performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) *Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Performance evaluations of CMS measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation as an attachment in the ERT.

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (g)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (g)(1) of this section.

(i) You must submit to the Administrator compliance reports. Beginning on April 16, 2021 or 1 year after the appropriate electronic reporting template becomes available on the CEDRI website, whichever is later, submit all subsequent reports following the procedure specified in paragraph (l) of this section.

(j) You must submit to the Administrator performance evaluations.

Beginning on April 16, 2021 or 1 year after the appropriate electronic reporting template becomes available on the CEDRI website, whichever is later, submit all subsequent reports following the procedure specified in paragraph (l) of this section.

(k) You must submit to the Administrator a Notification of Compliance Status. Beginning on April 16, 2021 or 1 year after the appropriate electronic reporting template becomes available on the CEDRI website, whichever is later, submit all subsequent reports following the procedure specified in paragraph (l) of this section.

(l) If you are required to submit reports following the procedure specified in this paragraph, you must submit reports to the EPA via CEDRI. CEDRI can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). You must use the appropriate electronic report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

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

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

(2) The outage must have occurred within the period of time beginning 5

business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

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

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

(i) The date, time and length of the outage;

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

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

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

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

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

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

(1) You may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is

due. For the purposes of this section, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

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

(3) You must provide to the Administrator:

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

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

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

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

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

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

■ 10. Section 63.9055 is amended by revising paragraph (b)(1) and adding paragraphs (c) and (d) to read as follows:

#### § 63.9055 What records must I keep?

\* \* \* \* \*

(b) \* \* \*

(1) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction for a period of 5 years. A startup, shutdown, and malfunction plan is not required after October 13, 2020.

\* \* \* \* \*

(c) After October 13, 2020, you must keep records of each deviation specified in paragraphs (c)(1) through (3) of this section.

(1) For each deviation record the date, time, and duration of each deviation.

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

(3) Record actions taken to minimize emissions in accordance with § 63.9005(b), 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 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.

■ 11. Table 1 to subpart NNNNN of part 63 is amended by revising entry 2.

\* \* \* \* \*

TABLE 1 TO SUBPART NNNNN OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS

For each . . .	You must meet the following emission limit and work practice standard
* * * * *	* * * * *
2. Emission stream from an HCl storage tank at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
* * * * *	* * * * *

■ 12. Table 6 of subpart NNNNN of part 63 is revised to read as follows:

As stated in § 63.9050(a), you must submit a compliance report that includes the information in § 63.9050(c) through (e) as well as the information in

the following table. For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, you must also submit startup,

shutdown, and malfunction reports according to the requirements in § 63.9050(f) and the following table. A startup, shutdown, and malfunction plan is not required after October 13, 2020.

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

If . . .	Then you must submit a report or statement that:
1. There are no deviations from any emission limitations that apply to you.	There were no deviations from any emission limitations that apply to you during the reporting period. Include this statement in the compliance report.
2. There were no periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	There were no periods during which the CMS were out-of-control during the reporting period. Include this statement in the compliance report.
3. There was a deviation from any emission limitation during the reporting period.	Contains the information in § 63.9050(d). Include this statement in the compliance report.
4. There were periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	Contains the information in § 63.9050(d). Include this statement in the compliance report.
5. There was a startup, shutdown, and malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	For existing sources and for new or reconstructed sources which commenced construction or reconstruction after April 17, 2003, but before February 5, 2019, before October 13, 2020, contains the information in § 63.9050(f). Include this statement in the compliance report. A startup, shutdown, and malfunction plan is not required after October 13, 2020.
6. There were periods when the procedures in the LDAR plan were not followed.	Contains the information in § 63.9050(c)(7). Include this statement in the compliance report.

■ 13. Table 7 to subpart NNNNN of part 63 is amended by:

■ a. Removing the entry for “§ 63.6(e)(1)–(2)”;

■ b. Adding entries for “§ 63.6(e)(1)(i)”, “§ 63.6(e)(1)(ii)”, and “§ 63.6(e)(1)(iii)–(e)(2)” in numerical order;

■ c. Revising the entries for “§ 63.6(e)(3)”, “§ 63.6(f)(1)”, and “§ 63.7(e)(1)”;

■ d. Removing the entry “§ 63.8(c)(1)–(3)”;

■ e. Adding the entries for “§ 63.8(c)(1)(i)”, “§ 63.8(c)(1)(ii)”, “§ 63.8(c)(1)(iii)”, and “§ 63.8(c)(2)–(3)” in numerical order;

■ f. Removing the entry for “§ 63.8(d)–(e)”;

■ g. Adding entries for “§ 63.8(d)(1)–(2)”, “§ 63.8(d)(3)”, and “§ 63.8(e)” in numerical order;

■ h. Removing the entry “§ 63.10(b)(2)(i)–(xi)”;

■ i. Adding entries for “§ 63.10(b)(2)(i)–(ii)”, “§ 63.10(b)(2)(iii)”,

“§ 63.10(b)(2)(iv)”, “§ 63.10(b)(2)(v)”, “§ 63.10(b)(2)(vi)”, and “§ 63.10(b)(2)(vii)–(xi)” in numerical order;

■ j. Removing the entry for “§ 63.10(c)”;

■ k. Adding entries for “§ 63.10(c)(1)–(14)” and “§ 63.10(c)(15)” in numerical order; and

■ l. Revising the entry for “§ 63.10(d)(5)”;

The additions and revisions read as follows:

\* \* \* \* \*

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

Citation	Requirement	Applies to subpart NNNNN	Explanation
* * *	* * *	* * *	* * *
§ 63.6(e)(1)(i) .....	General Duty to minimize emissions.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	Subpart NNNNN requires affected units to meet emissions standards at all times. See § 63.9005(b) for general duty requirement.
§ 63.6(e)(1)(ii) .....	Requirement to correct malfunctions ASAP.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.6(e)(1)(iii)–(e)(2) ..	Operation and maintenance requirements.	Yes .....	
§ 63.6(e)(3) .....	Startup, Shutdown, and Malfunction Plans.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.6(f)(1) .....	Compliance except during startup, shutdown, and malfunction.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
* * *	* * *	* * *	* * *
§ 63.7(e)(1) .....	Conditions for conducting performance tests.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	See § 63.9020(a) for performance testing requirements.

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

Citation	Requirement	Applies to subpart NNNNN	Explanation
* * *	* * *	* * *	* * *
§ 63.8(c)(1)(i) .....	General duty to minimize emissions and CMS operation.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.8(c)(1)(ii) .....	Continuous monitoring system O&M.	Yes .....	Applies as modified by § 63.9005(d).
§ 63.8(c)(1)(iii) .....	Requirement to develop Startup, Shutdown, and Malfunction Plan for CMS.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.8(c)(2)–(3) .....	Continuous monitoring system O&M.	Yes .....	Applies as modified by § 63.9005(d)
* * *	* * *	* * *	* * *
§ 63.8(d)(1)–(2) .....	Quality control program and CMS performance evaluation.	Yes .....	Applies as modified by § 63.9005(d).
§ 63.8(d)(3) .....	Written procedures for CMS	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	See § 63.9005(d)(5) for written procedures for CMS.
§ 63.8(e) .....	Performance evaluation of CMS.	Yes .....	Applies as modified by § 63.9005(d).
* * *	* * *	* * *	* * *
§ 63.10(b)(2)(i)–(ii) .....	Records related to startup, shutdown, and malfunction periods.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	See 63.9055 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) .....	Actions taken to minimize emissions during startup, shutdown, and malfunction.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.10(b)(2)(v) .....	Actions taken to minimize emissions during startup, shutdown, and malfunction.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
§ 63.10(b)(2)(vi) .....	Recordkeeping for CMS malfunctions.	Yes .....	
§ 63.10(b)(2)(vii)–(xi) ...	Records for performance tests and CMS.	Yes .....	
* * *	* * *	* * *	* * *
§ 63.10(c)(1)–(14) .....	Additional recordkeeping requirements for sources with CMS.	Yes .....	Applies as modified by § 63.9005 (d).
§ 63.10(c)(15) .....	Use of Startup, Shutdown, and Malfunction Plan.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	
* * *	* * *	* * *	* * *
§ 63.10(d)(5) .....	Startup, shutdown, and malfunction reports.	No, for new or reconstructed sources which commenced construction or reconstruction after February 4, 2019. Yes, for all other affected sources before October 13, 2020, and No thereafter.	See § 63.9050(c)(5) for malfunction reporting requirements.
* * *	* * *	* * *	* * *

[FR Doc. 2020-05853 Filed 4-14-20; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 127****[EPA-HQ-OW-2018-0293; FRL 10007-14-OW]****RIN 2040-AF78****Updates to NPDES eRule Data  
Elements To Reflect MS4 General  
Permit Remand Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is updating specific data elements within the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (NPDES eRule), published on October 22, 2015, that

apply to regulated municipal separate storm sewer systems (MS4s). These changes are necessary given the promulgation of a separate rulemaking after publication of the NPDES eRule that modified the NPDES permit requirements for small MS4s. That rule, referred to as the MS4 General Permit Remand Rule, published on December 9, 2016, made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This final rule updates those data elements to be consistent with the current MS4 regulations, corrects related typographical errors, and makes other selected clarifications at the request of state NPDES permitting programs.

**DATES:** This final rule is effective on May 15, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2018-0293. 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., 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:** Greg Schaner, Office of Wastewater Management, Water Permits Division (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-0721; email address: [schaner.greg@epa.gov](mailto:schaner.greg@epa.gov). Refer also to the EPA's website for further information related to this final rule.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this action apply to me?*

Entities potentially regulated by this final action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Federal and state governments .....	EPA or state NPDES stormwater permitting authorities .....	924110
Local governments .....	Operators of municipal separate storm sewer systems .....	924110
Military bases .....	Operators of small municipal separate storm sewer systems	928110
Highway, road, airport runways, and other thoroughfare systems owned or operated by the United States, by a State, city, town, borough, county, parish, district, association or other public body.	Operators of small municipal separate storm sewer systems	237310
Large hospital complexes .....	Operators of small municipal separate storm sewer systems	622110
Public colleges and universities .....	Operators of small municipal separate storm sewer systems	611310
Large prison complexes .....	Operators of small municipal separate storm sewer systems	922140

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 122.26 and 122.32, and the discussion in the preamble. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. What action is the Agency taking?*

The EPA is finalizing a set of changes to the NPDES eRule that updates the data elements that apply to regulated MS4s. These changes are necessary

because of a separate rulemaking that the EPA promulgated after publication of the NPDES eRule. That rulemaking, published on December 9, 2016, and referred to as the MS4 General Permit Remand Rule (MS4 Remand Rule), modified the NPDES permit requirements for small MS4s contained within the Phase II stormwater regulations. Promulgation of these Phase II regulatory changes made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This final rule updates those specific data elements to make them consistent with current stormwater Phase II regulations, corrects related typographical errors, and clarifies some other data elements at the request of state NPDES permitting authorities. The changes are limited to the correction of inaccuracies and the addition of requested clarifications, and do not increase reporting burden on regulated MS4 permittees.

*C. What is the Agency's authority for taking this action?*

This final rule modifies the NPDES eRule; therefore, the authorities for this action are derivative of the authorities for that action. The EPA promulgated the NPDES eRule on October 22, 2015 (80 FR 64064), pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, which added a new part to title 40 of the Code of Federal Regulations (CFR) (40 CFR part 127) and made changes to existing regulations. The EPA promulgated the NPDES eRule under authority of the CWA sections 101(f), 304(i), 308, 402, and 501.

These updates to the NPDES eRule are necessary because the EPA promulgated subsequent modifications to the Phase II stormwater permitting regulations for small MS4s, known as the MS4 Remand Rule. The authority for that rule is the Federal Water Pollution Control Act, 33



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 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 17, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

Title 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 L—Georgia

- 2. Add § 52.569 to read as follows:

##### § 52.569 Conditional approval.

Georgia submitted a letter to EPA on November 14, 2019, with a commitment to address the State Implementation Plan deficiencies regarding the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) for the 2015 8-hour ozone NAAQS. EPA conditionally approved these portions of Georgia's September 24, 2018 infrastructure SIP submission in an action published in the **Federal Register** on April 15, 2020. If Georgia fails to meet its commitment by April 15, 2021, the conditional approval will become a disapproval on that date and EPA will issue a notification to that effect.

#### Subpart II—North Carolina

- 3. Add § 52.1769 to read as follows:

##### § 52.1769 Conditional approval.

North Carolina submitted a letter to EPA on December 16, 2019, with a commitment to address the State Implementation Plan deficiencies regarding the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and

110(a)(2)(J) for the 2015 8-hour ozone NAAQS. EPA conditionally approved these portions of North Carolina's September 27, 2018 infrastructure SIP submission in an action published in the **Federal Register** on April 15, 2020. If North Carolina fails to meet its commitment by April 15, 2021, the conditional approval will become a disapproval on that date and EPA will issue a notification to that effect.

[FR Doc. 2020–06584 Filed 4–14–20; 8:45 am]

BILLING CODE 6560–50–P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 63

[EPA–HQ–OAR–2018–0794; FRL–10007–26–OAR]

RIN 2060–AU48

#### National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is taking final action establishing a subcategory of certain existing electric utility steam generating units (EGUs) firing eastern bituminous coal refuse (EBCR) for acid gas hazardous air pollutant (HAP) emissions that was noticed in a February 7, 2019, proposed rule titled “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review” (2019 Proposal). After consideration of public comments, the EPA has determined that there is a need for such a subcategory under the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired EGUs, commonly known as the Mercury and Air Toxics Standards (MATS), and the Agency is establishing acid gas HAP emission standards applicable only to the new subcategory. The EPA's final decisions on the other two distinct actions in the 2019 Proposal (*i.e.*, reconsideration of the 2016 Supplemental Finding that it is appropriate and necessary to regulate EGUs under Clean Air Act (CAA)

section 112 and the residual risk and technology review of MATS) will be announced in a separate final action.

**DATES:** This final rule is effective on April 15, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0794. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, Room Number 3334, WJC West Building, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Mary Johnson, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5025; and email address: [johnson.mary@epa.gov](mailto:johnson.mary@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact your EPA Regional representative as listed in 40 CFR 63.13 (General Provisions).

#### SUPPLEMENTARY INFORMATION:

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

ARIPPA Appalachian Region Independent Power Producers Association  
CAA Clean Air Act  
CEMS continuous emissions monitoring systems  
CFR Code of Federal Regulations  
CRA Congressional Review Act  
DSI dry sorbent injection  
EBCR eastern bituminous coal refuse  
ECMPS Emissions Collection and Monitoring Plan System  
EGU electric utility steam generating unit  
EPA Environmental Protection Agency  
FBC fluidized bed combustors

FGD flue gas desulfurization  
 HAP hazardous air pollutant(s)  
 HCl hydrochloric acid  
 Hg mercury  
 ICR Information Collection Request  
 lb pound  
 lb/MMBtu pounds per million British thermal units  
 lb/MWh pounds per megawatt-hour  
 MACT maximum achievable control technology  
 MATS Mercury and Air Toxics Standards  
 MMBtu million British thermal units  
 MW megawatt  
 MWh megawatt-hour  
 NAAQS National Ambient Air Quality Standards  
 NAICS North American Industry Classification System  
 NESHAP national emission standards for hazardous air pollutants  
 NTTAA National Technology Transfer and Advancement Act  
 OMB Office of Management and Budget  
 PM particulate matter  
 PM<sub>2.5</sub> fine particulate matter  
 PRA Paperwork Reduction Act  
 RFA Regulatory Flexibility Act  
 SDA spray dryer absorbers  
 SO<sub>2</sub> sulfur dioxide  
 tpy tons per year  
 UMRA Unfunded Mandates Reform Act

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

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

In the 2012 MATS rulemaking, the EPA established one subcategory of coal-fired EGUs for purposes of regulating acid gas HAP emissions. The Agency specifically rejected a request from some commenters for a separate acid gas HAP standard for all coal refuse-fired EGUs because we determined that the emissions of such HAP from some units combusting coal refuse were among the best performing sources for acid gas HAP as determined consistent with CAA section 112(d)(3). The EPA has reevaluated the data available when the 2012 MATS rule was established, in addition to new data generated since promulgation of that rule, and we now recognize that there are differences in the acid gas HAP emissions from EGUs firing EBCR as compared to EGUs firing other types of coal, including those firing types of coal refuse other than EBCR. Specifically, the EPA recognizes that there are differences between anthracite coal refuse and bituminous coal refuse, and that the type of fuel used leads to differences in the acid gas HAP emissions from EGUs firing those respective fuels. In the February 7, 2019 Proposal (84 FR 2670), the EPA explained that these differences in acid gas HAP emissions support the establishment of a subcategory for such sources and solicited comment on the need to establish a subcategory of certain existing EGUs firing EBCR for acid gas HAP emissions and on potential emissions standards for affected EGUs in that subcategory. After reviewing public comments and other available information, the EPA concludes that such a subcategory is warranted. Thus, this final action establishes a subcategory of certain existing EBCR-fired EGUs for emissions of hydrochloric acid (HCl) and sulfur dioxide (SO<sub>2</sub>)—both of which serve as a surrogate for all acid gas HAP emitted from EGUs under MATS. Under CAA section 112(d)(1), the EPA has the discretion to “. . . distinguish among classes, types, and sizes of sources within a category or subcategory in establishing . . . standards.” Further, when separate subcategories are established, the minimum level of

control, referred to as the “maximum achievable control technology (MACT) floor,” is determined separately for each subcategory.

The EPA has determined that emission limits reflecting a more stringent (*i.e.*, “beyond-the-floor”) level of control than the MACT floor level of control are appropriate for the new subcategory. The SO<sub>2</sub> emission standard (set in pounds (lb) SO<sub>2</sub>/million British thermal units (MMBtu)) that the EPA is promulgating here is an emission rate that the currently operating EBCR-fired EGUs have demonstrated an ability to achieve based on their emissions data and considering cost and non-air quality related environmental factors.<sup>1</sup> The EPA does not have corresponding emissions data for HCl<sup>2</sup> or output-based emissions of SO<sub>2</sub> (*i.e.*, lb SO<sub>2</sub>/megawatt-hour (MWh)) and, therefore, the EPA has established the final beyond-the-floor standards for SO<sub>2</sub> (in lb/MWh) and for HCl (in both lb/MMBtu and lb/MWh) consistent with the percentage reduction in the SO<sub>2</sub> lb/MMBtu emissions rate between the MACT floor value and the beyond-the-floor value. This action establishes the following emission limits for the subcategory of existing EBCR-fired EGUs:<sup>3</sup>

HCl: 4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh  
 SO<sub>2</sub>:<sup>4</sup> 6.0E–1 lb/MMBtu or 9.0 lb/MWh.

A further description of what the EPA is promulgating here, the rationale for the final decisions, and discussion of the key comments received regarding the need for such a subcategory and the acid gas HAP emission standards appropriate for that subcategory are provided in section III of this preamble.

### B. Does this action apply to me?

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

<sup>1</sup> For context, the 2012 final MATS emission standard for SO<sub>2</sub> is 2.0E–1 lb/MMBtu.

<sup>2</sup> For MATS, affected sources may report emissions of either SO<sub>2</sub> or HCl. Most MATS-affected EGUs report emissions of SO<sub>2</sub> because they already have the monitoring infrastructure to do so, since most already report SO<sub>2</sub> emissions under the EPA's Acid Rain Program.

<sup>3</sup> Continuous compliance with the emission limits is required to be demonstrated on a 30-boiler operating day rolling average basis.

<sup>4</sup> As is the requirement for all coal-fired EGUs subject to MATS, the alternate SO<sub>2</sub> limit may be used if the EGU has some form of flue gas desulfurization (FGD) system and SO<sub>2</sub> continuous emissions monitoring systems (CEMS) and both are installed and operated at all times.

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

NESHAP and source category	NAICS code <sup>a</sup>
Coal- and Oil-Fired EGUs ....	221112, 221122

<sup>a</sup>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. Specifically, entities that own and/or operate certain existing EBCR-fired EGUs subject to the NESHAP for Coal- and Oil-Fired EGUs (40 CFR part 63, subpart UUUUU) will be affected by this final action. To determine whether your facility is affected, you should examine the applicability criteria in the NESHAP for Coal- and Oil-Fired EGUs and the amendatory text of this final action. 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.

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

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at <https://www.epa.gov/mats/regulatory-actions-final-mercury-and-air-toxics-standards-mats-power-plants>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule and key technical documents at this same website.

*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 United States Court of Appeals for the District of Columbia Circuit (hereafter referred to as “the D.C. Circuit,” or “the Court”) by June 15, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble, 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 NESHAP for Coal- and Oil-Fired EGUs (commonly referred to as MATS) was proposed on May 3, 2011 (76 FR 24976), under title 40, part 63, subpart UUUUU. In that proposal, the EPA proposed a single acid gas HAP emission standard for all coal-fired power plants—using HCl as a surrogate for all acid gas HAP. The EPA also proposed an alternative equivalent emission standard for SO<sub>2</sub> as a surrogate for all the acid gas HAP for coal-fired EGUs with FGD systems and SO<sub>2</sub> CEMS installed and operational at all times. SO<sub>2</sub> is also an acidic gas—though not a HAP—and the controls used for SO<sub>2</sub> emission reduction are also effective at controlling the acid gas HAP emitted by EGUs. Further, most, if not all, affected EGUs already measure and report SO<sub>2</sub> emissions as a requirement of the EPA’s Acid Rain Program, 40 CFR part 75.

The Appalachian Region Independent Power Producers Association (ARIPPA) <sup>5</sup> submitted comments on the 2011 MATS proposal arguing that the characteristics of all coal refuse made achievement of the standard too costly for its members and requested that the EPA create a subcategory for all EGUs burning coal refuse. The EPA determined that there was no basis to

create such a subcategory and, on February 16, 2012 (77 FR 9304), finalized emission standards for both HCl and SO<sub>2</sub> that apply to all coal-fired EGUs, including the coal refuse-fired units subject to this final action. ARIPPA, along with other petitioners, challenged the EPA’s determination in the D.C. Circuit, and the Court upheld the final rule. *White Stallion Energy Center, et. al. v. EPA*, 748 F.3d 1222, 1249–50 (D.C. Cir. 2014).

In addition to challenging the final rule, ARIPPA also petitioned the EPA for reconsideration, again requesting a subcategory for the acid gas standards for facilities combusting all types of coal refuse. The EPA denied the Petition for Reconsideration on grounds that ARIPPA had adequate opportunity to comment on the ability of coal refuse-fired facilities to comply with the final standard. Furthermore, the EPA determined that the ARIPPA petition did not present any new information to support a change in the previous determination regarding the appropriateness of a subcategory for the acid gas HAP standard. ARIPPA subsequently sought judicial review of the denial of the Petition for Reconsideration. *ARIPPA v. EPA*, No. 15–1180 (D.C. Cir.).<sup>6</sup> In petitioner’s briefs, ARIPPA claimed that the EPA had misunderstood its reconsideration petition and pointed to a distinction between the control of acid gas HAP emissions from units burning anthracite coal refuse and those burning bituminous coal refuse. *See* Industry Pets. Br. at 35–36, *ARIPPA*, No. 15–1180 (D.C. Cir. filed December 6, 2016). The EPA disagrees with the assertion that the Agency misunderstood the basis for ARIPPA’s reconsideration petition as we could not find a single statement in the rulemaking record that clearly or even vaguely requested a separate acid gas HAP limit based on the distinction between anthracite coal refuse and bituminous coal refuse. Nonetheless, the EPA has since looked at emissions data from these sources and observed that there are differences in emissions based on the type of coal refuse used, and, consequently, recognized the differences in the 2019 Proposal.<sup>7</sup> Specifically, the EPA recognized that there are differences between anthracite coal refuse and bituminous coal refuse, and that the type of fuel used leads to differences in the acid gas HAP

<sup>5</sup> ARIPPA is a non-profit trade association comprised of independent electric power producers, environmental remediation, and service providers located in Pennsylvania and West Virginia that use coal refuse as a primary fuel to generate electricity.

<sup>6</sup> ARIPPA’s petition for review is currently being held in abeyance. *ARIPPA v. EPA*, No. 15–1180, Order, No. 1672985 (April 27, 2017).

<sup>7</sup> The analysis is summarized in a separate memorandum titled *HCl and SO<sub>2</sub> Emissions for Coal Refuse-Fired EGUs*, available in Docket ID No. EPA–HQ–OAR–2018–0794.

emissions from EGUs firing those respective fuels. The Agency also noted that the differences may impact the unit's ability to control those emissions. Additionally, the EPA recognized that there are differences between western bituminous coal refuse and subbituminous coal refuse as compared to EBCR and announced in the 2019 Proposal that it was considering establishing a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP. The proposal solicited comment on whether establishment of such a subcategory is needed and on the acid gas HAP emission standards that would be established if such a subcategory was created. 84 FR 2700–2703.

### III. Summary of Final Action

After considering and evaluating comments and data provided in response to the solicitation of comment on establishing a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP in its 2019 Proposal, the EPA is taking final action to establish a separate subcategory to address the issue. In this final action, the EPA is establishing a subcategory of certain

existing EGUs firing EBCR for emissions of acid gas HAP and acid gas HAP emission standards that are applicable to the new subcategory. The final rule defines *Eastern bituminous coal refuse (EBCR)* to mean coal refuse generated from the mining of bituminous coal in Pennsylvania and West Virginia. The final rule defines *Unit designed for eastern bituminous coal refuse (EBCR) subcategory* to mean any existing (*i.e.*, construction was commenced on or before May 3, 2011) coal-fired EGU with a net summer capacity of no greater than 150 megawatts (MW) that is designed to burn and that is burning 75 percent or more (by heat input) *eastern bituminous coal refuse* on a 12-month rolling average basis. The 150 MW net summer capacity level selected by the EPA limits the universe of sources that are in the new subcategory to only those EGUs identified in Table 2 to this preamble. Net summer capacity is the maximum output that generating equipment can supply to system load at the time of summer peak demand (period of June 1 through September 30). The 75 percent or more heat input requirement selected by the EPA is consistent with the Federal Energy Regulatory Commission

requirement that to be considered a qualifying facility under the Public Utility Regulatory Policies Act, as the EGUs in the new subcategory are, at least 75 percent of the heat content must come from coal refuse.

The existing EBCR-fired EGUs in the new subcategory being established in this action are listed in Table 2 of this preamble and the applicable HCl and SO<sub>2</sub> limits being finalized in this action are provided in Table 3 of this preamble. Four existing EBCR-fired EGUs at two facilities that were listed in the 2019 Proposal as being part of the new subcategory, if established, are no longer part of the subcategory. The EPA has learned that the Cambria facility shut down in June 2019, and the facility and surrounding property have been sold to a salvage company which plans to dismantle the facility over time.<sup>8</sup> The EPA has also learned that the Morgantown Energy facility will be transformed into a natural gas-fueled steam-only production facility, and the closure of the waste coal-fired boilers and complete transformation of the facility to steam-only production are expected to be completed by early to mid-2020.<sup>9</sup>

TABLE 2—EBCR-FIRED EGUS IN SUBCATEGORY

ORIS plant code <sup>a</sup>	EGU	State	Summer capacity (MW)	2016 average monthly generation (MWh) <sup>b</sup>
10143 .....	Colver Power Project .....	PA	110	60,905
10151 .....	Grant Town Power Plant Unit 1A .....	WV	40	28,010
10151 .....	Grant Town Power Plant Unit 1B .....	WV	40	28,010
10603 .....	Ebensburg Power .....	PA	50	16,258
50974 .....	Scrubgrass Generating Company LP Unit 1 .....	PA	42	17,377
50974 .....	Scrubgrass Generating Company LP Unit 2 .....	PA	42	17,377

<sup>a</sup> Unique plant identification code assigned by the Department of Energy's Energy Information Administration (EIA).

<sup>b</sup> 2016 annual generation is based on plant-level data reported on EIA Form 923, and annual totals are divided evenly to estimate 2016 average monthly generation. Unit-level estimates assume that generation is split evenly between all units at each plant.

TABLE 3—ACID GAS EMISSION LIMITATIONS FOR EBCR-FIRED EGUS SUBCATEGORY

Subcategory	Emission limit <sup>a</sup>	
	HCl	SO <sub>2</sub> <sup>b</sup>
Existing Eastern Bituminous Coal Refuse-Fired EGUs .....	4.0E–2 lb/MMBtu ..... or 4.0E–1 lb/MWh .....	6.0E–1 lb/MMBtu ..... or 9.0 lb/MWh

<sup>a</sup> Units of emission limits:

lb/MMBtu = pounds pollutant per million British thermal units fuel input; and

lb/MWh = pounds pollutant per megawatt-hour electric output (gross).

<sup>b</sup> Alternate SO<sub>2</sub> limit may be used if the EGU has some form of FGD system and SO<sub>2</sub> CEMS installed.

Sources in the new subcategory must comply with the applicable HCl or SO<sub>2</sub> requirements no later than the effective date of this final rule. Sources must

demonstrate that compliance has been achieved, by conducting the required performance tests and other activities as specified in 40 CFR part 60, subpart

UUUUU, no later than 180 days after the compliance date. To demonstrate initial compliance using either an HCl or SO<sub>2</sub> CEMS, the initial performance test

<sup>8</sup> See <https://www.tribdem.com/news/cambria-cogen-plant-to-be-leveled-after-shutting-down-over/>

article\_005a162c-2381-11ea-8c53-5b85339774fd.html.

<sup>9</sup> See <https://www.nsenenergybusiness.com/news/starwood-energy-terminates-eeepa/>.

consists of 30-boiler operating days. If the CEMS is certified prior to the compliance date, the test begins with the first operating day on or after that date. If the CEMS is not certified prior to the compliance date, the test begins with the first operating day after certification testing is successfully completed. Continuous compliance with the newly established emission limits is required to be demonstrated on a 30-boiler operating day rolling average basis.

The EPA's final decisions regarding establishing a subcategory for certain existing EGUs that fire EBCR and the acid gas HAP standards applicable to the new subcategory are provided later in this section of this preamble. Specifically, the EPA's rationale for the final decisions and discussion relating to the key comments received regarding the need for such a subcategory and the attendant acid gas HAP emission standards are provided. A summary of all significant public comments regarding the EPA's consideration of establishing such a subcategory and the EPA's responses to those comments is available in the document titled *Summary of Public Comments and Responses Regarding Establishment of a Subcategory and Acid Gas HAP Emission Standards for Certain Existing Eastern Bituminous Coal Refuse-Fired EGUs* (response to comments document), Docket ID No. EPA-HQ-OAR-2018-0794. A "track changes" version of the regulatory language that incorporates the changes in this action is also available in the docket for this action.

#### A. Basis for Subcategory

Under CAA section 112(d)(1), the Administrator has discretion to " \* \* \* distinguish among classes, types, and sizes of sources within a category or subcategory in establishing \* \* \* " standards. Based on the EPA's better understanding of the differences in anthracite coal refuse and bituminous coal refuse, and the acid gas HAP emissions profile associated with each, the EPA has now determined that, contrary to its earlier position, it is appropriate to establish a new subcategory for certain units firing EBCR. Specifically, the EPA is establishing a new subcategory for certain units with a net summer capacity of 150 MW or lower that fire EBCR because there are differences between emissions of acid gas HAP from these units and larger units burning EBCR and units burning other types of coal, including other types of coal refuse. See *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 656 (DC Cir. 2016) (finding

that "[s]ection 7412(d) gives the EPA discretion to create subcategories based on boiler type, and nothing in the statute forecloses the Agency from doing so based on the type of fuel a boiler was designed to burn."). Units in this new subcategory of EGUs are smaller, were designed to burn EBCR, and were constructed in close proximity to legacy piles of EBCR for the primary purposes of reclaiming abandoned mining sites while reducing the environmental hazards attendant to such piles of coal refuse. The EPA cannot predict with certainty what the industry response would be absent the establishment of a new subcategory as discussed in greater detail elsewhere in this preamble and in a docketed memorandum on expected costs and benefits. Among those possible outcomes, many industry commenters and others have suggested that some—and maybe all—of the affected sources would shut down.<sup>10</sup> If that is the case, then the establishment of this new subcategory will allow those units to continue to achieve both of their purposes of reclaiming abandoned mining sites and preserving the environmental benefits of repurposing coal refuse, while also maintaining emissions of acid gas HAP at levels similar to current emissions levels.<sup>11</sup>

Immediately below and in the response to comments document, we discuss in more detail the basis for the new subcategory and address the significant comments on the new subcategory.

As stated in the 2019 Proposal, the EPA finds that the emissions of acid gas HAP from EGUs firing EBCR are distinct from acid gas HAP emissions from EGUs firing other types of coal—including other forms of coal refuse. Specifically, the EPA recognized in the 2019 Proposal that there are differences between anthracite coal refuse and bituminous coal refuse, and that the type of fuel used leads to differences in the acid gas HAP emissions from EGUs

<sup>10</sup> While the EPA cannot predict with certainty what the industry response would be in the absence of a new subcategory, commenters' claims that the units would shut down is plausible. Coal-fired power plants are currently facing tremendous competitive pressures. As a result, coal's share of total U.S. electricity generation has been declining for over a decade, while generation from natural gas and renewables has increased significantly. A large number of coal units—especially smaller ones like the EBCR-fired EGUs—have retired since 2010. As mentioned earlier, four of the ten units that were identified as affected by this action in the 2019 Proposal have now either retired or announced plans to convert to natural gas.

<sup>11</sup> EBCR-fired EGUs were designed to achieve a control level generally at or exceeding 90 percent SO<sub>2</sub> reduction (see EPA Docket ID Item Nos. EPA-HQ-OAR-2018-0794-1125, EPA-HQ-OAR-2018-0794-1154, and EPA-HQ-OAR-2018-0794-1187).

firing those respective fuels. Bituminous coals (and, thus, bituminous coal refuse) from the Appalachian and Interior Regions of the U.S. have higher sulfur and chlorine contents than anthracite or coals of all types from the Western Region of the U.S. (and, thus, anthracite coal refuse or western bituminous and subbituminous coal refuse), and these differences lead to differences in emissions of acid gas HAP. These differences between the types of coal refuse used by EGUs to generate electricity may also impact a unit's ability to control those emissions. All coal refuse fuels are fired in fluidized bed combustors (FBC) that use limestone injection to reduce SO<sub>2</sub> emissions and to increase heat transfer efficiency. The EPA has been informed that limestone injection technology is generally adequate to allow EGUs that are firing anthracite coal refuse and western coal refuse to meet the 2012 final MATS alternative surrogate emission standard of 2.0E-1 lb/MMBtu for SO<sub>2</sub>.<sup>12</sup> This is because anthracite coals are naturally much lower in impurities (including sulfur and chlorine) and western coals (western bituminous coal and subbituminous coal) have lower sulfur and chlorine content and higher free alkalinity (which can act as a natural sorbent to neutralize acid gases produced in the combustion process). The same is not generally true for EGUs combusting EBCR. Because all existing EGUs firing anthracite coal refuse and western bituminous coal refuse are currently emitting SO<sub>2</sub> at rates that are below the 2012 final MATS emission standard for SO<sub>2</sub> and the existing EGU firing subbituminous coal refuse is currently emitting HCl at a rate that is below the 2012 final MATS emission standard for HCl, the EPA believes there is no need to broaden the subcategory to include those units.

The EBCR-fired EGUs that will be included in the new subcategory are also small units (all have capacities less than 120 MW and most are less than 100 MW). As contemplated in the 2019 Proposal, this final rule excludes the two EBCR-fired EGUs at the Seward Generating Station in Pennsylvania from the new subcategory. 84 FR 2702. Those units are the newest and, at 260 MW each, are, by far, the largest coal refuse-fired EGUs. The Seward units were also designed and constructed with downstream acid gas controls already incorporated, so they do not have the space limitations and other configurational challenges that may

<sup>12</sup> See Table 2 to subpart UUUUU of 40 CFR part 63.

affect other smaller existing EBCR-fired EGUs attempting to retrofit air pollution controls. Retrofitting air pollution controls to an existing EGU can often be challenging due to lack of available space within the facility and the potential need to re-route the exhaust gas stream to accommodate such equipment configurational changes. Control equipment that results in pressure drop along the exhaust stream can challenge existing blowers. These challenges and space limitations can be considered in the design of a new facility. The Seward units were among the best performing EGUs—with respect to HCl emissions—when the EPA developed the final MATS emission standards and, based on MATS compliance reports for the Seward EGUs, currently emit HCl at well below the final MATS HCl standard of 2.0E–3 lb/MMBtu, applicable to coal-fired EGUs.<sup>13</sup>

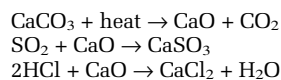
In response to the 2019 Proposal's solicitation of comment, the EPA received comments both supporting and opposing the establishment of a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP.

Several commenters pointed out the environmental benefits provided by EBCR-fired EGUs in the coal regions where they are located. Specifically, commenters pointed out that removal of coal refuse piles reduces surface and groundwater pollution from acidic drainage and reduces uncontrolled emissions of air pollutants that are released from self-ignited internal smoldering of the coal refuse piles. In addition, commenters pointed out that the alkaline ash produced by EBCR-fired EGUs is used to reclaim mining-affected lands by returning them to a productive use. Commenters further noted that the Pennsylvania Department of Environmental Protection has standards governing such beneficial use of coal ash in mine land reclamation (Title 25 PA Code, Chapter 290).<sup>14</sup>

Several commenters asserted that the 2012 final MATS limits for acid gas HAP and their SO<sub>2</sub> surrogate are not achievable by EBCR-fired EGUs and do not reflect the design, functionality, and economics of those units. Commenters stated that while limestone injection into the unit's combustion zone controls SO<sub>2</sub> and HCl emissions to a certain extent, there are operational and design limitations on the EGUs' ability to provide an adequate amount of

limestone to reduce SO<sub>2</sub> and HCl emissions beyond a certain point. Commenters further stated that the reduction of SO<sub>2</sub> and acid gases through increased injection of limestone is asymptotic, and significant additional limestone does not result in further significant acid gas emission reduction. Commenters explained that the configuration of the EGUs and their combustion zone physically limit the amount of material that the unit can hold, which impacts and limits the amount of coal refuse and limestone that can be injected into the unit. Commenters explained, for example, that increasing the amount of limestone injected to achieve the 2012 final MATS SO<sub>2</sub> emission limit could result in less coal refuse being fired. This would result in a corresponding reduction in steam production and electricity generation, making it uneconomic to operate in the current power market.

The EPA does not have detailed information regarding the specific amount of limestone that is injected into the EBCR-fired EGUs. However, the Agency acknowledges that it is current industry practice to inject limestone into the FBC in amounts based on an optimized calcium-to-sulfur (Ca:S) molar ratio. Therefore, the optimum limestone injection amount will vary with the sulfur content of the coal refuse being burned. Along with the coal (fuel) and limestone that are injected and utilized, the fluidized bed units also contain an inert bed material (e.g., sand or other). There is a limit to the amount of solid material—i.e., the sand, the coal refuse, coal ash, and limestone—that can be in the combustor. An increase in limestone injection may necessarily result in a decrease in coal refuse utilization. Utilization of the limestone for acid gas neutralization is dependent upon decomposition (calcination) of the limestone to lime and subsequent reaction of the lime with the acid gases via the following reactions:



The necessary calcination of the limestone and the desulfurization reactions occur within specific temperature ranges (typically around ~900 °Celsius or 1,650 °F) and the FBC operators must utilize sufficient fuel to maintain the boiler in the optimum temperature range. Lower temperatures result in insufficient calcination and lower boiler efficiency. Higher temperatures can result in materials sintering, which results in lower desulfurization capacity.

Commenters also noted concerns that a significant increase in limestone injection for control of SO<sub>2</sub> emissions could negatively impact the ability to beneficially use the combustion fly ash.<sup>15</sup> For example, for certain uses, the Pennsylvania Department of Environmental Protection *Guidelines for Beneficial Use of Coal Ash at Coal Mines*<sup>16</sup> warns that mixing of coal ash with conventional alkaline materials (e.g., limestone, lime, hydrated lime) may increase the likelihood of the coal ash becoming cementitious and reduce the neutralizing ability of the coal ash and the conventional material. In such cases, the captured fly ash would have to be disposed of in a lined landfill rather than beneficially reused. Commenters also contended that EBCR-fired EGUs may have to consider switching from EBCR as the primary fuel to firing less EBCR along with a lower sulfur fuel as a means of reducing SO<sub>2</sub> emissions to meet the 2012 final MATS SO<sub>2</sub> emission limit. Commenters stated that such practice, in addition to being uneconomical, could reduce EBCR usage to below the minimum 75-percent coal refuse heat input requirement to be considered a qualifying facility under the Public Utility Regulatory Policies Act. Commenters claimed that both approaches described earlier (i.e., increased limestone injection and fuel switching) undermine the environmental benefits realized by the EBCR-fired EGUs through clean-up of waste coal refuse sites.

One commenter stated that regardless of limestone addition and fuel switching, meeting the 2012 final MATS SO<sub>2</sub> limit would require additional control technology and likely result in permanent retirement of the facility. Several commenters pointed out that they are not aware of any retrofit installation of back-end scrubbing technology or a back-end dry sorbent injection (DSI) system for an EBCR-fired EGU. Commenters asserted that downstream acid gas controls cannot be considered technically or economically feasible for EBCR-fired EGUs and provided information regarding evaluation of such technologies.

<sup>15</sup> The combustion ash is beneficially used on mine sites to fill pits, create or amend soil, and as a low-permeability or high alkalinity material. In Pennsylvania the regulations governing the beneficial use of coal ash are available at 25 PA Code Chapter 290. See <http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Pages/CoalAshBeneficialUse.aspx>.

<sup>16</sup> Pennsylvania Department of Environmental Protection Bureau of Mining Programs; Document Number: 563–2112–228; *Guidelines for Beneficial Use of Coal Ash at Coal Mines*; Effective date: December 17, 2016.

<sup>13</sup> Ibid.

<sup>14</sup> See <https://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Pages/CoalAshBeneficialUse.aspx>.

Commenters claimed that adding on back-end control equipment would boost sulfur capture, but the capital and operating costs increases would not be supported by power sales revenues. Commenters further claimed that in addition to being cost prohibitive for the small EBCR units, control strategies such as wet FGD scrubbers and spray dryer absorbers (SDA) present installation difficulties given layout of the facilities, local topography, and needs of the systems to interface with existing EGU equipment.<sup>17</sup> Although commenters acknowledged that DSI systems do not present such technical challenges with deployment, they pointed out other problems associated with the alkaline sorbents (typically sodium- or calcium-based) injected in such systems. Several commenters stated that coal refuse-fired EGUs currently achieve extremely efficient mercury (Hg) control due, at least in part, to the relatively high levels of chlorine in coal refuse which can promote the oxidation of the Hg to the divalent form. This, coupled with the higher levels of unburned carbon in the fly ash, allows the Hg to be more readily captured in the downstream baghouse (*i.e.*, fabric filter particulate matter (PM) control device) and not emitted through the stack. Commenters explained that reducing the amount of chlorine (or HCl) in the flue gas prior to the oxidation reaction can have the effect of increasing Hg emissions from the facility. One commenter stated that their testing of both sodium- and calcium-based sorbents injected at the inlet of the baghouse (essentially in a DSI configuration) resulted in an increase in Hg emissions by a factor of 4 to 40 times resulting in levels exceeding the 2012 final MATS Hg emission limit.<sup>18</sup> Therefore, the commenter asserted that, even if technically feasible, the use of DSI could affect the unit's ability to meet other MATS emission limits. Several commenters stated that the potential for DSI technology to have a negative impact on the ability to use combustion ash for mine site reclamation and restoration activities would remove it as a viable alternative. Commenters explained that use of sodium-based sorbents (*e.g.*, trona or sodium bicarbonate) could alter the

leaching characteristics of the ash such that it would no longer be of beneficial use and would have to be disposed of in a lined landfill. One commenter stated that testing at their facility confirmed such a change in the quality of the ash to the point that it was at risk of failing to satisfy leaching requirements of the standards for beneficial use in mine land reclamation. Commenters claimed that ash disposal costs, especially when considering the significant quantity of ash generated, would far exceed the revenue generated through the sale of electricity. Commenters also pointed out that significant environmental benefits provided by EBCR-fired EGUs would be eliminated if the ash cannot be beneficially used.

Several commenters asserted that there is no justification for establishing a subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP. Commenters claimed that the EPA has not provided a valid technical basis for the subcategory, stating that while the EPA has said that eastern bituminous coal is distinguished by higher sulfur content and lesser content of free alkali, the EPA offers nothing to distinguish the EGUs it would subcategorize from other EGUs burning the same coals and subject to MATS. Commenters further claimed that there is no basis for a subcategory for EBCR-fired EGUs because some of those EGUs currently emit SO<sub>2</sub> at rates below the 2012 final MATS SO<sub>2</sub> limit and have shown that the current standards are achievable because there are technologies that are feasible. Commenters stated that the assessment of the need for a subcategory cannot reasonably be based on data for the period of January 2015 through June 2018, terminating before EGUs reported results of installed pollution controls. Commenters added that even if limestone injection alone is not adequate to meet the MATS limits, the fact that certain EGUs would need to install additional controls is not a valid basis for a subcategory. Commenters also added that the EPA may not subcategorize based on cost, even if some add-on controls would be particularly expensive, and the EPA may not alter the MACT floor because some sources may not be able to meet it. Commenters further stated that the EPA notes that the use of some sorbents may negatively impact the salability of fly ash, but commenters contend that losing the ability to sell the ash—a consequence for all EGUs using DSI, not just those using eastern bituminous coal-waste—does not suggest any basis

in the class, type, or size of the EGUs at the six plants that might allow the EPA to set different standards for those EGUs. Commenters pointed to a plant within the proposed subcategory that they contend demonstrates that units can meet the MATS acid gas limits while still re-using their ash. Commenters refuted the EPA's assertion that use of DSI technology results in a considerable increase in Hg emissions and would require the use of additional Hg controls, and, further, stated that even if true, it provides no lawful basis for the subcategory. Commenters pointed to EBCR-fired EGUs that they contend not only can meet both the MATS acid gas and Hg limits, they can achieve such low emissions of Hg that they qualify for low-emitting EGU status (*i.e.*, their emissions are less than 10 percent of the MATS limit) without any Hg-specific controls. Commenters added that CAA section 112 does not permit the EPA to loosen emission limitations based on the EPA's desired control configuration.

The EPA disagrees with comments opposed to establishing a new subcategory of certain existing EGUs firing EBCR for emissions of acid gas HAP. Under CAA section 112(d)(1), the Administrator has the discretion to “ \* \* \* distinguish among classes, types, and sizes of sources within a category or subcategory in establishing \* \* \* ” standards. The EPA generally establishes subcategories to address differences between units that make the nature of the HAP emissions different or if there are technical feasibility issues associated with different emission control approaches. Normally, the basis for subcategorizing (*e.g.*, type of unit) must be related to an effect on emissions, rather than some difference which does not affect emissions performance. EGUs are generally designed for a particular type of fuel, and the type of fuel being burned can impact the degree of combustion and the level and type of HAP emissions because the amount of fuel-borne HAP such as acid gases is primarily dependent upon the composition of the fuel. In addition, the type of fuel and attendant unit design can limit the availability and functionality of different types of controls, particularly for existing sources that must retrofit if add-on controls are required. Finally, the D.C. Circuit recently confirmed that the EPA may establish a subcategory based on the type of fuel a boiler is designed to burn. *See U.S. Sugar Corp. v. EPA*, 830 F.3d at 656. Consistent with the statute and case law, the EPA is establishing a subcategory based on the

<sup>17</sup> See EPA Docket ID Item Nos. EPA-HQ-OAR-2018-0794-1154 and EPA-HQ-OAR-2018-0794-1160 for additional discussion of commenters' claims of physical and configurational difficulties in installing downstream control technologies.

<sup>18</sup> This testing is described in materials provided to the EPA by ARIPPA during a March 13, 2013, meeting. The materials are available in the previous MATS rulemaking Docket ID Item No. EPA-HQ-OAR-2009-0234-20338 and in the current Docket ID No. EPA-HQ-OAR-2018-0794.



size (boiler 150 MW or less) and type (boiler designed to burn EBCR) to address the different acid gas HAP emissions from such sources.

To inform our consideration, the EPA reviewed EGU design, operating information, air emissions data compiled from the 2010 Information Collection Request (ICR) that was used by the EPA during development of the 2012 MATS final rule, and other available information for coal-fired EGUs in the source category. The EPA found that there are significant design and operational differences in coal-fired EGUs that are based on the expected source of fuel and the design of the unit that affect the levels of emissions of HCl and SO<sub>2</sub>—both of which serve as a surrogate for all acid gas HAP emitted from coal-fired EGUs under MATS. These differences support our decision to establish a subcategory for existing EGUs that burn EBCR and have a net summer capacity of 150 MW or lower. Specifically, the emissions data for HCl and SO<sub>2</sub> show a distinguishable difference in performance exists between coal-fired units with a net summer capacity of no greater than 150 MW designed to burn EBCR and other coal-fired units, including units that burn coal refuse other than EBCR.<sup>19 20</sup> Because the EBCR-fired units have different emission characteristics for acid gas HAP, the EPA has determined that units that are designed to burn EBCR, and actually burn at least 75-percent EBCR, are a different type of unit and should be subcategorized for acid gas HAP emissions.<sup>21</sup>

The determination that EBCR-fired EGUs have different emission characteristics for acid gas HAP is reasonably based on the same 2010 ICR dataset used to establish the bases of subcategories and standards in the 2012 MATS final rule. An examination of the data shows that there were no coal-fired units with a net summer capacity of 150 MW or less designed to burn EBCR among the top performing 12 percent of coal-fired units for emissions of HCl or SO<sub>2</sub>, even though the EPA used 12 percent of the entire source category (130 units) to establish the acid gas HAP

standard for coal-fired EGUs. There were, however, EGUs firing bituminous coal, subbituminous coal, and lignite among the top performing units for HCl and EGUs firing bituminous, subbituminous, lignite, and non-EBCR coal refuse among the top performers for SO<sub>2</sub>. The EPA points out that the assessment of the need for a subcategory was not based on data for the period of January 2015 through June 2018 as suggested by commenters. As discussed in section III.B of this preamble, those data were used to determine the SO<sub>2</sub> lb/MMBtu emission rate for beyond-the-floor level of control. The EPA disagrees with commenters' assertions that the fact that some EBCR-fired EGUs have met the 2012 final MATS SO<sub>2</sub> limit means the new subcategory is unreasonable. The EPA is aware of EGUs at two plants<sup>22</sup> that have been able to meet the 2012 final MATS SO<sub>2</sub> limit. Historical SO<sub>2</sub> emissions data reported to the EPA's Emissions Collection and Monitoring Plan System (ECMPS) for those EGUs shows that those plants had lower SO<sub>2</sub> emissions than other EBCR-fired EGUs. Thus, the additional SO<sub>2</sub> emissions reductions required for those EGUs to meet the 2012 final MATS SO<sub>2</sub> limit are more likely to be achievable through means such as increased limestone injection and fuel switching without the limitations described by several commenters and summarized earlier in this section of the preamble. The EPA's understanding, however, is that the operational changes made to those EGUs with historically lower SO<sub>2</sub> emissions in order to meet the 2012 final MATS SO<sub>2</sub> limit result in less EBCR being disposed of and are not economically feasible in the long term. One facility has met the SO<sub>2</sub> limit by injecting more limestone and the other facility has met the limit by co-firing lower sulfur coal. Similarly, the ability of those same units to meet the 2012 final MATS acid gas HAP limit as well as the Hg limit or to meet the 2012 final MATS acid gas HAP limit while still re-using their ash does not mean a separate subcategory is unwarranted or unreasonable. The information in the record supports a conclusion that the existing EGUs in the new subcategory are different from a fuel and design perspective and it is reasonable to establish a new subcategory based on the size and type of unit. In addition, this new subcategory is also reasonable because the alternative is to maintain a standard

that requires the sources to operate in a manner that undermines the purpose for which they were constructed and may be technologically infeasible for certain units in the subcategory. Specifically, the coal refuse-fired EGUs at issue were constructed at or near legacy piles of EBCR for the primary purposes of reducing the health and environmental hazards associated with the coal piles and using the resultant coal ash to reclaim abandoned mining sites. The commenters in support of the rule provided information indicating the reasons the new subcategory is warranted and how requiring compliance with the 2012 MATS limit for acid gas HAP would undermine the continued viability of the EBCR-fired EGUs to perform both of these functions.

For all these reasons, we do not agree that the commenters have raised any significant objections to the EPA's determination that it is reasonable and appropriate to establish a new subcategory for EBCR-fired EGUs. Accordingly, we are finalizing the new subcategory.

#### B. Subcategory Emission Standards

As noted in the 2019 Proposal, the EPA conducted an analysis to determine the numerical acid gas emission standards for the subcategory of certain existing EGUs that fire EBCR should such a subcategory be established.<sup>23</sup> The EPA explained that it determined the MACT floor and the beyond-the-floor (*i.e.*, more stringent than the MACT floor) levels of control for HCl and SO<sub>2</sub> emissions. The EPA further explained that the SO<sub>2</sub> lb/MMBtu emission rate for beyond-the-floor level of control was determined for each currently operating EBCR-fired EGU using monthly SO<sub>2</sub> data available in the EPA's ECMPS for the period of January 2015 through June 2018.<sup>24</sup> The EPA stated that if a beyond-the-floor (with floor at 1.0 lb/MMBtu) SO<sub>2</sub> emissions limit was established, it would likely be in the range of 0.60–0.70 lb/MMBtu; a limit that, on average, the currently operating EBCR-fired EGUs have demonstrated an ability to

<sup>19</sup> As discussed earlier in this section of this preamble, the subcategory being established in this final rule excludes the two EBCR-fired EGUs at the Seward Generating Station, which are 260 MW each, from the new subcategory.

<sup>20</sup> See the memorandum titled *HCl and SO<sub>2</sub> Emissions for Coal Refuse-Fired EGUs*, available in Docket ID No. EPA-HQ-OAR-2018-0794.

<sup>21</sup> For all other HAP from these two subcategories of coal-fired units, the data did not show any difference in the level of the HAP emissions and, therefore, we have determined that it is not reasonable to establish separate emissions limits for the other HAP.

<sup>22</sup> Neither of these two plants with EBCR-fired EGUs that have met the 2012 final MATS SO<sub>2</sub> limit are the Seward Generating Station discussed earlier in this section of this preamble.

<sup>23</sup> The analysis is summarized in a separate memorandum titled *NESHAP for Coal- and Oil-Fired EGUs: MACT Floor Analysis and Beyond the MACT Floor Analysis for Subcategory of Existing Eastern Bituminous Coal Refuse-Fired EGUs Under Consideration*, available in Docket ID No. EPA-HQ-OAR-2018-0794.

<sup>24</sup> At the time of the 2019 Proposal's analysis, SO<sub>2</sub> data through June 2018 were available. Data that have become available only after the 2019 Proposal is not a necessary basis of our discussion of that Proposal or the EPA's final action here, but it generally corroborates the basis already available and noticed to the public in February 2019. New data that have since become available to the EPA are discussed later in this section of this preamble.



achieve based on their monthly emissions data for January 2015 through June 2018. The EPA explained that due to data limitations (*i.e.*, no HCl lb/MMBtu or lb/MWh emissions data have been submitted for the currently operating EBCR-fired EGUs, and SO<sub>2</sub> lb/MWh emissions data are available for only two of the currently operating EBCR-fired EGUs), this same beyond-the-floor methodology used to determine the beyond-the-floor

standards for SO<sub>2</sub> in lb/MMBtu could not be used to evaluate beyond-the-floor standards for SO<sub>2</sub> in lb/MWh or for HCl in either lb/MMBtu or lb/MWh. The EPA, therefore, further explained that it determined that beyond-the-floor standards for those pollutants, if established, should reasonably be set based on the same percentage reduction as the SO<sub>2</sub> lb/MMBtu described earlier (*i.e.*, the 40-percent reduction in the emissions rate for SO<sub>2</sub> between the

calculated MACT floor value of 1.0 lb/MMBtu and the beyond-the-floor value of 0.60 lb/MMBtu). The EPA solicited comment on the analysis conducted to determine the numerical acid gas emission standards and, on its methodology, and results. Table 4 of this preamble shows the results of the MACT floor and beyond-the-floor analyses as discussed in the 2019 Proposal.

TABLE 4—MACT FLOOR AND BEYOND-THE-FLOOR RESULTS FOR POTENTIAL EBCR-FIRED EGUS SUBCATEGORY

Subcategory	Parameter	HCl	SO <sub>2</sub>
Existing Eastern Bituminous Coal Refuse-Fired EGUs .....	Number in MACT Floor .....	5 .....	5
	99% UPL <sup>a</sup> of Top 5 ( <i>i.e.</i> , MACT floor)	6.0E–2 lb/MMBtu ...	1.0 lb/MMBtu
		6.0E–1 lb/MWh .....	15 lb/MWh
	Beyond-the-floor Standard .....	4.0E–2 lb/MMBtu ...	6.0E–1 lb/MMBtu
		4.0E–1 lb/MWh .....	9.0 lb/MWh

<sup>a</sup> Upper prediction limit.

Immediately below and in the response to comments document, we discuss in more detail the basis for the acid gas HAP emission standards that are applicable to the new subcategory and address the significant comments on the standards for the new subcategory.

In response to the 2019 Proposal's solicitation of comment, the EPA received comments both supporting and opposing its analysis to determine the numerical acid gas emission standards for a subcategory of existing EBCR-fired EGUs. Several commenters agreed with the methodology that the EPA used to determine the MACT floor and beyond-the-floor levels of control for emissions of SO<sub>2</sub> and HCl. Commenters further stated that an SO<sub>2</sub> limit of 0.6 lb/MMBtu, as discussed in the 2019 Proposal, is reasonable, technologically and economically defensible, and would allow facilities to continue providing multimedia environmental benefits from coal refuse reclamation and remediation of mining-affected lands. Other commenters disagreed with the EPA's analyses of the MACT floor and beyond-the-floor levels of control and the resulting emission limits presented in the 2019 Proposal. Specifically, commenters disagreed with the data used in the analyses, claiming that it is not representative of the emissions reductions achieved in practice by the best-performing sources because it excludes time periods when controls were installed. In addition, commenters stated that the beyond-the-floor analysis fails to recognize that each plant in the subcategory already has acid gas controls sufficient to meet the current standard and, instead, assumes that

such controls are infeasible. Further, commenters stated that the only relevant cost for purposes of any beyond-the-floor standard is the cost of operating (rather than installing) the control.

The EPA disagrees with those comments opposing the data used in the MACT floor and beyond-the-floor analyses and the resulting emission limits. The MACT floor analyses for HCl and SO<sub>2</sub> for the subcategory of EBCR-fired EGUs are reasonably based on the same 2010 ICR dataset and methodology used to determine MACT floor emission values for pollutants regulated under the 2012 MATS final rule. HCl and SO<sub>2</sub> emissions data for the EBCR-fired EGUs that were operating at the time of the 2012 MATS final rule were used to calculate separate existing source MACT floors for HCl in lb/MMBtu and lb/MWh and SO<sub>2</sub> in lb/MMBtu and lb/MWh. Thus, the MACT floor analysis and resulting floor values are consistent with how MACT floors for other HAP emissions standards were calculated and are representative of the HCl and SO<sub>2</sub> emissions reductions achieved in practice by the best-performing EBCR-fired EGUs at that time, irrespective of the means that the reductions were achieved.

The beyond-the-floor analysis and resulting beyond-the-floor emission limit for SO<sub>2</sub> lb/MMBtu are reasonably based on the extensive data available in the EPA's ECMPs for each currently operating EBCR-fired EGU. As described in the 2019 Proposal, an SO<sub>2</sub> emission limit of 0.6 lb/MMBtu is a limit that the currently operating EBCR-fired EGUs have demonstrated an ability to achieve based on their monthly emissions data

for January 2015 through June 2018. Any means being used to control acid gases during that time period would be reflected in the average SO<sub>2</sub> lb/MMBtu emission rate for those EBCR-fired EGUs. Thus, the EPA's analysis does not exclude time periods when controls were installed. We note, however, that we are unaware of any EBCR-fired EGUs that have installed any downstream acid gas controls in addition to limestone injection into the FBC in response to the 2012 MATS rule. Further, the EPA has confirmed that extending the time horizon through March 2019 to include emissions data that have become available since the analysis for the 2019 Proposal would not result in changes to average SO<sub>2</sub> lb/MMBtu emission rates for the currently operating EBCR-fired EGUs nor to the SO<sub>2</sub> emission limit of 0.6 lb/MMBtu that, on average, those EGUs have achieved for that time period.<sup>25</sup>

Contrary to some comments, the beyond-the-floor analysis does recognize that each EBCR-fired EGU in the subcategory has controls to address acid gas emissions and, as explained earlier, average SO<sub>2</sub> lb/MMBtu emission rates reflect those controls. In addition, the 2019 Proposal, as well as section

<sup>25</sup> Including EBCR-fired EGUs' SO<sub>2</sub> emissions data for the time period of July 2018 through March 2019 results in minor changes to average SO<sub>2</sub> emissions values for some EBCR-fired EGUs but does not result in a change to the beyond-the-floor emission limit for SO<sub>2</sub> lb/MMBtu. Nevertheless, the more recent SO<sub>2</sub> data is included in an addendum to the 2019 Proposal's analysis, titled *NESHAP for Coal- and Oil-Fired EGUs: Addendum to MACT Floor Analysis and Beyond the MACT Floor Analysis for Subcategory of Existing Eastern Bituminous Coal Refuse-Fired EGUs Under Consideration*, available in Docket ID No. EPA-HQ-OAR-2018-0794.

III.A of this preamble, point out that all coal refuse fuels are fired in FBC that use limestone injection to minimize SO<sub>2</sub> emissions and to increase heat transfer efficiency. As discussed in section III.A of this preamble, commenters have pointed out, however, that there are limitations on the ability of existing EBCR-fired EGUs to control acid gas emissions to the level of the 2012 final MATS acid gas standard by increasing the amount of limestone injected. As such, the EPA disagrees with comments claiming that the current controls are sufficient to meet the 2012 final MATS acid gas standard and that, therefore, the only relevant cost for purposes of any beyond-the-floor standard is the cost of operating (rather than installing) the control. As also discussed in section III.A of this preamble, commenters have pointed out feasibility issues associated with installation and operation of various downstream acid gas control technologies in order to meet the 2012 final MATS acid gas standard. For those same reasons, the EPA determined that downstream acid gas control technologies such as scrubbers (either wet FGD scrubbers or SDA) or DSI systems are not beyond-the-floor options for acid gas HAP emissions from the subcategory of existing EBCR-fired EGUs.<sup>26</sup>

Based on a review of the public comments and other available information, the EPA is finalizing HCl and SO<sub>2</sub> emission limits reflecting beyond-the-floor level of control using the methodology described in the 2019 Proposal and earlier in this section of the preamble. Specifically, this action establishes the following emission limits for the new subcategory of existing EBCR-fired EGUs:

HCl: 4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh  
SO<sub>2</sub>: <sup>27</sup> 6.0E–1 lb/MMBtu or 9.0 lb/MWh

The SO<sub>2</sub> lb/MMBtu emissions limit is a limit that, on average, the currently operating EBCR-fired EGUs have achieved based on their monthly emissions data for January 2015 through

June 2018.<sup>28</sup> Because the EPA does not have such HCl emissions data or SO<sub>2</sub> lb/MWh emissions data, beyond-the-floor standards for SO<sub>2</sub> in lb/MWh and for HCl in lb/MMBtu and lb/MWh are based on the percentage reduction in the SO<sub>2</sub> lb/MMBtu emissions rate between the MACT floor value and the beyond-the-floor value.

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

##### A. What are the affected sources?

Affected sources are EGUs that are in the *unit designed for eastern bituminous coal refuse (EBCR) subcategory*, as defined under this final action. Based on available information, there are six currently operating EBCR-fired EGUs that are in the newly established subcategory and subject to the newly established acid gas HAP emission standards. The six EGUs, located at three facilities in Pennsylvania and one facility in West Virginia, are listed in Table 2 of this preamble.

##### B. What are the air quality impacts?

Absent the subcategory finalized in this action, many affected EBCR-fired EGUs would likely discontinue operations. Although the new emission standards will allow higher acid gas HAP and SO<sub>2</sub> emissions from these facilities compared to the emission standards in the original 2012 MATS, emissions of other HAP will not change under this action. These higher allowable emissions may, however, be partially offset. In the absence of this rule, closure of the units would likely result in reduced remediation of abandoned mine lands (AMLs) and potentially increase the risk and impact of emissions from refuse piles. Refuse piles at AMLs are prone to spontaneous internal combustion (smoldering) which emits uncontrolled air pollutants including acid gases and other HAP, and with less remediation, the potential for greater emissions from smoldering increases. More detailed analysis of potential air impacts of this rule is presented in a docketed memorandum.<sup>29</sup>

##### C. What are the compliance cost impacts?

Relative to a baseline in which the subcategory is not finalized and the existing 2012 MATS acid gas HAP emissions limits are enforced, the new subcategory could reduce costs by eliminating the need for investment in additional compliance measures which have not yet been made by affected units. The magnitude of potential cost reductions is discussed in a docketed memorandum.<sup>30</sup>

##### D. What are the economic impacts?

The impact of the newly finalized subcategory of EBCR-fired EGUs for emissions of acid gas HAP on the broader electricity sector is likely to be minor due to the relatively small size of these facilities. Additionally, the risk of the affected EBCR-fired EGUs closing because of challenges in meeting MATS acid gas HAP limits is reduced by the new subcategory. As a result, the coal refuse reclamation services the units provide are more likely to be sustained in the future, potentially offsetting reclamation costs that may be otherwise incurred by the states of Pennsylvania and West Virginia. Additionally, because of the reduced risk of closure, the acid gas HAP subcategory finalized in this action could prevent labor market transitions for individuals who operate and perform support functions for these facilities. However, it may limit labor market opportunities that could result from AML reclamation by other means.

##### E. What are the forgone benefits?

Absent the subcategory finalized in this action, affected EBCR-fired EGUs would likely either discontinue operations or perform compliance measures to comply with the previous MATS acid gas HAP limits, which would have the effect of reducing acid gas HAP emissions. The newly finalized subcategory will likely increase emissions of SO<sub>2</sub> relative to a baseline in which the subcategory is not finalized; this in turn would form fine PM (PM<sub>2.5</sub>) concentrations in the atmosphere and potentially adversely affect human health. The magnitude of those forgone co-benefits depends on the magnitude of the air quality impacts described earlier. Notably, most counties in Pennsylvania and bordering

<sup>26</sup> See, also, the memorandum titled *NESHAP for Coal- and Oil-Fired EGUs: Addendum to MACT Floor Analysis and Beyond the MACT Floor Analysis for Subcategory of Existing Eastern Bituminous Coal Refuse-Fired EGUs Under Consideration*, available in Docket ID No. EPA-HQ-OAR-2018-0794.

<sup>27</sup> As is the requirement for all coal-fired EGUs subject to MATS, the alternate SO<sub>2</sub> limit may be used if the EGU has some form of FGD system and SO<sub>2</sub> CEMS and both are installed and operated at all times. As specified in 40 CFR 63.10000(c)(1)(v) of the 2012 MATS final rule, limestone injection to an FBC unit is an “FGD system” that would allow the EBCR-fired EGUs to use the alternative SO<sub>2</sub> standard.

<sup>28</sup> As previously explained in this preamble, at the time of the 2019 Proposal’s analysis, SO<sub>2</sub> data through June 2018 were available. Inclusion of data that has become available only after the 2019 Proposal does not result in a change to the beyond-the-floor emission limit for SO<sub>2</sub> lb/MMBtu. See the memorandum titled *NESHAP for Coal- and Oil-Fired EGUs: Addendum to MACT Floor Analysis and Beyond the MACT Floor Analysis for Subcategory of Existing Eastern Bituminous Coal Refuse-Fired EGUs Under Consideration*, available in Docket ID No. EPA-HQ-OAR-2018-0794.

<sup>29</sup> See the memorandum titled *Analysis of Potential Costs and Benefits for the National*

*Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants*, available in Docket ID No. EPA-HQ-OAR-2018-0794

<sup>30</sup> Ibid.

states attain the current PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS), set at a level requisite to protect public health with an adequate margin of safety. The magnitude of potential forgone benefits is discussed in a docketed memorandum.<sup>31</sup>

In contrast, if plants continue to operate when they otherwise would not have absent this action, the continued remediation of AMLs could provide water quality co-benefits through reductions in toxic metal leaching and acid mine drainage. As noted earlier, removal of coal refuse piles reduces surface and groundwater pollution from acidic drainage and reduces uncontrolled emissions of air pollutants that are released from self-ignited internal smoldering of the coal refuse piles. In addition, commenters pointed out that the alkaline ash produced by EBCR-fired EGUs is used to reclaim mining-affected lands by returning them to a productive use.

Remediation of AMLs through the use of waste coal is supported by the state of Pennsylvania through policies such as tax credits and treatment of these units as renewable for purposes of the state's renewable portfolio standard. If these waste coal units are no longer able to operate, the state will need to find alternative means to remediate these sites leading to, at best, a delay in these benefits, if not a loss of these benefits altogether. These benefits are discussed qualitatively in greater detail in the docketed memorandum.

As noted earlier, while the EPA cannot predict with certainty what the industry response would be absent the establishment of a new subcategory, industry commenters have suggested that some—and maybe all—of the affected sources would shut down.<sup>32</sup> If that is the case, then the establishment of this new subcategory will allow those units to continue to achieve both of their purposes while also maintaining emissions of acid gas HAP at levels similar to current emissions levels.

While the EPA cannot predict with certainty what the industry response would be in the absence of a new subcategory, commenters' claim that the units would shut down is plausible. Coal-fired power plants are currently facing tremendous competitive pressures. As a result, coal's share of total U.S. electricity generation has been declining for over a decade, while generation from natural gas and renewables has increased significantly.

A large number of coal units—especially smaller ones like the EBCR-fired EGUs—have retired since 2010. Indeed, as mentioned earlier, four of the ten units that were identified as affected by this action in the 2019 Proposal have now either retired or announced plans to convert to natural gas.

## V. Statutory and Executive Order Reviews

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

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

This action is an economically 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 has conducted an analysis of all reasonably anticipated costs and benefits arising out of this rule, including those arising out of co-benefits pursuant to Executive Orders 12866 and 13563. That analysis can be found in a separate memorandum titled *Analysis of Potential Costs and Benefits for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants*, that is available in the docket.

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

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by revising the acid gas HAP emission standards for a new subcategory of certain existing EGUs that are currently subject to MATS and does not impose any additional regulatory requirements on the affected electric utility industry.

### 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 2060-0567. This action does not impose an information collection burden because the regulatory changes resulting

from this action do not affect the currently approved information collection requirements. Specifically, this action establishes acid gas HAP emission standards for a new subcategory of certain existing EGUs that are currently subject to MATS and the new emission standards do not result in any changes to the recordkeeping or reporting requirements that those impacted EGUs are currently subject to.

### 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 is a deregulatory action, and the burden on all entities affected by this final rule, including small entities, is reduced compared to the 2012 MATS.

### 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 neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Specifically, this action establishes acid gas HAP emission standards for a new subcategory of certain existing EGUs currently subject to MATS and located in Pennsylvania and West Virginia, states without any federally recognized tribal entities. Thus,

<sup>31</sup> Ibid.

<sup>32</sup> See EPA Docket ID Item Nos. EPA-HQ-OAR-2018-0794-1125 and EPA-HQ-OAR-2018-0794-1154.

Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of this action. The EPA held consultations with the Blue Lake Rancheria and the Fond du Lac Band of Lake Superior Chippewa on April 2, 2019, and April 3, 2019, respectively. Neither tribe provided comments regarding the 2019 Proposal's solicitation of comment on establishing a subcategory of certain existing EGUs firing EBCR for acid gas HAP emissions.

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

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. While children may experience forgone benefits as a result of this action, the potential forgone emission reductions (and related benefits) from the final amendments are small compared to the overall emission reductions (and related benefits) from the 2012 MATS.

Furthermore, this action does not affect the level of public health and environmental protection already being provided by existing NAAQS and other mechanisms in the CAA. This action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions. To the extent that states use other mechanisms in order to comply with the NAAQS, and still achieve the criteria pollution reductions that would have otherwise occurred, this action will not have a disproportionate adverse effect on children's health.

#### *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. Further, the EPA concludes that this action is not likely to have any adverse energy effects because it establishes acid gas HAP emission standards for a new subcategory of certain existing EGUs

that are currently subject to MATS and does not impose any additional regulatory requirements on the affected electric utility industry.

#### *J. National Technology Transfer and Advancement Act (NTTAA)*

This action 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). While these communities may experience forgone benefits as a result of this action, the potential forgone emission reductions (and related benefits) from the final action are small compared to the overall emission reductions (and related benefits) from the 2012 MATS.

Moreover, this action does not affect the level of public health and environmental protection already being provided by existing NAAQS, including ozone and PM<sub>2.5</sub>, and other mechanisms in the CAA. This action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions.

#### *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. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding under the provisions of 5 U.S.C. 808(2). The EPA finds that there is good cause under the provisions of 5 U.S.C. 808(2) to make this final rule effective without full, prior Congressional review under 5 U.S.C. 801 and to make the rule effective on April 15, 2020. The EPA finds that it is unnecessary to delay the date this rule could be effective because the Agency has determined that the owners or operators of affected MATS sources do not need time to adjust to this final action. This final action establishes a subcategory of certain existing EGUs firing EBCR and acid gas

HAP emission standards applicable only to the new subcategory. Sources in the new subcategory will be subject to an SO<sub>2</sub> emissions limit that, on average, the currently operating six EBCR-fired EGUs have demonstrated an ability to achieve but, otherwise, will not be subject to any new regulatory requirements.<sup>33</sup>

The EPA also finds that it is impracticable to delay the effective date of this rule. Three of the four facilities with EBCR-fired EGUs in the new subcategory are subject to EPA-issued Administrative Compliance Orders that provide interim SO<sub>2</sub> emission limits that terminate on April 15, 2020. Those facilities have asserted that they cannot meet the 2012 final MATS HCl emission standard, or the 2012 final MATS SO<sub>2</sub> acid gas HAP surrogate emission standard, while burning the coal refuse fuel for which their facilities were designed. By 11:59 p.m. on April 15, 2020, EBCR-fired EGUs at those facilities must achieve full compliance with MATS. Absent this final action's acid gas HAP emission standards for the new subcategory being effective by that date, EGUs at those three facilities would be subject to the 2012 final MATS acid gas HAP emission standards that they are not currently in compliance with, and, thus, in violation of their Orders. According to the facilities, if subject to the 2012 acid gas HAP emission standards, they would no longer be in a position to continue operating their EBCR-fired EGUs and, thus, provide the environmental benefits associated with removal of coal refuse piles and reclamation and remediation of mining-affected lands.

Accordingly, the EPA finds it would be unnecessary and impracticable to delay the effective date of this action and that there is good cause to dispense with the opportunity for a 60-day period of prior Congressional review and to publish this final rule with an effective date of April 15, 2020.

#### **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.

**Andrew Wheeler,**  
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 63 as follows:

<sup>33</sup> Affected sources may report emissions of either SO<sub>2</sub> or HCl. Most MATS-affected EGUs report emissions of SO<sub>2</sub> because they already report SO<sub>2</sub> emissions under the EPA's Acid Rain Program.

# **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 UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units**

■ 2. Section 63.9982 is amended by revising paragraph (d) to read as follows:

### **§ 63.9982 What is the affected source of this subpart?**

\* \* \* \* \*

(d) An EGU is existing if it is not new or reconstructed. An existing electric steam generating unit that meets the applicability requirements after April 16, 2012, due to a change in process (*e.g.*, fuel or utilization) is considered to be an existing source under this subpart.

■ 3. Section 63.9984 is amended by revising paragraphs (b) and (f) and adding paragraph (g) to read as follows:

### **§ 63.9984 When do I have to comply with this subpart?**

\* \* \* \* \*

(b) If you have an existing EGU, you must comply with this subpart no later than April 16, 2015, except as provided in paragraph (g) of this section.

\* \* \* \* \*

(f) You must demonstrate that compliance has been achieved, by conducting the required performance tests and other activities, no later than 180 days after the applicable date in paragraph (a), (b), (c), (d), (e), or (g) of this section.

(g) If you own or operate an EGU that is in the *Unit designed for eastern bituminous coal refuse (EBCR) subcategory* as defined in § 63.10042, you must comply with the applicable hydrogen chloride (HCl) or sulfur dioxide (SO<sub>2</sub>) requirements of this subpart no later than April 15, 2020.

■ 4. Section 63.9990 is amended by revising paragraph (a) to read as follows:

### **§ 63.9990 What are the subcategories of EGUs?**

(a) Coal-fired EGUs are subcategorized as defined in paragraphs (a)(1) through (3) of this section and as defined in § 63.10042.

(1) EGUs designed for coal with a heating value greater than or equal to 8,300 Btu/lb,

(2) EGUs designed for low rank virgin coal, and

(3) EGUs designed for EBCR.

\* \* \* \* \*

■ 5. Section 63.10042 is amended by adding definitions for “Eastern bituminous coal refuse (EBCR),” “Net summer capacity,” and “Unit designed for eastern bituminous coal refuse (EBCR) subcategory” in alphabetical order to read as follows:

### **§ 63.10042 What definitions apply to this subpart?**

\* \* \* \* \*

*Eastern bituminous coal refuse (EBCR)* means coal refuse generated from the mining of bituminous coal in Pennsylvania and West Virginia.

\* \* \* \* \*

*Net summer capacity* means the maximum output, commonly expressed in megawatts (MW), that generating equipment can supply to system load, as demonstrated by a multi-hour test, at the time of summer peak demand (period of June 1 through September 30.) This output reflects a reduction in capacity due to electricity use for station service or auxiliaries.

\* \* \* \* \*

*Unit designed for eastern bituminous coal refuse (EBCR) subcategory* means any existing (*i.e.*, construction was commenced on or before May 3, 2011) coal-fired EGU with a net summer capacity of no greater than 150 MW that is designed to burn and that is burning 75 percent or more (by heat input) eastern bituminous coal refuse on a 12-month rolling average basis.

\* \* \* \* \*

■ 6. Table 2 to Subpart UUUUU of Part 63 is revised to read as follows:

### **Table 2 to Subpart UUUUU of Part 63—Emission Limits for Existing EGUs**

As stated in § 63.9991, you must comply with the following applicable emission limits:<sup>1</sup>

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate ( <i>e.g.</i> , specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
1. Coal-fired unit not low rank virgin coal	a. Filterable particulate matter (PM).	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh <sup>2</sup> .	Collect a minimum of 1 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	5.0E–5 lb/MMBtu or 5.0E–1 lb/GWh.	Collect a minimum of 1 dscm per run.
	OR	OR	
	Individual HAP metals: .....	.....	Collect a minimum of 3 dscm per run.
	Antimony (Sb) .....	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Arsenic (As) .....	1.1E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Beryllium (Be) .....	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	
	Cadmium (Cd) .....	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Chromium (Cr) .....	2.8E0 lb/TBtu or 3.0E–2 lb/GWh.	
	Cobalt (Co) .....	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Lead (Pb) .....	1.2E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Manganese (Mn) .....	4.0E0 lb/TBtu or 5.0E–2 lb/GWh.	
	Nickel (Ni) .....	3.5E0 lb/TBtu or 4.0E–2 lb/GWh.	

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate ( <i>e.g.</i> , specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
2. Coal-fired unit low rank virgin coal .....	Selenium (Se) .....	5.0E0 lb/TBtu or 6.0E–2 lb/GWh.	For Method 26A at appendix A–8 to part 60 of this chapter, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 <sup>3</sup> or Method 320 at appendix A to part 63 of this chapter, sample for a minimum of 1 hour.
	b. Hydrogen chloride (HCl)	2.0E–3 lb/MMBtu or 2.0E–2 lb/MWh.	
	OR .....	.....	
	Sulfur dioxide (SO <sub>2</sub> ) <sup>4</sup> .....	2.0E–1 lb/MMBtu or 1.5E0 lb/MWh.	SO <sub>2</sub> CEMS.
	c. Mercury (Hg) .....	1.2E0 lb/TBtu or 1.3E–2 lb/GWh.	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B at appendix A–8 to part 60 of this chapter run or Hg CEMS or sorbent trap monitoring system only.
	OR .....	OR 1.0E0 lb/TBtu or 1.1E–2 lb/GWh.	LEE Testing for 90 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.
	a. Filterable particulate matter (PM).	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh <sup>2</sup> .	Collect a minimum of 1 dscm per run.
	OR Total non-Hg HAP metals	OR 5.0E–5 lb/MMBtu or 5.0E–1 lb/GWh.	Collect a minimum of 1 dscm per run.
	OR Individual HAP metals: .....	OR .....	Collect a minimum of 3 dscm per run.
	Antimony (Sb) .....	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Arsenic (As) .....	1.1E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Beryllium (Be) .....	2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	
	Cadmium (Cd) .....	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Chromium (Cr) .....	2.8E0 lb/TBtu or 3.0E–2 lb/GWh.	
	Cobalt (Co) .....	8.0E–1 lb/TBtu or 8.0E–3 lb/GWh.	
	Lead (Pb) .....	1.2E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Manganese (Mn) .....	4.0E0 lb/TBtu or 5.0E–2 lb/GWh.	
	Nickel (Ni) .....	3.5E0 lb/TBtu or 4.0E–2 lb/GWh.	
	Selenium (Se) .....	5.0E0 lb/TBtu or 6.0E–2 lb/GWh.	
	b. Hydrogen chloride (HCl)	2.0E–3 lb/MMBtu or 2.0E–2 lb/MWh.	
	OR Sulfur dioxide (SO <sub>2</sub> ) <sup>4</sup> .....	2.0E–1 lb/MMBtu or 1.5E0 lb/MWh.	For Method 26A, collect a minimum of 0.75 dscm per run; for Method 26 at appendix A–8 to part 60 of this chapter, collect a minimum of 120 liters per run. For ASTM D6348–03 <sup>3</sup> or Method 320, sample for a minimum of 1 hour.
	c. Mercury (Hg) .....	4.0E0 lb/TBtu or 4.0E–2 lb/GWh.	SO <sub>2</sub> CEMS.
	OR .....	.....	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
3. IGCC unit .....	a. Filterable particulate matter (PM). OR Total non-Hg HAP metals OR Individual HAP metals: ..... Antimony (Sb) ..... Arsenic (As) ..... Beryllium (Be) ..... Cadmium (Cd) ..... Chromium (Cr) ..... Cobalt (Co) ..... Lead (Pb) ..... Manganese (Mn) ..... Nickel (Ni) ..... Selenium (Se) ..... b. Hydrogen chloride (HCl) c. Mercury (Hg) .....	4.0E–2 lb/MMBtu or 4.0E–1 lb/MWh <sup>2</sup> . OR 6.0E–5 lb/MMBtu or 5.0E–1 lb/GWh. OR 1.4E0 lb/TBtu or 2.0E–2 lb/GWh. 1.5E0 lb/TBtu or 2.0E–2 lb/GWh. 1.0E–1 lb/TBtu or 1.0E–3 lb/GWh. 1.5E–1 lb/TBtu or 2.0E–3 lb/GWh. 2.9E0 lb/TBtu or 3.0E–2 lb/GWh. 1.2E0 lb/TBtu or 2.0E–2 lb/GWh. 1.9E+2 lb/TBtu or 1.8E0 lb/GWh. 2.5E0 lb/TBtu or 3.0E–2 lb/GWh. 6.5E0 lb/TBtu or 7.0E–2 lb/GWh. 2.2E+1 lb/TBtu or 3.0E–1 lb/GWh. 5.0E–4 lb/MMBtu or 5.0E–3 lb/MWh. 2.5E0 lb/TBtu or 3.0E–2 lb/GWh.	Collect a minimum of 1 dscm per run. Collect a minimum of 1 dscm per run. Collect a minimum of 2 dscm per run. For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 <sup>3</sup> or Method 320, sample for a minimum of 1 hour. LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.
4. Liquid oil-fired unit—continental (excluding limited-use liquid oil-fired subcategory units).	a. Filterable particulate matter (PM). OR Total HAP metals ..... OR Individual HAP metals: ..... Antimony (Sb) ..... Arsenic (As) ..... Beryllium (Be) ..... Cadmium (Cd) ..... Chromium (Cr) ..... Cobalt (Co) ..... Lead (Pb) ..... Manganese (Mn) ..... Nickel (Ni) ..... Selenium (Se) ..... Mercury (Hg) .....	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh <sup>2</sup> . OR 8.0E–4 lb/MMBtu or 8.0E–3 lb/MWh. OR 1.3E+1 lb/TBtu or 2.0E–1 lb/GWh. 2.8E0 lb/TBtu or 3.0E–2 lb/GWh. 2.0E–1 lb/TBtu or 2.0E–3 lb/GWh. 3.0E–1 lb/TBtu or 2.0E–3 lb/GWh. 5.5E0 lb/TBtu or 6.0E–2 lb/GWh. 2.1E+1 lb/TBtu or 3.0E–1 lb/GWh. 8.1E0 lb/TBtu or 8.0E–2 lb/GWh. 2.2E+1 lb/TBtu or 3.0E–1 lb/GWh. 1.1E+2 lb/TBtu or 1.1E0 lb/GWh. 3.3E0 lb/TBtu or 4.0E–2 lb/GWh. 2.0E–1 lb/TBtu or 2.0E–3 lb/GWh.	Collect a minimum of 1 dscm per run. Collect a minimum of 1 dscm per run. Collect a minimum of 1 dscm per run. For Method 30B sample volume determination (Section 8.2.4), the estimated Hg concentration should nominally be < <sup>1</sup> / <sub>2</sub> the standard.

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
5. Liquid oil-fired unit—non-continental (excluding limited-use liquid oil-fired subcategory units).	b. Hydrogen chloride (HCl)	2.0E–3 lb/MMBtu or 1.0E–2 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 <sup>3</sup> or Method 320, sample for a minimum of 1 hour.
	c. Hydrogen fluoride (HF) ..	4.0E–4 lb/MMBtu or 4.0E–3 lb/MWh.	
	a. Filterable particulate matter (PM).	3.0E–2 lb/MMBtu or 3.0E–1 lb/MWh <sup>2</sup> .	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 <sup>3</sup> or Method 320, sample for a minimum of 1 hour. Collect a minimum of 1 dscm per run.
	OR Total HAP metals .....	OR 6.0E–4 lb/MMBtu or 7.0E–3 lb/MWh.	
	OR Individual HAP metals: .....	OR .....	Collect a minimum of 2 dscm per run.
	Antimony (Sb) .....	2.2E0 lb/TBtu or 2.0E–2 lb/GWh.	
	Arsenic (As) .....	4.3E0 lb/TBtu or 8.0E–2 lb/GWh.	For Method 30B sample volume determination (Section 8.2.4), the estimated Hg concentration should nominally be < <sup>1</sup> / <sub>2</sub> the standard.
	Beryllium (Be) .....	6.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Cadmium (Cd) .....	3.0E–1 lb/TBtu or 3.0E–3 lb/GWh.	
	Chromium (Cr) .....	3.1E+1 lb/TBtu or 3.0E–1 lb/GWh.	
	Cobalt (Co) .....	1.1E+2 lb/TBtu or 1.4E0 lb/GWh.	
	Lead (Pb) .....	4.9E0 lb/TBtu or 8.0E–2 lb/GWh.	
	Manganese (Mn) .....	2.0E+1 lb/TBtu or 3.0E–1 lb/GWh.	
	Nickel (Ni) .....	4.7E+2 lb/TBtu or 4.1E0 lb/GWh.	
	Selenium (Se) .....	9.8E0 lb/TBtu or 2.0E–1 lb/GWh.	
	Mercury (Hg) .....	4.0E–2 lb/TBtu or 4.0E–4 lb/GWh.	
	b. Hydrogen chloride (HCl)	2.0E–4 lb/MMBtu or 2.0E–3 lb/MWh.	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348–03 <sup>3</sup> or Method 320, sample for a minimum of 2 hours.
	c. Hydrogen fluoride (HF) ..	6.0E–5 lb/MMBtu or 5.0E–4 lb/MWh.	
6. Solid oil-derived fuel-fired unit .....	a. Filterable particulate matter (PM).	8.0E–3 lb/MMBtu or 9.0E–2 lb/MWh <sup>2</sup> .	Collect a minimum of 1 dscm per run.
	OR Total non-Hg HAP metals	OR 4.0E–5 lb/MMBtu or 6.0E–1 lb/GWh.	
	OR Individual HAP metals: .....	OR .....	Collect a minimum of 3 dscm per run.
	Antimony (Sb) .....	8.0E–1 lb/TBtu or 7.0E–3 lb/GWh.	
	Arsenic (As) .....	3.0E–1 lb/TBtu or 5.0E–3 lb/GWh.	
	Beryllium (Be) .....	6.0E–2 lb/TBtu or 5.0E–4 lb/GWh.	
	Cadmium (Cd) .....	3.0E–1 lb/TBtu or 4.0E–3 lb/GWh.	
	Chromium (Cr) .....	8.0E–1 lb/TBtu or 2.0E–2 lb/GWh.	
	Cobalt (Co) .....	1.1E0 lb/TBtu or 2.0E–2 lb/GWh.	



If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate ( <i>e.g.</i> , specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
7. Eastern Bituminous Coal Refuse (EBCR)-fired unit.	Lead (Pb) .....	8.0E-1 lb/TBtu or 2.0E-2 lb/GWh.	For Method 26A, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348-03 <sup>3</sup> or Method 320, sample for a minimum of 1 hour.
	Manganese (Mn) .....	2.3E0 lb/TBtu or 4.0E-2 lb/GWh.	
	Nickel (Ni) .....	9.0E0 lb/TBtu or 2.0E-1 lb/GWh.	
	Selenium (Se) .....	1.2E0 lb/Tbtu or 2.0E-2 lb/GWh.	
	b. Hydrogen chloride (HCl)	5.0E-3 lb/MMBtu or 8.0E-2 lb/MWh.	
	OR		
	Sulfur dioxide (SO <sub>2</sub> ) <sup>4</sup> .....	3.0E-1 lb/MMBtu or 2.0E0 lb/MWh.	SO <sub>2</sub> CEMS.
	c. Mercury (Hg) .....	2.0E-1 lb/TBtu or 2.0E-3 lb/GWh.	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.
	a. Filterable particulate matter (PM).	3.0E-2 lb/MMBtu or 3.0E-1 lb/MWh <sup>2</sup> .	Collect a minimum of 1 dscm per run.
	OR		
	Total non-Hg HAP metals	5.0E-5 lb/MMBtu or 5.0E-1 lb/GWh.	Collect a minimum of 1 dscm per run.
	OR		
	Individual HAP metals: .....	OR	Collect a minimum of 3 dscm per run.
	Antimony (Sb) .....	8.0E-1 lb/TBtu or 8.0E-3 lb/GWh.	
	Arsenic (As) .....	1.1E0 lb/TBtu or 2.0E-2 lb/GWh.	
	Beryllium (Be) .....	2.0E-1 lb/TBtu or 2.0E-3 lb/GWh.	
	Cadmium (Cd) .....	3.0E-1 lb/TBtu or 3.0E-3 lb/GWh.	
	Chromium (Cr) .....	2.8E0 lb/TBtu or 3.0E-2 lb/GWh.	
	Cobalt (Co) .....	8.0E-1 lb/TBtu or 8.0E-3 lb/GWh.	
	Lead (Pb) .....	1.2E0 lb/TBtu or 2.0E-2 lb/GWh.	
	Manganese (Mn) .....	4.0E0 lb/TBtu or 5.0E-2 lb/GWh.	
	Nickel (Ni) .....	3.5E0 lb/TBtu or 4.0E-2 lb/GWh.	
	Selenium (Se) .....	5.0E0 lb/TBtu or 6.0E-2 lb/GWh.	
	b. Hydrogen chloride (HCl)	4.0E-2 lb/MMBtu or ..... 4.0E-1 lb/MWh .....	For Method 26A at appendix A-8 to part 60 of this chapter, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 120 liters per run. For ASTM D6348-03 <sup>3</sup> or Method 320 at appendix A to part 63 of this chapter, sample for a minimum of 1 hour.
	OR		
	Sulfur dioxide (SO <sub>2</sub> ) <sup>4</sup> .....	6E-1 lb/MMBtu or 9E0 lb/MWh.	SO <sub>2</sub> CEMS.
	c. Mercury (Hg) .....	1.2E0 lb/TBtu or 1.3E-2 lb/GWh.	LEE Testing for 30 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B at appendix A-8 to part 60 of this chapter run or Hg CEMS or sorbent trap monitoring system only.
		OR	

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) and limitations with the test methods in Table 5 to this Subpart . . .
		1.0E0 lb/TBtu or 1.1E–2 lb/GWh.	LEE Testing for 90 days with a sampling period consistent with that given in section 5.2.1 of appendix A to this subpart per Method 30B run or Hg CEMS or sorbent trap monitoring system only.

<sup>1</sup> For LEE emissions testing for total PM, total HAP metals, individual HAP metals, HCl, and HF, the required minimum sampling volume must be increased nominally by a factor of 2.

<sup>2</sup> Gross output.

<sup>3</sup> Incorporated by reference, see § 63.14.

<sup>4</sup> You may not use the alternate SO<sub>2</sub> limit if your EGU does not have some form of FGD system and SO<sub>2</sub> CEMS installed.

[FR Doc. 2020–07878 Filed 4–14–20; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA–HQ–OAR–2018–0417; FRL–10006–80–OAR]

RIN 2060–AT74

### National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production 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 Hydrochloric Acid (HCl) Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, in this action we are finalizing amendments to add electronic reporting; address periods of startup, shutdown, and malfunction (SSM); and establish work practice standards for maintenance activities pursuant to the Clean Air Act (CAA). We are making no revisions to the numerical emission limits based on the risk analysis or technology review. Although these amendments are not anticipated to result in reductions in emissions of hazardous air pollutants (HAP), they will result in improved monitoring, compliance and implementation of the rule.

**DATES:** This final rule is effective on April 15, 2020.

**ADDRESSES:** The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0417. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Nathan Topham, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0483; fax number: (919) 541–4991; and email address: [topham.nathan@epa.gov](mailto:topham.nathan@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](mailto:hollingsworth.terri@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania

Ave. NW, Washington, DC 20460; telephone number: (202) 564–7042; and email address: [mia.marcia@epa.gov](mailto:mia.marcia@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  
CDX Central Data Exchange  
Cl<sub>2</sub> chlorine  
ERT Electronic Reporting Tool  
HAP hazardous air pollutant(s)  
HCl hydrochloric acid  
HI hazard index  
HQ hazard quotient  
IARC International Agency for Research on Cancer  
ICR Information Collection Request  
MACT maximum achievable control technology  
MIR maximum individual risk  
NAAQS National Ambient Air Quality Standards  
NESHAP national emission standards for hazardous air pollutants  
NTTAA National Technology Transfer and Advancement Act  
RFA Regulatory Flexibility Act  
RTR Risk and Technology Review  
TOSHI target organ-specific hazard index  
UMRA Unfunded Mandates Reform Act

*Background information.* On February 4, 2019, the EPA proposed the results of the RTR for the HCl NESHAP and proposed amendments to add electronic reporting and address periods of SSM. In the proposal, the EPA also solicited public comments regarding maintenance activities. 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 *Summary of Public Comments and*

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 60 and 63**

[EPA-HQ-OAR-2002-0047; FRL-10006-05-OAR]

RIN 2060-AU18

**National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills 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 Municipal Solid Waste (MSW) Landfills source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revise wellhead operational standards and corrective action to improve effectiveness and provide compliance flexibility; reorganize rule text to incorporate provisions from the new source performance standards (NSPS) within this subpart; and add requirements for electronic reporting of performance test results. The EPA is also finalizing minor changes to the MSW Landfills NSPS and Emission Guidelines (EG) and Compliance Times for MSW Landfills. Specifically, the EPA is finalizing provisions to the most recent MSW Landfills NSPS and EG that would allow affected sources to demonstrate compliance with landfill gas control, operating, monitoring, recordkeeping, and reporting requirements by following the corresponding requirements in the MSW Landfills NESHAP. These final amendments will result in improved compliance and implementation of the rule.

**DATES:** This final rule is effective on March 26, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of March 26, 2020.

**ADDRESSES:** The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2002-0047. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, e.g., Confidential Business Information

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

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Andrew Sheppard, Natural Resources Group, Sector Policies and Programs Division (E143-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4161; fax number: (919) 541-0516; and email address: [Sheppard.Andrew@epa.gov](mailto:Sheppard.Andrew@epa.gov). For specific information regarding the risk modeling methodology, contact James Hirtz, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0881; fax number: (919) 541-0840; and email address: [Hirtz.James@epa.gov](mailto:Hirtz.James@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Ave. NW, Washington DC 20460; telephone number: (202) 564-7027; and email address: [Malave.Maria@epa.gov](mailto:Malave.Maria@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  
CFR Code of Federal Regulations  
CO carbon monoxide  
EG emission guidelines  
ERT Electronic Reporting Tool

FEMA Federal Emergency Management Agency  
GCCS gas collection and control system  
HAP hazardous air pollutant(s)  
HOV higher operating value  
HQ hazard quotient  
IBR incorporation by reference km kilometer  
LFG landfill gas  
MACT maximum achievable control technology  
Mg/yr megagrams per year  
MSW municipal solid waste  
NAICS North American Industry Classification System  
NARA National Archives and Records Administration  
NESHAP national emission standards for hazardous air pollutants  
NMOC non-methane organic compounds  
NSPS new source performance standards  
NTTAA National Technology Transfer and Advancement Act  
OMB Office of Management and Budget  
ppmv parts per million by volume  
PRA Paperwork Reduction Act  
REL reference exposure level  
RFA Regulatory Flexibility Act  
RTR residual risk and technology review  
SOE subsurface oxidation event  
SSM startup, shutdown, and malfunction  
TOSHI target organ-specific hazard index  
tpy tons per year  
UMRA Unfunded Mandates Reform Act

*Background information.* On July 29, 2019, the EPA proposed revisions to the MSW Landfills 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 the *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP*, available in Docket ID No. EPA-HQ-OAR-2002-0047. 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 MSW Landfills source category and how does the NESHAP regulate HAP emissions from the source category?

- C. What changes did we propose for the MSW Landfills source category in our July 29, 2019, RTR proposal?
- III. What is included in this final rule?
- A. What are the final rule amendments based on the risk review for the MSW Landfills source category?
- B. What are the final rule amendments based on the technology review for the MSW Landfills source category?
- C. What are the final rule amendments addressing emissions during periods of SSM?
- D. What other changes have been made to the MSW Landfills NESHAP?
- E. What are the effective and compliance dates of the standards?
- IV. What is the rationale for our final decisions and amendments for the MSW Landfills source category?
- A. Residual Risk Review for the MSW Landfills Source Category
- B. Technology Review for the MSW Landfills Source Category
- C. SSM for the MSW Landfills Source Category
- D. Summary of Changes Since Proposal
- 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. Incorporation by Reference
- VII. 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) 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 <sup>1</sup> code
Municipal Solid Waste Landfills ....	562212
Air and Water Resource and Solid Waste Management .....	924110
State, Local, and Tribal Government Agencies .....	924110

<sup>1</sup> 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/municipal-solid-waste-landfills-national-emission-standards>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

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

### C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the court) by May 25, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in

any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

## II. Background

### A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. "Major sources" are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as 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).<sup>1</sup> For more information on the statutory authority for this rule, see 84 FR 36670 (July 29, 2019).

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

The EPA promulgated the MSW Landfills NESHAP on January 16, 2003 (68 FR 2227). The standards are codified at 40 CFR part 63, subpart AAAA. As promulgated in 2003 and further amended on April 20, 2006 (71 FR 20462), the NESHAP regulates HAP emissions from MSW landfills that are either major or area sources.

The NESHAP applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m<sup>3</sup>) and have estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) of non-methane organic compounds (NMOC). The NESHAP also applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and include a bioreactor and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup> that were not permanently closed as of January 16, 2003.

The majority of HAP emissions at MSW landfills come from the continuous biodegradation of the MSW in the landfill and the formation of landfill gas (LFG) emissions. LFG emissions contain methane, carbon dioxide, and more than 100 different NMOC. The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene (61 FR 9906, March 12, 1996). The owner or operator of a landfill may control the gas by routing it to a non-enclosed flare, an enclosed combustion device, or a treatment system that processes the collected gas for subsequent sale or beneficial use.

The NESHAP regulates HAP emissions by requiring MSW landfills that exceed the size and emission thresholds to install and operate a

landfill gas collection and control system (GCCS). The NESHAP achieves emission reductions through a well-designed and well-operated landfill GCCS with a control device (*i.e.*, non-enclosed flare, enclosed combustion device, or treatment system) capable of reducing NMOC by 98 percent by weight. NMOC is a surrogate for LFG. The GCCS must be installed within 30 months after an MSW landfill that equals or exceeds the design capacity threshold (2.5 million Mg and 2.5 million m<sup>3</sup>) reaches or exceeds an NMOC emissions level of 50 Mg/yr. The landfill must expand the system to collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for 5 years or more if active; or 2 years or more if closed or at final grade. The collection and control system may be capped or removed when the landfill is closed, the system has operated 15 years, and NMOC emissions are below 50 Mg/yr.

In addition, the NESHAP requires timely control of bioreactors. A bioreactor is an MSW landfill or portion of the landfill where any liquid other than leachate is added to the waste mass to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the biodegradation of the waste. New bioreactors must install the GCCS in the bioreactor prior to initiating liquids addition, regardless of whether the landfill emissions rate equals or exceeds the estimated uncontrolled emissions rate; existing bioreactors must install the GCCS before initiating liquids addition and must begin operating the GCCS within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later.

Based on modeled emission estimates in the 2016 NSPS/EG datasets, and supplementary searching of the Greenhouse Gas Reporting Program data (located in 40 CFR part 98, subpart HH), the EPA Landfill Methane Outreach Program, Landfill and LFG Energy Project Database, and selected permits, as of 2014, there were between 664 and 709 MSW landfills subject to the LFG collection and control requirements of the NESHAP. The exact list of facilities subject to the NESHAP is unknown because many landfills collect site-specific data for NMOC concentrations using the Tier 2 provisions allowed under the regulation to compute the NMOC annual emission rates. A list of facilities expected to be subject to the NESHAP based on modeled emissions and a default NMOC concentration of 595 parts per million by volume (ppmv)

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

is available in the RTR dataset.<sup>2</sup> It is estimated that these landfills emit between 2,242 and 4,586 Mg/yr of HAP, after considering current control requirements. Most of these emissions are fugitive emissions.

*C. What changes did we propose for the MSW Landfills source category in our July 29, 2019, RTR proposal?*

On July 29, 2019, the EPA published a proposed rule in the **Federal Register** for the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), that took into consideration the RTR analyses (84 FR 36670). Based on the risk analysis, we proposed to find that the risks from the MSW Landfills source category are acceptable. The risk analysis estimated that the cancer risk to the individual most exposed is below 10-in-1 million from both actual and allowable emissions (estimated cancer incidence is 0.04 excess cancer cases per year, or 1 case every 20 years). The risk analysis also estimated a maximum chronic noncancer target organ-specific hazard index (TOSHI) value below 1.

Our risk analysis indicated the risks from this source category are low for both cancer and noncancer health effects, and, therefore, we proposed that any risk reductions to further control fugitive landfill emissions would result in minimal health benefits (84 FR 36686, July 29, 2019). We also proposed that the current NESHAP provides an ample margin of safety to protect public health (84 FR 36686, July 29, 2019). In addition, pursuant to the technology review for the MSW Landfills source category, we proposed that no revisions to the current standards are necessary because, after analyzing the available options, we determined that each is either not technically feasible or the cost is not justified for the level of emission reduction achievable (84 FR 36689, July 29, 2019).

In addition to the proposed decisions resulting from the RTR described above, we proposed revisions to the NESHAP to promote consistency between MSW landfills regulations under CAA sections 111 and 112. We also proposed changes to the wellhead temperature operating standards and associated monitoring, corrective action, and reporting and recordkeeping requirements for temperature. We proposed to adjust provisions for GCCS removal to provide additional flexibility for landfill owners and operators. In

addition, we proposed updates to SSM and electronic reporting requirements.

**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 MSW Landfills source category. This action also finalizes other changes to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA), including changes to promote consistency between MSW landfills regulations under CAA sections 111 and 112 and changes to the wellhead temperature operating standards, including associated monitoring, corrective action, and reporting and recordkeeping requirements for temperature. This final rule also provides additional flexibility for landfill owners and operators by adjusting the provisions for GCCS removal. In addition, SSM and electronic reporting requirements have been updated. This action also reflects several changes to the July 2019 RTR proposal in consideration of comments received during the public comment period described in section IV of this preamble.

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

This section introduces the final amendments to the NESHAP being promulgated pursuant to CAA section 112(f). The risks from this source category are low for both cancer and noncancer health effects and we proposed that the risks are acceptable. We received only comments in support of the proposed determination. We are finalizing our determination that risks from this source category are acceptable and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not finalizing any revisions to the NESHAP based on our analyses conducted under CAA section 112(f). Section IV.A.3 of this preamble provides a summary of key comments we received regarding risk review and our responses.

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

The technology review identified three types of developments that could lead to additional control of HAP from MSW landfills. The three potential developments are practices to reduce HAP formation within a landfill, to collect more LFG for control or treatment, and to achieve a greater level of HAP destruction in the collected LFG. As stated in the proposal preamble

(84 FR 36686–36689, July 29, 2019) none of these developments were deemed to be cost effective. We are finalizing our determination, as proposed, 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 SSM?*

We are finalizing the proposed amendments to the MSW landfills standards to remove and revise provisions related to SSM. Within its 2008 decision in *Sierra Club v. EPA* 551 F.3d 1019 (D.C. Cir. 2008), the court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 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. As detailed in section IV.D.8 of the proposal preamble (84 FR 36693–36697, July 29, 2019), we proposed that the NESHAP standards apply at all times (see 40 CFR 63.1930(b)), consistent with the court's decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008). The EPA is finalizing the SSM provisions as proposed with minimal changes.

We are finalizing a work practice requirement that applies whenever the GCCS is not operating. The work practice requirement appears at 40 CFR 63.1958(e) and is explained in the proposal preamble (84 FR 36695, July 29, 2019).

Further, the EPA is not setting separate standards for malfunction events. As discussed in the proposal preamble (84 FR 36694, July 29, 2019), the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. Although we are not setting separate standards for malfunction events, we are setting a work practice standard for when the GCCS is not operating, which could include periods of malfunction. Whenever a landfill operator is complying with the work practice for periods when the GCCS is not operating,

<sup>2</sup> MSW Landfills NESHAP RTR Draft Emissions Modeling File. May 2018. Available at: <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards>.

it is unlikely that a malfunction would result in a violation of the standards, and no comments were submitted that would suggest otherwise. Refer to 84 FR 36694 of the proposal preamble for further discussion of the EPA's rationale for the decision not to set separate standards for malfunctions, as well as a discussion of the actions a source could take in the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event. The 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, including malfunction events.

We are also finalizing revisions to Table 1 of subpart AAAA, part 63, titled *Applicability of NESHAP General Provisions to Subpart AAAA*, as explained in more detail in the SSM section of the proposal preamble (84 FR 36693, July 29, 2019), to eliminate requirements that include rule language providing an exemption for periods of SSM. Additionally, we are finalizing our proposal to eliminate language related to SSM that treats periods of startup and shutdown the same as periods of malfunction.

The legal rationale and detailed changes for SSM periods that we are finalizing are set forth in the proposed rule (84 FR 36693, July 29, 2019). As discussed in section IV.C of this preamble, the EPA is making it clear that the semi-annual report must describe the date, time, and duration of periods during which an operating standard was exceeded, as well as when the GCCS was not operating. For more information, see the response to comments document, titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP*, which is available in the docket for this action.

#### *D. What other changes have been made to the MSW Landfills NESHAP?*

This rule finalizes, as proposed, revisions to several NESHAP requirements that promote consistency among MSW landfills regulations developed under CAA sections 111 and 112. This rule also finalizes revisions to the 2016 NSPS (40 CFR part 60, subpart XXX) and EG (40 CFR part 60, subpart Cf) to promote consistency among MSW landfills regulations under the CAA. Most of these changes are the same as those proposed at 84 FR 36670 on July 29, 2019.

This rule also finalizes minor changes to other provisions of the NESHAP since proposal. Specific changes made since proposal are discussed in section IV.C of this preamble. Revisions to the NESHAP, NSPS, and EG include:

#### 1. Reorganization of the NESHAP

We are finalizing the reorganization of the NESHAP to incorporate the major compliance provisions from the MSW Landfills NSPS program directly into the NESHAP, thus, minimizing cross-referencing to other subparts and consolidating requirements between the NSPS program and the NESHAP. With the incorporation of the major compliance provisions from the 2016 NSPS (subpart XXX), we, thus, incorporated revisions to subpart XXX that were finalized in 2016. In addition, we clarified which of the reorganized provisions apply no later than 18 months after publication of the final rule.

#### 2. Revisions to the 1996 NSPS (40 CFR Part 60, Subparts WWW) and the 2016 NSPS and EG (40 CFR Part 60, Subparts XXX and Cf)

The EPA is clarifying that subpart Cf (once implemented via a state or federal plan) supersedes subparts WWW and Cc. The final rule revises the title and applicability of subpart WWW (at 40 CFR 60.750(a)) to distinguish the applicability dates from other landfills subparts. We clarify that after the effective date of an EPA-approved state or tribal plan implementing subpart Cf, or after the effective date of a federal plan implementing subpart Cf, owners and operators of MSW landfills must comply with the approved and effective state, tribal, or federal plan implementing subpart Cf instead of subpart WWW or the state or federal plan implementing subpart Cc.

#### 3. NSPS and EG (Subparts XXX and Cf) Opt-In Provisions for NESHAP

We are finalizing minor edits to the 2016 NSPS and EG regulations allowing MSW landfills affected by the NSPS and EG to demonstrate compliance with the "major compliance provisions" of the NESHAP in lieu of complying with the analogous provisions in the NSPS and EG. This change allows landfills to follow one set of operational, compliance, monitoring, and reporting provisions for pressure and temperature. The differences between the landfills subparts are identified in the memorandum titled *Comparison of Municipal Solid Waste (MSW) Landfills Regulations*, which is available in the docket for this action.

#### 4. Operational Standards for Wellheads

##### a. Nitrogen and Oxygen Concentrations

The EPA is finalizing the elimination of the operational standards and the corresponding corrective action for nitrogen and oxygen concentrations in the NESHAP for consistency with the 2016 NSPS and EG (subparts XXX and Cf). The EPA concluded that nitrogen and oxygen concentrations are not, by themselves, effective indicators of proper operation of the LFG collection system (see 81 FR 59346, August 29, 2016).

##### b. Increased Wellhead Temperature Operating Standard

The EPA is finalizing an increase of temperature standard to 145 degrees Fahrenheit (°F). The EPA is finalizing the increased wellhead temperature operating standard in the NESHAP to reduce the burden on regulated entities and delegated state, local, and tribal agencies. This change is expected to reduce the number of requests and burden associated with submitting and reviewing the requests for higher operating values (HOVs) for temperature, as well as reduce the frequency of corrective actions for exceeding the temperature limit. This change provides landfill owners and operators greater flexibility and autonomy with regards to wellhead monitoring and operations.

#### 5. Corrective Action for Wellhead Operating Standards

The EPA is finalizing the elimination of the requirements for corrective action for nitrogen and oxygen concentrations in the NESHAP to maintain consistency with the requirements in the 2016 NSPS and EG (subparts XXX and Cf). The operating standard for nitrogen and oxygen has already been eliminated in those rules. In the NESHAP, the EPA is finalizing changes to the corrective action procedures to address positive pressure and elevated temperature to provide flexibility to owners or operators in determining the appropriate remedy, as well as the timeline for implementing the remedy. The changes to the timeline and the process for correcting for positive pressure and elevated temperature make the NESHAP requirements consistent with the current requirements of the NSPS and EG, except that the requirements for corrective action procedures being proposed in the NESHAP are tied to the exceedance of the 145 °F standard, instead of the 131 °F standard that still applies in the NSPS and EG.



## 6. Enhanced Monitoring, Recordkeeping, and Reporting for High Wellhead Temperatures

The EPA is finalizing the addition of enhanced wellhead monitoring and visual inspection requirements for any landfill with wellhead temperature exceeding 145 °F. Enhanced monitoring in the final rule involves weekly observations for subsurface oxidation events (SOE), as well as weekly monitoring of wellhead temperature, carbon monoxide (CO), oxygen, and methane using an analyzer that meets all quality assurance and quality control requirements for EPA Methods 10, 3C, or 18. Enhanced monitoring begins 7 days after the first reading exceeding 145 °F is recorded and continues until the measured wellhead operating temperature is 145 °F or less, or an HOV is approved. The proposed rule required a landfill to continue weekly enhanced monitoring until an HOV was approved or until the LFG temperature at the wellhead reached less than or equal to 62.8 degrees Celsius (°C) (145 °F). In the final rule, the EPA is allowing monthly CO monitoring if the wellhead has CO readings below 100 ppmv for four consecutive weeks. If the CO level exceeds 100 ppmv again, the landfill must return to weekly monitoring (see section IV.D of this preamble). Consistent with our proposal, the final rule requires enhanced monitoring data to be submitted in the semi-annual report and maintained as records. The EPA is finalizing the enhanced monitoring requirements as proposed except for the following changes:

- The EPA is removing the proposed requirement for an independent laboratory analysis of each CO measurement (see section IV.D of this preamble).
- The EPA is finalizing the proposed 24-hour electronic report for any well with highly elevated temperature (76.7 °C or 170 °F) and CO readings (40 CFR 63.1981(k)). In the final rule, the EPA reduced the CO threshold for the 24-hour electronic report from 1,500 ppmv to 1,000 ppmv (see section IV.D of this preamble). The EPA adjusted the corresponding corrective action for wells that have any wellhead temperature reading of 170 °F or above and CO reading of 1,000 ppmv. The report is not required for landfills that have an HOV approved by the Administrator.
- The EPA is finalizing the proposed downwell monitoring. However, in the final rule, downwell monitoring is conducted annually, instead of weekly. Additionally, the annual downwell monitoring is only required for

wellheads that have any temperature reading of 165 °F or above (see section IV.D of this preamble).

## 7. Criteria for Removing GCCS

The EPA is finalizing as proposed the added flexibility to the NESHAP for determining when it is appropriate to cap, remove, or decommission a portion of the GCCS (40 CFR 63.1957(b)). The NESHAP requires three criteria to be met to remove controls: (1) The landfill is closed, (2) the calculated NMOC emission rate at the landfill is less than 50 Mg/yr on three successive test dates, and (3) the GCCS has operated for at least 15 years. In this final rule, we updated the third criterion to allow the landfill owner or operator to choose between the 15 years of GCCS operation or demonstrate that the GCCS will be unable to operate for 15 years due to declining gas flows.

## 8. Definition of Cover Penetration

To clarify the implementation concerns, the EPA is finalizing as proposed the phrase, “. . . at all cover penetrations” to the regulatory text of the NESHAP (40 CFR 63.1958(d)), consistent with this phrase in the 2016 NSPS and EG (subparts XXX and Cf). We are also adding a definition of cover penetration as proposed. At 40 CFR 63.1958(d), we are clarifying the surface monitoring provisions by requiring monitoring at any “cover penetrations” rather than at “any openings.” And we are clarifying that the landfill owner or operator must determine the latitude and longitude coordinates “of each exceedance.”

## 9. Electronic Reporting

The EPA is requiring owners and operators of new or modified MSW landfills to electronically submit required performance test reports, NMOC Emission Rate Reports, Bioreactor 40-percent moisture reports, and semi-annual reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI) (40 CFR 63.1981(l)). The final rule requires that performance test results be submitted using the Electronic Reporting Tool (ERT). Alternatively, MSW landfills may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. For more details, see the Electronic Reporting section of the proposal preamble (84 FR 36693, July 29, 2019). For NMOC Emission Rate Reports, Bioreactor 40-percent moisture reports, and semi-annual reports, the final rule requires that owners and operators use the

appropriate spreadsheet template/forms to submit information to CEDRI when it becomes available on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/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. For a more thorough discussion of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, available in Docket ID No. EPA-HQ-OAR-2002-0047.

## 10. Other Clarifications and Changes To Conform With the NSPS

In 2016, the EPA finalized its review of the 1996 NSPS (40 CFR part 60, subpart WWW) and made revisions (40 CFR part 60, subpart XXX) to simplify and streamline implementation of the rule. Note that some of the revisions were proposed as early as 2002 and 2006. With the incorporation of compliance provisions from the NSPS into the NESHAP as part of this rulemaking, we are likewise finalizing the following provisions from the NSPS:

- Allowing the use of portable gas composition analyzers to monitor the oxygen level at a wellhead (40 CFR 63.1961(a)).
- Requiring owners and operators to report more precise locational data for each surface emissions exceedance to provide a more robust and long-term record of GCCS performance and more easily locate and correct breaches in the landfill cover (40 CFR 63.1961(f)).
- Refining the criteria for updating a design plan by requiring landfill owners or operators to submit an updated design plan for approval based on the following criteria: (1) Within 90 days of



expanding operations to an area not covered by the previously approved design plan; and (2) before installing or expanding the gas collection system in a way that is not consistent to the previous design plan (40 CFR 63.1981(e)).

- Clarifying that in addition to use as a fuel for stationary combustion devices, use of treated LFG also includes other uses such as the production of vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process (40 CFR 63.1959(b)).

- Standardizing the terms “control system” and “collection and control system” in the NESHAP in order to use consistent terminology throughout the regulatory text.

- Exempting owners/operators of boilers and process heaters with design capacities of 44 megawatts or greater from the requirement to conduct an initial performance test since large boilers and process heaters consistently achieve the required level of control (67 FR 36478, May 23, 2002).

- Removing the term “combustion” from the requirement to monitor temperature of enclosed combustors to clarify that temperature could be monitored at another location, as long as the monitored temperature relates to proper operation of the enclosed combustor (71 FR 53276, September 8, 2006).

- Refining definitions to ensure consistent use across federal landfills regulations (40 CFR 63.1990) of the terms: Treated landfill gas, Treatment system, Modification, Household waste, and Segregated yard waste.

#### 11. Closed Areas

The EPA is maintaining the current approach to closed areas so that landfills subject to both the 2016 NSPS

and EG and the NESHAP have a streamlined set of requirements to follow. The 2016 NSPS and EG allow landfill owners or operators to model NMOC emissions or take actual measurements of NMOC emissions at physically separated, closed areas of open landfills. The EPA has not expanded the term “closed area” to include areas that are not physically separated (*e.g.*, separately lined).

#### 12. Changes to Definitions

The EPA expanded the list of definitions in the NESHAP to create a list that improves consistency between the 2016 NSPS, 1996 NSPS, and the NESHAP. The changes fall into the following categories:

- The 2003 MSW Landfills NESHAP included eight definitions. Five of these definitions remain the same. The EPA made changes to two of the original defined phrases. One of these phrases also has had a definition change. The original definition for “deviation” has been refined to reflect the updated SSM requirements.

- The EPA added a new definition for “cover penetration” based on public comments.

- To address public comments about definition consistency, the EPA included an additional 32 definitions that correspond to definitions in NSPS subparts XXX, WWW, or both. The EPA made minor updates to reflect current regulation references.

#### 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 March 26, 2020.

The compliance date for existing sources is January 16, 2004.

New sources must comply by January 16, 2003, or upon startup, whichever is later.

The compliance dates remain the same as proposed. The EPA is allowing facilities up to 18 months after March 26, 2020, to begin complying with the final rule. Affected MSW landfills must continue to comply with the existing requirements until they meet the new requirements.

#### IV. What is the rationale for our final decisions and amendments for the MSW Landfills 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, please see the comment summaries and the EPA’s Response to Comments document, which are available in the docket.

##### A. Residual Risk Review for the MSW Landfills Source Category

1. What did we propose pursuant to CAA section 112(f) for the MSW Landfills 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 July 29, 2019, proposed rule for 40 CFR part 63, subpart AAAA (84 FR 36670). The results of the risk assessment are presented briefly in Table 2 of this preamble. More detail is in the residual risk technical support document, *Residual Risk Assessment for the MSW Landfills Source Category in Support of the 2020 Risk and Technology Review Final Rule*, which is available in the docket for this rulemaking.

TABLE 2—MSW LANDFILLS INHALATION RISK ASSESSMENT RESULTS

Number of facilities <sup>1</sup>	Maximum individual lifetime cancer risk (in 1 million) <sup>2</sup>		Based on actual emissions				
	Based on actual emissions <sup>3</sup> . . .	Based on allowable emissions . . .	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated population at increased risk of cancer ≥10-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI <sup>4</sup>	Maximum screening acute noncancer hazard quotient (HQ)
706 .....	10 (p-dichlorobenzene, ethyl benzene, benzene).	10 (p-dichlorobenzene, ethyl benzene, benzene).	18,300	11	0.04	0.1 (neuro-logical)	HQ <sub>REL</sub> <sup>5</sup> = 0.07 (chloroform).

<sup>1</sup> Number of facilities evaluated in the risk analysis.

<sup>2</sup> Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.

<sup>3</sup> Whole facility emissions are equal to actual emissions and have the same risk.

<sup>4</sup> Maximum TOSHI. The target organ systems with the highest TOSHI for the source category are neurological, with risk driven by emissions of trichloroethylene, m-xylene, xylenes (mixed), and tetrachloroethene from fugitive emissions.

<sup>5</sup> Reference Exposure Level (REL).

The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of

current actual, allowable, and whole facility emissions under the NESHAP, the maximum individual risk posed by

the source category is 10-in-1 million. The total estimated cancer incidence based on actual emission levels is 0.04

excess cancer cases per year, or 1 case every 25 years. The total estimated cancer incidence based on allowable emission levels is 0.05 excess cancer cases per year, or 1 case every 20 years. Fugitive air emissions of benzene-based pollutants contributed approximately 50 percent to the cancer incidence. The population exposed to cancer risks greater than or equal to 1-in-1 million based upon actual emissions is 18,300. The population exposed to cancer risks greater than or equal to 10-in-1 million based upon actual emissions is 11. No individuals or groups are exposed to a chronic noncancer TOSHI greater than 1. The screening analysis for worst-case acute impacts indicates that no pollutants exceed an acute HQ value of 1 based upon the REL. Because none of the screening HQs were greater than 1, further refinement of the estimates was not warranted. A separate assessment of inhalation risk from facility-wide emissions was unnecessary because facility-wide emissions were the same as source category emissions. The multipathway risk screening assessment resulted in a maximum Tier 2 noncancer screening value of less than 1 for mercury. Mercury was the only persistent and bioaccumulative HAP emitted by the source category. Based on these results, we are confident that the human-health noncancer risks are below a level of concern. Mercury was the only environmental HAP identified from the category and the ecological risk screening assessment indicated that all modeled points were below the Tier 1 screening threshold. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all human health risk factors in our risk acceptability determination, and we proposed that the residual risks from the MSW Landfills 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 (or potential risks) associated with emissions from the source category. Our risk analysis

indicated the risks from this source category are low for both cancer and noncancer health effects, and, therefore, any additional emissions reductions would result in minimal health benefits or reductions in risk. We note that fugitive landfill emissions result in 84 percent of the cancer incidence for this source category. Based upon results of the risk analysis and our evaluation of the technical feasibility and cost of the option(s) to reduce landfill fugitive emissions, we proposed that the current NESHAP provides an ample margin of safety to protect the public health. We also proposed, based on the results of our environmental screening assessment, that more stringent standards are not necessary to prevent an adverse environmental effect.

## 2. How did the risk review change for the MSW Landfills source category?

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed.

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

We received comments that were generally supportive of the proposed residual risk review and our determination that no revisions were warranted under CAA section 112(f)(2) for the MSW Landfills source category. Commenters stated that the EPA's residual risk review approach was sufficiently conservative in its assumptions relating to facility emission profiles and supported the EPA's conclusion that the residual risk is acceptable and provides an ample margin of safety. One commenter stated that the modeling includes conservative features that is consistent with the National Ambient Air Quality Standards and conforms to many state programs and that EPA appropriately considered maximum exposed individuals, multipathway assessments, as well as specific populations by census blocks near actual facilities. The commenter also stated the EPA's emission factor data used for the proposed NESHAP is comprehensive considering the number of facilities referenced and the number of analytes assessed. However, another commenter expressed concern regarding the EPA's use of emission factors calculated using 2008 AP-42,<sup>3</sup> Chapter 2.4. The commenter stated that the

modeling inputs were based on use of draft emission factors from an AP-42 section that was proposed in 2008 and remains a draft. The commenter stated that the use of a draft section creates confusion regarding the information it contains and sets an unclear precedent.

We disagree with the comment that the use of draft AP-42 emission factors introduces confusion or sets precedent for using these factors in other regulations. In the development of the risk analysis, we documented the rationale for using the emission factors from 2008 AP-42 Chapter 2.4 in the docketed memorandum, *Residual Risk Modeling File Documentation for the Municipal Solid Waste Landfill Source Category*.<sup>4</sup> Specifically, the 2008 AP-42 draft emission factor data, with subsequent adjustments made to reflect comments received on the draft for the risk analysis, represent the best available data for HAP emissions from landfills. The 1998 Final AP-42 chapter had factors for only 23 HAP, whereas the updated factors used in the risk analysis cover 49 HAP derived from a significantly larger dataset. By including a larger number of HAP in the factors used in the risk analysis, the analysis was conservative. The EPA is not suggesting in this preamble or in background documentation that the factors used are appropriate for other permitting or regulatory uses.

After review of these comments, we determined that no changes needed to be made to the underlying risk assessment methodology. The comments and our specific responses can be found in the response to comments document titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP*, 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?

We evaluated all of the comments on the EPA's risk review and determined that no changes to the review are needed. For the reasons explained in the proposed rule, we proposed that the risks from the MSW Landfills source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental

<sup>3</sup> U.S. EPA, AP-42, Fifth Edition, *Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources*. 1995. <http://www.epa.gov/ttnchie1/ap42/>.

<sup>4</sup> See Appendix 1, Section 7 to docket item, *Residual Risk Assessment for the Municipal Solid Waste Landfill Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*. May 2019. Docket ID Item No. EPA-HQ-OAR-2002-0047-0091.

effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing the risk review as proposed.

#### *B. Technology Review for the MSW Landfills Source Category*

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

Pursuant to CAA section 112(d)(6), we proposed to conclude that no revisions to the current NESHAP are necessary (section IV.C of the proposal preamble 84 FR 36686). In conducting the review, we identified developments in work practices and technologies to reduce HAP formation, collect additional HAP, and destroy additional HAP from MSW landfills. We ruled out developments in waste diversion programs, which can reduce HAP formation, as technically infeasible, because programs to ban or recycle wastes instead of placing the wastes in the landfill are not typically under the control of landfill owners or operators. We analyzed the costs and emission reductions associated with earlier gas collection strategies, including a lower NMOC threshold and shortening the time in which a GCCS is required to expand into new areas of the landfill. Based on these analyses, we concluded that these options are not cost effective for HAP. We also analyzed the cost and emission reductions associated with destroying additional HAP in higher efficiency flares, and based on these analyses, we concluded that these options are not cost effective for HAP.

2. How did the technology review change for the MSW Landfills source category?

We have not changed any aspect of the technology review since the July 29, 2019, proposal for the MSW Landfills source category.

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

The comments received by the EPA on the technology review were generally supportive, with only one commenter challenging the EPA's findings regarding GCCS installation lag times. One commenter agreed that the EPA's findings regarding mandated source separation, earlier LFG collection, criteria, and timeframe for removing GCCS, early installation of landfill cover systems, enclosed flares, thermal oxidizers, energy recovery projects, and use of biocovers were infeasible, not cost-effective, or did not result in emissions reductions. Another commenter noted the limited innovation

in HAP-reducing technologies and requested increased government funding for research in this area. One commenter challenged the EPA's determination that earlier gas collection, via shorter expansion lag times, is not economically feasible and asked the EPA to reevaluate its determination.

The EPA has not revised the technology review for the NESHAP to analyze the costs of shorter expansion lag times for certain landfills. The EPA agrees with the commenter that shorter lag times are commercially available. However, the installation of well components to achieve these shorter lag times requires site-specific analysis. For example, the timing of well installation is affected by waste placement patterns and annual acceptance rates. The EPA explored shorter lag times as part of the review for the 2016 NSPS and EG and received several comments related to site-specific costs and safety concerns associated with reduced lag times, urging the EPA to retain flexibility in any lag-time adjustments. See 79 FR 41807 (July 17, 2014) and 80 FR 52121 (August 27, 2015) for more details. The EPA has not received any comments suggesting that the cost and safety concerns brought forth as part of the 2016 rulemaking have changed, and as a result, no changes to the lag times are being finalized.

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

As explained in the proposal preamble (84 FR 36686, July 29, 2019), we conducted a technology review to identify developments in practices, processes, and control technologies that may warrant revisions to the current NESHAP. We identified three types of developments that could lead to additional control of HAP from MSW landfills, but we determined that there are no cost-effective developments in practices, processes, or control technologies to warrant revisions to the standards. We also evaluated the public comments on the EPA's technology review and determined that no changes to the review are needed. More information concerning our technology review is in the memorandum titled *CAA section 112(d)(6) Technology Review for the MSW Landfills Source Category*, in the docket for this action, and in the preamble to the proposed rule (84 FR 36686–36689, July 29, 2019). Therefore, pursuant to CAA section 112(d)(6), we are finalizing the results of the technology review as proposed.

#### *C. SSM for the MSW Landfills Source Category*

1. What did we propose for the MSW Landfills source category?

We proposed amendments to the NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 36693).

2. How did the SSM provisions change for the MSW Landfills source category?

We are finalizing the SSM provisions as proposed (84 FR 36693, July 29, 2019) with the minor changes described in section IV.C.3 of this preamble.

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

We received two comments related to our proposed revisions to the SSM provisions. The first commenter agreed that the NESHAP must apply at all times and with the approach of applying a work practice standard under CAA section 112(h) during periods of SSM. The second commenter requested that the EPA clarify that SSM events be reported as stated in the proposal preamble (84 FR 36696, July 29, 2019). A summary of the SSM comments on the proposal and the EPA's responses to those comments is available in the response to comments document titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP*, which is available in Docket ID No. EPA-HQ-OAR-2002-0047.

The first commenter agreed that the work practice requirements of proposed 40 CFR 63.1958(e) are appropriate and consistent with a well-designed and operated LFG collection system. However, the commenter objected to the EPA's proposed preamble statements and rule revisions that specify that compliance with these provisions during SSM does not necessarily constitute compliance with the NESHAP. The commenter stated that these provisions are inconsistent with prior EPA decisions about appropriate landfill operation and are not compelled by the *Sierra Club v. EPA* decision.

Landfill emissions are produced by a continuous biological process that cannot be stopped or restarted. Therefore, the primary concern related to SSM is with malfunction of the landfill GCCS and associated monitoring equipment, not with the

startup or shutdown of the entire source. The SSM periods that are covered by the proposed additional work practice standard of 40 CFR 63.1958(e) are those periods when the landfill GCCS and associated monitoring equipment are not operating for any reason. During such periods, excess emissions to the atmosphere will occur. This additional work practice requires the owner or operator to shut down all valves in the collection and control system contributing to venting of the gas to the atmosphere within 1 hour and to minimize the downtime for making repairs to the collection and control system. Although this additional practice is necessary to reduce emissions associated with a GCCS outage, to minimize emissions also requires actions to prevent the shutdown of the GCCS. Although we agree with the commenter that some unavoidable circumstances may require that the GCCS system be shut down for short periods of time (e.g., for tying in a system expansion, repair, and preventative maintenance), the frequency of shutdowns also can be affected by carelessness, ineffective operation and maintenance procedures, failure to properly train landfill operations staff, and other site-specific factors. Actions to prevent the shutdown of a GCCS may include a preventative maintenance program, expeditious repair or replacement of equipment that frequently fails, the use of valves and bypass systems to segregate portions of the GCCS that are undergoing expansion, maintenance, or repairs from those portions that are unaffected by the work, and the use of redundant equipment and controls so that the system can remain online even if one component fails to operate properly. Additional reasonable steps include the controls of vehicular equipment on the landfill to avoid damage to the GCCS or crushed pipes. This may include speed limits and traffic routes that avoid passing over buried ductwork or other equipment.

Another commenter requested the EPA clarify that SSM events be reported as stated in the proposal preamble (84 FR 36696, July 29, 2019) in order to evaluate whether the general duty to minimize emissions is being met. The commenter stated that while the preamble stated that reporting will be required (84 FR 36696, July 29, 2019), the rule only requires records of SSM events.

The EPA proposed to add recordkeeping requirements for startup and shutdown to 40 CFR 63.1983(c) (84 FR 36696, July 29, 2019). Because 40 CFR 63.1958(e) specifies a different

standard for periods when the GCCS is not operating under normal conditions (which would include periods of startup, shutdown, and maintenance or repair), we noted that it will be important to know when such startup and shutdown periods begin and end in order to determine compliance with the appropriate standard. Thus, we proposed language in 40 CFR 63.1983(c)(6) to require that a landfill owner or operator report the date, time, and duration of each startup and shutdown period. However, the paragraphs we cited in the preamble and revised in the rule require only the records of such events.

The EPA agrees with the commenter that recordkeeping and reporting for SSM events needs to be clarified in the final rule. Thus, the EPA revised 40 CFR 63.1981(h)(1) to make it clear that the semi-annual report must describe the date, time, and duration of periods during which an operating standard was exceeded, as well as when the GCCS was not operating. The semi-annual report in 40 CFR 63.1981(h) does not require separate reporting of SSM events, but every exceedance, including when operating standards are exceeded and when the GCCS is not operating, must be reported including during SSM.

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

We evaluated the comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule, we determined that the proposed amendments appropriately remove and revise provisions related to SSM not consistent with the requirement that the standards apply at all times. More information concerning the amendments we are finalizing for SSM is in the preamble to the proposed rule (84 FR 36693, July 29, 2019). Therefore, we are finalizing our approach for the SSM provisions as proposed with the clarifications described in section IV.C.3 of this preamble.

#### D. Summary of Changes Since Proposal

##### 1. Enhanced Monitoring, Recordkeeping, and Reporting for Elevated Wellhead Temperature

Given concerns with fire risks from elevated temperatures, and the fact that parameters other than temperature can be indicators of a SOE, we proposed enhanced wellhead monitoring and visual inspections for subsurface oxidation events (40 CFR 63.1961(a)), and in some cases more frequent reporting (40 CFR 63.1981(k)), for any landfill with wellhead temperature

exceeding 145 °F. The proposed enhanced monitoring included weekly monitoring of CO, oxygen, and methane. For each CO measurement, the EPA proposed to require an independent laboratory analysis (84 FR 36691, July 29, 2019). As part of enhanced monitoring, the EPA proposed weekly temperature monitoring every 10 vertical feet down the well (downwell monitoring).

Several commenters expressed concerns with the requirement for independent laboratory CO testing. One commenter observed that laboratory testing is expensive, and three commenters stated that requiring laboratory testing would extend the response time and not provide timely information that can help the landfill owner or operator improve compliance. One commenter also noted several concerns with the logistics of independent laboratory analysis, including concerns with the proposed test methods and sample transportation.

The EPA agrees with commenters that independent laboratory analysis could present logistical challenges and potentially increase costs. Shipping passivated canisters or multi-layer foil gas sampling bags could require specialized shipping and could delay results that could improve operation of the GCCS. Therefore, based on public comments, the EPA is removing the requirement for an independent laboratory to analyze each CO measurement. In the final rule, landfill owners or operators have the option to collect the sample and conduct analysis on-site, using purchased or rented equipment that meets the requirements of EPA Method 10. This could generate results quicker, enabling the owner or operator to adjust the GCCS in a more timely manner. Conducting the analysis on-site would also prevent the need to package and ship the canisters or bags, thus, saving shipping costs and eliminating the logistical concerns of shipping the samples.

One commenter expressed concerns with the indefinite term of the enhanced monitoring. The commenter advised that if CO readings are less than 1,500 ppmv, monitoring should not be required indefinitely, but instead cease after 3 consecutive months. The commenter observed that this approach is consistent with the requirements of the consent decrees in the docket and with historical HOV demonstrations.

Regarding when to stop enhanced CO monitoring, the EPA agrees with commenters because the weekly enhanced monitoring is not intended to continue indefinitely. In the proposal, there were two means to stop enhanced

weekly CO monitoring. Enhanced monitoring could be stopped once an HOV is approved, at which time the monitoring provisions issued with the HOV should be followed (40 CFR 63.1961(a)(5)(viii)). Alternatively, the enhanced monitoring could stop once the measurement of LFG temperature at the wellhead is below 145 °F (40 CFR 63.1961(a)(5)(viii)). In the final rule, the EPA is retaining these two means to stop enhanced CO monitoring. The EPA is also providing an opportunity to reduce the frequency of monitoring in the final rule while still maintaining sufficient data availability of wellhead parameters for those wells that consistently operate at higher temperatures. Specifically, the EPA is extending the frequency of enhanced monitoring. Enhanced monitoring must be conducted on a weekly basis. However, if four consecutive weekly CO readings are below 100 ppmv, then monitoring may be decreased to a monthly basis. If the CO level exceeds 100 ppmv again, the landfill must return to weekly monitoring. Additionally, the EPA is specifically clarifying in the final rule that HOVs that have been previously approved under another MSW Landfill NSPS or EG regulation will not have to seek pre-approval for that HOV under the provisions in the NESHAP (40 CFR 63.1961(a)(5)).

One commenter expressed concern with the proposed 1,500 ppmv threshold for CO, asserting that 1,000 ppmv would be a more reasonable upper limit for detecting or preventing landfill fires. The EPA agrees with the commenter. The EPA reexamined the MSW Landfills consent decrees cited in the proposed rule; documents from CalRecycle, the Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers, and the Solid Waste Association of North America. These documents (see Docket ID No. EPA-HQ-OAR-2002-0047) all cite a 1,000 ppmv CO concentration as an indication of an underground landfill fire, in combination with other factors. Additionally, a guidance document from the Ohio EPA for subsurface heating events refers to the CO concentration cited in the FEMA and CalRecycle documents. Two of the consent decrees, Forward and Central Maui, require 24-hour electronic notification to the delegated authority for any CO reading of 1,000 ppmv or above. For these reasons, the EPA is reducing the reporting threshold for CO from 1,500 ppmv to 1,000 ppmv in the final rule.

One commenter expressed support for the downwell temperature reading requirement. However, another

commenter warned that the downwell monitoring may not be achievable or yield meaningful data, noting that installation of thermocouples to measure well temperature may not be possible on a well that is already constructed due to shifting in the well as settlement occurs. The commenter also noted that if wells have been raised with solid pipe, or the boring log does not provide accurate as-built information, the data may not be meaningful. Another commenter requested that the EPA eliminate the downwell temperature monitoring requirement. The commenter observed that the EPA claims that the proposed enhanced monitoring for well temperature is intended to facilitate the detection of a subsurface fire, yet the solid waste industry has long recognized that subsurface fires occur near the surface, require oxygen, are visually recognizable, and are addressed with known remedies. The commenter asserted that weekly downwell measurements could be counter-productive and inconsistent with the GCCS best management practices or challenging to implement.

The EPA reexamined the consent decrees and supporting documents and agrees with the commenters that weekly downwell monitoring could be potentially burdensome to implement. Requirements for conducting downwell temperature monitoring is in only the referenced consent decrees and not prescribed in the other supporting documents. Although the 2009 Ohio EPA best management practices document<sup>5</sup> suggests that inter-well and intra-well temperature data may be useful, it does not require those data in all cases. For these reasons, the EPA is reducing the frequency of downwell monitoring from weekly to annually. Annual downwell temperature monitoring will provide more robust data on waste temperatures throughout the radius of influence of the well. In addition, the EPA is increasing the wellhead temperature threshold that triggers downwell monitoring. In the final rule, downwell monitoring is required for wellhead temperatures of 165 °F or greater rather than 145 °F. The EPA believes the downwell monitoring data to be critical for assessing the operations of wells with these higher temperatures in order to minimize fire risks. The EPA expects that these changes will reduce the burden and

implementation challenges associated with downwell monitoring.

Because the EPA has changed the frequency of CO monitoring and downwell temperature monitoring, the EPA has modified the requirement to include a well-specific summary trend analysis in the semi-annual report (40 CFR 63.1981(h)(8)(ii)) to remove the downwell temperature and recognizes that CO monitoring may occur on a monthly or weekly basis depending on the level at the well. Additionally, the EPA has removed the requirement to submit a 24-hour high temperature report if the well is subject to an approved HOV for temperature (40 CFR 63.1981(k)).

The EPA has also adjusted the enhanced monitoring provisions at 40 CFR 63.1961(a)(5) to remove the upper bound limitation of 170 °F. Enhanced monitoring should continue until both this temperature level and a CO level of 1,000 ppmv have been reached, at which point the provisions 40 CFR 63.1960(a)(4)(i)(D) and 63.1981(k) apply. Consistent with the proposed preamble (80 FR 36692, July 29, 2019), high temperatures in combination with high levels of CO are considered a positive indication of an active underground fire. The EPA has adjusted the requirements for the records and reports associated with these enhanced monitoring data to remove the upper bound limitation.

## 2. Delegation of Authority

Commenters expressed concerns with the EPA's proposed delegation of authority language (40 CFR 63.1985(c)). The EPA proposed at 40 CFR 63.1985(c) that the EPA will not delegate "approval of alternatives to the standards" in 40 CFR 63.1955–63.1962, which the commenters interpreted to include authority to approve alternatives to monitoring (*i.e.*, HOVs). Thus, the commenters contend that the language restricts delegated state or local agencies from approving or disapproving HOVs and other alternatives that are needed to reflect a source's site-specific conditions. The commenters claim that the proposed provision will lead to confusion in the compliance and enforcement work of the delegated states or create conflicts wherein a state agency and the EPA disagree. One commenter contended that the proposal allows the EPA to approve an HOV by incorporating additional monitoring requirements. The commenter questioned whether incorporation of applicable NSPS-required limits and corrective actions in the title V permits would preclude the applicability of flexibility outside these terms. Another commenter was concerned that the

<sup>5</sup> Ohio EPA. *Guidance Document for Higher Operating Value Demonstrations*. <http://web.epa.state.oh.us/eBusinessCenter/Agency/DAPC/HOV%20Demonstration.doc>.

NESHAP was much more restrictive in the items that could be delegated than the NSPS and that this would create conflict between the EPA and delegated authorities.

The EPA disagrees that proposed 40 CFR 63.1985(c) includes authority to approve HOVs. The EPA did not intend to preclude state or local agencies from approving or disapproving HOVs and other alternatives that are needed to reflect a source's site-specific conditions. The final NESHAP directly incorporates the major compliance provisions of the NSPS rules (subparts WWW and XXX). Consistent with the NSPS rules, the final NESHAP allows owners or operators to establish an HOV for temperature at a particular well (40 CFR 63.1958(c)(1)). The owner or operator must submit a request for an HOV, along with supporting data, to the Administrator for approval. Also consistent with the NSPS rules, the collection and control system design plan may include for Administrator approval collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions. The Administrator or delegated authority would review and approve the HOV or design plan.

The EPA recognizes that proposed 40 CFR 63.1985(c) does not reflect its intent and may have caused confusion. In 40 CFR 63.1985(c), the EPA retains authority to approve "alternatives to the standards" in 40 CFR 63.1955–63.1962. Commenters incorrectly interpreted that the term "alternative emission standards" includes authority to approve HOVs. The term "emission standards" is defined in 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, establishing an allowance system, or prescribing equipment specifications for control of air pollution emissions." The EPA intends the use of the phrase "alternative emission standards" to refer to the "Standards" for MSW landfill emissions in 40 CFR 63.1955–63.1962. The EPA does not intend "alternative emission standards" to include alternatives for wellhead monitoring in 40 CFR 63.1958. The EPA also does not intend to retain authority to review and approve gas collection and control design plans.

Thus, based on public comments, the EPA is revising 40 CFR 63.1985(c) to reflect the EPA's intent, which is not to preclude states or other delegated authorities from approving HOVs and design plans. The EPA will delegate authority to approve HOVs and design

plans. However, consistent with the NSPS, the final rule retains the EPA's authority to approve alternative methods for determining the NMOC concentration in 40 CFR 63.1959(a)(3) and a site-specific methane generation rate constant in 40 CFR 63.1959(a)(4).

### 3. Technical Corrections

Based on public comments, the EPA made several technical corrections and clarifications to make clear the requirements of the regulation.

- 40 CFR 60.38f(k) and 60.767(j). Clarified that if an MSW landfill owner or operator is complying with the major compliance provisions of the NESHAP, then the owner or operator must follow the corrective action and the corresponding timeline reporting requirements in the NESHAP (40 CFR 63.1981(j)) in lieu of the corresponding timeline reporting requirements of the EG or NSPS, respectively.
- 40 CFR 60.39f(e)(6). Corrected a typographical error. Removed the word "you" and retained "owner or operator."
- 40 CFR 60.750. Clarified that an affected MSW landfill continues to comply with 40 CFR part 60, subpart WWW until it becomes subject to the more stringent requirements in an approved and effective state or federal plan that implements 40 CFR part 60, subpart Cf of this part, or until it modifies or reconstructs after July 17, 2014, and, thus, becomes subject to subpart XXX.
- 40 CFR 60.768(e)(6). Corrected a typographical error. Removed the word "you" and retained "owner or operator."
- 40 CFR 63.1947(a)(2). Corrected typographical error. Refer to 40 CFR 63.1982(c) and (d) instead of 40 CFR 63.1980(g) and (h) for moisture calculations.
- 40 CFR 63.1955(a). Clarified that alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions that have already been approved under 40 CFR part 60, subpart XXX can be used to comply with the NESHAP.
- 40 CFR 63.1960(a)(4)(i). Corrected typographical error. Removed the phrase, "for the purpose of identifying whether excess air infiltration exists" because the phrase does not apply to temperature.
- 40 CFR 63.1960(a)(4)(i)(D). Clarified that if the LFG temperature measured at either the wellhead or at any point in the well is greater than or equal to 76.7 °C (170 °F) and the CO concentration measured is greater than or equal to 1,000 ppmv, the owner or operator must

complete the corrective action(s) for the wellhead temperature standard (62.8 °C or 145 °F) within 15 days.

- 40 CFR 63.1960(e). Corrected reference from 40 CFR 63.1958(c) to 40 CFR 63.1958(e) to refer to SSM requirements.
- 40 CFR 63.1961(a)(5). Clarified that landfills with previously approved HOVs for temperature under various landfills subparts are not required to conduct enhanced monitoring.
- 40 CFR 63.1961(a)(5)(vii). Corrected reference from paragraph (a)(4) to (a)(5) to reference enhanced monitoring requirements.
- 40 CFR 63.1981(h)(1), (h)(1)(i), and (h)(1)(ii). Clarified that the semi-annual report must include the date, time, and duration of "each exceedance" of the applicable monitoring parameters, not "each failure."
- 40 CFR 63.1983(e)(2)(i). Corrected paragraph numbering to be (i), (ii), and (iii) instead of (i), (i), and (ii) and corrected cross-reference to the enhanced monitoring provisions in 40 CFR 63.1961(a)(5).
- 40 CFR 63.1990. Definition of controlled landfill. Clarified that the landfill is a controlled landfill when a collection and control system design plan is submitted in compliance with 40 CFR 60.752(b)(2)(i) or in compliance with 40 CFR 63.1959(b)(2)(i), regardless of whether that submittal is within 18 months after date of publication of the final rule in the **Federal Register**.
- Table 1 to subpart AAAA of part 63. Expanded to indicate which initial notifications apply before and which notifications apply after the date 18 months after publication of the final rule in the **Federal Register**. Added "Yes" entries for 40 CFR 63.6(i) and (j), and 40 CFR 63.10(a) to show applicability after the initial 18-month timeframe. Added a "No" entry for 40 CFR 63.10(c).

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

### A. What are the affected facilities?

We anticipate that approximately 738 active or closed MSW landfills in the United States and territories will be affected by these final amendments in the year 2023. This number is based on all landfills that accepted waste after November 8, 1987, that have a design capacity of at least 2.5 million Mg and 2.5 million m<sup>3</sup>. In addition, this number reflects the subset of landfills meeting these two criteria with modeled emission estimates of 50 Mg/yr NMOC or greater that have installed controls on or before 2023. While the EPA

recognizes some uncertainty regarding which landfills have actually exceeded the emission threshold, given the allowance of sites to estimate emissions using Tiers 1, 2, or 3, and the site-specific nature of NMOC concentrations, the number of MSW landfills that are collocated with major sources and, therefore, also subject to control requirements under this rule is also unknown. Therefore, 738 is the best estimate of the affected sources.

#### *B. What are the air quality impacts?*

The final amendments are expected to have a minimal impact on air quality. While these amendments do not require stricter control requirements or work practice standards on landfills to comply with the proposed amendments, some landfills may find that the adjustments made to the oxygen, nitrogen, and temperature wellhead standards finalized herein provide enough operational flexibility to install, expand, and operate additional voluntary GCCS, which could reduce emissions. The other proposed revisions that affect testing, monitoring, recordkeeping, and reporting will ensure that the GCCS equipment continues to perform as expected and provide reliable data from each facility to be reported for compliance.

#### *C. What are the cost impacts?*

The EPA has estimated \$0 compliance costs for all new and existing sources affected by this final rule, beyond what is already required under the existing NESHAP and what is already included in the previously approved information collection activities contained in the existing NESHAP (Office of Management and Budget (OMB) control number 2060-0505), as described in section VI.C of this preamble. Furthermore, landfills accepting waste after November 8, 1987, must comply with the similar, yet, more stringent requirements of the 2016 NSPS or a plan implementing 40 CFR part 60, subpart Cf. Many of the changes in these amendments better align the NESHAP with the requirements of the NSPS and plans implementing subpart Cf. These changes simplify compliance, which in turn could reduce costs. For example, elimination of the wellhead operating standards for oxygen and nitrogen to match requirements in the NSPS will reduce the number of requests for HOVs, which in turn could decrease compliance costs.

The EPA maintains that final changes to enhanced monitoring for wellhead temperature are not estimated to incur a cost. The EPA is finalizing a temperature standard that is 14 °F

higher than the standard that currently exists in the baseline regulations in order to provide additional flexibility to controlled landfills. However, ultimately, the requirement in the final NESHAP remains to install and operate a well-designed and well-operated GCCS. The EPA is not requiring enhanced monitoring from all controlled landfills, but this option is being made available as a compliance flexibility to the population of wells that do not already have an approved HOV and for which temperature cannot be adjusted downward through routine GCCS adjustments. Based on feedback provided in public comments, over 6,000 HOV requests have been submitted and reviewed by regulatory agencies, and the enhanced monitoring requirements would not apply to any of the HOV requests that have received approval. Furthermore, the concern that the enhanced monitoring requirements would continue in perpetuity is unsubstantiated. First, landfills have up to 7 days to adjust the well to achieve a lower temperature before the enhanced monitoring requirements are triggered (40 CFR 63.1961(a)(5)(vii)). Second, the enhanced monitoring can stop once the well temperature drops back to 145 °F or less. The EPA did not receive any comments on the number of wells that are operating above 145 °F without an approved HOV, which would have helped the EPA quantify how many wells would be affected and the corresponding costs. Additionally, the EPA did not receive any data on how long the wells without an approved HOV typically exceed 145 °F. Given insufficient data on the number and length of each temperature exceedance to make an estimate, the EPA has not quantified any cost impacts for the enhanced monitoring.

The EPA also contends that many of the parameters required in the enhanced monitoring are also parameters that are required to obtain an approval of an HOV request under the baseline regulations and so these costs are not an incremental cost that is not otherwise happening outside of the NESHAP amendments. For example, the Ohio EPA already requires 6 months of historical data, narrative discussion of the visual evidence of fire, and CO measurements using appropriate laboratory techniques.<sup>6</sup> Under the final amendments, the EPA anticipates that landfill operators will immediately implement corrective actions to lower

well temperatures, as well as immediately file appeals for HOVs for their wells, if appropriate. The EPA anticipates that processing requests for HOVs will be quicker because fewer requests are expected to be submitted due to the higher temperature standard and elimination of the oxygen and nitrogen standard.

The EPA also maintains that removal of the requirement to prepare an SSM plan and removal of the associated recordkeeping and reporting requirements will not result in additional costs for new or modified facilities, but instead result in a cost savings. Owners or operators will not incur the cost of preparing an SSM plan. To meet their obligation under 40 CFR 63.1955(c) to minimize emissions during collection or control system downtime, owners or operators are expected to rely on existing standard operating procedures and safety practices. The EPA expects that some landfills may incorporate automated controls that would shut down the gas mover system and valves in the event of detection of a collection or control system malfunction. Such systems are expected to have existing corresponding written or automated standard operating procedures and safety practices.

The recordkeeping and reporting requirements will not result in additional costs for new or modified facilities. The final work practice requirements mandate a shutdown of the gas mover system and all valves within the collection and control system within 1 hour of the collection or control system not operating and then require repair efforts to proceed in a way that keeps downtime to a minimum (40 CFR 63.1958(e)(1)(i)–(ii)). A landfill demonstrates compliance with these requirements via recordkeeping as specified in 40 CFR 63.1983(c)(6)–(7). The work practice requirement to record and report all instances of downtime will not result in an increased recordkeeping and reporting burden as compared to the 2003 NESHAP. Via cross-reference to the 1996 NSPS (40 CFR part 60, subpart WWW) to (40 CFR 63.1955(a)(1)), the 2003 NESHAP already required landfill owners to keep continuous records of the indication of flow to the control device, report periods when the control device was not operating for a period exceeding 1 hour. The records required by existing regulations serve as the records of system downtime.

Note that this work practice itself does not add incremental cost to new or modified landfills subject to the proposed regulation because this requirement already appears in the

<sup>6</sup> Ohio EPA. *Guidance Document for Higher Operating Value Demonstrations*. <http://web.epa.state.oh.us/eBusinessCenter/Agency/DAPC/HOV%20Demonstration.doc>.



NESHAP as promulgated in 2003 at 40 CFR 63.1955(a)(1), which says affected landfills must comply with the requirements of the 1996 NSPS. 40 CFR 60.753(e) already requires owners or operators to shut down the gas mover system and close all valves in the collection and control system contributing to venting of the gas to the atmosphere within 1 hour.

Given that the costs for these enhanced monitoring requirements cannot be quantified, in addition to the fact that there are some cost savings previously documented to offset these costs,<sup>7</sup> the EPA concludes that the final rule is best characterized as a no-cost action.

#### *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. Because there are no costs associated with the final rule, no economic impacts are anticipated.

#### *E. What are the benefits?*

As stated in section V.B of this preamble, we were unable to quantify the specific emissions reductions associated with adjustments made to the oxygen and nitrogen wellhead operating standards, although this change has the potential to reduce emissions. Any reduction in HAP emissions would be expected to provide health benefits in the form of improved air quality and less exposure to potentially harmful chemicals.

#### *F. What analysis of environmental justice did we conduct?*

To examine the potential for any environmental justice issues that might

be associated with the MSW Landfills source category, we performed a demographic analysis, which is an assessment of risk to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risk from the source category across different demographic groups within the populations living near facilities.<sup>8</sup>

The results of the demographic analysis are summarized in Table 3 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—MSW LANDFILLS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

		Population with cancer risk greater than or equal to 1 in 1 million	Population with hazard index greater than 1
	Nationwide	Source category	
Total Population .....	317,746,049	18,217	0
	Race by Percent		
White .....	62	58	0
All Other Races .....	38	42	0
	Race by Percent		
African American .....	12	13	0
Native American .....	0.8	0.1	0
Hispanic or Latino (includes white and nonwhite) .....	18	20	0
Other and Multiracial .....	7	8	0
	Income by Percent		
Below Poverty Level .....	14	15	0
Above Poverty Level .....	86	85	0
	Education by Percent		
Over 25 and without a High School Diploma .....	14	17	0
Over 25 and with a High School Diploma .....	86	83	0
	Linguistically Isolated by Percent		
Linguistically Isolated .....	6	8	0

#### *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. This action's health and risk

assessments are summarized in section IV.A of this preamble and are further documented in the report, *Risk and Technology Review-Analysis of Demographic Factors for Populations*

<sup>7</sup> U.S. EPA, *Cost Impacts of National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste (MSW) Landfills Risk and Technology Review*, May 20, 2019, Docket ID Item No. EPA-HQ-OAR-2002-0047-0081.

<sup>8</sup> Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults

without a high school diploma, people living below the poverty level, people living two times above the poverty level, and linguistically isolated people.



*Living Near Municipal Solid Waste Landfill Source Category Operations*, available in the docket for this action.

## VI. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text in 40 CFR 63.1961(a)(2)(ii) and (2)(iii)(B) that includes the IBR of ASTM D6522–11—Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers (Approved December 1, 2011), as an alternative for determining oxygen for wellhead standards in 40 CFR 63.1961(a)(2). For this test method, a gas sample is continuously extracted from a duct and conveyed to a portable analyzer for determination of nitrogen oxides, CO, and oxygen gas concentrations using electrochemical cells. Analyzer design specifications, performance specifications, and test procedures are provided to ensure reliable data. This method is an alternative to EPA methods and is consistent with the methods already allowed under the 2016 NSPS and EG (subparts XXX and Cf). The ASTM standards are available from the American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See <http://www.astm.org>. You may inspect a copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC; phone number: (202) 566–1744; Docket ID No. EPA–HQ–OAR–2019–0338. This IBR has been approved by the Office of the Federal Register and the method is federally enforceable under the CAA as of the effective date of this final rulemaking.

## VII. Statutory and Executive Order Reviews

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

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

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

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

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by removing the requirements for SSM plans and periodic SSM reports, removing the oxygen and nitrogen wellhead operating standards, increasing the temperature wellhead standard, revising the corrective action timeline and procedures, providing flexibility for landfills to remove controls, and adding electronic reporting.

### 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 2060–0505. The only burden associated with the final rule is limited to affected sources becoming familiar with the changes in the final rule. The burden for respondents to review rule requirements each year is already accounted for in the previously approved information collection activities contained in the existing regulations (40 CFR part 63, subpart AAAA), which were assigned OMB control number 2060–0505. Additionally, changes to 40 CFR part 60, subpart WWW, subpart XXX, and subpart Cf only add clarifying language for affected sources and provide alternatives for any deviations from the respective standards. These changes would not increase any burden for affected sources.

### 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 action is projected to affect 738 MSW landfills, and approximately 60 of these facilities are owned by a small entity. The small entities subject to the requirements of this final rule may include private small business and small governmental jurisdictions that own or operate landfills, but the cost for complying

with the final amendments is expected to be \$0. 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 an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While state, local, or tribal governments own and operate landfills subject to these final amendments, the impacts resulting from this regulatory action are far below the applicable threshold.

### 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 has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The database used to estimate impacts of these final amendments identified one tribe, the Salt River Pima-Maricopa Indian Community, that owns three landfills potentially subject to the NESHAP. Two of these landfills are already controlling emissions—the Salt River Landfill and the Tri Cities Landfill. Although the permits for these landfills indicate they are subject to this subpart, these final changes are not expected to increase the costs. The other landfill, North Center Street Landfill, is not estimated to install controls under the NESHAP. The EPA offered to consult with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes in the process of developing this regulation to permit them to have meaningful and timely input into its development. A copy of the letter offering consultation is in the docket for 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 III.A and IV.A of this preamble.

*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. The EPA has decided to use voluntary consensus standards ASTM D6522–11, “Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers,” as an acceptable alternative to EPA Method 3A when used at the wellhead before combustion. It is advisable to know the flammability and check the lower explosive limit of the flue gas constituents prior to sampling, in order to avoid undesired ignition of the gas. The results of ASTM D6522–11 may be used to determine nitrogen oxides and CO emission concentrations from natural gas combustion at stationary sources. This test method may also be used to monitor emissions during short-term emission tests or periodically in order to optimize process operation for nitrogen oxides and CO control. The EPA's review is documented in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review*, in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2002–0047).

In this rule, the EPA is finalizing regulatory text for 40 CFR part 63, subpart AAAA that includes IBR in accordance with requirements of 1 CFR 51.5. Specifically, the EPA is incorporating by reference ASTM D6522–11. See section VI of this preamble for information on the availability of this material.

*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).

Our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups, including the African American, Hispanic or Latino, Over 25 Without a High School Diploma, and Below the Poverty Level groups. In addition, the population living within 50 km of MSW landfills has a higher percentage of minority, lower income, and lower education people when compared to the nationwide percentages of those groups. However, acknowledging these potential disparities, the risks for the source category were determined to be acceptable, and any emissions reductions from the final revisions will benefit these groups the most.

The documentation for this decision is contained in section IV.B and C of this preamble, and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Municipal Solid Waste Landfill Source Category Operations*, which is available in the docket for this action.

*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**

*40 CFR Part 60*

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

*40 CFR Part 63*

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

Dated: February 25, 2020.

**Andrew R. Wheeler,**  
Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR parts 60 and 63 as follows:

**PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

■ 1. The authority citation for part 60 continues to read as follows:

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

**Subpart Cf—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills**

■ 2. Section 60.34f is amended by revising the introductory text to read as follows:

**§ 60.34f Operational standards for collection and control systems.**

For approval, a state plan must include provisions for the operational standards in this section (as well as the provisions in §§ 60.36f and 60.37f), or the operational standards in § 63.1958 of this chapter (as well as the provisions in §§ 63.1960 of this chapter and 63.1961 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1958 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section. Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c) must:

\* \* \* \* \*

■ 3. Section 60.36f is amended by revising the introductory text and paragraph (a)(3)(ii) to read as follows:

**§ 60.36f Compliance provisions.**

For approval, a state plan must include the compliance provisions in this section (as well as the provisions in §§ 60.34f and 60.37f), or the compliance provisions in § 63.1960 of this chapter (as well as the provisions in §§ 63.1958 of this chapter and 63.1961 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1960 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

(a) \* \* \*

(3) \* \* \*

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure or elevated temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) or positive pressure. The owner or operator must submit the items listed in § 60.38f(h)(7) as part of the next annual report. The owner or operator must keep records according to § 60.39f(e)(4).

\* \* \* \* \*

■ 4. Section 60.37f is amended by revising the introductory text to read as follows:

**§ 60.37f Monitoring of operations.**

For approval, a state plan must include the monitoring provisions in this section, (as well as the provisions in §§ 60.34f and 60.36f) except as provided in § 60.38f(d)(2), or the monitoring provisions in § 63.1961 of this chapter (as well as the provisions in §§ 63.1958 of this chapter and 63.1960 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1961 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

\* \* \* \* \*

■ 5. Section 60.38f is amended by revising paragraphs (h) introductory, (h)(7), and (k) introductory text and adding paragraph (n) to read as follows:

**§ 60.38f Reporting guidelines.**

\* \* \* \* \*

(h) *Annual report.* The owner or operator of a landfill seeking to comply with § 60.33f(e)(2) using an active collection system designed in accordance with § 60.33f(b) must submit to the Administrator, following the procedures specified in paragraph (j)(2) of this section, an annual report of the recorded information in paragraphs (h)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system. The initial annual report must include the initial performance test

report required under § 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. The initial performance test report must be submitted, following the procedure specified in paragraph (j)(1) of this section, no later than the date that the initial annual report is submitted. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.39f(c)(1). If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§ 60.34f, 60.36f, and 60.37f, the owner or operator must follow the semi-annual reporting requirements in § 63.1981(h) of this chapter in lieu of this paragraph.

\* \* \* \* \*

(7) For any corrective action analysis for which corrective actions are required in § 60.36f(a)(3) or (5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or elevated temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

\* \* \* \* \*

(k) *Corrective action and the corresponding timeline.* The owner or operator must submit according to paragraphs (k)(1) and (2) of this section. If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§ 60.34f, 60.36f, and 60.37f, the owner or operator must follow the corrective action and the corresponding timeline reporting requirements in § 63.1981(j) of this chapter in lieu of paragraphs (k)(1) and (2) of this section.

\* \* \* \* \*

(n) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must submit the 24-hour high temperature report according to § 63.1981(k) of this chapter.

■ 6. Section 60.39f is amended by revising paragraph (e) introductory text and adding paragraph (e)(6) to read as follows:

**§ 60.39f Recordkeeping guidelines.**

\* \* \* \* \*

(e) Except as provided in § 60.38f(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the items in paragraphs (e)(1) through (5) of this section. Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must keep the records in paragraph (e)(6) of this section and must keep records according to § 63.1983(e)(1) through (5) of this chapter in lieu of paragraphs (e)(1) through (5) of this section.

\* \* \* \* \*

(6) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must keep records of the date upon which the owner or operator started complying with the provisions in §§ 63.1958, 63.1960, and 63.1961.

\* \* \* \* \*

**Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification on or after May 30, 1991, but Before July 18, 2014**

■ 7. Section 60.750 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

**§ 60.750 Applicability, designation of affected facility, and delegation of authority.**

(a) The provisions of this subpart apply to each municipal solid waste landfill that commenced construction, reconstruction, or modification on or after May 30, 1991, but before July 18, 2014.

\* \* \* \* \*

(d) An affected municipal solid waste landfill must continue to comply with this subpart until it:

(1) Becomes subject to the more stringent requirements in an approved and effective state or federal plan that implements subpart Cf of this part, or

(2) Modifies or reconstructs after July 17, 2014, and thus becomes subject to subpart XXX of this part.

**Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014**

■ 8. Section 60.762 is amended by revising paragraph (b)(2)(iv) to read as follows:

**§ 60.762 Standards for air emissions from municipal solid waste landfills.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) *Operation.* Operate the collection and control device installed to comply with this subpart in accordance with the provisions of §§ 60.763, 60.765, and 60.766; or the provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter. Once the owner or operator begins to comply with the provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of §§ 60.763, 60.765, and 60.766.

\* \* \* \* \*

■ 9. Section 60.765 is amended by revising paragraph (a)(5)(ii) to read as follows:

**§ 60.765 Compliance provisions.**

(a) \* \* \*

(5) \* \* \*

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure or elevated temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) or positive pressure. The owner or operator must submit the items listed in § 60.767(g)(7) as part of the next annual report. The owner or operator must keep records according to § 60.768(e)(4).

\* \* \* \* \*

■ 10. Section 60.767 is amended by revising paragraphs (g) introductory text, (g)(7), and (j) introductory text and adding paragraph (m) to read as follows:

**§ 60.767 Reporting requirements.**

\* \* \* \* \*

(g) *Annual report.* The owner or operator of a landfill seeking to comply with § 60.762(b)(2) using an active collection system designed in

accordance with § 60.762(b)(2)(ii) must submit to the Administrator, following the procedure specified in paragraph (i)(2) of this section, annual reports of the recorded information in paragraphs (g)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system and must include the initial performance test report required under § 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.768(c). If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), the owner or operator must follow the semi-annual reporting requirements in § 63.1981(h) of this chapter in lieu of this paragraph.

\* \* \* \* \*

(7) For any corrective action analysis for which corrective actions are required in § 60.765(a)(3) or (5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or elevated temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

\* \* \* \* \*

(j) *Corrective action and the corresponding timeline.* The owner or operator must submit according to paragraphs (j)(1) and (2) of this section. If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), the owner or operator must follow the corrective action and the corresponding timeline requirements in § 63.1981(j) of this chapter in lieu of this paragraph.

\* \* \* \* \*

(m) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961, as allowed at § 60.762(b)(2)(iv), must submit the 24-hour high temperature report according to § 63.1981(k) of this chapter.

■ 11. Section 60.768 is amended by revising paragraph (e) introductory text and adding paragraph (e)(6) to read as follows:

**§ 60.768 Recordkeeping requirements.**

\* \* \* \* \*

(e) Except as provided in § 60.767(c)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the items in paragraphs (e)(1) through (5) of this section. Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), must keep the records in paragraph (e)(6) of this section and must keep records according to §§ 63.1983(e)(1) through (5) of this chapter in lieu of paragraphs (e)(1) through (5) of this section.

\* \* \* \* \*

(6) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at § 60.762(b)(2)(iv), must keep records of the date upon which the owner or operator started complying with the provisions in §§ 63.1958, 63.1960, and 63.1961.

\* \* \* \* \*

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

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

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

■ 13. Section 63.14 is amended by revising paragraph (h)(94) to read as follows:

**§ 63.14 Incorporations by reference.**

\* \* \* \* \*

(h) \* \* \*

(94) ASTM D6522–11 Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, Approved December 1, 2011, IBR approved for § 63.1961(a) and table 3 to subpart YYY.

\* \* \* \* \*

■ 14. Subpart AAAA is revised to read as follows:

## Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

### What This Subpart Covers

Sec.

- 63.1930 What is the purpose of this subpart?
- 63.1935 Am I subject to this subpart?
- 63.1940 What is the affected source of this subpart?
- 63.1945 When do I have to comply with this subpart?
- 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?
- 63.1950 When am I no longer required to comply with this subpart?
- 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

### Standards

- 63.1955 What requirements must I meet?
- 63.1957 Requirements for gas collection and control system installation and removal
- 63.1958 Operational standards for collection and control systems
- 63.1959 NMOC calculation procedures
- 63.1960 Compliance provisions
- 63.1961 Monitoring of operations
- 63.1962 Specifications for active collection systems

### General and Continuing Compliance Requirements

- 63.1964 How is compliance determined?
- 63.1965 What is a deviation?
- 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

### Notifications, Records, and Reports

- 63.1981 What reports must I submit?
- 63.1982 What records and reports must I submit and keep for bioreactors or liquids addition other than leachate?
- 63.1983 What records must I keep?

### Other Requirements and Information

- 63.1985 Who enforces this subpart?
- 63.1990 What definitions apply to this subpart?

### Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

## Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

### What This Subpart Covers

#### § 63.1930 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for existing and new municipal solid waste (MSW) landfills.

(a) Before September 28, 2021, all landfills described in § 63.1935 must meet the requirements of 40 CFR part 60, subpart WWW, or an approved state

or federal plan that implements 40 CFR part 60, subpart Cc, and requires timely control of bioreactors and additional reporting requirements. Landfills must also meet the startup, shutdown, and malfunction (SSM) requirements of the general provisions as specified in Table 1 to Subpart AAAA of this part and must demonstrate compliance with the operating conditions by parameter monitoring results that are within the specified ranges. Specifically, landfills must meet the following requirements of this subpart that apply before September 28, 2021, as set out in: §§ 63.1955(a), 63.1955(b), 63.1965(a), 63.1965(c), 63.1975, 63.1981(a), 63.1981(b), and 63.1982, and the definitions of “Controlled landfill” and “Deviation” in § 63.1990.

(b) Beginning no later than September 27, 2021, all landfills described in § 63.1935 must meet the requirements of this subpart. A landfill may choose to meet the requirements of this subpart rather than the requirements identified in § 63.1930(a) at any time before September 27, 2021. The requirements of this subpart apply at all times, including during periods of SSM, and the SSM requirements of the General Provisions of this part do not apply.

#### § 63.1935 Am I subject to this subpart?

You are subject to this subpart if you meet the criteria in paragraph (a) or (b) of this section.

(a) You are subject to this subpart if you own or operate an MSW landfill that has accepted waste since November 8, 1987, or has additional capacity for waste deposition and meets any one of the three criteria in paragraphs (a)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in § 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in § 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m<sup>3</sup>) and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) NMOC as calculated according to § 63.1959.

(b) You are subject to this subpart if you own or operate an MSW landfill that has accepted waste since November 8, 1987, or has additional capacity for waste deposition, that includes a bioreactor, as defined in § 63.1990, and that meets any one of the criteria in paragraphs (b)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in § 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in § 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup> and that is not permanently closed as of January 16, 2003.

#### § 63.1940 What is the affected source of this subpart?

(a) An affected source of this subpart is an MSW landfill, as defined in § 63.1990, that meets the criteria in § 63.1935(a) or (b). The affected source includes the entire disposal facility in a contiguous geographic space where household waste is placed in or on land, including any portion of the MSW landfill operated as a bioreactor.

(b) A new affected source of this subpart is an affected source that commenced construction or reconstruction after November 7, 2000. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2 of subpart A.

(c) An affected source of this subpart is existing if it is not new.

#### § 63.1945 When do I have to comply with this subpart?

(a) If your landfill is a new affected source, you must comply with this subpart by January 16, 2003, or at the time you begin operating, whichever is later.

(b) If your landfill is an existing affected source, you must comply with this subpart by January 16, 2004.

#### § 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?

You must comply with this subpart by the dates specified in § 63.1945(a) or (b). If you own or operate a bioreactor located at a landfill that is not permanently closed as of January 16, 2003, and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>, then you must install and operate a collection and control system that meets the criteria in § 63.1959(b)(2) according to the schedule specified in paragraph (a), (b), or (c) of this section.

(a) If your bioreactor is at a new affected source, then you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose

to begin gas collection and control system operation 180 days after achieving a 40-percent moisture content instead of 180 days after liquids addition, use the procedures in §§ 63.1982(c) and (d) to determine when the bioreactor moisture content reaches 40 percent.

(b) If your bioreactor is at an existing affected source, then you must install and begin operating the gas collection and control system for the bioreactor by January 17, 2006, or by the date your bioreactor is required to install a gas collection and control system under 40 CFR part 60, subpart WWW; a federal plan; or an EPA-approved and effective state plan or tribal plan that applies to your landfill, whichever is earlier.

(c) If your bioreactor is at an existing affected source and you do not initiate liquids addition to your bioreactor until later than January 17, 2006, then you must meet the requirements in paragraphs (c)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40-percent moisture content instead of 180 days after liquids addition, use the procedures in § 63.1980(e) and (f) to determine when the bioreactor moisture content reaches 40 percent.

**§ 63.1950 When am I no longer required to comply with this subpart?**

You are no longer required to comply with the requirements of this subpart when your landfill meets the collection and control system removal criteria in § 63.1957(b).

**§ 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?**

If you own or operate a landfill that includes a bioreactor, you are no longer required to comply with the requirements of this subpart for the bioreactor provided you meet the conditions of either paragraph (a) or (b) of this section.

(a) Your affected source meets the control system removal criteria in § 63.1950 or the bioreactor meets the criteria for a nonproductive area of the landfill in § 63.1962(a)(3)(ii).

(b) The bioreactor portion of the landfill is a closed landfill as defined in § 63.1990, you have permanently ceased

adding liquids to the bioreactor, and you have not added liquids to the bioreactor for at least 1 year. A closure report for the bioreactor must be submitted to the Administrator as provided in § 63.1981(g).

**Standards**

**§ 63.1955 What requirements must I meet?**

(a) Before September 28, 2021, if alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions have already been approved under 40 CFR part 60, subpart WWW; subpart XXX; a federal plan; or an EPA-approved and effective state or tribal plan, these alternatives can be used to comply with this subpart, except that all affected sources must comply with the SSM requirements in subpart A of this part as specified in Table 1 of this subpart and all affected sources must submit compliance reports every 6 months as specified in § 63.1981(h), including information on all deviations that occurred during the 6-month reporting period. Deviations for continuous emission monitors or numerical continuous parameter monitors must be determined using a 3-hour monitoring block average. Beginning no later than September 28, 2021, the collection and control system design plan may include for approval collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions, as provided in § 63.1981(d)(2).

(b) If you own or operate a bioreactor that is located at an MSW landfill that is not permanently closed and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>, then you must meet the requirements of this subpart, including requirements in paragraphs (b)(1) and (2) of this section.

(1) You must comply with this subpart starting on the date you are required to install the gas collection and control system.

(2) You must extend the collection and control system into each new cell or area of the bioreactor prior to initiating liquids addition in that area.

(c) At all times, beginning no later than September 27, 2021, 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 the requirements of this subpart 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.

**§ 63.1957 Requirements for gas collection and control system installation and removal.**

(a) *Operation.* Operate the collection and control device in accordance with the provisions of §§ 63.1958, 63.1960, and 63.1961.

(b) *Removal criteria.* The collection and control system may be capped, removed, or decommissioned if the following criteria are met:

(1) The landfill is a closed landfill (as defined in § 63.1990). A closure report must be submitted to the Administrator as provided in § 63.1981(f);

(2) The gas collection and control system has been in operation a minimum of 15 years or the landfill owner or operator demonstrates that the gas collection and control system will be unable to operate for 15 years due to declining gas flow; and

(3) Following the procedures specified in § 63.1959(c), the calculated NMOC emission rate at the landfill is less than 50 Mg/yr on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

**§ 63.1958 Operational standards for collection and control systems.**

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 63.1957 must:

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

- (1) 5 years or more if active; or
- (2) 2 years or more if closed or at final grade;

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

(1) A fire or increased well temperature. The owner or operator must record instances when positive pressure occurs in efforts to avoid a fire. These records must be submitted with the semi-annual reports as provided in § 63.1981(h);

(2) Use of a geomembrane or synthetic cover. The owner or operator must develop acceptable pressure limits in the design plan;

(3) A decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes must be approved by the Administrator as specified in § 63.1981(d)(2);

(c) Operate each interior wellhead in the collection system as specified in § 60.753(c), except:

(1) Beginning no later than September 27, 2021, operate each interior wellhead in the collection system with a landfill gas temperature less than 62.8 degrees Celsius (145 degrees Fahrenheit).

(2) The owner or operator may establish a higher operating temperature value at a particular well. A higher operating value demonstration must be submitted to the Administrator for approval and must include supporting data demonstrating that the elevated parameter neither causes fires nor significantly inhibits anaerobic decomposition by killing methanogens. The demonstration must satisfy both criteria in order to be approved (*i.e.*, neither causing fires nor killing methanogens is acceptable).

(d)(1) Operate the collection system so that the methane concentration is less than 500 parts per million (ppm) above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface

monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

(2) Beginning no later than September 27, 2021, the owner or operator must:

(i) Conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in § 63.1960(d).

(ii) Conduct surface testing at all cover penetrations. Thus, the owner or operator must monitor any cover penetrations that are within an area of the landfill where waste has been placed and a gas collection system is required.

(iii) Determine the latitude and longitude coordinates of each exceedance using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(e) Operate the system as specified in § 60.753(e) of this chapter, except:

(1) Beginning no later than September 27, 2021, operate the system in accordance to § 63.1955(c) such that all collected gases are vented to a control system designed and operated in compliance with § 63.1959(b)(2)(iii). In the event the collection or control system is not operating:

(i) The gas mover system must be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere must be closed within 1 hour of the collection or control system not operating; and

(ii) Efforts to repair the collection or control system must be initiated and completed in a manner such that downtime is kept to a minimum, and the collection and control system must be returned to operation.

(2) [Reserved]

(f) Operate the control system at all times when the collected gas is routed to the system.

(g) If monitoring demonstrates that the operational requirements in paragraph (b), (c), or (d) of this section are not met, corrective action must be taken as specified in § 63.1960(a)(3) and (5) or (c). If corrective actions are taken as specified in § 63.1960, the monitored exceedance is not a deviation of the operational requirements in this section.

#### § 63.1959 NMOC calculation procedures.

(a) Calculate the NMOC emission rate using the procedures specified in § 60.754(a) of this chapter, except:

(1) *NMOC emission rate.* Beginning no later than September 27, 2021 the landfill owner or operator must calculate the NMOC emission rate using either Equation 1 provided in paragraph (a)(1)(i) of this section or Equation 2 provided in paragraph (a)(1)(ii) of this section. Both Equation 1 and Equation 2 may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i) of this section, for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii) of this section, for part of the life of the landfill. The values to be used in both Equation 1 and Equation 2 are 0.05 per year for  $k$ , 170 cubic meters per megagram ( $m^3/Mg$ ) for  $L_o$ , and 4,000 parts per million by volume (ppmv) as hexane for the  $C_{NMOC}$ . For landfills located in geographical areas with a 30-year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site, the  $k$  value to be used is 0.02 per year.

(i)(A) Equation 1 must be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{NMOC} = \sum_{i=1}^n 2 k L_o M_i (e^{-kt_i}) (C_{NMOC}) (3.6 \times 10^{-9}) \text{ (Eq. 1)}$$

Where:

$M_{NMOC}$  = Total NMOC emission rate from the landfill, Mg/yr.

$k$  = Methane generation rate constant, year<sup>-1</sup>.

$L_o$  = Methane generation potential,  $m^3/Mg$  solid waste.

$M_i$  = Mass of solid waste in the  $i$ th section, Mg.

$t_i$  = Age of the  $i$ th section, years.

$C_{NMOC}$  = Concentration of NMOC, ppmv as hexane.

$3.6 \times 10^{-9}$  = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total

mass of solid waste in a particular section of the landfill when calculating the value for  $M_i$  if documentation of the nature and amount of such wastes is maintained.

(ii)(A) Equation 2 must be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_oR (e^{-kc}-e^{-kt}) C_{NMOC}(3.6 \times 10^{-9}) \text{ (Eq. 2)}$$



Where:

$M_{\text{NMOC}}$  = Mass emission rate of NMOC, Mg/yr.

$L_0$  = Methane generation potential,  $\text{m}^3/\text{Mg}$  solid waste.

$R$  = Average annual acceptance rate, Mg/yr.

$k$  = Methane generation rate constant,  $\text{year}^{-1}$ .

$t$  = Age of landfill, years.

$C_{\text{NMOC}}$  = Concentration of NMOC, ppmv as hexane.

$c$  = Time since closure, years; for active landfill  $c=0$  and  $e^{-kc} = 1$ .

$3.6 \times 10^{-9}$  = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of  $R$ , if documentation of the nature and amount of such wastes is maintained.

(2) *Tier 1.* The owner or operator must compare the calculated NMOC mass emission rate to the standard of 50 Mg/yr.

(i) If the NMOC emission rate calculated in paragraph (a)(1) of this section is less than 50 Mg/yr, then the landfill owner or operator must submit an NMOC emission rate report according to § 63.1981(c) and must recalculate the NMOC mass emission rate annually as required under paragraph (b) of this section.

(ii) If the calculated NMOC emission rate as calculated in paragraph (a)(1) of this section is equal to or greater than 50 Mg/yr, then the landfill owner must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(d) and install and operate a gas collection and control system within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 Mg/yr, according to paragraphs (b)(2)(ii) and (iii) of this section;

(B) Determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the Tier 2 procedures provided in paragraph (a)(3) of this section; or

(C) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the Tier 3 procedures provided in paragraph (a)(4) of this section.

(3) *Tier 2.* The landfill owner or operator must determine the site-specific NMOC concentration using the following sampling procedure. The landfill owner or operator must install at least two sample probes per hectare, evenly distributed over the landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The probes should be evenly distributed across the sample area. The

sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator must collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using EPA Method 25 or 25C of appendix A–7 to part 60. Taking composite samples from different probes into a single cylinder is allowed; however, equal sample volumes must be taken from each probe. For each composite, the sampling rate, collection times, beginning and ending cylinder vacuums, or alternative volume measurements must be recorded to verify that composite volumes are equal. Composite sample volumes should not be less than one liter unless evidence can be provided to substantiate the accuracy of smaller volumes. Terminate compositing before the cylinder approaches ambient pressure where measurement accuracy diminishes. If more than the required number of samples are taken, all samples must be used in the analysis. The landfill owner or operator must divide the NMOC concentration from EPA Method 25 or 25C of appendix A–7 to part 60 by 6 to convert from  $C_{\text{NMOC}}$  as carbon to  $C_{\text{NMOC}}$  as hexane. If the landfill has an active or passive gas removal system in place, EPA Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two sampling probe per hectare requirement. For active collection systems, samples may be collected from the common header pipe. The sample location on the common header pipe must be before any gas moving, condensate removal, or treatment system equipment. For active collection systems, a minimum of three samples must be collected from the header pipe.

(i) Within 60 days after the date of completing each performance test (as defined in § 63.7 of subpart A), the owner or operator must submit the results according to § 63.1981(i).

(ii) The landfill owner or operator must recalculate the NMOC mass emission rate using Equation 1 or Equation 2 provided in paragraph (a)(1)(i) or (ii) of this section and use the average site-specific NMOC concentration from the collected samples instead of the default value provided in paragraph (a)(1) of this section.

(iii) If the resulting NMOC mass emission rate is less than 50 Mg/yr, then the owner or operator must submit a periodic estimate of NMOC emissions in an NMOC emission rate report according to § 63.1981(c) and must

recalculate the NMOC mass emission rate annually as required under paragraph (b) of this section. The site-specific NMOC concentration must be retested every 5 years using the methods specified in this section.

(iv) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration is equal to or greater than 50 Mg/yr, the landfill owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(d) and install and operate a gas collection and control system within 30 months according to paragraphs (b)(2)(ii) and (iii) of this section; or

(B) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the Tier 3 procedures specified in paragraph (a)(4) of this section.

(4) *Tier 3.* The site-specific methane generation rate constant must be determined using the procedures provided in EPA Method 2E of appendix A–1 to part 60 of this chapter. The landfill owner or operator must estimate the NMOC mass emission rate using Equation 1 or Equation 2 in paragraph (a)(1)(i) or (ii) of this section and using a site-specific methane generation rate constant, and the site-specific NMOC concentration as determined in paragraph (a)(3) of this section instead of the default values provided in paragraph (a)(1) of this section. The landfill owner or operator must compare the resulting NMOC mass emission rate to the standard of 50 Mg/yr.

(i) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration and Tier 3 site-specific methane generation rate is equal to or greater than 50 Mg/yr, the owner or operator must:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 63.1981(e) and install and operate a gas collection and control system within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 Mg/yr, according to paragraphs (b)(2)(ii) and (iii) of this section.

(B) [Reserved]

(ii) If the NMOC mass emission rate is less than 50 Mg/yr, then the owner or operator must recalculate the NMOC mass emission rate annually using Equation 1 or Equation 2 in paragraph (a)(1) of this section and using the site-specific Tier 2 NMOC concentration and Tier 3 methane generation rate constant and submit a periodic NMOC emission rate report as provided in § 63.1981(c).



The calculation of the methane generation rate constant is performed only once, and the value obtained from this test must be used in all subsequent annual NMOC emission rate calculations.

(5) *Other methods.* The owner or operator may use other methods to determine the NMOC concentration or a site-specific methane generation rate constant as an alternative to the methods required in paragraphs (a)(3) and (4) of this section if the method has been approved by the Administrator.

(b) Each owner or operator of an affected source having a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup> must either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in paragraph (a) of this section. The NMOC emission rate must be recalculated annually, except as provided in § 63.1981(c)(1)(ii)(A).

(1) If the calculated NMOC emission rate is less than 50 Mg/yr, the owner or operator must:

(i) Submit an annual NMOC emission rate emission report to the Administrator, except as provided for in § 63.1981(c)(1)(ii); and

(ii) Recalculate the NMOC emission rate annually using the procedures specified in paragraph (a)(1) of this section until such time as the calculated NMOC emission rate is equal to or greater than 50 Mg/yr, or the landfill is closed.

(A) If the calculated NMOC emission rate, upon initial calculation or annual recalculation required in paragraph (b) of this section, is equal to or greater than 50 Mg/yr, the owner or operator must either: comply with paragraph (b)(2) of this section or calculate NMOC emissions using the next higher tier in paragraph (a) of this section.

(B) If the landfill is permanently closed, a closure report must be submitted to the Administrator as provided for in § 63.1981(f).

(2) If the calculated NMOC emission rate is equal to or greater than 50 Mg/yr using Tier 1, 2, or 3 procedures, the owner or operator must either:

(i) Submit a collection and control system design plan prepared by a professional engineer to the Administrator within 1 year as specified

in § 63.1981(d) or calculate NMOC emissions using the next higher tier in paragraph (a) of this section. The collection and control system must meet the requirements in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) Collection system. Install and start up a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(B) or (C) and (b)(2)(iii) of this section within 30 months after:

(A) The first annual report in which the NMOC emission rate equals or exceeds 50 Mg/yr, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 50 Mg.

(B) An active collection system must:

(1) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment;

(2) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade;

(3) Collect gas at a sufficient extraction rate; and

(4) Be designed to minimize off-site migration of subsurface gas.

(C) A passive collection system must:

(1) Comply with the provisions specified in paragraphs (b)(2)(ii)(B)(1), (2), and (3) of this section; and

(2) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners must be installed as required under § 258.40 of this chapter.

(iii) Control system. Route all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii)(A), (B), or (C) of this section.

(A) A non-enclosed flare designed and operated in accordance with the parameters established in § 63.11(b) except as noted in paragraph (f) of this section; or

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight-percent or reduce the outlet NMOC concentration to less than 20 ppmv, dry

basis as hexane at 3-percent oxygen. The reduction efficiency or ppmv must be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in paragraph (e) of this section. The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(1) If a boiler or process heater is used as the control device, the landfill gas stream must be introduced into the flame zone.

(2) The control device must be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in §§ 63.1961(b) through (e);

(C) A treatment system that processes the collected gas for subsequent sale or beneficial use such as fuel for combustion, production of vehicle fuel, production of high-British thermal unit (Btu) gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas must be controlled according to either paragraph (b)(2)(iii)(A) or (B) of this section.

(D) All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b)(2)(iii)(A) or (B) of this section.

(c) After the installation and startup of a collection and control system in compliance with this subpart, the owner or operator must calculate the NMOC emission rate for purposes of determining when the system can be capped, removed, or decommissioned as provided in § 63.1957(b)(3), using Equation 3:

$$\text{NMNOC} = 1.89 \times 10^{-3} Q_{\text{LFG}} C_{\text{NMOC}} \text{ (Eq. 3)}$$

Where:

$M_{\text{NMOC}}$  = Mass emission rate of NMOC, Mg/yr.

$Q_{\text{LFG}}$  = Flow rate of landfill gas, m<sup>3</sup> per minute.

$C_{\text{NMOC}}$  = Average NMOC concentration, ppmv as hexane.

$1.89 \times 10^{-3}$  = Conversion factor.

(1) The flow rate of landfill gas,  $Q_{\text{LFG}}$ , must be determined by measuring the

total landfill gas flow rate at the common header pipe that leads to the control system using a gas flow measuring device calibrated according to the provisions of section 10 of EPA Method 2E of appendix A–1 of part 60.

(2) The average NMOC concentration,  $C_{NMOC}$ , must be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in EPA Method 25 or 25C of appendix A–7 to part 60 of this chapter. The sample location on the common header pipe must be before any condensate removal or other gas refining units. The landfill owner or operator must divide the NMOC concentration from EPA Method 25 or 25C of appendix A–7 to part 60 by 6 to convert from  $C_{NMOC}$  as carbon to  $C_{NMOC}$  as hexane.

(3) The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the Administrator.

(i) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results of the performance test, including any associated fuel analyses, according to § 63.1981(i).

(ii) [Reserved]

(d) For the performance test required in § 63.1959(b)(2)(iii)(B), EPA Method 25 or 25C (EPA Method 25C of appendix A–7 to part 60 of this chapter may be used at the inlet only) of appendix A of this part must be used to determine compliance with the 98 weight-percent efficiency or the 20- ppmv outlet concentration level, unless another method to demonstrate compliance has been approved by the Administrator as

provided by § 63.1981(d)(2). EPA Method 3, 3A, or 3C of appendix A–7 to part 60 must be used to determine oxygen for correcting the NMOC concentration as hexane to 3 percent. In cases where the outlet concentration is less than 50 ppm NMOC as carbon (8 ppm NMOC as hexane), EPA Method 25A should be used in place of EPA Method 25. EPA Method 18 may be used in conjunction with EPA Method 25A on a limited basis (compound specific, e.g., methane) or EPA Method 3C may be used to determine methane. The methane as carbon should be subtracted from the EPA Method 25A total hydrocarbon value as carbon to give NMOC concentration as carbon. The landowner or operator must divide the NMOC concentration as carbon by 6 to convert from the  $C_{NMOC}$  as carbon to  $C_{NMOC}$  as hexane. Equation 4 must be used to calculate efficiency:

$$\text{Control Efficiency} = (\text{NMOC}_{\text{in}} - \text{NMOC}_{\text{out}}) / (\text{NMOC}_{\text{in}}) \quad (\text{Eq. 4})$$

Where:

$\text{NMOC}_{\text{in}}$  = Mass of NMOC entering control device.

$\text{NMOC}_{\text{out}}$  = Mass of NMOC exiting control device.

(e) For the performance test required in § 63.1959(b)(2)(iii)(A), the net heating value of the combusted landfill gas as determined in § 63.11(b)(6)(ii) is calculated from the concentration of methane in the landfill gas as measured by EPA Method 3C of appendix A to part 60 of this chapter. A minimum of three 30-minute EPA Method 3C samples are determined. The measurement of other organic components, hydrogen, and carbon monoxide is not applicable. EPA Method 3C may be used to determine the landfill gas molecular weight for calculating the flare gas exit velocity under § 63.11(b)(7) of subpart A.

(1) Within 60 days after the date of completing each performance test (as defined in § 63.7), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by § 63.1959(c) or (e) according to § 63.1981(i).

(2) [Reserved]

(f) The performance tests required in §§ 63.1959(b)(2)(iii)(A) and (B), must be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator. 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.

#### § 63.1960 Compliance provisions.

(a) Except as provided in § 63.1981(d)(2), the specified methods in paragraphs (a)(1) through (6) of this section must be used to determine whether the gas collection system is in compliance with § 63.1959(b)(2)(ii).

(1) For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with § 63.1959(b)(2)(ii)(C)(1), either Equation 5 or Equation 6 must be used. The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the Administrator. The methane generation rate constant (k) and methane generation potential ( $L_0$ ) kinetic factors should be those published in the most recent *Compilation of Air Pollutant Emission Factors* (AP–42) or other site-specific values demonstrated to be appropriate and approved by the Administrator. If k has been determined as specified in § 63.1959(a)(4), the value of k determined from the test must be used. A value of no more than 15 years must be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Q_m = 2L_0R (e^{-k_c} - e^{-k_t}) \quad (\text{Eq. 5})$$

Where:

$Q_m$  = Maximum expected gas generation flow rate,  $\text{m}^3/\text{yr}$ .

$L_0$  = Methane generation potential,  $\text{m}^3/\text{Mg}$  solid waste.

R = Average annual acceptance rate,  $\text{Mg}/\text{yr}$ .

k = Methane generation rate constant,  $\text{year}^{-1}$ .

t = Age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill,

whichever is less. If the equipment is installed after closure,  $t$  is the age of the landfill at installation, years.

$c$  = Time since closure, years (for an active landfill  $c = 0$  and  $e^{-kc} = 1$ ).  
 $2$  = Constant.

(ii) For sites with known year-to-year solid waste acceptance rate:

$$Q_M = \sum_{i=1}^n 2kL_o M_i (e^{-kt_i}) \text{ (Eq. 6)}$$

Where:

$Q_m$  = Maximum expected gas generation flow rate,  $m^3/yr$ .

$k$  = Methane generation rate constant,  $year^{-1}$ .

$L_o$  = Methane generation potential,  $m^3/Mg$  solid waste.

$M_i$  = Mass of solid waste in the  $i$ th section,  $Mg$ .

$t_i$  = Age of the  $i$ th section, years.

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, Equation 5 or Equation 6 in paragraphs (a)(1)(i) and (ii) of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using Equation 5 or Equation 6 in paragraph (a)(1)(i) or (ii) of this section or other methods must be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

(2) For the purposes of determining sufficient density of gas collectors for compliance with § 63.1959(b)(2)(ii)(B)(2), the owner or operator must design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Administrator, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

(3) For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with § 63.1959(b)(2)(ii)(B)(3), the owner or operator must measure gauge pressure in the gas collection header applied to each individual well monthly. Any attempted corrective measure must not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval. If a positive pressure exists, follow the procedures as specified in § 60.755(a)(3), except:

(i) Beginning no later than September 27, 2021, if a positive pressure exists, action must be initiated to correct the exceedance within 5 days, except for the three conditions allowed under § 63.1958(b).

(A) If negative pressure cannot be achieved without excess air infiltration within 15 days of the first measurement of positive pressure, the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after positive pressure was first measured. The owner or operator must keep records according to § 63.1983(e)(3).

(B) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the positive pressure measurement. The owner or operator must submit the items listed in § 63.1981(h)(7) as part of the next semi-annual report. The owner or operator must keep records according to § 63.1983(e)(5).

(C) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to § 63.1981(j). The owner or operator must keep records according to § 63.1983(e)(5).

(ii) [Reserved]

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), for the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator must follow the procedures as specified in § 60.755(a)(5) of this chapter, except:

(i) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), the owner or operator must monitor each well monthly for temperature. If a well exceeds the operating parameter for temperature as provided in § 63.1958(c)(1), action must be initiated to correct the exceedance within 5 days. Any attempted corrective

measure must not cause exceedances of other operational or performance standards.

(A) If a landfill gas temperature less than or equal to 62.8 degrees Celsius (145 degrees Fahrenheit) cannot be achieved within 15 days of the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit), the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after a landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit) was first measured. The owner or operator must keep records according to § 63.1983(e)(3).

(B) If corrective actions cannot be fully implemented within 60 days following the temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit). The owner or operator must submit the items listed in § 63.1981(h)(7) as part of the next semi-annual report. The owner or operator must keep records according to § 63.1983(e)(4).

(C) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to § 63.1981(h)(7) and (j). The owner or operator must keep records according to § 63.1983(e)(5).

(D) If a landfill gas temperature measured at either the wellhead or at any point in the well is greater than or equal to 76.7 degrees Celsius (170 degrees Fahrenheit) and the carbon monoxide concentration measured, according to the procedures in § 63.1961(a)(5)(vi) is greater than or equal to 1,000 ppmv the corrective action(s) for the wellhead temperature standard (62.8 degrees Celsius or 145 degrees Fahrenheit) must be completed within 15 days.

(5) An owner or operator seeking to demonstrate compliance with

§ 63.1959(b)(2)(ii)(B)(4) through the use of a collection system not conforming to the specifications provided in § 63.1962 must provide information satisfactory to the Administrator as specified in § 63.1981(c)(3) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with § 63.1958(a), each owner or operator of a controlled landfill must place each well or design component as specified in the approved design plan as provided in § 63.1981(b). Each well must be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

- (1) 5 years or more if active; or
- (2) 2 years or more if closed or at final grade.

(c) The following procedures must be used for compliance with the surface methane operational standard as provided in § 63.1958(d).

(1) After installation and startup of the gas collection system, the owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of this section.

(2) The background concentration must be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

(3) Surface emission monitoring must be performed in accordance with section 8.3.1 of EPA Method 21 of appendix A–7 of part 60 of this chapter, except that the probe inlet must be placed within 5 to 10 centimeters of the ground. Monitoring must be performed during typical meteorological conditions.

(4) Any reading of 500 ppm or more above background at any location must be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section must be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of § 63.1958(d).

(i) The location of each monitored exceedance must be marked and the location and concentration recorded. Beginning no later than September 27, 2021, the location must be recorded using an instrument with an accuracy of at least 4 meters. The coordinates must

be in decimal degrees with at least five decimal places.

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance must be made and the location must be re-monitored within 10 days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action must be taken and the location must be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same location, the action specified in paragraph (c)(4)(v) of this section must be taken, and no further monitoring of that location is required until the action specified in paragraph (c)(4)(v) of this section has been taken.

(iv) Any location that initially showed an exceedance but has a methane concentration less than 500 ppm methane above background at the 10-day re-monitoring specified in paragraph (c)(4)(ii) or (iii) of this section must be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 ppm above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in paragraph (c)(4)(iii) or (v) of this section must be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 ppm above background three times within a quarterly period, a new well or other collection device must be installed within 120 days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the Administrator for approval.

(5) The owner or operator must implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in paragraph (c) of this section must comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

(1) The portable analyzer must meet the instrument specifications provided in section 6 of EPA Method 21 of appendix A of part 60 of this chapter, except that “methane” replaces all references to “VOC”.

(2) The calibration gas must be methane, diluted to a nominal concentration of 500 ppm in air.

(3) To meet the performance evaluation requirements in section 8.1 of EPA Method 21 of appendix A of part 60 of this chapter, the instrument evaluation procedures of section 8.1 of EPA Method 21 of appendix A of part 60 must be used.

(4) The calibration procedures provided in sections 8 and 10 of EPA Method 21 of appendix A of part 60 of this chapter must be followed immediately before commencing a surface monitoring survey.

(e)(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standards in introductory paragraph § 63.1958(e), the provisions of this subpart apply at all times, except during periods of SSM, provided that the duration of SSM does not exceed 5 days for collection systems and does not exceed 1 hour for treatment or control devices. You must comply with the provisions in Table 1 to subpart AAAA that apply before September 28, 2021.

(2) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(c)(1), the provisions of this subpart apply at all times, including periods of SSM. During periods of SSM, you must comply with the work practice requirement specified in § 63.1958(e) in lieu of the compliance provisions in § 63.1960.

#### **§ 63.1961 Monitoring of operations.**

Except as provided in § 63.1981(d)(2):

(a) Each owner or operator seeking to comply with § 63.1959(b)(2)(ii)(B) for an active gas collection system must install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead and:

(1) Measure the gauge pressure in the gas collection header on a monthly basis as provided in § 63.1960(a)(3); and

(2) Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as follows:

(i) The nitrogen level must be determined using EPA Method 3C of appendix A–2 to part 60 of this chapter, unless an alternative test method is established as allowed by § 63.1981(d)(2).

(ii) Unless an alternative test method is established as allowed by § 63.1981(d)(2), the oxygen level must be determined by an oxygen meter using EPA Method 3A or 3C of appendix A–2 to part 60 of this chapter or ASTM

D6522–11 (incorporated by reference, see § 63.14). Determine the oxygen level by an oxygen meter using EPA Method 3A or 3C of appendix A–2 to part 60 or ASTM D6522–11 (if sample location is prior to combustion) except that:

(A) The span must be set between 10- and 12-percent oxygen;

(B) A data recorder is not required;

(C) Only two calibration gases are required, a zero and span;

(D) A calibration error check is not required; and

(E) The allowable sample bias, zero drift, and calibration drift are  $\pm 10$  percent.

(iii) A portable gas composition analyzer may be used to monitor the oxygen levels provided:

(A) The analyzer is calibrated; and

(B) The analyzer meets all quality assurance and quality control requirements for EPA Method 3A of appendix A–2 to part 60 of this chapter or ASTM D6522–11 (incorporated by reference, see § 63.14).

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), the owner or operator must follow the procedures as specified in § 60.756(a)(2) and (3) of this chapter. Monitor temperature of the landfill gas on a monthly basis as provided in § 63.1960(a)(4). The temperature measuring device must be calibrated annually using the procedure in Section 10.3 of EPA Method 2 of appendix A–1 to part 60 of this chapter.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), monitor temperature of the landfill gas on a monthly basis as provided in § 63.1960(a)(4). The temperature measuring device must be calibrated annually using the procedure in Section 10.3 of EPA Method 2 of appendix A–1 to part 60 of this chapter. Keep records specified in § 63.1983(e).

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), unless a higher operating temperature value has been approved by the Administrator under this subpart or under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a federal plan or EPA-approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf, you must initiate enhanced monitoring at each well with a measurement of landfill gas temperature

greater than 62.8 degrees Celsius (145 degrees Fahrenheit) as follows:

(i) Visual observations for subsurface oxidation events (smoke, smoldering ash, damage to well) within the radius of influence of the well.

(ii) Monitor oxygen concentration as provided in paragraph (a)(2) of this section;

(iii) Monitor temperature of the landfill gas at the wellhead as provided in paragraph (a)(4) of this section.

(iv) Monitor temperature of the landfill gas every 10 vertical feet of the well as provided in paragraph (a)(6) of this section.

(v) Monitor the methane concentration with a methane meter using EPA Method 3C of appendix A–6 to part 60, EPA Method 18 of appendix A–6 to part 60 of this chapter, or a portable gas composition analyzer to monitor the methane levels provided that the analyzer is calibrated and the analyzer meets all quality assurance and quality control requirements for EPA Method 3C or EPA Method 18.

(vi) Monitor carbon monoxide concentrations, as follows:

(A) Collect the sample from the wellhead sampling port in a passivated canister or multi-layer foil gas sampling bag (such as the Cali-5-Bond Bag) and analyze that sample using EPA Method 10 of appendix A–4 to part 60 of this chapter, or an equivalent method with a detection limit of at least 100 ppmv of carbon monoxide in high concentrations of methane; and

(B) Collect and analyze the sample from the wellhead using EPA Method 10 of appendix A–4 to part 60 to measure carbon monoxide concentrations.

(vii) The enhanced monitoring this paragraph (a)(5) must begin 7 days after the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit); and

(viii) The enhanced monitoring in this paragraph (a)(5) must be conducted on a weekly basis. If four consecutive weekly carbon monoxide readings are under 100 ppmv, then enhanced monitoring may be decreased to monthly. However, if carbon monoxide readings exceed 100 ppmv again, the landfill must return to weekly monitoring.

(ix) The enhanced monitoring in this paragraph (a)(5) can be stopped once a higher operating value is approved, at which time the monitoring provisions issued with the higher operating value should be followed, or once the measurement of landfill gas temperature at the wellhead is less than or equal to 62.8 degrees Celsius (145 degrees Fahrenheit).

(6) For each wellhead with a measurement of landfill gas temperature greater than or equal to 73.9 degrees Celsius (165 degrees Fahrenheit), annually monitor temperature of the landfill gas every 10 vertical feet of the well. This temperature can be monitored either with a removable thermometer, or using temporary or permanent thermocouples installed in the well.

(b) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) using an enclosed combustor must calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of  $\pm 1$  percent of the temperature being measured expressed in degrees Celsius or  $\pm 0.5$  degrees Celsius, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

(2) A device that records flow to the control device and bypass of the control device (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that must record the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) using a non-enclosed flare must install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame; and

(2) A device that records flow to the flare and bypass of the flare (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least

once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with § 63.1959(b)(2)(iii) using a device other than a non-enclosed flare or an enclosed combustor or a treatment system must provide information satisfactory to the Administrator as provided in § 63.1981(d)(2) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator must review the information and either approve it, or request that additional information be submitted. The Administrator may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in § 63.1962 or seeking to monitor alternative parameters to those required by §§ 63.1958 through 63.1961 must provide information satisfactory to the Administrator as provided in § 63.1981(d)(2) and (3) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with the 500-ppm surface methane operational standard in § 63.1958(d) must monitor surface concentrations of methane according to the procedures in § 63.1960(c) and the instrument specifications in § 63.1960(d). If you are complying with the 500-ppm surface methane operational standard in § 63.1958(d)(2), for location, you must determine the latitude and longitude coordinates of each exceedance using an instrument with an accuracy of at least 4 meters and the coordinates must be in decimal degrees with at least five decimal places. In the semi-annual report in § 63.1981(i), you must report the location of each exceedance of the 500-ppm methane concentration as provided in § 63.1958(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 ppm or more above background detected during the annual monitoring returns the

frequency for that landfill to quarterly monitoring.

(g) Each owner or operator seeking to demonstrate compliance with § 63.1959(b)(2)(iii)(C) using a landfill gas treatment system must calibrate, maintain, and operate according to the manufacturer's specifications a device that records flow to the treatment system and bypass of the treatment system (if applicable). Beginning no later than September 27, 2021, each owner or operator must maintain and operate all monitoring systems associated with the treatment system in accordance with the site-specific treatment system monitoring plan required in § 63.1983(b)(5)(ii). The owner or operator must:

(1) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the treatment system at least every 15 minutes; and

(2) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(h) The monitoring requirements of paragraphs (a), (b), (c), (d), and (g) of this section apply at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities. A monitoring system malfunction is any sudden, infrequent, 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. Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c)(1), (d)(2), and (e)(1), the standards apply at all times.

#### **§ 63.1962 Specifications for active collection systems.**

(a) Each owner or operator seeking to comply with § 63.1959(b)(2)(i) must site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density

throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Administrator as provided in § 63.1981(d)(2) and (3):

(1) The collection devices within the interior must be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues must be addressed in the design: Depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, resistance to the refuse decomposition heat, and ability to isolate individual components or sections for repair or troubleshooting without shutting down entire collection system.

(2) The sufficient density of gas collection devices determined in paragraph (a)(1) of this section must address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

(3) The placement of gas collection devices determined in paragraph (a)(1) of this section must control all gas producing areas, except as provided by paragraphs (a)(3)(i) and (ii) of this section.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under § 63.1983(d). The documentation must provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area and must be provided to the Administrator upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material must be documented and provided to the Administrator upon request. A separate NMOC emissions estimate must be made for each section proposed for exclusion, and the sum of all such sections must be compared to the NMOC emissions estimate for the entire landfill.

(A) The NMOC emissions from each section proposed for exclusion must be computed using Equation 7:

$$Q_i = 2 k L_o M_i (e^{-kt_i}) (C_{NMOC}) (3.6 \times 10^{-9}) \text{ (Eq. 7)}$$

Where:

$Q_i$  = NMOC emission rate from the  $i$ th section, Mg/yr.

$k$  = Methane generation rate constant, year<sup>-1</sup>.

$L_o$  = Methane generation potential, m<sup>3</sup>/Mg solid waste.

$M_i$  = Mass of the degradable solid waste in the  $i$ th section, Mg.

$t_i$  = Age of the solid waste in the  $i$ th section, years.

$C_{NMOC}$  = Concentration of NMOC, ppmv.

$3.6 \times 10^{-9}$  = Conversion factor.

(B) If the owner/operator is proposing to exclude, or cease gas collection and control from, nonproductive physically separated (*e.g.*, separately lined) closed areas that already have gas collection systems, NMOC emissions from each physically separated closed area must be computed using either Equation 3 in § 63.1959(c) or Equation 7 in paragraph (a)(3)(ii)(A) of this section.

(iii) The values for  $k$  and  $C_{NMOC}$  determined in field testing must be used if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for  $k$ ,  $L_o$  and  $C_{NMOC}$  provided in § 63.1959(a)(1) or the alternative values from § 63.1959(a)(5) must be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in paragraph (a)(3)(i) of this section.

(b) Each owner or operator seeking to comply with § 63.1959(b)(2)(ii) must construct the gas collection devices using the following equipment or procedures:

(1) The landfill gas extraction components must be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: Convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system must extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors must be perforated to allow gas entry without head loss sufficient to impair

performance across the intended extent of control. Perforations must be situated with regard to the need to prevent excessive air infiltration.

(2) Vertical wells must be placed so as not to endanger underlying liners and must address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors must be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices must be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(3) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly must include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices must be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) must convey the landfill gas to a control system in compliance with § 63.1959(b)(2)(iii) through the collection header pipe(s). The gas mover equipment must be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

(1) For existing collection systems, the flow data must be used to project the maximum flow rate. If no flow data exists, the procedures in paragraph (c)(2) of this section must be used.

(2) For new collection systems, the maximum flow rate must be in accordance with § 63.1960(a)(1).

### General and Continuing Compliance Requirements

#### § 63.1964 How is compliance determined?

Compliance is determined using performance testing, collection system monitoring, continuous parameter monitoring, and other credible evidence. In addition, continuous parameter monitoring data collected under § 63.1961(b)(1), (c)(1), and (d) are used to demonstrate compliance with the operating standards for control

systems. If a deviation occurs, you have failed to meet the control device operating standards described in this subpart and have deviated from the requirements of this subpart.

(a) Before September 28, 2021, you must develop a written SSM plan according to the provisions in § 63.6(e)(3) of subpart A. A copy of the SSM plan must be maintained on site. Failure to write or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

(b) After September 27, 2021, the SSM provisions of § 63.6(e) of subpart A no longer apply to this subpart and the SSM plan developed under paragraph (a) of this section no longer applies. Compliance with the emissions standards and the operating standards of § 63.1958 of this subpart is required at all times.

#### § 63.1965 What is a deviation?

A deviation is defined in § 63.1990. For the purposes of the landfill monitoring and SSM plan requirements, deviations include the items in paragraphs (a) through (c) of this section.

(a) A deviation occurs when the control device operating parameter boundaries described in § 63.1983(c)(1) are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data. A valid hour of data must have measured values for at least three 15-minute monitoring periods within the hour.

(c) Before September 28, 2021, a deviation occurs when a SSM plan is not developed or maintained on site and when an affected source fails to meet any emission limitation, (including any operating limit), or work practice requirement in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart.

#### § 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Before September 28, 2021, averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW (§ 60.758(b)(2)(i) for average combustion temperature and § 60.758(c) for 3-hour average combustion temperature for enclosed combustors), except that the data collected during the events listed in paragraphs (a) through (d) of this section are not to be included in any average computed under this subpart. Beginning



no later than September 27, 2021, averages are calculated according to §§ 63.1983(b)(2)(i) and 63.1983(c)(1)(i) and the data collected during the events listed in paragraphs (a) through (d) of this section are included in any average computed under this subpart.

(a) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.

(b) Startups.

(c) Shutdowns.

(d) Malfunctions.

## Notifications, Records, and Reports

### § 63.1981 What reports must I submit?

You must submit the reports specified in this section and the reports specified in Table 1 to this subpart. If you have previously submitted a design capacity report, amended design capacity report, initial NMOC emission rate report, initial or revised collection and control system design plan, closure report, equipment removal report, or initial performance test under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a federal plan or EPA-approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf, then that submission constitutes compliance with the design capacity report in paragraph (a) of this section, the amended design capacity report in paragraph (b) of this section, the initial NMOC emission rate report in paragraph (c) of this section, the initial collection and control system design plan in paragraph (d) of this section, the revised design plan in paragraph (e) of this section, the closure report in paragraph (f) of this section, the equipment removal report in paragraph (g) of this section, and the initial performance test report in paragraph (i) of this section. You do not need to re-submit the report(s). However, you must include a statement certifying prior submission of the respective report(s) and the date of submittal in the first semi-annual report required in this section.

(a) *Initial design capacity report.* The initial design capacity report must contain the information specified in § 60.757(a)(2) of this chapter, except beginning no later than September 28, 2021, the report must contain:

(1) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the state, local, or tribal agency responsible for regulating the landfill.

(2) The maximum design capacity of the landfill. Where the maximum design

capacity is specified in the permit issued by the state, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering practices. The calculations must be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either Mg or m<sup>3</sup> for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million Mg or 2.5 million m<sup>3</sup>, the calculation must include a site-specific density, which must be recalculated annually. Any density conversions must be documented and submitted with the design capacity report. The state, tribal, local agency or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(b) *Amended design capacity report.* An amended design capacity report must be submitted to the Administrator providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million Mg and 2.5 million m<sup>3</sup>. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 63.1983(f).

(c) *NMOC emission rate report.* Each owner or operator subject to the requirements of this subpart must submit a copy of the latest NMOC emission rate report that was submitted according to § 60.757(b) of this chapter or submit an NMOC emission rate report to the Administrator initially and annually thereafter, except as provided for in paragraph (c)(1)(ii)(A) of this section. The Administrator may request such additional information as may be necessary to verify the reported NMOC emission rate. If you have submitted an annual report under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a Federal plan or EPA-approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf, then that submission constitutes compliance with the annual NMOC emission rate report in this paragraph.

You do not need to re-submit the annual

report for the current year. Beginning no later than September 27, 2021, the report must meet the following requirements:

(1) The NMOC emission rate report must contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in § 63.1959(a) or (b), as applicable.

(i) The initial NMOC emission rate report must be submitted no later than 90 days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(ii) Subsequent NMOC emission rate reports must be submitted annually thereafter, except as provided for in paragraph (c)(1)(ii)(A) of this section.

(A) If the estimated NMOC emission rate as reported in the annual report to the Administrator is less than 50 Mg/yr in each of the next 5 consecutive years, the owner or operator may elect to submit, an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate must include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided to the Administrator. This estimate must be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate must be submitted to the Administrator. The revised estimate must cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(B) The report must be submitted following the procedure specified in paragraph (l)(2) of this section.

(2) The NMOC emission rate report must include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements to submit an NMOC emission rate report, after installing a collection and control system that complies with § 63.1959(b)(2), during such time as the collection and control system is in operation and in compliance with §§ 63.1958 and 63.1960.

(d) *Collection and control system design plan.* Each owner or operator



subject to the provisions of § 63.1959(b)(2) must submit a collection and control system design plan to the Administrator for approval according to § 60.757(c) of this chapter and the schedule in § 60.757(c)(1) and (2). Beginning no later than September 27, 2021, each owner or operator subject to the provisions of § 63.1959(b)(2) must submit a collection and control system design plan to the Administrator according to paragraphs (d)(1) through (6) of this section. The collection and control system design plan must be prepared and approved by a professional engineer.

(1) The collection and control system as described in the design plan must meet the design requirements in § 63.1959(b)(2).

(2) The collection and control system design plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of §§ 63.1957 through 63.1983 proposed by the owner or operator.

(3) The collection and control system design plan must either conform with specifications for active collection systems in § 63.1962 or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to § 63.1962.

(4) Each owner or operator of an MSW landfill affected by this subpart must submit a collection and control system design plan to the Administrator for approval within 1 year of becoming subject to this subpart.

(5) The landfill owner or operator must notify the Administrator that the design plan is completed and submit a copy of the plan's signature page. The Administrator has 90 days to decide whether the design plan should be submitted for review. If the Administrator chooses to review the plan, the approval process continues as described in paragraph (d)(6) of this section. In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

(6) Upon receipt of an initial or revised design plan, the Administrator must review the information submitted under paragraphs (d)(1) through (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are

possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems.

(e) *Revised design plan.* Beginning no later than September 27, 2021, the owner or operator who has already been required to submit a design plan under paragraph (d) of this section must submit a revised design plan to the Administrator for approval as follows:

(1) At least 90 days before expanding operations to an area not covered by the previously approved design plan.

(2) Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Administrator according to paragraph (d) of this section.

(f) *Closure report.* Each owner or operator of a controlled landfill must submit a closure report to the Administrator within 30 days of waste acceptance cessation. The Administrator may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of § 258.60 of this chapter. If a closure report has been submitted to the Administrator, no additional wastes may be placed into the landfill without filing a notification of modification as described under § 63.9(b) of subpart A.

(g) *Equipment removal report.* Each owner or operator of a controlled landfill must submit an equipment removal report as provided in § 60.757(e) of this chapter. Each owner or operator of a controlled landfill must submit an equipment removal report to the Administrator 30 days prior to removal or cessation of operation of the control equipment.

(1) Beginning no later than September 27, 2021, the equipment removal report must contain all of the following items:

(i) A copy of the closure report submitted in accordance with paragraph (f) of this section;

(ii) A copy of the initial performance test report demonstrating that the 15-year minimum control period has expired, or information that demonstrates that the gas collection and control system will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's Central Data Exchange (CDX); and

(iii) Dated copies of three successive NMOC emission rate reports

demonstrating that the landfill is no longer producing 50 Mg or greater of NMOC per year. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

(2) The Administrator may request such additional information as may be necessary to verify that all of the conditions for removal in § 63.1957(b) have been met.

(h) *Semi-annual report.* The owner or operator of a landfill seeking to comply with § 63.1959(b)(2) using an active collection system designed in accordance with § 63.1959(b)(2)(ii) must submit to the Administrator semi-annual reports. Beginning no later than September 27, 2021, you must submit the report, following the procedure specified in paragraph (l) of this section. The initial report must be submitted within 180 days of installation and startup of the collection and control system and must include the initial performance test report required under § 63.7 of subpart A, as applicable. In the initial report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. For enclosed combustion devices and flares, reportable exceedances are defined under § 63.1983(c). The semi-annual reports must contain the information in paragraphs (h)(1) through (8) of this section.

(1) Number of times that applicable parameters monitored under § 63.1958(b), (c), and (d) were exceeded and when the gas collection and control system was not operating under § 63.1958(e), including periods of SSM. For each instance, report the date, time, and duration of each exceedance.

(i) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the temperature and nitrogen or oxygen operational standards in introductory paragraph § 63.1958(c), provide a statement of the wellhead operational standard for temperature and oxygen you are complying with for the period covered by the report. Indicate the number of times each of those parameters monitored under § 63.1961(a)(3) were exceeded. For each instance, report the date, time, and duration of each exceedance.

(ii) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), provide a statement of the wellhead operational standard for temperature and oxygen you are complying with for the period covered by the report. Indicate the number of times each of those parameters monitored under § 63.1961(a)(4) were exceeded. For each instance, report the date, time, and duration of each exceedance.

(iii) Beginning no later than September 27, 2021, number of times the parameters for the site-specific treatment system in § 63.1961(g) were exceeded.

(2) Description and duration of all periods when the gas stream was diverted from the control device or treatment system through a bypass line or the indication of bypass flow as specified under § 63.1961.

(3) Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

(4) All periods when the collection system was not operating.

(5) The location of each exceedance of the 500-ppm methane concentration as provided in § 63.1958(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. Beginning no later than September 27, 2021, for location, you record the latitude and longitude coordinates of each exceedance using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(6) The date of installation and the location of each well or collection system expansion added pursuant to § 63.1960(a)(3) and (4), (b), and (c)(4).

(7) For any corrective action analysis for which corrective actions are required in § 63.1960(a)(3)(i) or (a)(5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(8) Each owner or operator required to conduct enhanced monitoring in §§ 63.1961(a)(5) and (6) must include the results of all monitoring activities conducted during the period.

(i) For each monitoring point, report the date, time, and well identifier along with the value and units of measure for oxygen, temperature (wellhead and downwell), methane, and carbon monoxide.

(ii) Include a summary trend analysis for each well subject to the enhanced monitoring requirements to chart the weekly readings over time for oxygen, wellhead temperature, methane, and weekly or monthly readings over time, as applicable for carbon monoxide.

(iii) Include the date, time, staff person name, and description of findings for each visual observation for subsurface oxidation event.

(i) *Initial performance test report.* Each owner or operator seeking to comply with § 63.1959(b)(2)(iii) must include the following information with the initial performance test report required under § 63.7 of subpart A:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area;

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

(j) *Corrective action and the corresponding timeline.* The owner or operator must submit information regarding corrective actions according to paragraphs (j)(1) and (2) of this section.

(1) For corrective action that is required according to § 63.1960(a)(3) or (4) and is not completed within 60 days after the initial exceedance, you must submit a notification to the Administrator as soon as practicable but no later than 75 days after the first

measurement of positive pressure or temperature exceedance.

(2) For corrective action that is required according to § 63.1960(a)(3) or (4) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 62.8 degrees Celsius (145 degrees Fahrenheit) or above. The Administrator must approve the plan for corrective action and the corresponding timeline.

(k) *24-hour high temperature report.* Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1) and a landfill gas temperature measured at either the wellhead or at any point in the well is greater than or equal to 76.7 degrees Celsius (170 degrees Fahrenheit) and the carbon monoxide concentration measured is greater than or equal to 1,000 ppmv, then you must report the date, time, well identifier, temperature and carbon monoxide reading via email to the Administrator within 24 hours of the measurement unless a higher operating temperature value has been approved by the Administrator for the well under this subpart or under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a Federal plan or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf.

(l) *Electronic reporting.* Beginning no later than September 27, 2021, the owner or operator must submit reports electronically according to paragraphs (l)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (l)(1)(i) through (iii) of this section.

(i) Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test. Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The data must be submitted in a file format generated

through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

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

(iii) Confidential business information (CBI). If you claim some of the information submitted under paragraph (a) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (l)(1)(i) of this section.

(2) Each owner or operator required to submit reports following the procedure specified in this paragraph must submit reports to the EPA via CEDRI. CEDRI can be accessed through the EPA's CDX. The owner or operator must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>). Once the spreadsheet template upload/forms for the reports have been available in CEDRI for 90 days, the owner or operator 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. The NMOC emission rate reports, semi-annual reports, and bioreactor 40-percent moisture reports should be electronically reported as a spreadsheet template upload/form to CEDRI. If the reporting forms specific to this subpart are not available in CEDRI at the time

that the reports are due, the owner or operator must submit the reports to the Administrator at the appropriate address listed in § 63.13 of subpart A.

(m) *Claims of EPA system outage.* Beginning no later than September 27, 2021, if you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to comply timely with the reporting requirement. To assert a claim of EPA system outage, you must meet the following requirements:

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

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

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

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

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

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

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

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

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

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

(n) *Claims of force majeure.* Beginning no later than September 2, 2021, if you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to comply timely with the reporting requirement. To assert a claim of force majeure, you must meet the following requirements:

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business

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

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

(3) You must provide to the Administrator:

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

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

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

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

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

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

#### **§ 63.1982 What records and reports must I submit and keep for bioreactors or liquids addition other than leachate?**

Submit reports as specified in this section and § 63.1981. Keep records as specified in this section and § 63.1983.

(a) For bioreactors at new affected sources you must submit the initial semi-annual compliance report and performance test results described in § 63.1981(h) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(a)(2).

(b) If you must submit a semi-annual compliance report for a bioreactor as well as a semi-annual compliance report for a conventional portion of the same landfill, you may delay submittal of a subsequent semi-annual compliance report for the bioreactor according to paragraphs (b)(1) through (3) of this section so that the reports may be submitted on the same schedule.

(1) After submittal of your initial semi-annual compliance report and performance test results for the bioreactor, you may delay submittal of the subsequent semi-annual compliance report for the bioreactor until the date the initial or subsequent semi-annual compliance report is due for the conventional portion of your landfill.

(2) You may delay submittal of your subsequent semi-annual compliance report by no more than 12 months after the due date for submitting the initial semi-annual compliance report and performance test results described in § 63.1981(h) for the bioreactor. The report must cover the time period since the previous semi-annual report for the bioreactor, which would be a period of at least 6 months and no more than 12 months.

(3) After the delayed semi-annual report, all subsequent semi-annual reports for the bioreactor must be submitted every 6 months on the same date the semi-annual report for the conventional portion of the landfill is due.

(c) If you add any liquids other than leachate in a controlled fashion to the waste mass and do not comply with the bioreactor requirements in §§ 63.1947, 63.1955(b), and paragraphs (a) and (b) of this section, you must keep a record of calculations showing that the percent moisture by weight expected in the waste mass to which liquid is added is less than 40 percent. The calculation must consider the waste mass, moisture content of the incoming waste, mass of water added to the waste including leachate recirculation and other liquids addition and precipitation, and the mass of water removed through leachate or other water losses. Moisture level sampling or mass balances calculations can be used. You must document the calculations and the basis of any assumptions. Keep the record of the calculations until you cease liquids addition.

(d) If you calculate moisture content to establish the date your bioreactor is required to begin operating the collection and control system under § 63.1947(a)(2) or (c)(2), keep a record of the calculations including the information specified in paragraph (e) of this section for 5 years. Within 90 days after the bioreactor achieves 40-percent moisture content, report the results of the calculation, the date the bioreactor achieved 40-percent moisture content by weight, and the date you plan to begin collection and control system operation to the Administrator. Beginning no later than September 27, 2021, the reports should be submitted

following the procedure specified in § 63.1981(l)(2).

#### **§ 63.1983 What records must I keep?**

You must keep records as specified in this subpart. You must also keep records as specified in the general provisions of 40 CFR part 63 as shown in Table 1 to this subpart.

(a) Except as provided in § 63.1981(d)(2), each owner or operator of an MSW landfill subject to the provisions of § 63.1959(b)(2)(ii) and (iii) of this chapter must keep for at least 5 years up-to-date, readily accessible, on-site records of the design capacity report that triggered § 63.1959(b), the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Except as provided in § 63.1981(d)(2), each owner or operator of a controlled landfill must keep up-to-date, readily accessible records for the life of the control system equipment of the data listed in paragraphs (b)(1) through (5) of this section as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring must be maintained for a minimum of 5 years. Records of the control device vendor specifications must be maintained until removal.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(ii):

(i) The maximum expected gas generation flow rate as calculated in § 63.1960(a)(1).

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in § 63.1962(a)(1) and (2).

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

(i) The average temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in § 63.1959(b)(2)(iii)(B) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(B)(1) through use of a

boiler or process heater of any size: A description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(A) through use of a non-enclosed flare, the flare type (*i.e.*, steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in § 63.11; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame or the flare flame is absent.

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 63.1959(b)(2)(iii)(C) through use of a landfill gas treatment system:

(i) *Bypass records.* Records of the flow of landfill gas to, and bypass of, the treatment system.

(ii) *Site-specific treatment monitoring plan.* Beginning no later than September 27, 2021, the owner or operator must prepare a site-specific treatment monitoring plan to include:

(A) Monitoring records of parameters that are identified in the treatment system monitoring plan and that ensure the treatment system is operating properly for each intended end use of the treated landfill gas. At a minimum, records should include records of filtration, de-watering, and compression parameters that ensure the treatment system is operating properly for each intended end use of the treated landfill gas.

(B) Monitoring methods, frequencies, and operating ranges for each monitored operating parameter based on manufacturer's recommendations or engineering analysis for each intended end use of the treated landfill gas.

(C) Documentation of the monitoring methods and ranges, along with justification for their use.

(D) List of responsible staff (by job title) for data collection.

(E) Processes and methods used to collect the necessary data.

(F) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems (CMS).

(c) Except as provided in § 63.1981(d)(2), each owner or operator of a controlled landfill subject to the

provisions of this subpart must keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in § 63.1961 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) The following constitute exceedances that must be recorded and reported under § 63.1981(h):

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million Btu per hour) or greater, all 3-hour periods of operation during which the average temperature was more than 28 degrees Celsius (82 degrees Fahrenheit) below the average combustion temperature during the most recent performance test at which compliance with § 63.1959(b)(2)(iii) was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

(2) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible continuous records of the indication of flow to the control system and the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under § 63.1961(b)(2)(ii), (c)(2)(ii), and (g)(2).

(3) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with § 63.1959(b)(2)(iii) must keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other state, local, tribal, or federal regulatory requirements.

(4) Each owner or operator seeking to comply with the provisions of this subpart by use of a non-enclosed flare must keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under § 63.1961(c), and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

(5) Each owner or operator of a landfill seeking to comply with § 63.1959(b)(2) using an active collection system designed in

accordance with § 63.1959(b)(2)(ii) must keep records of periods when the collection system or control device is not operating.

(6) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(e)(1), the date, time, and duration of each startup and/or shutdown period, recording the periods when the affected source was subject to the standard applicable to startup and shutdown.

(7) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard in § 63.1958(e)(1), in the event that an affected unit fails to meet an applicable standard, record the information below in this paragraph:

(i) For each failure record the date, time and duration of each failure and the cause of such events (including unknown cause, if applicable).

(ii) For each failure to meet an applicable standard; record and retain a list of the affected sources or equipment.

(iii) Record actions taken to minimize emissions in accordance with the general duty of § 63.1955(c) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(8) Beginning no later than September 27, 2021, in lieu of the requirements specified in § 63.8(d)(3) of subpart A you must keep the written procedures required by § 63.8(d)(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 is revised, you must keep previous (*i.e.*, superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

(d) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector.

(1) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible records of the installation date and location of all

newly installed collectors as specified under § 63.1960(b).

(2) Each owner or operator subject to the provisions of this subpart must keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in § 63.1962(a)(3)(i) as well as any nonproductive areas excluded from collection as provided in § 63.1962(a)(3)(ii).

(e) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the following:

(1) All collection and control system exceedances of the operational standards in § 63.1958, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

(2) Each owner or operator subject to the control provisions of this subpart must keep records of each wellhead temperature monitoring value of greater than 55 degrees Celsius (131 degrees Fahrenheit), each wellhead nitrogen level at or above 20 percent, and each wellhead oxygen level at or above 5 percent, except:

(i) When an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the compliance provisions for wellhead temperature in § 63.1958(c)(1), but no later than September 27, 2021, the records of each wellhead temperature monitoring value of 62.8 degrees Celsius (145 degrees Fahrenheit) or above instead of values greater than 55 degrees Celsius (131 degrees Fahrenheit).

(ii) Each owner or operator required to conduct the enhanced monitoring provisions in § 63.1961(a)(5), must also keep records of all enhanced monitoring activities.

(iii) Each owner or operator required to submit the *24-hour high temperature report* in § 63.1981(k), must also keep a record of the email transmission.

(3) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(i)(A) or (a)(4)(i)(A), keep a record of the root cause analysis conducted, including a description of the recommended corrective action(s) taken, and the date(s) the corrective action(s) were completed.

(4) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(i)(B) or (a)(4)(i)(B), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the

positive pressure reading or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(5) For any root cause analysis for which corrective actions are required in § 63.1960(a)(3)(i)(C) or (a)(4)(i)(C), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates, and a copy of any comments or final approval on the corrective action analysis or schedule from the Administrator.

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million Mg or 2.5 million m<sup>3</sup>, as provided in the definition of “design capacity,” must keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(g) Except as provided in § 63.1981(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of all collection and control system monitoring data for parameters measured in § 63.1961(a)(1) through (5).

(h) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), you must keep the following records.

(1) Records of the landfill gas temperature on a monthly basis as monitored in § 63.1960(a)(4).

(2) Records of enhanced monitoring data at each well with a measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit) as gathered in § 63.1961(a)(5) and (6).

(i) Any records required to be maintained by this subpart 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.

(ii) [Reserved]

## Other Requirements and Information

### § 63.1985 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable state, local, or tribal agency. If the EPA Administrator has delegated authority to a state, local, or tribal agency, then that agency as well as the EPA has the authority to implement and enforce this subpart. Contact the applicable EPA Regional office to find out if 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 paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the state, local, or tribal agency.

(c) The authorities that will not be delegated to state, local, or tribal agencies are as follows. Approval of alternatives to the standards in §§ 63.1955 through 63.1962. Where this subpart references 40 CFR part 60, subpart WWW, the cited provisions will be delegated according to the delegation provisions of 40 CFR part 60, subpart WWW. For this subpart, the EPA also retains the authority to approve methods for determining the NMOC concentration in § 63.1959(a)(3) and the method for determining the site-specific methane generation rate constant *k* in § 63.1959(a)(4).

### § 63.1990 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, 40 CFR part 60, subparts A, Cc, Cf, WWW, and XXX; 40 CFR part 62, subpart GGG, and subpart A of this part, and this section that follows:

*Active collection system* means a gas collection system that uses gas mover equipment.

*Active landfill* means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

*Bioreactor* means an MSW landfill or portion of an MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste.

*Closed area* means a separately lined area of an MSW landfill in which solid

waste is no longer being placed. If additional solid waste is placed in that area of the landfill, that landfill area is no longer closed. The area must be separately lined to ensure that the landfill gas does not migrate between open and closed areas.

*Closed landfill* means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under § 63.9(b). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

*Closure* means that point in time when a landfill becomes a closed landfill.

*Commercial solid waste* means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

*Controlled landfill* means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with § 60.752(b)(2)(i) of this chapter or in compliance with § 63.1959(b)(2)(i).

*Corrective action analysis* means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected corrective action(s) is/are the best alternative(s), including, but not limited to, considerations of cost effectiveness, technical feasibility, safety, and secondary impacts.

*Cover penetration* means a wellhead, a part of a landfill gas collection or operations system, and/or any other object that completely passes through the landfill cover. The landfill cover includes that portion which covers the waste, as well as the portion which borders the waste extended to the point where it is sealed with the landfill liner or the surrounding land mass. Examples of what is not a penetration for purposes of this subpart include but are not limited to: Survey stakes, fencing including litter fences, flags, signs, utility posts, and trees so long as these items do not pass through the landfill cover.

*Design capacity* means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted

for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million Mg or 2.5 million m<sup>3</sup>, the calculation must include a site-specific density, which must be recalculated annually.

*Deviation before September 28, 2021*, means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, (including any operating limit), or work practice requirement in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart.

*Deviation beginning no later than September 27, 2021*, means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

*Disposal facility* means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

*Emissions limitation* means any emission limit, opacity limit, operating limit, or visible emissions limit.

*Enclosed combustor* means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

*EPA approved State plan* means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subparts Cc or Cf. An approved state plan becomes effective on the date specified in the document

published in the **Federal Register** announcing EPA's approval.

*EPA approved Tribal plan* means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 to implement and enforce 40 CFR part 60, subpart Cc or subpart Cf.

*Federal plan* means the EPA plan to implement 40 CFR part 60, subparts Cc or Cf for existing MSW landfills located in states and Indian country where state plans or tribal plans are not currently in effect. On the effective date of an EPA approved state or tribal plan, the Federal Plan no longer applies. The Federal Plan implementing 40 CFR part 60, subpart Cc is found at 40 CFR part 62, subpart GGG.

*Flare* means an open combustor without enclosure or shroud.

*Gas mover equipment* means the equipment (*i.e.*, fan, blower, compressor) used to transport landfill gas through the header system.

*Household waste* means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste. Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities. Household waste does not include construction, renovation, or demolition wastes, even if originating from a household.

*Industrial solid waste* means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, 40 CFR parts 264 and 265. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

*Interior well* means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

*Landfill* means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this chapter.

*Lateral expansion* means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

*Leachate recirculation* means the practice of taking the leachate collected from the landfill and reapplying it to the landfill by any of one of a variety of methods, including pre-wetting of the waste, direct discharge into the working face, spraying, infiltration ponds, vertical injection wells, horizontal gravity distribution systems, and pressure distribution systems.

*Modification* means an increase in the permitted volume design capacity of the landfill by either lateral or vertical expansion based on its permitted design capacity after November 7, 2000. Modification does not occur until the owner or operator commences construction on the lateral or vertical expansion.

*Municipal solid waste landfill* or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (§ 257.2 of this chapter) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

*Municipal solid waste landfill emissions* or *MSW landfill emissions* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

*NMOC* means nonmethane organic compounds, as measured according to the provisions of § 63.1959.

*Nondegradable waste* means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not



limited to, concrete, municipal waste combustor ash, and metals.

*Passive collection system* means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

*Root cause analysis* means an assessment conducted through a process of investigation to determine the primary cause, and any other contributing causes, of an exceedance of a standard operating parameter at a wellhead.

*Segregated yard waste* means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities.

*Sludge* means the term sludge as defined in § 258.2 of this chapter.

*Solid waste* means the term solid waste as defined in § 258.2 of this chapter.

*Sufficient density* means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this subpart.

*Sufficient extraction rate* means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

*Treated landfill gas* means landfill gas processed in a treatment system as defined in this subpart.

*Treatment system* means a system that filters, de-waters, and compresses landfill gas for sale or beneficial use.

*Untreated landfill gas* means any landfill gas that is not treated landfill gas.

*Work practice requirement* means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

**Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA**

As specified in this subpart, you must meet each requirement in the following table that applies to you. The owner or operator may begin complying with the provisions that apply no later than September 27, 2021, any time before that date.

**TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA**

Part 63 citation	Description	Applicable to subpart AAAA before September 28, 2021	Applicable to subpart AAAA no later than September 27, 2021	Explanation
§ 63.1(a) .....	Applicability: General applicability of NESHAP in this part.	Yes .....	Yes.	
§ 63.1(b) .....	Applicability determination for stationary sources.	Yes .....	Yes.	
§ 63.1(c) .....	Applicability after a standard has been set ...	No <sup>1</sup> .....	Yes.	
§ 63.1(e) .....	Applicability of permit program before relevant standard is set.	Yes .....	Yes.	
§ 63.2 .....	Definitions .....	Yes .....	Yes.	
§ 63.3 .....	Units and abbreviations .....	No <sup>1</sup> .....	Yes.	
§ 63.4 .....	Prohibited activities and circumvention .....	Yes .....	Yes.	
§ 63.5(a) .....	Construction/reconstruction .....	No <sup>1</sup> .....	Yes.	
§ 63.5(b) .....	Requirements for existing, newly constructed, and reconstructed sources.	Yes .....	Yes.	
§ 63.5(d) .....	Application for approval of construction or reconstruction.	No <sup>1</sup> .....	Yes.	
§ 63.5(e) and (f) .....	Approval of construction and reconstruction	No <sup>1</sup> .....	Yes.	
§ 63.6(a) .....	Compliance with standards and maintenance requirements—applicability.	No <sup>1</sup> .....	Yes.	
§ 63.6(b) and (c) .....	Compliance dates for new, reconstructed, and existing sources.	No <sup>1</sup> .....	Yes.	
§ 63.6(e)(1)(i)–(ii) .....	Operation and maintenance requirements ...	Yes .....	No .....	See § 63.1955(c) for general duty requirements.
63.6(e)(3)(i)–(ix) .....	SSM plan .....	Yes .....	No.	
63.6(f)(1) .....	Exemption of nonopacity emission standards during SSM.	Yes .....	No.	
§ 63.6(f)(2) and (3) .....	Compliance with nonopacity emission standards.	Yes .....	Yes.	
§ 63.6(g) .....	Use of an alternative nonopacity standard ...	No <sup>1</sup> .....	Yes.	
§ 63.6(h) .....	Compliance with opacity and visible emission standards.	No <sup>1</sup> .....	No .....	Subpart AAAA does not prescribe opacity or visible emission standards.
§ 63.6(i) .....	Extension of compliance with emission standards.	No <sup>1</sup> .....	Yes.	
§ 63.6(j) .....	Exemption from compliance with emission standards.	No <sup>1</sup> .....	Yes.	
§ 63.7 .....	Performance testing .....	No <sup>1</sup> .....	Yes.	
§ 63.7(e)(1) .....	Conditions for performing performance tests	No <sup>1</sup> .....	No .....	40 CFR 63.1959(f) specifies the conditions for performing performance tests.
§ 63.8(a) and (b) .....	Monitoring requirements—Applicability and conduct of monitoring.	No <sup>1</sup> .....	Yes.	
§ 63.8(c)(1) .....	Operation and Maintenance of continuous emissions monitoring system.	No <sup>1</sup> .....	Yes.	



TABLE 1 TO SUBPART AAAA OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA—  
Continued

Part 63 citation	Description	Applicable to subpart AAAA before September 28, 2021	Applicable to subpart AAAA no later than September 27, 2021	Explanation
§ 63.8(c)(1)(i) .....	Operation and Maintenance Requirements ...	No <sup>1</sup> .....	No .....	Unnecessary due to the requirements of § 63.8(c)(1) and the requirements for a quality control plan for monitoring equipment in § 63.8(d)(2).
§ 63.8(c)(1)(ii) .....	Operation and Maintenance Requirements ...	No <sup>1</sup> .....	No.	
§ 63.8(c)(1)(iii) .....	SSM plan for monitors .....	No <sup>1</sup> .....	No.	
§ 63.8(c)(2)–(8) .....	Monitoring requirements .....	No <sup>1</sup> .....	Yes.	
§ 63.8(d)(1) .....	Quality control for monitors .....	No <sup>1</sup> .....	Yes.	
§ 63.8(d)(2) .....	Quality control for monitors .....	No <sup>1</sup> .....	Yes.	
§ 63.8(d)(3) .....	Quality control records .....	No <sup>1</sup> .....	No .....	See § 63.1983(c)(8).
§ 63.9(a), (c), and (d) .....	Notifications .....	No <sup>1</sup> .....	Yes.	
§ 63.9(b) .....	Initial notifications .....	No <sup>1</sup> .....	Yes <sup>2</sup> .	
§ 63.9(e) .....	Notification of performance test .....	No <sup>1</sup> .....	Yes <sup>2</sup> .	
§ 63.9(f) .....	Notification of visible emissions/opacity test ..	No <sup>1</sup> .....	No .....	Subpart AAAA does not prescribe opacity or visible emission standards.
§ 63.9(g) .....	Notification when using CMS .....	No <sup>1</sup> .....	Yes <sup>2</sup> .	
§ 63.9(h) .....	Notification of compliance status .....	No <sup>1</sup> .....	Yes <sup>2</sup> .	
§ 63.9(i) .....	Adjustment of submittal deadlines .....	No <sup>1</sup> .....	Yes.	
§ 63.9(j) .....	Change in information already provided .....	No <sup>1</sup> .....	Yes.	
§ 63.10(a) .....	Recordkeeping and reporting—general .....	No <sup>1</sup> .....	Yes.	
§ 63.10(b)(1) .....	General recordkeeping .....	No <sup>1</sup> .....	Yes.	
§ 63.10(b)(2)(i) .....	Startup and shutdown records .....	Yes .....	No .....	See § 63.1983(c)(6) for recordkeeping for periods of startup and shutdown.
§ 63.10(b)(2)(ii) .....	Recordkeeping of failures to meet a standard	Yes .....	No .....	See § 63.1983(c)(6)–(7) for recordkeeping for any exceedance of a standard.
§ 63.10(b)(2)(iii) .....	Recordkeeping of maintenance on air pollution control equipment.	Yes .....	Yes.	
§ 63.10(b)(2)(iv)–(v) ...	Actions taken to minimize emissions during SSM.	Yes .....	No .....	See § 63.1983(c)(7) for recordkeeping of corrective actions to restore compliance.
§ 63.10(b)(vi) .....	Recordkeeping for CMS malfunctions .....	No <sup>1</sup> .....	Yes.	
§ 63.10(b)(vii)–(xiv) ...	Other Recordkeeping of compliance measurements.	No <sup>1</sup> .....	Yes.	
§ 63.10(c) .....	Additional recordkeeping for sources with CMS.	No <sup>1</sup> .....	No .....	See § 63.1983 for required CMS recordkeeping.
§ 63.10(d)(1) .....	General reporting .....	No <sup>1</sup> .....	Yes.	
§ 63.10(d)(2) .....	Reporting of performance test results .....	No <sup>1</sup> .....	Yes.	
§ 63.10(d)(3) .....	Reporting of visible emission observations ...	No <sup>1</sup> .....	Yes.	
§ 63.10(d)(4) .....	Progress reports for compliance date extensions.	No <sup>1</sup> .....	Yes.	
§ 63.10(d)(5) .....	SSM reporting .....	Yes .....	No .....	All exceedances must be reported in the semi-annual report required by § 63.1981(h).
§ 63.10(e) .....	Additional reporting for CMS systems .....	No <sup>1</sup> .....	Yes.	
§ 63.10(f) .....	Recordkeeping/reporting waiver .....	No <sup>1</sup> .....	Yes.	
§ 63.11 .....	Control device requirements/flares .....	No <sup>1</sup> .....	Yes .....	§ 60.18 is required before September 27, 2021. However, § 60.18 and 63.11 are equivalent.
§ 63.12(a) .....	State authority .....	Yes .....	Yes.	
§ 63.12(b)–(c) .....	State delegations .....	No <sup>1</sup> .....	Yes.	
§ 63.13 .....	Addresses .....	No <sup>1</sup> .....	Yes.	
§ 63.14 .....	Incorporation by reference .....	No <sup>1</sup> .....	Yes.	
§ 63.15 .....	Availability of information and confidentiality	Yes .....	Yes.	

<sup>1</sup> Before September 28, 2021, this subpart requires affected facilities to follow 40 CFR part 60, subpart WWW, which incorporates the General Provisions of 40 CFR part 60.

<sup>2</sup> If an owner or operator has complied with the requirements of this paragraph under either 40 CFR part 60, subpart WWW or subpart XXX, then additional notification is not required.

Board of Directors of Company A, the Board resolves to sell all the assets of Company A to Company B. Under the asset sale agreement with Company B, Company B will not assume Plan A; Company A expects to undertake a standard termination of Plan A. Company A is required to report a liquidation event 30 days after the Board resolved to sell the assets of Company A.

- 25. Amend § 4043.31 by revising paragraph (c)(6) to read as follows:

**§ 4043.31 Extraordinary dividend or stock redemption.**

\* \* \* \* \*

(c) \* \* \*

(6) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

- 26. Amend § 4043.32 by revising paragraph (c)(4) to read as follows:

**§ 4043.32 Transfer of benefit liabilities.**

\* \* \* \* \*

(c) \* \* \*

(4) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

- 27. Amend § 4043.35 by adding paragraph (b)(3) to read as follows:

**§ 4043.35 Insolvency or similar settlement.**

\* \* \* \* \*

(b) \* \* \*

(3) *Liquidation event.* Notice under paragraph (a)(3) or (4) of this section is waived if reporting is also required under § 4043.30 and notice has been provided timely to PBGC for the same event under that section.

**§ 4043.81 [Amended]**

- 28. Amend § 4043.81 by removing paragraph (c).

**PART 4233—PARTITIONS OF ELIGIBLE MULTIEmployer PLANS**

- 29. The authority citation for part 4233 continues to read as follows:

*Authority:* 29 U.S.C. 1302(b)(3), 1413.

**Appendix A to Part 4233—[Amended]**

- 30. Amend the two model notices in appendix A by removing the phone number “(202) 326-4000 x6535” under PBGC Contact Information after “Phone:” and adding in its place “(202) 229-6047”, and by removing the phone number “(202) 326-4488” under PBGC Participant and Plan Sponsor Advocate Contact Information after “Phone:” and adding in its place “(202) 229-4448”.

Issued in Washington, DC.

**Gordon Hartogensis,**  
*Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 2020-01628 Filed 2-3-20; 8:45 am]

**BILLING CODE 7709-02-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[EPA-HQ-OAR-2010-0682; FRL 10004-55-OAR]**

**RIN 2016-AT18**

**National Emission Standards for Hazardous Air Pollutants: Petroleum Refinery Sector**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action sets forth the U.S. Environmental Protection Agency’s (EPA’s) decision on aspects of the Agency’s proposed reconsideration of the December 1, 2015, final rule: Petroleum Refinery Sector Residual Risk and Technology Review (RTR) and New Source Performance Standards (NSPS). This action also finalizes proposed amendments to clarify a compliance issue raised by stakeholders subject to the rule, to correct referencing errors, and to correct publication errors associated with amendments to the final rule which were published on November 26, 2018.

**DATES:** This final action is effective on February 4, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-0682. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet, and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room 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. Brenda Shine, 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) 541-3608; fax number: (919) 541-0516; email address: [shine.brenda@epa.gov](mailto:shine.brenda@epa.gov). For information about the applicability of the national emission standards for hazardous air pollutants (NESHAP) to a particular entity, contact Ms. Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-7027; fax number: (202) 564-0050; and email address: [malave.maria@epa.gov](mailto:malave.maria@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:

AEGL acute exposure guideline level  
CAA Clean Air Act  
CFR Code of Federal Regulations  
DCU delayed coking unit  
EPA Environmental Protection Agency  
ERPG emergency response planning guideline  
FCCU fluid catalytic cracking unit  
HAP hazardous air pollutants  
ICR information collection request  
lb/day pounds per day  
LEL lower explosive limit  
MACT maximum achievable control technology  
MIR maximum individual risk  
MPV miscellaneous process vent  
NESHAP national emissions standards for hazardous air pollutants  
NSPS new source performance standards

NTTAA National Technology Transfer and Advancement Act  
 OAQPS Office of Air Quality Planning and Standards  
 OECA Office of Enforcement and Compliance Assurance  
 OMB Office of Management and Budget  
 OSHA Occupational Safety and Health Administration  
 PB-HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment  
 PRA Paperwork Reduction Act  
 PRD pressure relief device  
 psig pounds per square inch gauge  
 PSM Process Safety Management  
 PTE potential to emit  
 RCA/CAA root cause analysis and corrective action analysis  
 REL reference exposure level  
 RFA Regulatory Flexibility Act  
 RMP Risk Management Plan  
 RTR residual risk and technology review  
 SRU sulfur recovery unit  
 µg/m<sup>3</sup> micrograms per cubic meter  
 UMRA Unfunded Mandates Reform Act  
 VOC volatile organic compounds  
 °F degrees Fahrenheit

*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. Final Action

- A. Issue 1: Work Practice Standard for PRDs
- B. Issue 2: Work Practice Standard for Emergency Flaring
- C. Issue 3: Assessment of Risk From the Petroleum Refinery Source Categories After Implementation of the PRD and Emergency Flaring Work Practice Standards
- D. Issue 4: Alternative Work Practice Standards for DCUs Employing the Water Overflow Design
- E. Issue 5: Alternative Sampling Frequency for Burden Reduction for Fenceline Monitoring
- F. Additional Proposed Clarifying Amendments
- G. Corrections to November 2018 Final Rule

#### IV. Summary of Cost, Environmental, and Economic Impacts

#### 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 are shown in Table 1 of this preamble.

**TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION**

NESHAP and source category	NAICS <sup>1</sup> code
Petroleum Refining Industry	324110

<sup>1</sup>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 categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

The docket number for this final action regarding the sector rules for the Petroleum Refinery source category is Docket ID No. EPA-HQ-OAR-2010-0682.

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/petroleum-refinery-sector-risk-and-technology-review-and-new-source>. 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 April 6, 2020. 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, 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

The EPA promulgated NESHAP pursuant to CAA sections 112(d)(2) and (3) for petroleum refineries located at major sources in three separate rules. These standards are also referred to as maximum achievable control technology (MACT) standards. The first rule, promulgated on August 18, 1995, and codified at 40 CFR part 63, subpart CC (also referred to as Refinery MACT 1), regulates miscellaneous process vents, storage vessels, wastewater, equipment leaks, gasoline loading racks, marine tank vessel loading, and heat

exchange systems. The second rule, promulgated on April 11, 2002, and codified at 40 CFR part 63, subpart UUU (also referred to as Refinery MACT 2), regulates process vents on catalytic cracking units (CCUs, including fluid catalytic cracking units (FCCUs)), catalytic reforming units, and sulfur recovery units (SRUs). The third rule, promulgated on October 28, 2009, amended Refinery MACT 1 to include MACT standards for heat exchange systems, which were not originally addressed in Refinery MACT 1. This same rulemaking included updating cross-references to the General Provisions in 40 CFR part 63.

The EPA conducted a residual risk and technology review (RTR) of Refinery MACT 1 and 2, publishing proposed amendments on June 30, 2014 (June 2014 proposal). These proposed amendments included technical corrections and clarifications raised in a 2008 industry petition for reconsideration of NSPS for Petroleum Refineries (40 CFR part 60, subpart Ja). After soliciting, receiving, and addressing public comments, the EPA published final amendments on December 1, 2015. The December 2015 final rule (December 2015 rule) included a determination pursuant to CAA section 112(f) that the remaining risk after promulgation of the revised NESHAP is acceptable and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. The December 2015 rule also finalized changes to Refinery MACT 1 and 2 pursuant to CAA section 112(d)(2) and (3), notably revising the requirements for flares and pressure relief devices (PRDs), removing startup, shutdown, and malfunction exemptions, and adding requirements for delayed cokers. Additional amendments were also promulgated pursuant to CAA section 112(d)(6) to require a fenceline monitoring work practice standard as an advancement in the way fugitive emissions are managed and mitigated. The December 2015 rule also finalized technical corrections and clarifications to Refinery NSPS subparts J and Ja to address issues raised by the American Petroleum Institute (API) in their 2008 petition for reconsideration of the final NSPS Ja rule that had not been previously addressed. These included corrections and clarifications to provisions for sulfur recovery plants, performance testing, and control device operating parameters.

The EPA received three separate administrative petitions for reconsideration of the December 2015 rule. Two petitions were jointly filed by

the API and American Fuel and Petrochemical Manufacturers (AFPM). The first of these petitions was filed on January 19, 2016, and requested that the EPA reconsider the maintenance vent provisions in Refinery MACT 1 for sources constructed on or before June 30, 2014; the alternate startup, shutdown, or hot standby standards for FCCUs constructed on or before June 30, 2014, in Refinery MACT 2; the alternate startup and shutdown for SRUs constructed on or before June 30, 2014, in Refinery MACT 2; and the new CRUs purging limitations in Refinery MACT 2. The request pertained to providing and/or clarifying the compliance time for these sources. Based on this request and additional information received, the EPA issued a proposal on February 9, 2016 (81 FR 6814), and a final rule on July 13, 2016 (81 FR 45232), fully responding to the January 19, 2016, petition for reconsideration.

The second petition from API and AFPM was filed on February 1, 2016, and outlined a number of specific issues related to the work practice standards for PRDs and flares, and the alternative water overflow provisions for delayed coking units (DCUs), as well as a number of other specific issues on other aspects of the rule. The third petition was filed on February 1, 2016, by Earthjustice on behalf of Air Alliance Houston, California Communities Against Toxics, the Clean Air Council, the Coalition for a Safe Environment, the Community In-Power & Development Association, the Del Amo Action Committee, the Environmental Integrity Project, the Louisiana Bucket Brigade, the Sierra Club, the Texas Environmental Justice Advocacy Services, and Utah Physicians for a Healthy Environment. The Earthjustice petition claimed that several aspects of the revisions to Refinery MACT 1 were not proposed, and, thus the public was precluded from commenting on them during the public comment period, including: (1) Work practice standards for PRDs and flares; (2) alternative water overflow provisions for DCUs; (3) reduced monitoring provisions for fenceline monitoring; and (4) adjustments to the risk assessment to account for these new work practice standards. On June 16, 2016, the EPA sent letters to petitioners granting reconsideration on issues where petitioners claimed they had not been provided an opportunity to comment. These petitions and letters granting reconsideration are available for review in the rulemaking docket (see Docket ID Item Nos. EPA-HQ-OAR-2010-0682–

0860, EPA-HQ-OAR-2010-0682–0891, and EPA-HQ-OAR-2010-0682–0892).

On October 18, 2016 (81 FR 71661), the EPA proposed for public comment the issues for which reconsideration was granted in the June 16, 2016, letters. The EPA solicited public comment on five issues in the proposal: (1) The work practice standards for PRDs; (2) the work practice standards for emergency flaring events; (3) the assessment of risk as modified based on implementation of these PRD and emergency flaring work practice standards; (4) the alternative work practice standards for DCUs employing the water overflow design; and (5) the provision allowing refineries to reduce the frequency of fenceline monitoring at sampling locations that consistently record benzene concentrations below 0.9 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). In that notice, the EPA also proposed two minor clarifying amendments to correct a cross referencing error and to clarify that facilities complying with overlapping equipment leak provisions must still comply with the PRD work practice standards in the December 2015 rule. We received public comments from 17 parties. Copies of all comments submitted are available at the EPA Docket Center Public Reading Room. Comments are also available electronically through <https://www.regulations.gov/> by searching Docket ID No. EPA-HQ-OAR-2010-0682.

In section III of this preamble, the EPA sets forth its final decisions on each of the five reconsideration items included in the October 18, 2016 (81 FR 71661), proposed notice of reconsideration (October 2016 proposed notice of reconsideration). Additionally, section III of this preamble summarizes the history of each of the five reconsideration items as well as the two proposed clarifying amendments included in the proposed notice of reconsideration, summarizes the public comments received on the proposed notice of reconsideration, and presents the EPA's responses to these comments.

As described in section III.D of this preamble, specific to reconsideration item (4), the alternative work practice standards for DCUs employing the water overflow design, the EPA proposed and finalized amendments to the DCU water overflow provisions to address comments on the October 2016 proposed notice of reconsideration. On April 10, 2018 (April 2018 proposal) (83 FR 15458), the EPA proposed a number of technical amendments to Refinery MACT 1 and 2 and the Refinery NSPS, which included a proposed requirement to use a vapor disengaging device for

DCUs using the water overflow provisions. On November 26, 2018, (November 2018 rule) (83 FR 60696), the EPA finalized the technical amendments from the April 2018 proposal, including requirements for DCUs using the water overflow provisions, after considering public comments received on the April 2018 proposal.

### III. Final Action

#### A. Issue 1: Work Practice Standard for PRDs

##### 1. What is the history of work practice standards for PRDs?

In the June 2014 proposal, the EPA proposed to revise Refinery MACT 1 to establish operating and pressure release requirements that apply to all PRDs and to prohibit atmospheric releases of hazardous air pollutants (HAP) from PRDs. To ensure compliance, we proposed to require that sources monitor PRDs using a system that is capable of recording the time and duration of each pressure release and notifying operators that a pressure release has occurred. Many commenters suggested that a prohibition on atmospheric PRD releases did not reflect the manner in which the best performing facilities operate, was unachievable and/or very costly, and would have negative environmental impacts due to additional flares that would need to be installed and operated in standby mode to accept the PRD releases. Some commenters suggested that we should instead consider as MACT the rules on PRDs that apply to refineries in the South Coast Air Quality Management District (SCAQMD) and the Bay Area Air Quality Management District (BAAQMD).

The two California district rules are similar in that they both establish comprehensive regulatory programs to address the group or system of PRDs at refineries by requiring monitoring, root cause analysis, and corrective action, and by applying only to those PRD with the greatest emissions potential through a combination of applicability thresholds. Based on these comments, pursuant to CAA section 112(d)(2) and (3), we identified the SCAQMD rule as representing the requirements applicable to the best performers for PRDs. Consistent with the requirements of the SCAQMD rule and considering additional measures included in the BAAQMD rule, we established work practice standards for PRDs in the December 2015 rule (see 40 CFR 63.648(j)(3)) for new and existing sources. The work practice standard is a comprehensive set of requirements

that apply to PRDs at refineries and focuses on reducing the size and frequency of atmospheric releases of HAP from PRDs, with an emphasis on prevention, monitoring, correction, and limitations on the frequency of release events. For further details on our analysis of the SCAQMD and BAAQMD rules and our use of those rules to establish a work practice standard for PRDs that is representative of the requirements that apply at best performing refineries, refer to the December 1, 2015, document at 80 FR 75216–18 and the memorandum in the docket titled “Pressure Relief Device Control Option Impacts for Final Refinery Sector Rule,” July 30, 2015 (Docket ID Item No. EPA–HQ–OAR–2010–0682–0750).

The work practice standard included in the December 2015 rule is comprised of four parts. The first component of the work practice standard requires that owners or operators monitor PRDs using a system that is capable of recording the time and duration of each pressure release and notifying operators that a pressure release has occurred. Second, the work practice standard requires refinery owners or operators to establish preventative measures for each affected PRD to minimize the likelihood of a direct release of HAP to the atmosphere as a result of pressure release events. Third, in the event of an atmospheric release, the work practice standard requires refinery owners or operators to conduct a root cause analysis to determine the cause of a PRD release event. If the root cause was due to operator error or negligence, then the release would be a violation of the work practice standard. A second release due to the same root cause for the same equipment in a 3-year period would be a violation of the work practice standard. A third release in a 3-year period would be a violation of the work practice standard, regardless of the root cause—although *force majeure* events, as defined in the December 2015 rule, would not count in determining whether there has been a second or third event. The fourth component of the work practice standard is a requirement for corrective action. For any event other than a *force majeure* event, the owner or operator would be required to conduct a corrective action analysis and implement corrective action. Refiners have 45 days to complete the root cause analysis and implement corrective action after the release event. The results of the root cause analysis and identification of the corrective action are required to be

included in the periodic reports which are due on a semi-annual basis.

Consistent with the District rules, the work practice standard does not apply to the following PRDs that have very low potential to emit (PTE) based on their type of service, size, and pressure (40 CFR 63.648(j)(5)): PRDs that only release material that is liquid at standard temperature and pressure and that is hard-piped to a controlled drain system, PRDs that do not have a PTE of 72 pounds per day (lbs/day) or more of volatile organic compounds (VOC), PRDs with design release pressure of less than 2.5 pounds per square inch gauge (psig), PRDs on mobile equipment, PRDs in heavy liquid service, and PRDs that are designed solely to release due to liquid thermal expansion. These PRDs are subject to the operating and pressure release requirements in 40 CFR 63.648(j)(1) and (2), which apply to all PRDs, but not the pressure release management requirements in 40 CFR 63.648(j)(3).

We requested public comment on the work practice standard for PRDs as provided in 40 CFR 63.648(j)(3) and (5) through (7), including the number and type of release/event allowances; the type of PRDs subject to the work practice standard; and the definition of “*force majeure* event” in 40 CFR 63.641. We also requested public comment on the recordkeeping and reporting requirements associated with the work practice standard in 40 CFR 63.655(g)(10)(iii) and (i)(11).

The following is a summary of the comments received in response to our October 2016 proposed notice of reconsideration and our responses to these comments.

##### 2. What comments were received on the work practice standards for PRDs?

*Comment A.1:* Some commenters were generally supportive of the final work practice standards for PRDs while other commenters disagreed with numerous aspects of the final work practice standards. The commenters who did not support the work practice standards claimed that they are unlawful because they do not provide for standards that are continuous and that apply at all times, pursuant to section 112 of the CAA as construed by the Court in the 2008 vacatur of the malfunction exemptions in the MACT General Provisions. *Sierra Club v. EPA*, 551 F.3d 1019, 1027–28 (D.C. Cir. 2008). (“Congress has required that there must be continuous section 112-compliant standards.”). The commenter also noted that Congress in H.R. Rep. No. 95–294, at 92 (1977), reprinted in 1977 U.S.C.C.A.N. 1077, 1170 also provided

that the term “continuous” emission standard requirement does not allow merely “temporary, periodic, or limited systems of control.” The commenters believe that because the work practice standards do not limit emissions to an amount certain during a PRD release event, there is effectively no emission limitation that applies during these times. Additionally, commenters do not believe that the work practice standards are justified under CAA section 112(h) because they believe the EPA erred in determining that the application of measurement methodology was not feasible in the case of PRDs and cited available wireless technology or monitoring of PRD releases.

*Response A.1:* We disagree that the standards do not apply at all times. The work practice standards for PRDs require a number of preventative measures that operators must undertake to prevent PRD release events, and the installation and operation of continuous monitoring device(s) to identify when a PRD release has occurred. These measures must be complied with at all times. The monitoring technology suggested by the commenters is in fact best suited to this application and is one of the acceptable methods that facility owners or operators may use to comply with the continuous monitoring requirement. Although that technology is adequate for identifying PRD releases, we disagree that it is adequate for accurately measuring emissions for purposes of determining compliance with a numeric emission standard. The technology cited is a wireless monitor that provides an indication that the PRD released, but it does not provide information on release quantity or composition. PRD release events are characterized by short, high pressure non-steady state conditions which make such releases difficult to quantitatively measure. As detailed in the preamble to the December 2015 rule (80 FR 75218), we specifically considered the issues related to constructing a conveyance and quantitatively measuring PRD releases and concluded that these measures were not practicable. Refinery operators can estimate emissions based on vessel operating conditions (temperature and pressure) and vessel contents when a release occurs, but these estimates do not constitute a measurement of emissions or emission rate within the meaning of CAA section 112(h). As such, we maintain our position that the application of a work practice standard is appropriate for PRDs.

*Comment A.2:* Commenters indicated that another reason they believe that the PRD work practice standard is illegal is

that PRDs are not independent emission points and instead function in venting emissions from other emission points during a malfunction. For example, commenters pointed out that some equipment that vents to the atmosphere and, therefore, must meet the miscellaneous process vent standard, may also contain PRDs that vent HAP emissions to the atmosphere, bypassing the requirements established for miscellaneous process vents. The commenters believe that the EPA has simply created an exemption allowing equipment connected to PRDs to violate their emission standards without triggering a violation or potential enforcement and penalty liability. Finally, the commenters indicated that the EPA should retain the work practice standards for PRD on top of the existing emission standards for connected equipment to assure compliance and attempt to prevent fugitive emissions.

*Response A.2:* The commenters incorrectly suggest that the PRD work practice standard replaces the existing emission standards for “connected equipment.” The amendments to the NESHAP addressing PRDs do not affect requirements in the NESHAP that apply to equipment associated with the PRD. For example, compliance with the PRD requirements apply in addition to requirements for miscellaneous process vents for the same equipment, which addresses the commenter’s suggestion.

We disagree that PRDs are simply bypasses for emissions that are subject to emission limits and controls and that they, thus, allow for uncontrolled emissions without violation or penalty. The PRDs are generally safety devices that are used to prevent equipment failures that could pose a danger to the facility and facility workers. The PRD releases are triggered by equipment or process malfunction. As such, they do not occur frequently or routinely and do not have the same emissions or release characteristics that routine emission sources have, even if the PRD and the vent are on the same equipment. This is because conditions during a PRD release (temperature, pressure, and vessel contents) differ from those that occur that result in routine emissions as miscellaneous process vents. In contrast, emissions from miscellaneous process vents are predictable and must be characterized for emission potential and applicable control requirements prior to operation in the facility’s notification of compliance status report. In addition, PRDs must operate in a closed position and, as discussed earlier, must be continuously monitored to identify when releases have occurred. If an affected pressure relief device

releases to the atmosphere, the owner and operator is required to perform root cause analysis and corrective action analysis (RCA/CAA) as well as implement corrective actions and comply with the specified reporting requirements. The work practice standard also includes criteria for releases from affected PRD which would result in a violation at 40 CFR 63.648(j)(3)(v).

*Comment A.3:* Commenters indicated that, even if the work practice standards for PRDs are justified, the work practice standards do not comply with the CAA requirements to assure both the average limitation achieved by the relevant best-performing sources and the maximum degree of emission reduction that is achievable. The commenters asserted that there is no discussion in the record or analysis that allowing 1–2 uncontrolled releases every 3 years reflects, at minimum, the average of the best performers’ reductions and indicated that the EPA cannot simply replicate rules in place that specify PRD requirements. The commenters indicated that the EPA should have reviewed data, such as the 2007 SCAQMD Staff Report (Docket ID Item No. EPA–HQ–OAR–2010–0869–0024) which shows releases from Los Angeles area refineries ranged from 0.4–0.89 tons of VOC per year, to establish that no source has done better or cannot do better than those rules allow. The commenters also asserted that the EPA’s promulgated work practice standards for PRDs are not as stringent as the SCAQMD and BAAQMD requirements that they are modelled after.

*Response A.3:* Section 112 of the CAA requires MACT for existing sources to be no less stringent than “the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information). . . .” [(CAA section 112(d)(3)(A)]. “Emission limitation” is defined in the CAA as “. . . a requirement established by the State or Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard promulgated under this chapter” [CAA section 302(k)]. The EPA specifically considers existing rules from state and local authorities in identifying the “emission limitations” for a given source. We then identify the best performers to identify the MACT floor (the no less stringent than level) for that source. The EPA identified the

SCAQMD rule requirements as the MACT floor because it represented the requirements applicable to the best performing sources. The commenters appear to suggest that the EPA should identify an emissions level achieved in practice through implementation of the work practices in the two California rules and that the EPA is obligated to require sources to meet that emissions level. However, this is contrary to the predicate for the EPA establishing work practice standards. Work practice standards are established in place of a numeric limit where it is not feasible to establish such limits. Thus, in a case such as this, where the EPA has determined that it is appropriate to establish work practice standards (because it is infeasible to establish numeric limits), it was reasonable for the EPA to identify the work practice standards that impose the most stringent requirements and, thus, represent what applies to the best performers and then to require those work practice standards as MACT.

We recognize that the final standards for PRDs do not exactly mirror the SCAQMD provisions, but this is because, having established the MACT floor, we consider options for going beyond the MACT floor. As noted in the memorandum in the docket titled "Pressure Relief Device Control Option Impacts for Final Refinery Sector Rule," July 30, 2015 (Docket ID Item No. EPA-HQ-OAR-2010-0682-0750), we looked at the BAAQMD standard as a more stringent work practice standard, and while we did not directly adopt the BAAQMD rule requirements, we did adopt several aspects of that rule. Specifically, we adopted the three prevention measures requirements in the BAAQMD with limited modifications. We also did not include a provision similar to that in the SCAQMD rule that excludes releases less than 500 lbs/day from the requirement to perform a root cause analysis; that provision in the SCAQMD rule does not include any other obligation to reduce the number of these events. Rather than allowing unlimited releases less than 500 lbs/day, we require a root cause analysis for releases of any size. We considered these to be reasonable and cost-effective enhancements to the SCAQMD rule. However, because we count small releases that the SCAQMD rule does not regulate at all, we considered it reasonable to provide a higher number of releases prior to considering the owner or operator to be in violation of the work practice standard. After considering the PRD release event limits

in both the SCAQMD and BAAQMD rules, we determined it was reasonable and appropriate to establish PRD requirements consistent with those provisions in the SCAQMD and BAAQMD rules that provide flare work practice standards. Therefore, the final requirements provide that three events from the same PRD in a 3-calendar-year period is a violation of the work practice standard. We also note that a facility cannot simply choose to release pollutants from a PRD; any release that is caused willfully or caused by negligence or operator error is considered a violation. Additionally, a second PRD release event in a 3-calendar-year period for the same root cause is a violation.

With the implementation of the three prevention measures and the elimination of the 500 lbs/day applicability threshold, we specifically evaluated and adopted requirements beyond the MACT floor (*i.e.*, more stringent than the SCAQMD rule) and established requirements that we deemed to be cost effective and that we determined would achieve emission reductions equivalent to or better than the SCAQMD requirements.

The EPA further notes that the reported emissions the commenters claim the EPA should rely on are not actually measured emissions but rather engineering calculations of release quantities. As such, even if it were possible to establish a numeric emissions limit, there would be concerns about relying on the information cited by the commenters. Finally, we note that the commenter's summary of PRD release data from the 2007 SCAQMD Staff Report (Docket ID Item No. EPA-HQ-OAR-2010-0869-0024) suggests that the SCAQMD PRD requirements appear to be effective at reducing PRD emissions compared to states that do not have similar work practice standards.

In summary, the work practice standard we finalized provides a comprehensive program to manage entire populations of PRDs and includes prevention measures, continuous monitoring, root cause analysis, and corrective actions, and addresses the potential for violations for multiple releases over a 3-year period. We followed the requirements of section 112 of the CAA, including CAA section 112(h), in establishing what work practice constituted the MACT floor; we then identified certain additional provisions which were more stringent than the MACT floor requirements that we determined were cost effective, and we finalized the work practice

standards, as enhanced by those additional provisions, as MACT.

*Comment A.4:* Commenters claimed that the EPA's malfunction exemptions are arbitrary and capricious under the CAA because the EPA did not finalize the prohibition on atmospheric releases from PRDs, as included in the June 2014 proposal. The commenters noted that the EPA finalized similar provisions prohibiting PRD releases in MACT standards for Group IV Polymers and Resins, Pesticide Active Ingredient Manufacturing, and Polyether Polyols Production. The commenters further stated that the Court recently upheld this type of prohibition [*Mexichem Specialty Resins, Inc. v EPA*, 787 F.3d 544, 560–61 (D.C. Cir. 2015)] and urged the EPA to finalize the standards for PRD as proposed. The commenters also suggested that the EPA's justification for not finalizing a prohibition on atmospheric PRDs was based on environmental disbenefits of having additional flare capacity on standby to control these unpredictable and infrequent events. According to the commenters, flares can be operated with spark ignition systems that would only operate when triggered by a flare event, and, therefore, the commenters suggested that the EPA overestimated the environmental disbenefits.

*Response A.4:* During the comment period on the June 2014 proposal, comments both from industry and environmental advocacy groups suggested we consider requiring the work practice standards established in regulations adopted by the BAAQMD and SCAQMD rules for PRD releases. In light of those comments and the statutory requirement that the EPA evaluate the best performing facilities in determining the appropriate MACT standard, the Agency considered whether the work practice standards established in the SCAQMD and BAAQMD rules represented what was achieved by the best performers. The BAAQMD and SCAQMD rules are the only rules we are aware of that have been established to address the infrequent and unpredictable nature of PRD releases for petroleum refineries. As noted in the previous response, the EPA established a MACT standard based on the SCAQMD rule and incorporated several of the key elements of the BAAQMD standard into the PRD requirements promulgated for new and existing sources in the December 2015 rule.

After determining a standard based on the best performing sources, we examined whether to establish a more stringent standard (requiring all PRD releases to be routed to a control



device). We rejected such an approach based on the economic impacts. We estimated that requiring control of all atmospheric PRDs would cost approximately 41 million dollars per year (annually) compared to the estimated economic impact of the work practice standards of 3.3 million dollars per year. (Cost is not a consideration in setting the MACT floor, but it is relevant to our determination whether to establish additional requirements more stringent than that floor.) We also estimated that secondary emissions for additional flaring in the event all PRDs were routed to a control device would increase greenhouse gas emissions by 104,000 megagrams of carbon dioxide equivalents per year and increase nitrogen oxide emissions by 85 tons per year (see memorandum in the docket titled “Pressure Relief Device Control Option Impacts for Final Refinery Sector Rule,” July 30, 2015, Docket ID Item No. EPA-HQ-OAR-2010-0682-0750).

Regarding the comment that flares could be equipped with spark ignition systems, we note that such systems are not compliant with the long-standing requirements in 40 CFR 60.18 and 63.11 or the new requirements in 40 CFR 63.670 that flares be operated with a pilot present at all times. The EPA has previously rejected the use of spark ignition systems because these systems may not reliably ignite on demand and which would result in an atmospheric release of the pollutants routed to the flare.

*Comment A.5:* Commenters stated that the EPA’s malfunction exemption for *force majeure* events in the PRD work practice standard is arbitrary and capricious under CAA section 112 because it creates periods of time when no emissions standard applies. Further, commenters added that *force majeure* is a term defined by contract law to provide a defense to avoid meeting a party’s responsibility under a contract and applies only where a party has specifically negotiated and agreed to its use. As such, commenters claimed that the concept of *force majeure* does not exist or belong in the context of compliance with a non-contractual federal law, such as the CAA. Refineries should not be able to decide when to comply with the CAA requirements.

Commenters stated that it is unlawful and arbitrary to promulgate a definition of *force majeure* that does not codify criteria for determining whether a *force majeure* event or a violation has occurred (*i.e.*, the determination is left to the Administrator). The commenters added that the EPA does not have the authority to decide when such an event has occurred, rather the Court must

decide whether a violation warranting a penalty has occurred with the burden of proof resting on the refinery.

*Response A.5:* The PRD work practice standard requires redundant prevention measures, which are designed to limit the duration and quantity of releases from all atmospheric PRDs regardless of the cause. These requirements apply at all times; thus, the final work practice standards do have requirements that apply to PRDs at all times and they are not contrary to the CAA requirements in CAA section 112. We also note that facilities are also required to initiate a root cause analysis to assess the cause of the release, including releases determined to be caused by a *force majeure* event.

We disagree that because *force majeure* is a term typically used in contract law that it cannot or should not be used in the context of regulations establishing standards under the CAA. We have determined that a *force majeure* provision is part of the MACT floor for regulating PRDs at refineries and, as such, should be included as part of the MACT standard. The definition of *force majeure* event in the December 2015 final rule is based specifically on a clause included in the SCAQMD rule, which served as the basis for the MACT standard. Rather than repeating this clause at each instance, we determined that it was preferential to use and define the term *force majeure* event. We find that the December 2015 final rule’s definition of *force majeure* event has adequate specificity to allow determination of whether a PRD release event was caused by a *force majeure* event. The definition specifies events that are beyond the control of the operator, including natural disasters, acts of war or terrorism, external power curtailments (excluding curtailments due to interruptible service agreements), and fire or explosions originating at near or adjoining facilities outside of the refinery owner or operator’s control that impact the refinery’s ability to operate. The commenters suggest that criteria are needed for determining whether a *force majeure* event has occurred. We disagree; the examples provided in the definition provide sufficient specificity to help guide a decisionmaker in deciding whether to pursue an enforcement action because they believe a violation has occurred that was not caused by a *force majeure* event and for a court or other arbiter to rule on any claim. Regarding the comment that the Court, not the Administrator, should determine when a *force majeure* event has occurred, we note that the regulations do not specify that the Administrator would make a binding

determination of whether a *force majeure* event has occurred, and the issue could be argued and resolved by the Court in the context of a citizen suit.

*Comment A.6:* One commenter supported the work practices for PRD and emergency flaring with the exception of the additional backstop measures in 40 CFR 63.648(j)(3)(iv) and (v) and 40 CFR 63.670(o)(7)(iv), respectively. The commenter explained that these backstops arbitrarily limit the number of release events for PRD and emergency flaring events and are not needed to demonstrate continuous compliance with the work practice standards.

*Response A.6:* For PRDs, these are the applicable standards that were determined to be MACT and are modeled after the backstop within the SCAQMD rule. With respect to the flare work practice requirements, our goal is to ensure continuous compliance with the emission limits applicable to the gas streams that are discharged to the flare. We determined that optimal HAP destruction occurs under specific conditions, which include limited periods of visible emissions. Therefore, we established these requirements in parallel with the PRD requirements to help limit the size and duration of these emergency flaring events and optimize flare performance. We consider these backstop measures for PRD and emergency flaring to be critical to ensure that the prevention measures implemented are effective, that the root-cause analyses conducted are thorough, and that the corrective action measures implemented are effective.

*Comment A.7:* Commenters stated the final rule provided criteria for releases that will be considered a violation of the pressure release management work practices in 40 CFR 63.648(j)(v)(B) and (C) based on a “3 calendar year period,” but the Agency did not explain how this time period runs nor how it will be assessed or reported to the EPA and to the public. The commenter noted that the EPA stated in the preamble (80 FR 75212) relative to the flare work practice provisions, the violation criteria is based on a “rolling 3-year period,” but a rolling 3-year period is not in the regulatory text for either the flare or PRD work practice.

*Response A.7:* The regulatory text at 40 CFR 63.648(j)(3)(B) and (C) clearly states that the time period is based on a 3-calendar-year period. We consider 2020 to be one calendar year. A 3-calendar-year period in 2020 would include events that occurred in 2018, 2019, and 2020. It is a rolling average to the extent that, in 2021, one would consider events that occurred in 2019,



2020, and 2021. As indicated in 40 CFR 63.655(g)(10)(iii), each pressure release to the atmosphere, including the duration of the release, the estimated quantity of each organic HAP released, and the results of the RCA/CAA completed during the reporting period must be included as part of the reporting obligation.

*Comment A.8:* Commenters stated that the EPA should add to the reporting requirements for the PRD and flare work practice standards by requiring an initial report to the EPA, state, and local regulators within 1 hour of the start of a release event or within 1 hour of the operator reasonably knowing of its occurrence. They maintained that the initial report should include the process unit the flare or PRD is associated with and initial identification of the cause of the event. The initial report should be followed by a report containing the contents of 40 CFR 63.655(g)(10) and (11) within 30 days after the event and additionally include whether the PRD or flare has had an emissions release or smoking event in the past 3 years, including references or copies of previously submitted reports. Commenters added that this would be consistent with the Agency's attempt to match the SCAQMD requirements for PRDs. Finally, commenters suggested that the EPA should require all malfunction reports be made publicly available online at the same time they are submitted to the EPA.

*Response A.8:* The SCAQMD rule has notification and reporting requirements for atmospheric PRD releases in excess of the reportable quantity limits in 40 CFR part 117, part 302, and part 355, including releases in excess of 100 pounds of VOC (Rule 1173(i)(3)). The notification must occur within 1 hour of the release or within 1 hour of the time a person should have reasonably known of its occurrence. A written report must be submitted within 30 days of the atmospheric release. These requirements closely mirror those under other EPA programs, such as the Superfund Amendments and Reauthorization Act 313 (SARA 313). We note that refinery owners or operators are already required to report emissions events through various state and federal requirements, including immediate notifications of releases exceeding reportable quantities under SARA 313, and while we acknowledge that these reports would be submitted to a different branch within the EPA, we believe any additional reporting requirements would be redundant, unnecessary, and inefficient. Therefore, we are not revising the recordkeeping and reporting requirements in the

December 2015 rule as requested by the commenter.

*Comment A.9:* Commenters stated that the exemptions for specific types of pressure relief devices are unlawful and arbitrary. Commenters contended that the only justification the EPA has made for providing these PRD exemptions is that the emissions are expected to be small. Commenters asserted that there is no *de minimis* threshold for regulating emission points within a source category and, thus, the EPA's attempt to exempt certain types of PRDs is illegal.

*Response A.9:* We modeled the applicability of the PRD provisions after the SCAQMD rule, based on a MACT floor analysis and considering the appropriate requirements for these types of PRDs. It is likely that the SCAQMD rule did not apply the PRD-specific requirements to certain PRDs due to their low emissions release potential. As part of our "beyond the floor" analysis, we determined that it was not cost effective to include control of these PRDs as part of the work practice standard for PRDs. However, these PRDs are regulated under other provisions of the MACT. We note that, if the PRD is in gas or vapor service, refinery owners and operators are still required to monitor the PRD after the release to verify the device is operating with an instrument reading of less than 500 parts per million. Liquid PRDs are still subject to repair if a leak is found during visual inspection.

3. What is the EPA's final decision on the work practice standards for PRDs?

The PRD work practice standards were developed in accordance with the CAA, establishing a MACT floor based on consideration of the SCAQMD and BAAQMD work practice standards. The sources complying with these requirements are the best performing sources. It was necessary to establish these requirements as work practice standards under CAA section 112(h) because quantitative measurement of flow rates during PRD release events is not practicable due to technological and economic limitations with measuring highly transient flows. The inclusion of *force majeure* event allowances and restrictions of the applicability of the pressure release management requirements to specified types of PRDs are consistent with the MACT floor and are necessary components of the work practice standards. We consider a complete prohibition of atmospheric PRD to be "beyond the MACT floor" and we are declining to set a "beyond the floor" requirement on the basis of cost and environmental disbenefits. We have not been presented with any

comments and/or information received in response to the October 2016 proposed notice of reconsideration relative to the PRD work practice standards which will result in any changes to the December 2015 rule.

#### *B. Issue 2: Work Practice Standard for Emergency Flaring*

1. What is the history of work practice standards for emergency flaring?

In the June 2014 proposal, the EPA proposed to amend the operating and monitoring requirements for petroleum refinery flares. As discussed in the proposal at 79 FR 36904, we determined that the requirements for flares in the General Provisions at 40 CFR 63.18 were not adequate to ensure compliance with the Refinery MACT standards. In general, at the time the MACT standards were promulgated, flares used as air pollution control devices were expected to achieve a 98-percent HAP destruction efficiency. However, because flows of waste gases to the flares had diminished based on reductions achieved by the increased use of flare gas recovery systems, there have been times when the waste gas to the flare contained insufficient heat content to adequately combust and, thus, a 98-percent HAP destruction efficiency was not being achieved. In addition, the practice of applying assist media to the flare (particularly steam to prevent smoking of the flare tip) had led to a decrease in the combustion efficiency of flares.

To ensure that a 98-percent HAP destruction efficiency was being met, as contemplated at the time the MACT standard was promulgated, we proposed revisions to Refinery MACT 1 that required flares to operate with a continuously-lit pilot flame at all times when gases are sent to the flare, with no visible emissions except for periods not to exceed 5 minutes during any 2 consecutive hours, and to meet flare tip velocity limits and combustion zone operating limits at all times when gases are flared.

During the comment period on the June 2014 proposal, we received comments that the EPA's concern over insufficient heat content of the waste gas or over-assisting flares is less problematic in attaining a high level of destruction efficiency at the flare in emergency situations, where the flow in the flare exceeds the smokeless capacity of the flare. The commenters suggested that better combustion was assured closer to the incipient smoke point of the flare and that flow velocity limits and limits on visible emissions should not apply during emergency flaring events.

In the December 2015 rule, we determined that it was appropriate to set different standards for when a flare is operating below its smokeless capacity and when it is operating above its smokeless capacity. We finalized the proposed requirements (with minor revisions) to apply when a flare is operating below its smokeless capacity.

In the December 2015 rule, we established a work practice standard that applies to each affected flare with a potential to exceed its smokeless capacity. The work practice standard requires owners or operators to develop flare management plans to identify the flare system smokeless capacity and flare components, waste gas streams that are flared, monitoring systems and their locations, procedures that will be followed to limit discharges to the flare that cause the flare to exceed its smokeless capacity, and prevention measures implemented for PRDs that discharge to the flare header. The work practice standard requires a continuously-lit pilot flame, combustion-zone operating limits, and the monitoring, recordkeeping, and reporting requirements apply at all times—whether the flare is operating below, at, or above its smokeless capacity, including during a *force majeure* event. These requirements are the most critical in ensuring that a 98-percent destruction efficiency is being met during emergency release events.

In addition, where a flare exceeds its smokeless capacity, a work practice standard requires refinery owners or operators to conduct a root cause analysis and take corrective action for any flaring event that exceeds the flare's smokeless capacity and that also exceeds the flare tip velocity and/or visible emissions limit. Refiners have 45 days to complete the root cause analysis and implement corrective action after an event. The results of the root cause analysis and corrective action are due with the periodic reports on a semi-annual basis. If the root cause analysis indicates that the exceedance of the flare tip velocity and/or the visible emissions limit is caused by operator error or poor maintenance, the exceedance is a violation of the work practice standard. A second event causing an exceedance of either the flare tip velocity or the visible emissions limit within a rolling 3-year period from the same root cause on the same equipment is a violation of the standard. A third exceedance of the velocity or visible emissions limit occurring from the same flare in a rolling 3-year period is a violation of the work practice standard, regardless of the root cause.

However, *force majeure* events are excluded from the event count.

We requested public comment on the above smokeless capacity work practice standard in 40 CFR 63.670(o), including the requirements to maintain records of prevention measures in 40 CFR 63.670(o)(1)(ii)(B) and (iv); the requirement to establish a single smokeless design capacity in 40 CFR 63.670(o)(1)(iii)(B); the number and type of releases/events that constitute a violation; the phrase “. . . and the flare vent gas flow rate is less than the smokeless design capacity of the flare” in 40 CFR 63.670(c) and (d); the proposed correction to paragraph 40 CFR 63.670(o)(1)(ii)(B); and other provisions in 40 CFR 63.670(o)(3) through (7). We also requested public comment on the recordkeeping and reporting requirements associated with these work practice standards in 40 CFR 63.655(g)(11)(iv) and (i)(9)(x) through (xii).

In reviewing the regulatory text for this proposed action, we also determined that 40 CFR 63.670(o)(1)(ii)(B) contains an incorrect reference to pressure relief devices for which preventative measures must be implemented. The correct reference is paragraph 40 CFR 63.648(j)(3)(ii), not 40 CFR 63.648(j)(5). We proposed to correct this referencing error.

## 2. What comments were received on the work practice standards for emergency flaring?

*Comment B.1:* Some commenters were generally supportive of the final work practice standards for emergency flares, while other commenters disagreed with numerous aspects of the final work practice standards. The commenters who disagree indicated that establishing these work practice standards for emergency flaring is unlawful because they do not provide for standards that are continuous and that apply at all times, as directed by section 112 of the CAA and as upheld by the Court in the 2008 vacatur of the malfunction exemptions in the MACT General Provisions. *Sierra Club v. EPA*, 551 F.3d 1019, 1027–28 (D.C. Cir. 2008) (“Congress has required that there must be continuous section 112-compliant standards.”); see also H.R. Rep. No. 95–294, at 92 (1977), reprinted in 1977 U.S.C.A.N. 1077, 1170 (“continuous” emission standard requirement does not allow merely “temporary, periodic, or limited systems of control”). The commenters state that because the work practice standards do not limit emissions to any certain amount during an emergency flaring event, there is effectively no emission limitation that

applies during these times.

Additionally, the commenters do not believe that the work practice standards are justified under CAA section 112(h) for emergency flaring because measurement technology is available to measure what is sent to the flare.

*Response B.1:* We disagree that the standards do not apply at all times. The work practice combustion efficiency standards (specifically limits on the net heating value in combustion zone) apply at all times, including during periods of emergency flaring. With respect to setting work practice standards under CAA section 112(h), we note that the combustion efficiency standards were established as work practice standards. In the case of flaring, emissions are not conveyed through a stack and are difficult to measure. The EPA's practice has been to establish work practice standards for regulating flares (see, e.g., General Provisions in 40 CFR parts 60 and 63, the combustion efficiency requirements in this rule, and flaring work practice standards in the Petroleum Refinery NSPS, subpart Ja). These work practice standards do take advantage of upstream measurement systems, but we do not agree that upstream measurement systems are the same as measuring emissions from the flare following combustion nor are they, standing alone, a sufficient emissions limitation or standard.

*Comment B.2:* Commenters stated that, even if the work practice standards for flares operating above the smokeless capacity are justified, the work practice standards do not comply with the CAA requirements that the emissions limitation is as stringent as the average emission limitation achieved by the best-performing sources, and the maximum degree of emission reduction that is achievable. Commenters explained that the EPA provided an allowance for up to two smoking flare events per flare in a 3-year period based on API-supplied information reporting that the average refinery flare experiences an event every 4.4 years and an assumption that the best performing flares have one smoking event every 6 years. The commenters contended that these figures are based on unverified data submitted in an API/AFPM survey and its use is arbitrary and capricious. The commenters maintained that instead of using the API/AFPM survey data, the EPA should have reviewed data including emissions data from their own studies as well as emissions data available from Texas Commission on Environmental Quality (TCEQ), SCAQMD, or BAAQMD when developing these standards. The commenters suggested that the EPA

establish standards based on the duration and amount of gas routed to a flare during a malfunction event that causes the flare to operate above its smokeless capacity, in addition to the cap on the number of exceptions.

*Response B.2:* First, one must recognize that the flare is not a specific emission source within Refinery MACT 1 standards and, thus, we did not seek to establish a MACT floor for flares at the time that we promulgated Refinery MACT 1. Rather, we identified flares as an acceptable means for meeting otherwise applicable requirements and we established flare operational standards that we believed would achieve a 98-percent destruction efficiency on a continual basis. Recognizing that flares were not achieving the 98-percent reduction efficiency in practice, we proposed additional requirements in the June 2014 proposal to ensure that flares operate as intended at the time we promulgated Refinery MACT 1.

Regarding the operational standards for flares operating above the smokeless capacity, we note that these flare emissions are emissions due to a sudden increase in waste gas entering the flare, typically resulting from a malfunction or an emergency shutdown at one or more pieces of equipment that vents emissions to the flare. The commenter's suggestion that the EPA should establish standards on the duration and amount of gas discharged to a flare during malfunction events misses the mark. Flares are associated with a wide variety of process equipment and the emissions routed to a flare during a malfunction can vary widely based on the cause of the malfunction and the type of associated equipment. Thus, it is not feasible to establish a one-size-fits-all standard on the amount of gas allowed to be routed to flares during a malfunction. Moreover, we note that routing emissions to the flare will result in less pollution than the other alternative, which would be to emit directly to the atmosphere. We note that we do not set similar limits for thermal oxidizers, baghouses, or other control devices that we desire to remain operational during malfunction events to limit pollutant emissions to the extent practicable. However, we did establish work practice standards that we believe will be effective in reducing the size and duration of flaring events that exceed the smokeless capacity of the flare to improve overall flare performance. We are establishing these work practice standards for flares in order to ensure 98-percent destruction of HAP discharged to the flare (as contemplated at the time Refinery

MACT 1 was promulgated) during both normal operating conditions when the flare is used solely as a control device and malfunction releases where the flare acts both as a safety device and a control device.

*Comment B.3:* Commenters stated that the EPA's malfunction exemption for *force majeure* events for emergency flaring is arbitrary and capricious under CAA section 112 because it creates periods of time when no emissions standard applies.

*Response B.3:* As noted in Response A.5 to similar comments regarding PRD release events, it is very difficult to guard perfectly against acts of God and acts of terrorism. The EPA does not believe it can develop measures that would effectively limit emissions during all such acts. Regardless, we disagree that *force majeure* events are exempt from regulation. Several of the work practice standards apply during these events. Specifically, flares are required to comply with the requirements for a continuously lit pilot flame and combustion efficiency standards (*i.e.*, limits on the net heating value in combustion zone) at all times, including during periods of emergency flaring caused by a *force majeure* event.

*Comment B.4:* Commenters requested that the EPA delete from the rule the requirements at 40 CFR 63.670(o)(1)(ii)(B) and (o)(1)(iv), claiming the requirements are highly burdensome. These requirements require an owner or operator to include as part of the flare management plan (FMP) records of prevention measures and design and operating details for PRDs that are routed to flares. Alternatively, commenters recommended that the rule only require this information be included in the FMP for those PRDs (*i.e.*, a single PRD or a single set of PRDs which protect a single piece of equipment) whose potential for release is great enough to exceed the smokeless capacity of the flare.

*Response B.4:* Because PRDs are expected to be the primary source of a release that might cause a flaring event that could exceed the smokeless capacity of the flare, we determined that the identification of the PRDs that are vented to the flare is a critical component of the FMP. We also recognize that consideration of prevention measures for PRDs that can discharge to a flare will help to reduce the number of flaring events that exceed the smokeless capacity of the flare. Consequently, we include consideration of prevention measures for PRDs as one of three critical items, listed in 40 CFR 63.670(o)(1)(ii)(A) through (C), that each owner or operator of a flare must

consider within the flare minimization assessment requirement of the FMP. While submission of the FMP is primarily a one-time event, we expect that these prevention measures for PRDs discharged to the flare will be an active and growing list as owners and operators implement corrective actions after a release event exceeding the smokeless capacity of the flare and exceeding the visible emissions limit and/or the flare tip velocity limit. As noted in 40 CFR 63.670(o)(2)(ii), the plan must be updated periodically to account for changes in the operation of the flare, but we do not consider new prevention measures implemented for PRDs that discharge to the flare to constitute a change in the operation of the flare. Thus, this updated listing can be in an electronic database and it is not required to be updated in the FMP unless the FMP is otherwise required to be updated or re-submitted according to the provisions in 40 CFR 63.670(o)(2)(ii). We do not consider this effort to be a significant burden beyond what is already required for hazards analysis and the commenter did not provide any data to quantify or substantiate the claims that this effort is "highly burdensome."

We considered the suggestion to limit this requirement to PRDs with high potential release rates. However, many flares may receive discharges from dozens of PRDs across multiple process units. In an emergency event, it is possible that several of these PRDs associated with different equipment can relieve at the same time. While any one PRD may not exceed the flare's smokeless capacity, the combination of PRD releases may. Thus, we determined that it is appropriate to require all PRDs discharged to the flare to be identified and applicable prevention measures should be evaluated regardless of the release potential of an individual PRD.

3. What is the EPA's final decision on the work practice standards for emergency flaring?

The emergency flaring work practice standards were developed to ensure that flares achieve the 98-percent reduction assumed at the time MACT 1 was promulgated. In determining the means to ensure that flares achieve the 98-percent reduction, the EPA considered available data for best performing flare sources. The inclusion of the *force majeure* provisions in the work practice standard do not alter the work practice requirements for a continuously lit pilot flame and combustion efficiency standards, which apply at all times. The flare requirements in Refinery MACT 1 were established as work practice

standards and the operational standards established in the December 2015 final rule and affirmed in this action are also work practice standards under CAA section 112(h). Work practice standards are appropriate for flares because pollutants emitted from the flare cannot be emitted through a conveyance designed and constructed to emit or capture such pollutants. We have not been presented with any comments and/or information received in response to the proposed notice of reconsideration relative to the emergency flaring work practice standards which will result in any changes to these requirements as promulgated in the December 2015 rule.

*C. Issue 3: Assessment of Risk From the Petroleum Refinery Source Categories After Implementation of the PRD and Emergency Flaring Work Practice Standards*

1. What is the history of the assessment of risk from the Petroleum Refinery source categories after implementation of the PRD and emergency flaring work practice standards?

The results of our residual risk review for the Petroleum Refinery source categories were published in the June 2014 proposal (79 FR 36934 through 36942), and included assessment of chronic and acute inhalation risk, as well as multipathway and environmental risk, to inform our decisions regarding acceptability and ample margin of safety. The results indicated that the cancer risk to the individual most exposed (maximum individual risk or “MIR”) based on allowable HAP emissions is no greater than approximately 100-in-1 million, which is the presumptive limit of risk acceptability, and that the MIR based on actual HAP emissions is no greater than 60-in-1 million, but may be closer to 40-in-1 million. In addition, the maximum chronic noncancer target organ-specific hazard index (TOSHI) due to inhalation exposures was less than 1. The evaluation of acute noncancer risks, which was conservative, showed the potential for adverse health effects from acute exposures is unlikely. Based on the results of a refined site-specific multipathway analysis, we also concluded that the cancer risk to the individual most exposed through ingestion is considerably less than 100-in-1 million.

In the December 2015 rule, we established work practice standards for PRD releases and emergency flaring events, which under the June 2014 proposal would not have been allowed. Because we did not consider such non-routine emissions under our risk

assessment for the June 2014 proposal, we performed a screening level analysis of risk associated with these emissions for the December 2015 rule as discussed in detail in “Final Residual Risk Assessment for the Petroleum Refining Source Sector” in Docket ID Item No. EPA-HQ-OAR-2010-0682-0800. Our analysis showed that HAP emissions could increase the MIR based on actual emissions by as much as 2-in-1 million, which is not substantially different than the level of risk estimated at proposal. We also estimated that chronic noncancer TOSHIs attributable to the additional exposures from non-routine flaring and PRD HAP emissions are well below 1. When the additional chronic noncancer TOSHI from the screening analysis are added to the TOSHI estimated in the June 2014 proposal, all chronic noncancer TOSHIs remain below 1. Further, our screening analysis also projected that maximum acute exposure to non-routine PRD and flare emissions would result in a maximum hazard quotient (HQ) of 14 from benzene emissions based on a reference exposure level (REL). An exceedance of an REL value does not necessarily indicate that an adverse health effect will occur. Because of the infrequent occurrence of such events and the probability that someone would be at the exact most highly impacted exposure locations at the time of the elevated ambient levels, the EPA risk assessors believe there is a very low probability of any adverse exposure. Based on the risk analysis performed for the June 2014 proposal and the screening assessment to consider how conclusions from that analysis would be affected by the additional non-routine flare and PRD emissions allowed under the December 2015 rule, we determined that the risk posed after implementation of the revisions to the MACT standards is acceptable and that the standards as promulgated provide an ample margin of safety to protect public health.

We requested public comment on the screening analysis and the conclusions reached based on that analysis in conjunction with the risk analysis performed for the June 2014 proposal.

2. What comments were received on the assessment of risk from the Petroleum Refinery source categories after implementation of the PRD and emergency flaring work practice standards?

*Comment C.1:* Commenters explained that the EPA performed a screening level risk assessment to account for the additional risk from the PRD and emergency flare work practice standards based on “approximately 430 records of

PRD and flare HAP pollutant release events” from 25 facilities, as reported in response to the detailed Petroleum Refinery information collection request (ICR), and that this assessment resulted in an additional 2-in-1 million lifetime cancer risk and an acute risk that is 14 times higher than what the Agency considers safe. The commenters contended that these risks were based on biased-low industry-estimated emissions data when they should have been based on a true maximum additional cancer or acute risk from a serious fire, explosion, or *force majeure* event, or even from one of the largest historical leaks or emergency flaring events. Commenters referenced numerous malfunction events which they asserted demonstrate the long history of these types of releases from refineries that could have been prevented by advanced planning, inspections, upgrades, and maintenance and claimed these events could have been used for the purpose of estimating additional risks from PRD releases and smoking flare events. In addition to not basing the risks on a worst-case scenario, the commenters said the EPA did not explain how the risk model predicted worst case 1-hour and annual average concentrations for PRDs and flares or whether the concentrations presented in the final risk assessment were total HAP or benzene. In any case, the commenters asserted that these concentrations are higher than what the California EPA has deemed health protective for acute and chronic exposure, and while they are lower than the EPA’s 2003 Integrated Risk Information System values, the EPA should consider that these exposures occur in combination with other emissions from refineries.

*Response C.1:* The December 2015 rule established work practice standards that require advanced planning, inspections, upgrades, and maintenance of equipment through the implementation of prevention measures, root cause analysis, and corrective action. Under CAA section 112(f)(2), the EPA is required to estimate the risk remaining after the implementation of the MACT, which for this emissions source is the promulgated work practice standards. This approach is consistent with the way that EPA has performed its risk analysis for all previously promulgated risk reviews under CAA section 112(f)(2). In the screening analysis, we used release information collected under the authority of CAA section 114 which represents annual releases occurring prior to the implementation of these work practice

standards and the data and assumptions used as inputs to the screening analysis are a reasonable representation of the worst-case releases allowed under the promulgated standard and that may be expected subsequent to the implementation of the work practice standards.

In response to the commenters' statement that the EPA did not explain how the risk model predicted worst case 1-hour and annual average concentrations for PRDs and flares or whether the concentrations presented in the final risk assessment were total HAP or benzene, as noted in the risk report (appendix 13 of Docket ID Item No. EPA-HQ-OAR-2010-0682-0800), the EPA estimated concentrations using a conservative (health protective) screening dispersion modeling approach. Further, the risks were estimated based on all reported emissions (*i.e.*, not only benzene). Acute risks (HQs) are estimated on a pollutant-by-pollutant basis.

With regard to the comment that the EPA should consider the California Office of Environmental Health Hazard Assessment health benchmarks, in May 2018, based on examination of the California EPA's acute (1-hour) REL for benzene, and taking into account aspects of the methodology used in the derivation of the value and how this assessment stands in comparison to the Agency for Toxic Substances and Disease Registry's toxicological assessment, EPA toxicologists decided it is not appropriate to use the benzene REL value to support the EPA's RTR rules. In lieu of using the REL in RTR risk assessments, the EPA is now evaluating acute benzene risks by comparing potential exposure levels to the emergency response planning guidelines (ERPG)-1 values. In this case, the acute HQ value from non-routine PRD and flare emissions is 0.07 when comparing ambient levels to the ERPG-1.

*Comment C.2:* Commenters asserted that the EPA's risk assessment and determinations are unlawful and are arbitrary and capricious because the EPA has not followed its own policy and guidelines in summing cancer risk and treating a lifetime cancer risk above 100-in-1 million as showing the need for section CAA section 112(f) standards. The commenters stated that the EPA found an inhalation-based cancer risk of 100-in-1 million from routine emissions, an additional cancer risk of 2-in-1 million from non-routine PRD and flare emissions, and an additional cancer risk of 4-in-1 million from non-inhalation or multipathway emissions. The sum of these risks is 106-in-1 million, and,

therefore, above the presumptive acceptability threshold of 100-in-1 million, yet the EPA has continued to maintain that risks are acceptable. The commenters also contended that in addition to never adding these risks, the EPA has not provided a reasoned justification in the record for not doing so. The commenters added that the EPA recognized risks were unacceptable for a similar set of risks (*e.g.*, lead smelting and ferroalloys) as those in the Petroleum Refinery RTR, and, thus, the risk for the Petroleum Refinery RTR should also be found unacceptable.

Further, the commenters noted that the EPA's refined multipathway risk assessment for one refinery, for which the EPA indicates that the sum of the multipathway and inhalation risks for that facility is less than 100-in-1 million, conflicts with the fact that the inhalation risk alone is at least 100-in-1 million; it is unclear how combined risks would not exceed 100-in-1 million. Finally, the commenters stated that the EPA has not supported the conclusion based on data in the record that after performing a refined risk assessment on one refinery that cancer risk for all facilities can be discounted.

*Response C.2:* As an initial matter, it is important to note that a risk level of 100-in-1 million is a presumptive limit of acceptability, not a threshold for acceptability or regulatory action. As stated in the Benzene NESHAP (54 FR 38044, 38061, September 14, 1989), in determining the need for residual risk standards, we strive to limit to no higher than approximately 100-in-1 million the estimated cancer risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years and, in the ample margin of safety decision, to protect the greatest number of persons possible to an individual lifetime risk level of no higher than approximately 1-in-1 million. In determining whether risk is acceptable under CAA section 112(f), these levels are not rigid lines, and we weigh the cancer risk values with a series of other health measures and factors, including the specific uncertainties of the emissions, health effects, and risk information for the relevant source category, in both the decision regarding risk acceptability and in the ample margin of safety determination. The source category-specific decision of what constitutes an acceptable level of risk and whether it is necessary to promulgate more stringent standards to provide an ample margin of safety is a holistic one; that is, the EPA considers all potential health impacts—chronic and acute, cancer and noncancer, and

multipathway—along with their uncertainties.

With regard to the analysis performed for the refinery standards at issue here, the estimated risk of 100-in-1 million is based on a risk analysis using the MACT-allowable HAP emissions from a model plant, while the estimated risk based on actual HAP emissions from refineries is no greater than approximately 60-in-1 million and may be closer to 40-in-1 million based on updated data received during the comment period. The model plant screening approach used to assess MACT-allowable HAP emissions used several health protective assumptions including co-locating all sources at a refinery at a single location. The screening analysis used to estimate risk from non-routine PRD and flare emissions is also based on several health protective assumptions. Because of the conservative nature of these screening analyses, the EPA does not typically add their results (*i.e.*, risk estimates from the model plant non-routine PRD and flare emissions to risk estimates from model plant allowable emissions). Further, we do not add the multipathway (non-inhalation) risks to inhalation risks because it is highly unlikely that the person exposed to the highest inhalation risk is the same person exposed to the highest refined multipathway (ingestion) risks. Overall risk results are presented to one significant digit, thus, even if we were to add the non-inhalation risk of 4-in-1 million to the 100-in-1 million risk from inhalation, we would still assess the total risk based on allowable emissions as 100-in-1 million.

Regarding the refined multipathway analysis performed on a single facility, as stated in the risk report, the EPA performed the refined analysis to gain a better understanding of the uncertainty associated with the multipathway Tier I and II screening analyses. The site, Marathon Ashland Petroleum facility (NEI6087) near Garyville in St. John the Baptist Parish, Louisiana, was among those that exceeded the Tier I screen for any HAP known to be persistent and bio-accumulative in the environment (PB-HAP), and it was among the refineries that had the greatest exceedance of a Tier II threshold for any PB-HAP. It also was selected based on the feasibility, with respect to the modeling framework, of obtaining model parameters for the region surrounding the refinery. The exposure estimates (and the risks calculated for those exposures) are anticipated to be among the highest that might be encountered for this source category because of the proximity of waterbodies

as well as agricultural lands. We note that many of the refineries did not exceed the Tier I screen, and for those that did, the levels of the exceedances were generally less than the level of exceedance exhibited by the facility selected for the refined assessment. Because the other facilities had a similar or lower exceedance of the screening level, the results of the refined assessment for this facility led us to conclude that if refined analyses were performed for other sites, the risk estimates would similarly be reduced from their Tier II estimates.

*Comment C.3:* A commenter stated that the EPA acknowledged that people of color and those with low incomes are disproportionately exposed to risk from refinery emissions. The commenter asserted that the EPA has not provided a rational explanation why the unfair distribution of this risk does not lead to an unacceptable risk finding or at least require additional protections to assure an ample margin of safety to protect public health for all exposed persons.

*Response C.3:* Following the analysis that CAA section 112(f)(2) requires, the EPA determined that the risk posed by emissions from the Petroleum Refinery source category were acceptable. After considering whether additional standards were required to provide an ample margin of safety to protect public health, including the health of people of color and those with low income, the EPA established additional control requirements for storage vessels. The December 2015 rule reduces risk for millions of people living near petroleum refineries and provides an ample margin of safety to protect public health. The NESHAP accordingly provides an ample margin of safety for all proximate populations, including people of color and those with low incomes.

*Comment C.4:* A commenter stated that the EPA's risk assessment and determination are unlawful and are arbitrary and capricious because they are based on internally contradictory findings that, although acute risk is high (citing an HQ of 14 due to benzene from non-routine PRD and flare emissions), exposure to these non-routine emissions will rarely occur. The commenter asserted that the EPA's own record shows that non-routine emissions occur frequently: Every 4.4 to 6 years at all refineries, 16.7 percent probability of having an event in any given year, and that over a long period of time, such as 20 years, half of the best performers would have two events in a 3-year period. The commenter added that the December 2015 rule will allow these non-routine emissions events to happen even more frequently. The commenter

further asserted that the EPA's justification to discount this high acute risk was by stating that it could have used the acute exposure guideline level (AEGL) or ERPG level to develop a lower acute risk value than the value developed for the published risk assessment which was based on the REL. The commenter stated that the AEGL and ERPG level are designed to be used in a true emergency and not to set health protective standards that will generally apply at all times, adding that the AEGL, unlike the REL, does not incorporate consideration of vulnerability, such as for children, or community exposure over time. The commenter stated that the use of the AEGL and ERPG numbers would be expected to substantially underestimate risk and using them as justification to discount the high acute risk is arbitrary and capricious.

*Response C.4:* As an initial matter, we disagree with the characterization that the work practice standards in the December 2015 rule for flares and PRDs will allow non-routine events to occur more frequently than they do now. Prior to promulgation of the flare requirements and the PRD provisions, the MACT did not include any specific regulatory requirements that applied to these events. As noted in sections III.A and B above, the final work practice standards include requirements that are designed to reduce the number and magnitude of these types of releases. The commenters have not explained why the new requirements would increase the frequency and/or magnitude of these events.

In May 2018, based on examination of California EPA's acute (1-hour) REL for benzene, and considering aspects of the methodology used in the derivation of the value and how this assessment stands in comparison to the Agency for Toxic Substances and Disease Registry's toxicological assessment, EPA toxicologists decided it is not appropriate to use the benzene REL value to support the EPA's RTR rules. In lieu of using the REL in RTR risk assessments, the EPA is now evaluating acute benzene risks by comparing potential exposure levels to the ERPG-1 values. In this case, the acute HQ value from non-routine PRD and flare emissions is 0.07 when comparing ambient levels to the ERPG-1. To better characterize the potential health risks associated with estimated worst-case acute exposures to HAP, and in response to a key recommendation from the Science Advisory Board's peer review of the EPA's RTR risk assessment methodologies, we now examine a wider range of available acute health

metrics than we do for our chronic risk assessments. This is in acknowledgement that there are generally more data gaps and uncertainties in acute reference values than there are in chronic reference values. The acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures. Although the potential for effects increases as exposure concentration increases above the acute REL, the level of exposure greater than the REL that would cause health effects is not specifically known. Therefore, when an REL is exceeded and an AEGL-1 or ERPG-1 level is available (*i.e.*, levels at which mild, reversible effects are anticipated in the general public for a single exposure), we typically use them as an additional comparative measure, as they provide an upper bound for exposure levels above which exposed individuals could experience effects. The worst-case maximum estimated 1-hour exposure to benzene outside the facility fence line is less than the AEGL-1 or ERPG-1 levels.

3. What is the EPA's final decision on the risk assessment?

As supported by the screening analysis published with the December 2015 rule, the additional risk from the PRD and emergency flaring work practice standards did not significantly alter the risk estimates in the EPA's 2014 analysis. In response to the current proposal, we did not receive any new information or other basis that would support a change to the risk analysis and the determination that the risk from the source category is acceptable and that, as modified by the December 2015 rule, the MACT standards provide an ample margin of safety to protect public health.

#### *D. Issue 4: Alternative Work Practice Standards for DCUs Employing the Water Overflow Design*

1. What is the history of the alternative work practice standards for DCUs employing the water overflow design?

In the December 2015 rule, we finalized MACT standards for DCU decoking operations. The rule provided that existing DCU-affected sources must comply with a 2 psig or 220 degrees Fahrenheit (°F) limit in the drum overhead line determined on a rolling 60-event basis prior to venting to the atmosphere, draining, or deheading the coke drum. New DCU-affected sources must comply with a 2.0 psig or 218 °F limit in the drum overhead line on a per-event, not-to-exceed basis. In the

December 2015 rule, we also finalized an alternative requirement that we did not propose to address DCU with water overflow design, where pressure monitoring would not be appropriate. As part of these provisions, we included a new requirement in the December 2015 rule for DCU with water overflow design to hard-pipe the overflow drain water to the receiving tank via a submerged fill pipe (pipe below the existing liquid level) whenever the overflow water exceeds 220 °F.

We requested public comment on the alternative work practice standard for delayed coking units employing a water overflow design provided in 40 CFR 63.657(e).

In response to the comments received on the October 2016 proposed notice of reconsideration regarding the alternative work practice standards for DCU employing the water overflow design, we proposed amendments on April 10, 2018 (April 2018 proposal) (see 83 FR 15458), to the water overflow requirements in 40 CFR 63.657(e). The EPA has issued a final rule which was promulgated on November 26, 2018 (November 2018 rule) fully addressing this issue and responding to all of the comments on the proposal for this rule as well as the April 2018 proposal.

#### *E. Issue 5: Alternative Sampling Frequency for Burden Reduction for Fenceline Monitoring*

1. What is the history of the alternative sampling frequency for burden reduction for fenceline monitoring?

In the December 2015 rule, we revised Refinery MACT 1 to establish a work practice standard requiring refinery owners to monitor benzene concentrations around the fenceline or perimeter of the refinery. We promulgated new EPA Methods 325A and B which specify monitor siting and quantitative sample analysis procedures. The work practice is designed to improve the management of fugitive emissions at petroleum refineries through the use of passive monitors by requiring sources to implement corrective measures if the benzene concentration in air attributable to emissions from the refinery exceeds a fenceline benzene concentration action level. The work practice requires refinery owners to maintain fenceline benzene concentrations at or below the concentration action level of 9  $\mu\text{g}/\text{m}^3$ . In the December 2015 rule, we included provisions that were not proposed that would allow for reduced monitoring frequency (after 2 years of continual monitoring) at monitoring locations that

record concentrations below 0.9  $\mu\text{g}/\text{m}^3$  [see 40 CFR 63.658(e)(3)].

We requested public comment on the provision allowing refineries to reduce the frequency of fenceline monitoring at monitoring locations that consistently record benzene concentrations below 0.9  $\mu\text{g}/\text{m}^3$ .

2. What comments were received on the alternative sampling frequency for fenceline monitoring?

*Comment E.1:* Commenters asserted that setting the threshold for reducing the frequency of fenceline monitoring at 0.9  $\mu\text{g}/\text{m}^3$  is arbitrary and capricious. The commenters stated that the EPA's modeling predicted that more than half (81 of 142) of the refineries modeled would have fenceline concentrations equal to or less than 0.4  $\mu\text{g}/\text{m}^3$ , and, thus, it is unlikely these facilities will have any monitors register concentrations in excess of the threshold. Therefore, these refineries will likely qualify for reduced monitoring, although they could have malfunctioning equipment causing benzene levels to be double the EPA's modeled amount.

The commenter added that while the fenceline concentrations modeled by the EPA do not include background ambient concentrations of benzene which will contribute to the benzene concentration measured at each monitor, it is still likely that the eligibility threshold for reduced frequency monitoring is too high and will allow operators to reduce the monitoring frequency at downwind monitors. The commenter supported this statement by referencing the API Corrected Fenceline Monitoring Results, Docket ID Item No. EPA-HQ-OAR-2010-0682-0752, which showed that at least 25 percent of facilities would be eligible for reduced monitoring at more than half of the monitoring sites based on the 0.9  $\mu\text{g}/\text{m}^3$  threshold.

*Response E.1:* We disagree that entire refineries will be able to qualify for reduced monitoring frequency. As the commenters themselves noted, the Agency's modeled concentrations provide only the impact of refinery emissions on the ambient air concentration (the  $\Delta\text{C}$ ) and do not include background concentrations. The modeling does not allow us to evaluate the total (refinery plus background) concentration level at any one location. Second, we note that the API study was a 3-month study that occurred primarily in the winter months when fugitive emissions are expected to be at their lowest. We also considered the Corpus Christi year-long study and a comparison of the concentrations observed throughout the year. That

study showed that benzene concentrations at the fenceline are higher during warmer weather because most fugitive emission sources, such as storage tanks and wastewater, have a significant temperature dependency. The reduced monitoring provisions require 2 full years (52 consecutive 2-week samples) where the highest single value, not the average concentration at that location, is less than 0.9  $\mu\text{g}/\text{m}^3$ . Based on the data we have available, we consider that only a few monitoring locations will qualify for reduced frequency monitoring based on this 2-year requirement that all sample concentrations at the location are less than 0.9  $\mu\text{g}/\text{m}^3$ .

In addition, we selected this value to be consistent with the minimum detection limit we required for an alternative monitoring method. It seemed incongruous to allow an alternative monitoring method with a detection limit of 0.9  $\mu\text{g}/\text{m}^3$  to be used to comply with the rule but then establish a burden reduction alternative that used a lower concentration level. Ultimately, we are confident that only a limited number of sampling locations at any petroleum refinery will meet the burden reduction criteria. We considered it reasonable to provide incentives for refinery owners or operators to achieve even greater reductions than are required by the 9  $\mu\text{g}/\text{m}^3$   $\Delta\text{C}$  action level, and the final burden reduction provisions provide such an incentive without compromising the overall objectives of the program.

*Comment E.2:* One commenter stated that the provisions allowing refineries to reduce the frequency of fenceline monitoring are unlawful and are arbitrary and capricious. To support this statement, the commenter stated that a reduction in burden to the fenceline monitoring program will not allow the program to serve its intended purpose: To enable operators to identify leaks or operating problems at equipment that cannot practically be monitored, tested, or evaluated for compliance on a frequent basis. In further support of their argument, the commenters explained that the risk findings for the December 2015 rule hinge on the frequency of the fenceline monitoring cycle. The commenter stated that the EPA is on record stating that if the emission inventories or risk assessment do understate actual emissions, as some commenters have alleged, the fenceline monitoring and corrective action requirements will ensure refineries reduce their actual emissions to levels comparable to their emissions inventories, and that in doing so, will



ensure communities surrounding petroleum refineries would be protected to acceptable risk levels. Therefore, the commenter asserted that it is imperative for the EPA to maintain the 2-week monitoring cycle to ensure operators are quickly identifying malfunctioning equipment and to close the gap between actual and reported emissions.

On the other hand, some commenters stated that the alternative monitoring provisions did not go far enough at reducing burden. Some commenters suggested that after 2 years of demonstrating a background-corrected maximum fenceline annual average concentration ( $\Delta C$ ) below the action level, monitoring frequency be reduced to a 2-week period every quarter for all monitoring locations. If the background-corrected annual average benzene concentration based on the quarterly monitoring exceeds the action level, a return to more frequent monitoring could be required RCA/CAA requirement. The reduced monitoring frequency could be available again after 1 year of meeting the action level. Another commenter recommended that the reduced monitoring provision be removed in favor of a one-time demonstration that the annual fenceline benzene  $\Delta C$  concentration is less than 50 percent of the action level during normal operations.

*Response E.2:* With respect to the commenter's opposition to the alternative sampling frequency, it is important to understand that the alternative sampling frequency provision in the December 2015 rule does not reduce the frequency by which the  $\Delta C$  values must be determined. This is because the reduced sampling frequency provision will impact only selected locations that have monitored benzene concentrations below  $0.9 \mu\text{g}/\text{m}^3$  based on 2 full years of data. Refineries will still collect samples at all other locations during each 2-week period and will still determine the  $\Delta C$  value for each sampling interval and include the  $\Delta C$  for the sampling interval in the annual average  $\Delta C$  value calculation. Therefore, we still expect the fenceline monitoring program as included in the December 2015 rule to achieve its purpose of more timely detection and correction of issues that can lead to high fugitive emissions.

The burden reduction alternatives suggested by some commenters would significantly limit the effectiveness of the fenceline monitoring program to identify issues early. A one-time determination completely defeats this purpose and could not possibly be done in a manner representative of the variety of circumstances that can occur

throughout the year or the lifetime of a facility. The purpose of the fenceline monitoring program is to allow for detection and correction of issues that may cause abnormally high emissions, such as large leaks in valves, tears in rim seals of floating roof storage vessels, and other unexpected, difficult to predict events. A one-time determination does not allow the fenceline monitoring program to timely and effectively identify these issues on an on-going basis.

While quarterly determinations would be more effective than a one-time determination for on-going fugitive management, quarterly determinations are less effective in improving fugitive emissions management than continual 2-week sampling. First, for large leak events, the emissions may continue for months prior to being detected under quarterly monitoring versus being detected in a week or two under continual 2-week sampling. Thus, the emission reduction achieved by the quarterly monitoring would not be as great as by continual 2-week monitoring. Second, under the quarterly monitoring option, there would be large periods of time when no monitoring will be performed. The passive diffusive tubes cannot be deployed over such a long time period. Thus, we assume that quarterly monitoring would consist of a 2-week sampling period once every quarter. As such, for more than 80 percent of the time, no monitoring would be conducted at the fenceline. Consequently, quarterly monitoring would often miss periodic emission events, such as tank cleaning and/or filling, which can lead to high short-term emissions. These short-term events can contribute significantly to a facility's emissions and their contribution would be captured via the continual 2-week sampling, but likely missed under a quarterly monitoring approach. In order to effectively manage all fugitive emission sources, including periodic releases, we determined that the continual 2-week sampling period should be maintained for the overall program. By providing a monitoring skip period only to locations that do not exceed  $0.9 \mu\text{g}/\text{m}^3$  for any sampling interval for 2 full years (52 consecutive 2-week sampling periods), we maintain continual 2-week sampling at all locations that may contribute to an exceedance of the action level and ensure on-going enhanced management of fugitive emissions.

*Comment E.3:* Commenters stated that the rule does not include provisions for re-instating the monitoring frequency for those monitors which may at one time qualify for reduced monitoring.

*Response E.3:* We disagree. Section 63.658(e)(v) of the final rule provides that any location with a value above  $0.9 \mu\text{g}/\text{m}^3$  while reduced monitoring is being implemented will subject the owner or operator to a 3-month "probationary period" where samples must be collected every 2 weeks at that location. If the concentrations during the probationary period are all at or below  $0.9 \mu\text{g}/\text{m}^3$ , the owner or operator may continue with the monitoring frequency prior to the excursion. If any other sample during the probationary period exceeds  $0.9 \mu\text{g}/\text{m}^3$ , then the owner or operator must comply with the more stringent monitoring requirements and would not be eligible for reduced monitoring frequency until completion of a new 2-year period at that more stringent monitoring frequency.

*Comment E.4:* A commenter stated that despite the EPA's claims that it is allowing less frequent monitoring to reduce burden, there is no quantified or otherwise evaluated data available in the record related to the actual burden reduction.

*Response E.4:* We did not specifically develop burden reduction estimates associated with this provision for several reasons. First, fenceline monitoring must be performed for a full 2 years prior to the burden reduction provisions applying to any monitoring location, so estimating the burden of the fenceline monitoring provisions without consideration of the burden reduction provisions provides an accurate estimate of the annual burden for the first 2 years. Second, we were uncertain how many monitoring locations would qualify for the burden reduction provision. Third, with respect to the burden estimate for the December 2015 rule as provided in the Supporting Statement for the Office of Management and Budget's (OMB's) ICR, we estimated the costs of the on-going fenceline monitoring program assuming all samples would continue to be collected during the 3-year period covered by the ICR.

Based on the burden estimate detail provided in the attachments to the memorandum, "Fenceline Monitoring Impact Estimates for Final Rule" (see Docket ID Item No. EPA-HQ-OAR-2010-0682-0749), we estimate that each time a sample does not need to be collected at a specific location there will be a burden reduction of 0.3 technical hours (0.25 hours reduced during sample collection and 0.05 hours reduced during sample analyses). Considering management and clerical hours, the total burden reduction per sample skipped would be 0.35 hours and approximately \$29. As an example



of potential burden reduction, if a facility could use the monthly reduced monitoring provisions for two locations in a given year (26 skipped samples, 13 at each site), the burden reduction for that facility would be 9 hours and \$745 each year.

*Comment E.5:* One commenter recommended that the EPA reduce burden by providing a mechanism to use existing HAP ambient monitoring programs as an acceptable alternative to the EPA fenceline monitoring program.

*Response E.5:* We provided a mechanism and criteria by which a refinery owner or operator may submit a request for an alternative test method to the passive diffusive tube fenceline monitoring methods (EPA Methods 325A and 325B). These provisions are included at 40 CFR 63.658(k) of the final rule.

3. What is EPA's final decision on the alternative sampling frequency for fenceline monitoring?

For fenceline monitoring requirements, the alternative sampling frequency requirements will not alter the effectiveness of the program as the requirements do not change the facility-level procedures and frequency for calculating and reporting  $\Delta C$  (see Response E.1). Furthermore, the  $0.9 \mu\text{g}/\text{m}^3$  threshold for reducing the frequency of fenceline monitoring is appropriate based on the available data and it is consistent with the minimum detection limit required for alternative monitoring methods. We have not been presented with any comments and/or information in response to the October 2016 proposed notice of reconsideration relative to the alternative sampling frequency for fenceline monitoring which will result in any changes to the December 2015 rule.

#### *F. Additional Proposed Clarifying Amendments*

1. What is the history of the proposed clarifying amendments?

The EPA proposed to amend provisions related to the overlap requirements for equipment leaks that are contained in Refinery MACT 1 and in the Refinery Equipment Leak NSPS (40 CFR part 60, subpart GGGa). The Refinery MACT 1 provision at 40 CFR 63.640(p)(2) states that equipment leaks that are subject to the provisions in the Refinery Equipment Leak NSPS (40 CFR part 60, subpart GGGa) are only required to comply with the provisions in the Refinery Equipment Leak NSPS. However, the Refinery Equipment Leak NSPS does not include the new work practice standards finalized in the final

Refinery MACT 1 at 40 CFR 63.648(j) which apply to releases from PRDs. We intended that these new work practice standards would be applicable to all PRDs at refineries, including those PRDs subject to the requirements in the Refinery Equipment Leaks NSPS. In order to provide clarity and assure that refiners subject to these provisions fully understand their compliance obligations, we proposed to modify the equipment leak requirement to provide that PRDs in organic HAP service must comply with the requirements in Refinery MACT 1 at 40 CFR 63.648(j) for PRDs. We also proposed to amend the introductory text in 40 CFR 63.648(j) to reference the Refinery Equipment Leaks NSPS at 40 CFR 60.482–4a and amend paragraphs (j)(2)(i) through (iii) of Refinery MACT 1 to correct the existing reference to 40 CFR 60.485(b), to instead refer to 40 CFR 60.485(c) and 40 CFR 60.485a(c). As noted in section III.B.1 of this preamble, we also proposed to revise the incorrect cross-reference to PRD prevention measures at 40 CFR 63.670(o)(1)(ii)(B) from 40 CFR 63.648(j)(5) to 63.648(j)(3)(ii). However, we concluded it would be more accurate to cross-reference 40 CFR 63.648(j)(3)(ii)(A) through (E) rather than the entirety of 40 CFR 63.648(j)(3)(ii). Therefore, in the April 2018 proposal, we proposed this clarified revision and finalized this revision as proposed in the November 2018 rule.

2. What comments were received on the proposed clarifying amendments?

*Comment F.1:* Commenters asserted that the EPA's proposal to modify the provisions in 40 CFR 63.640(p)(2) by providing that PRDs in organic HAP service must comply with the requirements in 40 CFR 63.648(j) is arbitrary and capricious. Commenters opposed the proposed revisions claiming they would enshrine exemptions from NSPS equipment leak standards for new and modified PRD or allow for substitution of NSPS requirements for the work practice standards in 40 CFR 63.648(j), which they believe are exemptions from malfunction requirements. They added that these provisions amend the NSPS for Petroleum Refineries without satisfying the appropriate procedural and substantive legal tests required to do so.

*Response F.1:* It appears that the commenter misunderstands the proposed amendment. When we revised Refinery MACT 1 at 40 CFR 63.648(j) to add PRD requirements, we failed to recognize that the NSPS overlap provisions in 40 CFR 63.640(p)(2) could

be used as a “loophole” by refinery owners and operators to not implement three prevention measures and to not perform the root cause analysis or implement corrective actions. This is because the NSPS subpart GGGa does not have any pressure release management requirements. In the absence of the proposed amendment, the existing overlap provision states that “Equipment leaks that are also subject to the provisions of 40 CFR part 60, subpart GGGa, are required to comply only with the provisions specified in 40 CFR part 60, subpart GGGa.” Thus, PRDs subject to 40 CFR part 60, subpart GGGa, were inadvertently exempted from the new PRD pressure release management requirements. We understand that the commenter does not support some of the provisions in the pressure release management requirements in the final Refinery MACT 1 rule, but these requirements are clearly more stringent than the NSPS subpart GGGa provisions for PRDs which only require monitoring of the PRD after a release, and do not have any restrictions or requirements to limit PRD releases. We note that in addition to the new PRD requirements established in the December 2015 rule, the Refinery MACT 1 PRD requirements at 40 CFR 63.648(j)(1) and (2) fully include those requirements that would apply under 40 CFR part 60, subpart GGGa. In reviewing standards covering the same pieces of equipment, we look to identify the overlapping standards and require the owner or operator to comply only with the most stringent standard. After the revisions to the PRD requirements in Refinery MACT 1, we determined that the equipment leak provisions for PRDs in Refinery MACT 1 are more stringent than those in 40 CFR part 60, subpart GGGa. By revising this overlap provision, we are requiring equipment leak sources that are subject to both rules to comply with the 40 CFR part 60, subpart GGGa for most equipment leak sources but PRDs must comply with the PRD requirements in Refinery MACT 1. This revision will require PRDs that are also subject to 40 CFR part 60, subpart GGGa, to implement prevention measures for PRDs, conduct root cause analyses, and implement corrective actions to prevent a similar release from occurring. Because compliance with 40 CFR part 60, subpart GGGa is not sufficient to demonstrate compliance with Refinery MACT 1 PRD provisions, revision of the existing overlap provisions was deemed critical to ensure all Refinery MACT 1 PRDs comply with the new pressure release management requirements.

The commenter is also mistaken that this provision amends the NSPS. Rather, it defines what sources subject to Refinery MACT 1 must do to comply with Refinery MACT 1. Specifically, for equipment leaks at facilities subject to *both* Refinery MACT 1 and 40 CFR part 60, subpart GGGa, owners and operators must comply with the requirements in Refinery MACT 1 (40 CFR part 63, subpart CC) for PRDs associated with the leaking equipment because the requirements in Refinery MACT 1 for PRDs are more stringent than those in 40 CFR part 60, subpart GGGa. The NSPS requirements are not modified by this change to 40 CFR part 63, subpart CC and remain in effect for PRDs associated with equipment leaks that are not subject to Refinery MACT 1.

*Comment F.2:* Commenters supported the clarification to the overlap provisions for equipment leaks in 40 CFR 63.640(p)(2), but also request that a delay of repair provision be included in 40 CFR 63.648 because other equipment leak rules (such as 40 CFR part 60, subparts GGG and GGGa) potentially applicable to refinery PRDs include such delay of repair provisions. The commenters noted that PRDs subject to 40 CFR part 60, subpart GGG,

are made subject to 40 CFR 63.648(j) by 40 CFR 63.640(p)(1).

*Response F.2:* By proposing a technical correction to 40 CFR 63.640(p)(2), the EPA was not proposing to re-open the substantive requirements of 40 CFR 63.640 nor of other provisions, such as 40 CFR 63.648 that may be referenced in 40 CFR 63.640. We also disagree that PRDs are allowed to comply with delay of repair provisions in the NSPS (subparts GGG/GGGa or VV/Vva) beyond taking the equipment out of VOC service. In any case, we determined that it was contrary to safety and good air pollution control practices to continue to operate a process unit without a properly functioning PRD as PRDs are, primarily, safety devices.

3. What is the EPA's final decision on the proposed clarifying amendments?

We are finalizing the amendment that equipment leaks that are subject to the provisions of the Refinery Equipment Leak NSPS pursuant to 40 CFR 63.640(p)(2) must comply with the requirements in Refinery MACT 1 at 40 CFR 63.648(j) for PRDs, as proposed. We are also finalizing the amendment to the introductory text in 40 CFR 63.648(j) to reference Refinery Equipment Leaks

NSPS at 40 CFR 60.482–4a and the amendment to paragraphs (j)(2)(i) through (iii) of Refinery MACT 1 to correct the existing reference to 40 CFR 60.485(b), which should refer to 40 CFR 60.485(c) and 40 CFR 60.485a(c), as proposed. Finally, as noted in the history of these clarifying amendments, we addressed the proposed amendments at 40 CFR 63.670(o)(1)(ii)(B) in a final rule issued in November 2018 to more accurately cross-reference 40 CFR 63.648(j)(3)(ii)(A) through (E) rather than the entirety of 40 CFR 63.648(j)(3)(ii).

#### *G. Corrections to November 2018 Final Rule*

There were a number of publication errors associated with the November 2018 rule. Several of these errors were associated with inaccurate amendatory instructions or editorial errors in the final amendment package. We are correcting these errors to finalize the amendments consistent with the intent of the preamble to the November 2018 final rule (83 FR 60696). Table 2 of this preamble provides a summary of the publication and editorial errors in the November 2018 rule that we are correcting in this final action.

TABLE 2—SUMMARY OF CORRECTIONS TO NOVEMBER 2018 RULE

Provision	Issue	Final revision
<b>Refinery MACT 1</b>		
40 CFR 63.641, definition of “Reference control technology for storage vessels”.	Incorrect amendatory instructions; the Code of Federal Regulations could not implement revisions as instructed.	Revise instructions and reprint the entire definition to more easily implement revisions to the definition of “Reference control technology for storage vessels” consistent with the intent of the preamble to the November 2018 final rule.
40 CFR 63.643(c)(1)(v) .....	There is a comma after the word “less.” It should be a period.	Amend 40 CFR 63.643(c)(1)(v) to replace the comma after the word “less” with a period.
40 CFR 63.655(f)(1)(iii) .....	Subordinate paragraphs (A) and (B) were inadvertently removed due to incorrect amendatory instructions.	Amend 40 CFR 63.655(f)(1)(iii) to include subordinate paragraphs (A) and (B) consistent with the intent of the preamble to the November 2018 final rule.
40 CFR 63.655(f)(2) .....	Subordinate paragraphs (i) through (iii) were inadvertently removed due to incorrect amendatory instructions.	Amend 40 CFR 63.655(f)(2) to include subordinate paragraphs (i) through (iii) consistent with the intent of the preamble to the November 2018 final rule.
40 CFR 63.655(h)(10) .....	The introductory text associated with this paragraph was missing from the regulatory text included in the rule as published in the <b>Federal Register</b> .	Amend 40 CFR 63.655(h)(10) introductory text to read as “ <i>Extensions to electronic reporting deadlines.</i> ”
40 CFR 63.655(i)(11) “. . . For each pilot-operated pressure relief device subject to the requirements at 40 CFR 63.648(j)(4)(ii) or (iii), . . .”.	Pilot-operated PRDs are not subject to requirements at 40 CFR 63.648(j)(4)(iii) so the inclusion of “or (iii)” was incorrect.	Amend 40 CFR 63.655(i)(11) introductory text to remove “or (iii).”
40 CFR 63.660(i)(2)(iii). “Use a cap, blind flange, plug, or a second valve for an open-ended valves or line . . .”.	Use of the plural in referencing “. . . an open-ended valves . . .” is incorrect grammar.	Amend 40 CFR 63.660(i)(2)(iii) to read “Use a cap, blind flange, plug, or a second valve for an open-ended valve or line . . .”
40 CFR 63.670(d)(2) .....	Equation term $NHV_{vg}$ incorrectly references paragraph (l)(4) and should instead reference (k)(4).	Amend the reference in the equation term $NHV_{vg}$ in 40 CFR 63.670(d)(2) from (l)(4) to (k)(4).

TABLE 2—SUMMARY OF CORRECTIONS TO NOVEMBER 2018 RULE—Continued

Provision	Issue	Final revision
<b>Refinery MACT 2</b>		
Table 4 to Subpart UUU, Item 9.c. “XRF procedure in appendix A to this subpart 1; . . .”.	The “1” should be superscripted as it is intended to identify footnote 1.	Amend Item 9.c. of Table 4 to Subpart UUU to read. “XRF procedure in appendix A to this subpart; <sup>1</sup> . . .”.

#### IV. Summary of Cost, Environmental, and Economic Impacts

As described in section III of this preamble, the EPA is not revising the 2015 Rule requirements for: (1) The work practice standards for PRDs; (2) the work practice standards for emergency flaring events; (3) the assessment of risk as modified based on implementation of these PRD and emergency flaring work practice standards; or (4) the provision allowing refineries to reduce the frequency of fenceline monitoring at sampling locations that consistently record benzene concentrations below 0.9 µg/m<sup>3</sup>. In this action, the EPA is finalizing two clarifying amendments which were included in the proposed notice of reconsideration. These amendments are not expected to have any cost, environmental, or economic impacts. Therefore, the burden estimates and economic impact analysis associated with the December 2015 rule (available in Docket ID No. EPA–HQ–OAR–2010–0682) have not been altered as a result of this action. We note that in the November 2018 rule, the EPA revised the requirements for the alternative water overflow provisions for DCUs. A discussion of the cost, environmental, and economic impacts of the amendments for the water overflow provisions for DCUs were included in the April 2018 proposal and the November 2018 rule.

#### V. Statutory and Executive Order Reviews

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

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

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

##### B. Executive Order 13771: Reducing Regulation 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 at 40 CFR part 63, subparts CC and UUU, and has assigned OMB control numbers 2060–0340 and 2060–0554. The revisions adopted in this action are clarifications and technical corrections that do not affect the estimated burden of the existing rule. Therefore, we have not revised the information collection request for the existing 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 rule revisions being made through this action consist of clarifications and technical corrections which do not change the expected economic impact analysis performed for the December 2015 rule. 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 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 effect 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 environmental health or safety risks addressed by this action do not present a disproportionate risk to children. The actions taken in this rulemaking are technical clarifications and corrections and they do not affect risk for any populations.

##### 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 actions taken in this rulemaking are technical clarifications and corrections and they do not affect the risk for any populations.

*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 14, 2020.

**Andrew R. Wheeler,**  
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency is amending 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.*

**Subpart CC—National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries**

■ 2. Section 63.640 is amended by revising paragraph (p)(2) to read as follows:

**§ 63.640 Applicability and designation of affected source.**

\* \* \* \* \*

(p) \* \* \*

(2) Equipment leaks that are also subject to the provisions of 40 CFR part 60, subpart GGGa, are required to comply only with the provisions specified in 40 CFR part 60, subpart GGGa, except that pressure relief devices in organic HAP service must

only comply with the requirements in § 63.648(j).

\* \* \* \* \*

■ 3. Section 63.641 is amended by revising the definition of “Reference control technology for storage vessels” to read as follows:

**§ 63.641 Definitions.**

\* \* \* \* \*

*Reference control technology for storage vessels* means either:

(1) For Group 1 storage vessels complying with § 63.660:

(i) An internal floating roof, including an external floating roof converted to an internal floating roof, meeting the specifications of §§ 63.1063(a)(1)(i), (a)(2), and (b) and 63.660(b)(2);

(ii) An external floating roof meeting the specifications of §§ 63.1063(a)(1)(ii), (a)(2), and (b) and 63.660(b)(2); or

(iii) [Reserved]

(iv) A closed-vent system to a control device that reduces organic HAP emissions by 95 percent, or to an outlet concentration of 20 parts per million by volume (ppmv).

(v) For purposes of emissions averaging, these four technologies are considered equivalent.

(2) For all other storage vessels:

(i) An internal floating roof meeting the specifications of § 63.119(b) of subpart G except for § 63.119(b)(5) and (6);

(ii) An external floating roof meeting the specifications of § 63.119(c) of subpart G except for § 63.119(c)(2);

(iii) An external floating roof converted to an internal floating roof meeting the specifications of § 63.119(d) of subpart G except for § 63.119(d)(2); or

(iv) A closed-vent system to a control device that reduces organic HAP emissions by 95 percent, or to an outlet concentration of 20 parts per million by volume.

(v) For purposes of emissions averaging, these four technologies are considered equivalent.

\* \* \* \* \*

■ 4. Section 63.643 is amended by revising paragraph (c)(1)(v) to read as follows:

**§ 63.643 Miscellaneous process vent provisions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) If, after applying best practices to isolate and purge equipment served by a maintenance vent, none of the applicable criterion in paragraphs (c)(1)(i) through (iv) of this section can be met prior to installing or removing a blind flange or similar equipment blind,

the pressure in the equipment served by the maintenance vent is reduced to 2 psig or less. Active purging of the equipment may be used provided the equipment pressure at the location where purge gas is introduced remains at 2 psig or less.

\* \* \* \* \*

■ 5. Section 63.648 is amended by revising paragraphs (j) introductory text and (j)(2)(i) through (iii) to read as follows:

**§ 63.648 Equipment leak standards.**

\* \* \* \* \*

(j) Except as specified in paragraph (j)(4) of this section, the owner or operator must comply with the requirements specified in paragraphs (j)(1) and (2) of this section for pressure relief devices, such as relief valves or rupture disks, in organic HAP gas or vapor service instead of the pressure relief device requirements of § 60.482–4 of this chapter, § 60.482–4a of this chapter, or § 63.165, as applicable. Except as specified in paragraphs (j)(4) and (5) of this section, the owner or operator must also comply with the requirements specified in paragraph (j)(3) of this section for all pressure relief devices in organic HAP service.

\* \* \* \* \*

(2) \* \* \*

(i) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter, or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(ii) If the pressure relief device includes a rupture disk, either comply with the requirements in paragraph (j)(2)(i) of this section (not replacing the rupture disk) or install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator must conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(iii) If the pressure relief device consists only of a rupture disk, install a replacement disk as soon as practicable

after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator may not initiate startup of the equipment served by the rupture disk until the rupture disc is replaced. The owner or operator must conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter, or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

■ 6. Section 63.655 is amended by revising paragraphs (f)(1)(iii), (f)(2), adding a paragraph (h)(10) subject heading, and revising paragraph (i)(11) introductory text to read as follows:

**§ 63.655 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(iii) For miscellaneous process vents controlled by control devices required to be tested under §§ 63.645 and 63.116(c), performance test results including the information in paragraphs (f)(1)(iii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.645 and that the test conditions are representative of current operating conditions. If the performance test is submitted electronically through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) in accordance with § 63.655(h)(9), the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

(A) The percentage of reduction of organic HAP's or TOC, or the outlet concentration of organic HAP's or TOC (parts per million by volume on a dry basis corrected to 3 percent oxygen), determined as specified in § 63.116(c) of subpart G of this part; and

(B) The value of the monitored parameters specified in table 10 of this subpart, or a site-specific parameter approved by the permitting authority,

averaged over the full period of the performance test.

\* \* \* \* \*

(2) If initial performance tests are required by §§ 63.643 through 63.653, the Notification of Compliance Status report shall include one complete test report for each test method used for a particular source. On and after February 1, 2016, for data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test, you must submit the results in accordance with § 63.655(h)(9) by the date that you submit the Notification of Compliance Status, and you must include the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted in the Notification of Compliance Status. All other performance test results must be reported in the Notification of Compliance Status.

(i) For additional tests performed using the same method, the results specified in paragraph (f)(1) of this section shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(iii) Performance tests are required only if specified by §§ 63.643 through 63.653 of this subpart. Initial performance tests are required for some kinds of emission points and controls. Periodic testing of the same emission point is not required.

\* \* \* \* \*

(h) \* \* \*

(10) *Extensions to electronic reporting deadlines.*

\* \* \* \* \*

(i) \* \* \*

(11) For each pressure relief device subject to the pressure release management work practice standards in § 63.648(j)(3), the owner or operator shall keep the records specified in paragraphs (i)(11)(i) through (iii) of this section. For each pilot-operated pressure relief device subject to the requirements at § 63.648(j)(4)(ii), the

owner or operator shall keep the records specified in paragraph (i)(11)(iv) of this section.

\* \* \* \* \*

■ 7. Section 63.660 is amended by revising paragraph (i)(2)(iii) to read as follows:

**§ 63.660 Storage vessel provisions.**

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(iii) Use a cap, blind flange, plug, or a second valve for an open-ended valve or line following the requirements specified in § 60.482–6(a)(2), (b), and (c).

\* \* \* \* \*

■ 8. Section 63.670 is amended by revising paragraph (d)(2) to read as follows:

**§ 63.670 Requirements for flare control devices.**

\* \* \* \* \*

(d) \* \* \*

(2)  $V_{tip}$  must be less than 400 feet per second and also less than the maximum allowed flare tip velocity ( $V_{max}$ ) as calculated according to the following equation. The owner or operator shall monitor  $V_{tip}$  using the procedures specified in paragraphs (i) and (k) of this section and monitor gas composition and determine  $NHV_{vg}$  using the procedures specified in paragraphs (j) and (l) of this section.

$$\log_{10}(V_{max}) = \frac{NHV_{vg} + 1,212}{850}$$

Where:

$V_{max}$  = Maximum allowed flare tip velocity, ft/sec.

$NHV_{vg}$  = Net heating value of flare vent gas, as determined by paragraph (k)(4) of this section, Btu/scf.

1,212 = Constant.

850 = Constant.

\* \* \* \* \*

**Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units**

■ 9. Revise Table 4 to Subpart UUU of Part 63 to read as follows:

Table 4 to Subpart UUU of Part 63—Requirements for Performance Tests for Metal HAP Emissions From Catalytic Cracking Units

As stated in §§ 63.1564(b)(2) and 63.1571(a)(5), you shall meet each requirement in the following table that applies to you.

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
1. Any .....	<p>a. Select sampling port's location and the number of traverse ports.</p> <p>b. Determine velocity and volumetric flow rate.</p> <p>c. Conduct gas molecular weight analysis.</p> <p>d. Measure moisture content of the stack gas.</p> <p>e. If you use an electrostatic precipitator, record the total number of fields in the control system and how many operated during the applicable performance test.</p> <p>f. If you use a wet scrubber, record the total amount (rate) of water (or scrubbing liquid) and the amount (rate) of make-up liquid to the scrubber during each test run.</p>	<p>Method 1 or 1A in appendix A–1 to part 60 of this chapter.</p> <p>Method 2, 2A, 2C, 2D, or 2F in appendix A–1 to part 60 of this chapter, or Method 2G in appendix A–2 to part 60 of this chapter, as applicable.</p> <p>Method 3, 3A, or 3B in appendix A–2 to part 60 of this chapter, as applicable.</p> <p>Method 4 in appendix A–3 to part 60 of this chapter.</p>	Sampling sites must be located at the outlet of the control device or the outlet of the regenerator, as applicable, and prior to any releases to the atmosphere.
2. Subject to the NSPS for PM in 40 CFR 60.102 and not elect § 60.100(e).	<p>a. Measure PM emissions.</p> <p>b. Compute coke burn-off rate and PM emission rate (lb/1,000 lb of coke burn-off).</p> <p>c. Measure opacity of emissions.</p>	<p>Method 5, 5B, or 5F (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for unit with wet scrubber.</p> <p>Equations 1, 2, and 3 of § 63.1564 (if applicable).</p> <p>Continuous opacity monitoring system .....</p>	<p>You must maintain a sampling rate of at least 0.15 dry standard cubic meters per minute (dscm/min) (0.53 dry standard cubic feet per minute (dscf/min)).</p> <p>You must collect opacity monitoring data every 10 seconds during the entire period of the Method 5, 5B, or 5F performance test and reduce the data to 6-minute averages.</p>
3. Subject to the NSPS for PM in 40 CFR 60.102a(b)(1) or elect § 60.100(e), electing the PM for coke burn-off limit.	<p>a. Measure PM emissions.</p> <p>b. Compute coke burn-off rate and PM emission rate (lb/1,000 lb of coke burn-off).</p>	<p>Method 5, 5B, or 5F (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for unit with wet scrubber.</p> <p>Equations 1, 2, and 3 of § 63.1564 (if applicable).</p>	You must maintain a sampling rate of at least 0.15 dscm/min (0.53 dscf/min).

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
	c. Establish site-specific limit if you use a COMS.	Continuous opacity monitoring system .....	If you elect to comply with the site-specific opacity limit in § 63.1564(b)(4)(i), you must collect opacity monitoring data every 10 seconds during the entire period of the Method 5, 5B, or 5F performance test. For site specific opacity monitoring, reduce the data to 6-minute averages; determine and record the average opacity for each test run; and compute the site-specific opacity limit using Equation 4 of § 63.1564.
4. Subject to the NSPS for PM in 40 CFR 60.102a(b)(1) or elect § 60.100(e).	a. Measure PM emissions.	Method 5, 5B, or 5F (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for unit with wet scrubber.	You must maintain a sampling rate of at least 0.15 dscm/min (0.53 dscf/min).
5. Option 1a: Elect NSPS subpart J requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 2 of this table.		
6. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 3 of this table.		
7. Option 1c: Elect NSPS requirements for PM concentration, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 4 of this table.		
8. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 3 of this table.		
9. Option 3: Ni lb/hr limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Measure concentration of Ni. b. Compute Ni emission rate (lb/hr). c. Determine the equilibrium catalyst Ni concentration.	Method 29 (40 CFR part 60, appendix A–8) Equation 5 of § 63.1564.  XRF procedure in appendix A to this subpart; <sup>1</sup> or EPA Method 6010B or 6020 or EPA Method 7520 or 7521 in SW–8462; or an alternative to the SW–846 method satisfactory to the Administrator.	You must obtain 1 sample for each of the 3 test runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 1 of § 63.1571, if applicable.
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 6 and 7 of § 63.1564 using data from continuous opacity monitoring system, gas flow rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the average opacity from all the 6-minute averages for each test run. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate for each test run.

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
10. Option 4: Ni per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	<p>a. Measure concentration of Ni.</p> <p>b. Compute Ni emission rate (lb/1,000 lb of coke burn-off).</p> <p>c. Determine the equilibrium catalyst Ni concentration.</p> <p>d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.</p> <p>e. Record the catalyst addition rate for each test and schedule for the 10-day period prior to the test.</p>	<p>Method 29 (40 CFR part 60, appendix A-8). Equations 1 and 8 of §63.1564.</p> <p>See item 9.c. of this table . . . . .</p> <p>i. Equations 9 and 10 of §63.1564 with data from continuous opacity monitoring system, coke burn-off rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.</p>	<p>You must obtain 1 sample for each of the 3 test runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of §63.1571, if applicable.</p> <p>(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the average opacity from all the 6-minute averages for each test run.</p> <p>(2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow rate as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate for each test run.</p>
11. If you elect item 5 Option 1b in Table 1, item 7 Option 2 in Table 1, item 8 Option 3 in Table 1, or item 9 Option 4 in Table 1 of this subpart and you use continuous parameter monitoring systems.	<p>a. Establish each operating limit in Table 2 of this subpart that applies to you.</p> <p>b. Electrostatic precipitator or wet scrubber: Gas flow rate.</p> <p>c. Electrostatic precipitator: Total power (voltage and current) and secondary current.</p>	<p>Data from the continuous parameter monitoring systems and applicable performance test methods.</p> <p>i. Data from the continuous parameter monitoring systems and applicable performance test methods.</p> <p>i. Data from the continuous parameter monitoring systems and applicable performance test methods.</p>	<p>(1) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial performance test; determine and record the average gas flow rate for each test run.</p> <p>(2) You must determine and record the 3-hr average gas flow rate from the test runs. Alternatively, before August 1, 2017, you may determine and record the maximum hourly average gas flow rate from all the readings.</p> <p>(1) You must collect voltage, current, and secondary current monitoring data every 15 minutes during the entire period of the performance test; and determine and record the average voltage, current, and secondary current for each test run. Alternatively, before August 1, 2017, you may collect voltage and secondary current (or total power input) monitoring data every 15 minutes during the entire period of the initial performance test.</p> <p>(2) You must determine and record the 3-hr average total power to the system for the test runs and the 3-hr average secondary current from the test runs. Alternatively, before August 1, 2017, you may determine and record the minimum hourly average voltage and secondary current (or total power input) from all the readings.</p>



For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
	d. Electrostatic precipitator or wet scrubber: Equilibrium catalyst Ni concentration.	Results of analysis for equilibrium catalyst Ni concentration.	You must determine and record the average equilibrium catalyst Ni concentration for the 3 runs based on the laboratory results. You may adjust the value using Equation 1 or 2 of § 63.1571 as applicable.
	e. Wet scrubber: Pressure drop (not applicable to non-venturi scrubber of jet ejector design).	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect pressure drop monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the average pressure drop for each test run. (2) You must determine and record the 3-hr average pressure drop from the test runs. Alternatively, before August 1, 2017, you may determine and record the minimum hourly average pressure drop from all the readings.
	f. Wet scrubber: Liquid-to-gas ratio.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect gas flow rate and total water (or scrubbing liquid) flow rate monitoring data every 15 minutes during the entire period of the initial performance test; determine and record the average gas flow rate for each test run; and determine the average total water (or scrubbing liquid) flow for each test run. (2) You must determine and record the hourly average liquid-to-gas ratio from the test runs. Alternatively, before August 1, 2017, you may determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate from all the readings. (3) You must determine and record the 3-hr average liquid-to-gas ratio. Alternatively, before August 1, 2017, you may determine and record the minimum liquid-to-gas ratio.
	g. Alternative procedure for gas flow rate.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect air flow rate monitoring data or determine the air flow rate using control room instrumentation every 15 minutes during the entire period of the initial performance test. (2) You must determine and record the 3-hr average rate of all the readings from the test runs. Alternatively, before August 1, 2017, you may determine and record the hourly average rate of all the readings. (3) You must determine and record the maximum gas flow rate using Equation 1 of § 63.1573.

<sup>1</sup> Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure).

<sup>2</sup> EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, and EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Revision 5 (April 1998). The SW-846 and Updates (document number 955-001-00000-1) are available for purchase from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, (202) 512-1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. Copies may be inspected at the EPA Docket Center, William Jefferson Clinton (WJC) West Building (Air Docket), Room 3334, 1301 Constitution Ave. NW, Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

[EPA-HQ-OAR-2019-0208; FRL-10006-06-OAR]

RIN 2060-AU17

## National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production 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 Solvent Extraction for Vegetable Oil Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). Based on the results of the U.S. Environmental Protection Agency's (EPA's) risk review, the Agency is finalizing the decision that risks due to emissions of air toxics from this source category are acceptable and that the current NESHAP provides an ample margin of safety to protect public health. Under the technology review, the EPA is finalizing the decision that there are no developments in practices, processes, or control technologies that necessitate revision of the standards. Therefore, the EPA is finalizing no revisions to the numerical emission limits based on the risk and technology reviews. We are taking final action to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM), including removing general exemptions for periods of SSM, adding alternative work practice standards for periods of initial startup for new or significantly modified sources, and making other minor clarifications or corrections. The EPA is also taking final action to add provisions for electronic reporting of certain notifications and reports and performance test results; and make other minor clarifications and corrections. These final amendments will result in improved compliance and implementation of the rule.

**DATES:** This final rule is effective on March 18, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2019-0208. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, e.g., Confidential Business Information

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

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Mr. Bill Schrock, Natural Resources Group, 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) 541-5032; fax number: (919) 541-0516; and email address: [schrock.bill@epa.gov](mailto:schrock.bill@epa.gov). For specific information regarding the risk modeling methodology, contact Mr. Matthew Woody, 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) 541-1535; fax number: (919) 541-0840; and email address: [woody.matthew@epa.gov](mailto:woody.matthew@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact Ms. Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-7027; and email address: [malave.maria@epa.gov](mailto:malave.maria@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  
CFR Code of Federal Regulations  
EPA Environmental Protection Agency  
HAP hazardous air pollutant(s)  
HI hazard index

HQ hazard quotient  
ICR Information Collection Request  
km kilometer  
MACT maximum achievable control technology  
MIR maximum individual risk  
NAICS North American Industry Classification System  
NESHAP national emission standards for hazardous air pollutants  
NTTAA National Technology Transfer and Advancement Act  
OMB Office of Management and Budget  
PRA Paperwork Reduction Act  
REL reference exposure level  
RFA Regulatory Flexibility Act  
RTR residual risk and technology review  
SSM startup, shutdown, and malfunction the Court United States Court of Appeals for the District of Columbia Circuit  
TOSHI target organ-specific hazard index  
tpy tons per year  
UMRA Unfunded Mandates Reform Act  
VCS voluntary consensus standards

*Background information.* On June 27, 2019, the EPA proposed revisions to the Solvent Extraction for Vegetable Oil Production NESHAP in conjunction with our RTR for the Solvent Extraction for Vegetable Oil Production source category (84 FR 30812). 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 *Summary of Public Comments and Responses for the Risk and Technology Review for Solvent Extraction For Vegetable Oil Production*, in Docket ID No. EPA-HQ-OAR-2019-0208. 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 Solvent Extraction for Vegetable Oil Production source category and how does the NESHAP regulate HAP emissions from the source category?
  - C. What changes did we propose for the Solvent Extraction for Vegetable Oil Production source category in our June 27, 2019, RTR proposal?
- III. What is included in this final rule?
  - A. What are the final rule amendments based on the risk review for the Solvent

- Extraction for Vegetable Oil Production source category?
- B. What are the final rule amendments based on the technology review for the Solvent Extraction for Vegetable Oil Production source category?
- C. What are the final rule amendments addressing emissions during periods of SSM?
- D. What other changes have been made to the NESHAP?
- E. What are the effective and compliance dates of the standards?
- IV. What is the rationale for our final decisions and amendments for the Solvent Extraction for Vegetable Oil Production source category?
- A. Residual Risk Review for the Solvent Extraction for Vegetable Oil Production Source Category
- B. Technology Review for the Solvent Extraction for Vegetable Oil Production Source Category
- C. SSM for the Solvent Extraction for Vegetable Oil Production Source Category
- D. Technical amendments to the MACT standards for the Solvent Extraction for Vegetable Oil Production Source Category
- 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 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.* 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 <sup>a</sup> code
Flour Milling .....	Solvent Extraction for Vegetable Oil Production .....	311211
Wet Corn Milling .....		311221
Fats and Oils Refining and Blending .....		311225
Other Animal Food Manufacturing .....		311119
Soybean and Other Oilseed Processing .....		311224
Fats and Oils Refining and Blending .....		311225

<sup>a</sup>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/solvent-extraction-vegetable-oil-production-national-emission>. Following publication in the **Federal Register**, the EPA will post the **Federal**

**Register** version and key technical documents at this same website.

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

### C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by May 18, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

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

## II. Background

### A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. “Major sources” are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as 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).<sup>1</sup> For more information on the statutory authority for this rule, see 84 FR 30812, June 27, 2019.

### B. What is the Solvent Extraction for Vegetable Oil Production source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Solvent Extraction for Vegetable Oil Production NESHAP on April 12, 2001 (66 FR 19006). The standards are codified at 40 CFR part 63, subpart GGGG. As promulgated in 2001 and further amended on April 5, 2002 (67 FR 16317), and September 1, 2004 (69 FR 53338), the NESHAP regulates HAP emissions from solvent extraction for vegetable oil production processes at a facility that is a major source of HAP emissions. The affected source is each vegetable oil production process. A vegetable oil production process means the equipment comprising a continuous process for producing crude vegetable oil and meal products, including specialty soybean products, in which oil is removed from oilseeds listed in Table

1 of 40 CFR 63.2840 through direct contact with an organic solvent. Process equipment typically includes the following components: oilseed preparation operations (including conditioning, drying, dehulling, and cracking), solvent extractors, desolventizer-toasters, meal dryers, meal coolers, meal conveyor systems, oil distillation units, solvent evaporators and condensers, solvent recovery system (also referred to as a mineral oil absorption system), vessels storing solvent-laden materials, and crude meal packaging and storage vessels. A vegetable oil production process does not include vegetable oil refining operations (including operations such as bleaching, hydrogenation, and deodorizing) and operations that engage in additional chemical treatment of crude soybean meals produced in specialty desolventizer units (including operations such as soybean isolate production). The source category covered by this MACT standard currently includes 89 facilities.

The primary HAP emitted from vegetable oil production processes is n-hexane. The EPA does not consider n-hexane classifiable as a human carcinogen. However, short-term exposure to n-hexane can cause reactions such as irritation, dizziness, headaches, and nausea. Long-term exposure can cause permanent nerve damage.

The current NESHAP controls facility-wide n-hexane emissions by setting emission limitations based on the number of gallons of HAP lost per ton of oilseeds processed, expressed as oilseed solvent loss ratios. Facilities demonstrate compliance by calculating a compliance ratio comparing the actual HAP loss to the allowable HAP loss for the previous 12 operating months. Allowable HAP loss is based on the oilseed solvent loss ratios provided in Table 1 of 40 CFR 63.2840 of the rule for new and existing sources. Compliance is demonstrated when the facility’s calculated compliance ratio is less than or equal to 1.00 (*i.e.*, the actual HAP loss is no greater than the calculated allowable HAP loss). Determination of compliance with the requirements of the Solvent Extraction for Vegetable Oil Production NESHAP requires the facility to keep records of the amount of n-hexane purchased, used, and recovered from the oilseed extraction process, the amount of oilseed processed, and the volume fraction of each HAP exceeding 1 percent in the extraction solvent used. Facilities may also adjust their solvent loss to account for cases where solvent is routed through a closed vent system

<sup>1</sup> The Court 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.”).

to a control device that is used to reduce emissions to meet the standard.

*C. What changes did we propose for the Solvent Extraction for Vegetable Oil Production source category in our June 27, 2019, RTR proposal?*

On June 27, 2019, the EPA published a proposed rule in the **Federal Register** for the Solvent Extraction for Vegetable Oil Production NESHAP, 40 CFR part 63, subpart GGGG, that took into consideration the RTR analyses. In the proposed rule, we proposed that the risks from the source category are acceptable and the current standards provide an ample margin of safety to protect public health. In addition, pursuant to the technology review for the Solvent Extraction for Vegetable Oil Production source category, we proposed no revisions to the current standards based on these analyses.

We proposed revisions to the SSM provisions of the standards to ensure that they are consistent with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008). 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 therefore proposed that the standards would apply at all times, including during startups, shutdowns, and malfunctions (see 40 CFR 63.2840(a) and Table 1 to 40 CFR 63.2870 (General Provisions Applicability Table). Additionally, we proposed to remove requirements that allowed sources to previously designate a source operating status period as a "malfunction period" and exclude data collected during the "malfunction period" when determining compliance with the emission standards.<sup>2</sup> Under the

proposed rule, sources that continue to operate must instead meet the emission standard requirements for either a normal operating period or the work practice standards for an initial startup period (if applicable) in 40 CFR 63.2850 and Table 1 of 40 CFR 63.2850. In proposing the revised standards, the EPA considered whether to set separate standards for startup and shutdown periods, but only found that separate standards were necessary for initial startup periods for new or significantly modified sources. For periods of initial startup following new construction or significant modification, we proposed work practice standards and a requirement to establish and follow site-specific operating ranges for temperature and vacuum for the desolventizing and oil distillation units associated with solvent recovery, as well as associated recordkeeping and reporting requirements (e.g., initial startup report) for these periods.

We proposed to require electronic reporting of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). We also proposed minor clarifications and corrections to five definitions (i.e., "Compliance ratio," "Nonoperating period," "Normal operating period," "Operating month," and "Hazardous air pollutant (HAP)") and to 40 CFR 63.2840(a)(1) and (b)(1), 40 CFR 63.2853(a)(2), 40 CFR 63.2855(a)(3), and Table 1 of 40 CFR 63.2850. Refer to section IV.D of the June 27, 2019, proposal preamble for further discussion of these proposed amendments and the EPA's rationale for these changes (84 FR 60825).

### 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 Solvent Extraction for Vegetable Oil Production source category. This action also finalizes other changes to the NESHAP, including revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), provisions for electronic reporting of initial notifications, initial startup

reports, annual compliance certifications, deviation reports, and performance test reports; and other minor editorial and technical changes. This action reflects several changes to the proposed rule in consideration of comments received during the public comment period as described in section IV of this preamble.

*A. What are the final rule amendments based on the risk review for the Solvent Extraction for Vegetable Oil Production source category?*

This section describes the final risk determination for the Solvent Extraction for Vegetable Oil Production NESHAP being promulgated pursuant to CAA section 112(f). The EPA proposed no changes to the Solvent Extraction for Vegetable Oil Production NESHAP based on the risk review conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks from this source category are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Section IV.A.3 of this preamble provides a summary of key comments we received regarding the risk review and our responses to those comments.

*B. What are the final rule amendments based on the technology review for the Solvent Extraction for Vegetable Oil Production source category?*

The EPA is finalizing the technology review as proposed. 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 SSM?*

We are finalizing the proposed amendments to the Solvent Extraction for Vegetable Oil Production NESHAP to remove and revise provisions related to SSM. As detailed in section IV.D of the proposal preamble (84 FR 30825), the final amendments to the Solvent Extraction for Vegetable Oil Production NESHAP require that the standards apply at all times (see 40 CFR 63.2840(a) and Table 1 to 40 CFR 63.2870 (General Provisions applicability table), consistent with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008).

We are finalizing that the emission standards for normal operation apply at all times, except for periods of initial

<sup>2</sup> The 2001 NESHAP allowed for facilities to determine compliance based on the distinct categorized operating status of the facility (normal operating, nonoperating, initial startup, malfunction, or exempt) during a compliance period, as defined in Table 1 of 40 CFR 63.2853. Existing and new sources operating during a malfunction period could either meet the compliance requirements for normal operation periods in 40 CFR 63.2850 and Table 1 of 40 CFR 63.2850 or the requirements for malfunction periods subject to 40 CFR 63.2850(e)(2) and Table 1 of 40 CFR 63.2850 (for which no limits or work practices applied). Sources operating during a malfunction period were not required to determine compliance using data recorded for the malfunction period. We proposed to remove the option for facilities to categorize the operating period as a malfunction period and to remove the option to meet the requirements for malfunction periods subject to 40 CFR 63.2850(e)(2) and Table 1 of 40

CFR 63.2850, such that the standards apply at all times. Sources that continue to operate during a malfunction must continue to meet the general duty requirements at 40 CFR 63.2840(g). The term "malfunction period" is retained in the rule only as it applies to facilities prior to September 15, 2020.

startup for new and significantly modified sources, as described below in this section and in section IV.C of this preamble. For periods of initial startup for new or significantly modified sources, we are finalizing work practice standards, including operation of the mineral oil absorption system and solvent condensers at all times during the initial startup period, and a requirement to establish and follow site-specific operating ranges for temperature and vacuum for the desolventizing and oil distillation units associated with solvent recovery, as well as associated recordkeeping and reporting requirements (e.g., initial startup report) for these periods. Facilities will continue to have the option to meet the requirements for normal operating periods in Table 1 of 40 CFR 63.2850. The EPA is also finalizing the definition of “initial startup period” and the requirements of 40 CFR 62.2850(c)(2) and (d)(2) to clarify that the end of the initial startup period occurs when the plant meets and maintains steady-state operations. Steady-state is defined as operating at or above 90 percent of the extractor nominal design production rate or at or above 90 percent of the production rate in the plant’s permit for 15 consecutive days. Any initial startup period may not exceed 6 calendar months after startup for new or reconstructed sources or 3 calendar months after startup for modified sources.

As discussed in section IV.D of the June 27, 2019, proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. We noted that our interpretation regarding CAA section 112 not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards has been upheld as reasonable by the Court in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (2016). The EPA further explained that, “EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions” (84 FR 30827).

While we requested comment on work practice standards during periods of malfunction, and received some information in support of such standards, we did not receive sufficient information on which to base a

malfunction standard. As further explained at proposal, “[i]n 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 preventive 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 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” (84 FR 30828).

For these reasons, we are not setting separate standards for periods of malfunction. Under the final rule, sources that experience an unscheduled shutdown as a result of a malfunction, continue to operate during a malfunction (including the period reasonably necessary to correct the malfunction), or start up after a shutdown resulting from a malfunction must instead meet the emission standard requirements for either a normal operating period or the work practice standards for an initial startup period (if a new or significantly modified source) in 40 CFR 63.2850 and Table 1 of 40 CFR 63.2850. Although we did not propose and are not finalizing work practice standards for periods of malfunction, we are finalizing revisions to deviation reporting to account for one-time malfunction events in which the potential solvent loss could result in a deviation for one or more consecutive monthly compliance ratio determinations. Specifically, we have revised the final rule to include a requirement that facilities flag and provide an explanation for any deviation from the compliance ratio for which a deviation report is being submitted for more than one consecutive month (i.e., include a reference to the original date and

reporting of the deviation). Although a facility would need to retain records of any deviation and the corrective action(s) performed, no additional corrective action would be required at the time the 12-month compliance ratio is officially exceeded in subsequent months if the facility demonstrates the exceedance is from a prior malfunction that has been corrected.

As is explained in more detail below, we are finalizing revisions related to requirements that apply during periods of SSM. We eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made changes to the rule to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. Refer to sections III.C.1 through III.C.6 of this preamble for a detailed discussion of the final amendments.

#### 1. 40 CFR 63.2840 General Duty

We are finalizing as proposed revisions to the General Provisions applicability table (Table 1 to 40 CFR 63.2870) entry for 40 CFR 63.6(e)(1)(i) by changing the “Yes” in column 4 to a “No.” The EPA is instead adding general duty regulatory text at 40 CFR 63.2840(g) to reflect the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The general duty to minimize emissions continues to apply during periods of malfunction and sources must still address malfunctions expeditiously in order to maintain any affected source, including associated air pollution control equipment and monitoring equipment, and minimize emissions. The EPA is also revising the General Provisions applicability table (Table 1 to 40 CFR 63.2870) entry for 40 CFR 63.6(e)(1)(ii) by changing the “Yes” in column 4 to a “No” to remove 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 63.2840(g).

#### 2. SSM Plan

As proposed, the EPA is revising the General Provisions applicability table (Table 1 to 40 CFR 63.2870) entries for 40 CFR 63.6(e)(3)(i) through (e)(3)(ii), 40 CFR 63.6(e)(3)(v) through (vii), and 40 CFR 63.6(e)(3)(viii) and (ix) by changing the “Yes” in column 4 to a “No.” The EPA is also revising 40 CFR 63.2852, which cross-references the requirements of 40 CFR 63.6(e)(3). The final amendments remove requirements related to the SSM plan.

### 3. Compliance With Standards

The EPA is revising the General Provisions applicability table (Table 1 to 40 CFR 63.2870) entry for 40 CFR 63.6(f)(1) by revising the text in column 4 and removing the text in column 5 to clarify that the SSM exemption previously applied but will not apply going forward.

### 4. 40 CFR 63.2853 Performance Testing

We are also finalizing a revision to the performance testing requirements. The EPA is revising the General Provisions applicability table (Table 1 to 40 CFR 63.2870) entry for 40 CFR 63.7(e)(1) by changing the “Yes” in column 4 to a “No,” and adding a revised performance testing requirement at 40 CFR 63.2853(a)(5)(i)(A). The final performance testing provisions prohibit performance testing for purposes of demonstrating compliance during startup, shutdown, or malfunction because these conditions are not representative of normal operating periods. The final rule also requires that operators maintain records to document that operating conditions during the test represent normal operations.

### 5. 40 CFR 63.2862 Recordkeeping

The EPA is revising the General Provisions applicability table (Table 1 to 40 CFR 63.2870) entry for 40 CFR 63.10(b)(2)(i) by changing the “Yes” in column 4 to a “No,” and is adding recordkeeping requirements to 40 CFR 63.2862(f). The final revisions require owners or operators of sources subject to a work practice standard during initial startup times to report a description and dates of the initial startup period, the reason it qualifies as an initial startup period, an estimate of the solvent loss in gallons for the duration of the initial startup, and the nominal design rate and operating rate of the extractor or the permitted and actual production rates for the duration of the initial startup period. The final revisions also require facilities to record information including the measured temperature and pressure for desolventizing and oil distillation units; an indication that the mineral oil absorption system was operating at all times; and (3) an indication that the solvent condensers were operating at all times.

The EPA is revising the General Provisions applicability table (Table 1 to 40 CFR 63.2870) entry for 40 CFR 63.10(b)(2)(ii) by changing the “Yes” in column 4 to a “No.” The final rule includes recordkeeping requirements for malfunctions in 40 CFR 63.2862(g), including any “failure to meet an

applicable standard” (including any deviation from the emissions standards of 40 CFR 63.2840 or the work practice standards for periods of initial startup). Source owners or operators must record the date and duration of the “failure.” We have revised the final rule requirements from proposal to clarify how to designate the date a deviation occurred and the duration of the deviation. For deviations from the compliance ratio, the date of the deviation is the date the compliance ratio determination is made, and the duration of the deviation is the length of time taken to address the cause of the deviation (including the duration of any malfunction) and to return the affected unit(s) to its normal or usual manner of operation. For deviations from the work practice standard during the initial startup period, the date of the deviation is the date when the facility fails to comply with any of the work practice standards in 40 CFR 63.2840(h), and the duration of the deviation is the length of time taken to return to the work practice standards. We have also removed the requirement to record and report the time of the deviation as described in section IV.C of this preamble.

The EPA is adding to 40 CFR 63.2862(g) a requirement that source owners or operators keep records that include a statement of the cause of each deviation (including unknown cause, if applicable), 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 when the standard is not met, and a description of the method used to estimate the emissions.

The EPA is revising the General Provisions applicability table (Table 1 to 40 CFR 63.2870) entry for 40 CFR 63.10(b)(2)(iv) and 40 CFR 63.10(b)(2)(v) by changing the “Yes” in column 4 to a “No” to remove requirements related to the SSM plan. The final rule includes a requirement to record actions to minimize emissions and record corrective actions in 40 CFR 63.2862(g).

### 6. 40 CFR 63.2861 Reporting

To replace the SSM reporting requirements, the EPA is eliminating the periodic SSM reports in 40 CFR 63.2861(c), which were required to be submitted at the end of each calendar month of an initial startup period or malfunction period. The EPA is also removing the requirement in 40 CFR 63.2861(d) to submit an immediate report for SSM when a source failed to meet an applicable standard but did not follow the SSM plan. The EPA is

instead requiring that existing or new source owners or operators that fail to meet the applicable emission standards (including sources that experience a malfunction) or the work practice standards for initial startup periods at any time must report the information concerning such events in the deviation report, including the number, date, 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 HAP emitted over the emission requirements of 40 CFR 63.2840, and a description of the method used to estimate the emissions. For sources operating under an initial startup period, the EPA is also finalizing a provision that source owners or operators that fail to meet the work practice standard must include a description of the deviation and include the records for the initial startup period in 40 CFR 63.2862(f).

Finally, the EPA is finalizing that source owners or operators that choose to operate under an initial startup period according to 40 CFR 63.2850(c)(2) or (d)(2) must also provide an initial startup report, including a compliance certification indicating whether the source was in compliance with the work practice standard of 40 CFR 63.2840(h). The initial report must be submitted within 30 days of the end of the initial startup period.

The legal rationale and detailed changes for SSM periods that we are finalizing here are set forth in the proposed rule (see 84 FR 30825). Section IV.C of this preamble provides a summary of key comments we received on the SSM provisions and our responses.

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

This rule also finalizes, as proposed, revisions to several other NESHAP requirements. To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners and operators of facilities in the Solvent Extraction for Vegetable Oil Production source category submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports through the EPA’s CDX using the CEDRI. The initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports are required to be submitted according to the deadlines specified in 40 CFR 63.2861. We also are finalizing, as proposed, provisions that allow



facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.*, for a possible outage in the CDX or CEDRI or for a *force majeure* event in the time just prior to a report's due date, as well as the process to assert such a claim.

The EPA is finalizing several minor technical editorial changes to the rule. The EPA is finalizing several definitions in 40 CFR 63.2872 to harmonize with the removal of the SSM requirements and to clarify existing provisions. The definitions of "Compliance ratio," "Nonoperating period," "Normal operating period," and "Operating month" are revised in the final rule to clarify that we have removed malfunction periods as a distinct source operating status during which no limits or work practices applied. The definition of "Normal operating period" is also revised to clarify that this definition also applies to "normal operation."

The EPA is revising the definition of "Hazardous Air Pollutant (HAP)" as proposed to remove the reference to the date of April 12, 2001. Finally, the EPA is adding a definition for "Nonoperating month" as proposed.

The EPA is finalizing minor revisions to 40 CFR 63.2840(a)(1) and (b)(1), 40 CFR 63.2853(a)(2), and 40 CFR 63.2855(a)(3) to remove text that is redundant with the definition of "Operating month" in 40 CFR 63.2872. Finally, the EPA is revising Table 1 of 40 CFR 63.2850 to correct a typographical error in row "(a)" for malfunction periods.

The legal rationale and detailed changes for these revisions are set forth in the proposed rule (see 84 FR 30830).

#### *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 March 18, 2020.

Existing affected sources and affected sources that commenced construction or reconstruction on or before June 27, 2019, must comply with the amendments no later than 180 days after March 18, 2020. Affected sources that commence construction or reconstruction after June 27, 2019 must comply with all requirements of 40 CFR part 63, subpart GGGG, no later than the effective date of the final rule or upon startup, whichever is later. The EPA is finalizing three changes that would affect ongoing compliance requirements for the Solvent Extraction for Vegetable Oil Production NESHAP. First, for all sources, we are finalizing a requirement that initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test results be electronically submitted. Next, the EPA is finalizing changing the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods. For new or significantly modified sources, we are finalizing an option for facilities to follow new work practice standards for periods of initial startup. From our assessment of the timeframe needed for implementing the entirety of the revised requirements, the EPA proposed a period of 180 days to be the most expeditious compliance period practicable for existing affected sources or affected sources that commenced construction or reconstruction on or before June 27, 2019. No comments on the compliance period were received during the public comment period and the 180-day period is being finalized as proposed. Thus, the compliance date of the final amendments for all existing sources and new sources that commenced construction or reconstruction on or before June 27, 2019, will be September 15, 2020. The compliance date of the final amendments for new sources that commence construction or

reconstruction after June 27, 2019, will be March 18, 2020.

#### **IV. What is the rationale for our final decisions and amendments for the Solvent Extraction for Vegetable Oil Production source category?**

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries, and the EPA's responses can be found in the comment summary and response document, *Summary of Public Comments and Responses for the Risk and Technology Review for Solvent Extraction For Vegetable Oil Production*, which is available in the docket for this rulemaking.

##### *A. Residual Risk Review for the Solvent Extraction for Vegetable Oil Production Source Category*

1. What did we propose pursuant to CAA section 112(f) for the Solvent Extraction for Vegetable Oil Production 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 June 27, 2019, proposed rule for 40 CFR part 63, subpart GGGG (84 FR 30812). The results of the risk assessment for the proposal are presented briefly in Table 2 of this preamble. More detail may be found in the residual risk technical support document, *Residual Risk Assessment for the Solvent Extraction for Vegetable Oil Production Source Category in Support of the 2019 Risk and Technology Review Final Rule*, which is available in the docket for this rulemaking.

**TABLE 2—SOLVENT EXTRACTION FOR VEGETABLE OIL PRODUCTION INHALATION PROPOSED RISK ASSESSMENT RESULTS**

Number of facilities <sup>1</sup>	Maximum individual cancer risk (in 1 million) <sup>2</sup>	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI <sup>3</sup>	Maximum screening acute noncancer HQ
88 .....	Based on Actual Emissions Level				
	<1	0	0.00005	0.7 (n-hexane) .....	HQ <sub>REL</sub> = 0.7 (acrolein)
	Based on Allowable Emissions Level				
	<1	0	0.0002	2 (n-hexane) .....	N/A

<sup>1</sup> Number of facilities evaluated in the risk analysis.

<sup>2</sup> Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.

<sup>3</sup> The target organ with the highest target organ-specific hazard index (TOSHI) for the Solvent Extraction for Vegetable Oil Production source category is the nervous system (neurocognitive and neurobehavioral effects).



The results of the proposed inhalation risk assessment using actual emissions data, as shown in Table 2 of this preamble, indicate the estimated cancer maximum individual risk (MIR) is less than 1-in-1 million. At proposal, the total estimated cancer incidence from this source category was estimated to be 0.00005 excess cancer cases per year, or 1 case every 20,000 years and for allowable emissions was 0.0002 excess cancer cases per year, or 1 case every 5,000 years driven by emissions of acetaldehyde and formaldehyde. At proposal, the maximum modeled chronic noncancer TOSHI for the source category based on actual emissions was estimated to be 0.7 and, for allowable emissions, was estimated to be 2 due to emissions of n-hexane. Approximately 13 people were estimated to have exposures resulting in a TOSHI greater than 1 if exposed to allowable emissions from this source category.

As shown in Table 2 of this preamble, the worst-case acute hazard quotient (HQ) (based on the reference exposure level (REL)) at proposal was less than 1 (0.7 based on the REL for acrolein). This value is the highest HQ that is outside facility boundaries. The multipathway risk screening assessment did not identify emissions of any HAP known to be persistent and bio-accumulative in the environment; therefore, no further evaluation of multipathway risk was conducted for this source category. Further, because we did not identify environmental HAP emissions, no quantitative environmental risk screening was conducted for this source category.

We conducted an assessment of facility-wide risks. The maximum lifetime individual cancer risk posed by the 88 facilities, based on facility-wide emissions at proposal, was 5-in-1 million with cadmium, nickel, arsenic, chromium (VI), and formaldehyde emissions from facility-wide external combustion boilers driving the risk. The maximum chronic noncancer TOSHI posed by facility-wide emissions was estimated to be 0.7 (for the nervous system) driven by source category n-hexane emissions.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the risks from the Solvent Extraction for Vegetable Oil Production source category are acceptable (section IV.C.1 of proposal preamble, 84 FR 30812, June 27, 2019).

We then considered whether the existing MACT standards for this source category provide an ample margin of safety to protect public health and

whether, taking into consideration costs, energy, safety, and other relevant factors, standards are required to prevent an adverse environmental effect. In considering whether standards are required 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. We proposed that the current standards provide an ample margin of safety to protect public health and revision of the standards for the Solvent Extraction for Vegetable Oil Production source category are not required to provide an ample margin of safety to protect public health. We also proposed that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect (see section IV.B of proposal preamble, 84 FR 30812, June 27, 2019.)

## 2. How did the risk review change for the Solvent Extraction For Vegetable Oil Production source category?

We have not changed any aspect of the risk assessment since the June 27, 2019, RTR proposal for the Solvent Extraction for Vegetable Oil Production source category. We received several comments indicating that the risk assessment (1) Improperly included emissions of acetaldehyde that are not associated with the Solvent Extraction for Vegetable Oil Production source category, but are emitted from other facility processes; (2) overestimated actual emissions for certain facilities where the EPA assumed that reported volatile organic compound (VOC) emissions were n-hexane; and (3) overestimated allowable emissions for the source category based on the assumptions used to develop the MACT allowable-to-actual emissions multiplier.

As discussed in section IV.A.3 of this preamble, the inputs and assumptions in the risk assessment at proposal are likely to overestimate the risks from the Solvent Extraction for Vegetable Oil Production source category. However, the risks as modeled at proposal indicate that both the actual and allowable inhalation cancer risks to the individual most exposed are less than 1-in-1 million, well below the presumptive limit of acceptability of 100-in-1 million. The maximum chronic noncancer TOSHI due to inhalation exposures is less than 1 for actual

emissions, and 2 for MACT-allowable emissions with an estimated 13 people exposed to a TOSHI greater than 1. Although for MACT-allowable emissions, the maximum chronic noncancer TOSHI due to inhalation exposures is 2, we note that due to the inherent health protective nature of our risk assessment methods and the uncertainties in this assessment (*i.e.*, the emissions dataset, dispersion modeling, and exposure estimates), our risk estimates are conservative. For example, risk estimates for allowable emissions were based on scaled-up actual emissions. At the first facility with a TOSHI value greater than 1, allowable emissions are based on permit data. At the other facility, allowable emissions are based on an allowable multiplier applied to actual emissions.

Additionally, the results of the acute screening analysis showed that acute risks were below a level of concern. Because the risk assessment already shows risks from the source category are acceptable and that the existing standards provide an ample margin of safety to protect public health, revision of the risk assessment to address the comments that our emission estimates were too high would not change the EPA's finding that the risks from the Solvent Extraction for Vegetable Oil Production source category are acceptable.

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

We received comments in support of and opposed to our proposed risk assessment and determination that no revisions to the standards are warranted under CAA section 112(f)(2) for the Solvent Extraction for Vegetable Oil Production source category. Generally, the comments that were not supportive of the acceptability and ample margin of safety determinations suggested changes to the underlying risk assessment methodology. The suggested changes to the EPA's risk assessment methodology included that the EPA should lower its presumptive limit of acceptability for cancer risks to below 100-in-1 million, include emissions outside of the source categories in question in the risk assessment, and assume that pollutants with noncancer health effects have no safe level of exposure. Other commenters asserted that the methodology for developing modeling inputs overestimated the actual or allowable emissions of certain pollutants from specific facilities, and subsequently overstated the risks from the source category. We evaluated all comments and determined that no

changes regarding our risk review were needed. These comments and our specific responses can be found below and in the comment summary and response document titled *Summary of Public Comments and Responses for the Risk and Technology Review for Solvent Extraction for Vegetable Oil Production*, which is available in the docket for this action.

**Comment:** One commenter stated that the acetaldehyde emissions that were modeled for the ADM-Clinton facility were not associated with the vegetable oil process and should not have been included in the source category modeling file. The commenter stated that the EPA should correct the risk assessment by removing acetaldehyde for the ADM-Clinton facility.

**Response:** As noted at proposal, we included acetaldehyde emissions in the modeling file for the source category with the understanding that their inclusion in the assessment would result in a conservative estimate of risk. We acknowledge that a reassessment of risk that excludes acetaldehyde emissions from the facility would result in lower facility emissions, and potentially lower the source category risks associated with acetaldehyde. Therefore, because revising the assessment by removing acetaldehyde emissions from the source category modeling file would not change the outcome of our risk determination, we are not undertaking further analysis. We note that the acetaldehyde emissions would continue to be considered as part of the facility-wide risk assessment (see 84 FR 30824) and whole facility risks.

**Comment:** One commenter stated that the EPA overestimated actual emissions for nine facilities where the EPA assumed that 100 percent of the reported VOC emissions were emitted as n-hexane. The commenter stated that although the EPA did not identify the nine facilities, the commenter's review indicated that actual emissions in the modeling file for several sources significantly exceeded the actual 2014 emissions of n-hexane. The commenter stated that the EPA should identify the extent to which the reported HI (0.7) may be affected by this assumption. The commenter also stated that the EPA overestimated the allowable-to-actual ratio used to estimate allowable emissions for multiple facilities. The commenter asserted that although the EPA did not identify the facilities that were used to estimate an allowable-to-actual ratio, they believe, based on a review of the data, that the EPA overestimated the allowable-to-actual ratio by incorrectly assuming that n-hexane emissions were equal to total

solvent (VOC) loss or by not accounting for the volume fraction of n-hexane in solvent.

**Response:** As noted at proposal (84 FR 30818), the EPA assumed for certain facilities that all solvent loss reported as VOC is emitted as n-hexane. We adopted this approach where data for facility hexane emissions were unavailable or lacking, recognizing that this approach would provide the most conservative estimate of risk. Additionally, the MACT allowable emissions multiplier conservatively assumed that all loss of n-hexane in the solvent extraction process is emitted to the atmosphere (84 FR 30819). The proposed approach was adopted taking into consideration that the volume fraction of n-hexane may vary significantly within a solvent (the solvent used in vegetable oil production facilities is 100-percent VOC and may range from less than 1 percent to 88-percent n-hexane). Where emissions of n-hexane or the volume fraction of n-hexane were not readily available from permit materials, we conservatively assumed all solvent loss is n-hexane. Therefore, the risk assessment does likely overestimate the actual and allowable emissions for certain facilities; as noted at proposal, these conservative assumptions were adopted to account for the potential "worst-case" risks given that we lacked complete information on the n-hexane emissions for specific facilities. Although we acknowledge that the source category risks would be lower with the adjustments requested by the commenters, revision of the actual emissions or MACT-allowable emissions in the modeling file would not change the EPA's conclusions regarding risk.

**Comment:** One commenter objected to the EPA's methodology for the acute risk assessment. The commenter stated that the risk assessment is weakened because the EPA used "reasonable worst-case" conditions. The commenter stated that after recognizing the need to evaluate the worst-case set of conditions, it is inherently contradictory and circular for the EPA to decide to ignore the impacts by deciding that the worst-case is not actually "reasonable." Another commenter stated the assessment of risks for acute exposure is conservative. It assumes that estimated 1-hour peak emissions occur at the same time as the "reasonable worst-case" meteorological conditions and that an individual will be exposed at this time and under these conditions at the location of the maximum predicted impact.

**Response:** The EPA disagrees that our Acute Screening-Level Assessment should not be based on "reasonable worst-case" meteorological conditions. In developing an acute exposure scenario, we estimate 1-hour exposure concentrations through air dispersion modeling during hours of peak emissions. However, hourly emissions data are not typically available, and the exact hours of peak emissions are often unknown, making it difficult to determine the meteorological conditions to model with the peak emissions. We make assumptions about when peak hourly emissions occur. In a worst-case scenario, peak hourly emissions would occur during the 1 hour of the year with the worst-case air dispersion conditions (i.e., low, continuous wind speeds blowing in a specific direction). However, the probability of peak hourly emissions occurring in the same hour as the worst-case air dispersion conditions is extremely low. For example, as documented in Appendix 5 of the *Residual Risk Assessment for the Solvent Extraction for Vegetable Oil Production Source Category in Support of the 2019 Risk and Technology Review Final Rule*, available in the docket for this rulemaking, conservatively the probability of these two events occurring simultaneously is about 1-in-200,000 (or a 0.0005 percent chance). Instead, we use "reasonable worst-case" meteorological conditions. This approach strikes a balance of being health protective without overestimating acute exposures and has a reasonable probability of occurrence (conservatively, an 88-in-200,000 chance or 0.044 percent). Using the "reasonable worst-case" meteorological conditions, the scenario we modeled is a rare event (peak emissions would have a 0.044% chance of occurring during the same hour as the "reasonable worst-case" meteorology based on conservative assumptions, or a 99.956% chance of not occurring during that hour) rather than a scenario that is extremely unlikely (peak emissions would have a 0.0005% chance of occurring during the same hour as the worst-case meteorology, or a 99.9995% chance of not occurring during that hour).

After review of all the comments received, we determined that no changes to the risk assessment were necessary. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Review for the Solvent Extraction for Vegetable Oil Production Source Category*, available in the docket for this action.

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

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

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, and adverse environmental effects have changed. For the reasons explained in the proposed rule, we determined that the risks from the Solvent Extraction for Vegetable Oil Production source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not revising the standards for this source category pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).

#### *B. Technology Review for the Solvent Extraction for Vegetable Oil Production Source Category*

1. What did we propose pursuant to CAA section 112(d)(6) for the Solvent Extraction for Vegetable Oil Production source category?

Pursuant to CAA section 112(d)(6), we proposed to conclude that no revisions to the current MACT standards for this source category are necessary for control of n-hexane emissions from vegetable oil production facilities (sections IV.C of proposal preamble, 84 FR 30825). We did not find any developments in practices, processes, and control technologies that could be applied to solvent extraction for vegetable oil process vents and that could be used to reduce emissions from solvent extraction for vegetable oil production facilities. We also did not identify any developments in work practices, pollution prevention techniques, or process changes that could achieve

emission reductions from solvent extraction for vegetable oil process vents. We identified for consideration the use of a cryogenic condenser after the main vent as an add-on control option, based on a review of best available control technology analyses where such controls were previously considered. However, based on the costs and emission reductions for the proposed options, we did not find the use of a cryogenic condenser as cost effective for reducing emissions from these emission sources at solvent extraction for vegetable oil production units; and we proposed that it is not necessary to revise the MACT standards for these emission sources pursuant to CAA section 112(d)(6). Additional details of our technology review can be found in the memorandum, *CAA Section 112(d)(6) Technology Review for the Solvent Extraction for Vegetable Oil Production Source Category*, which is available in the docket for this action.

2. How did the technology review change for the Solvent Extraction for Vegetable Oil Production source category?

We have not changed any aspect of the technology review since the June 27, 2019, RTR proposal for the Solvent Extraction for Vegetable Oil Production source category.

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

We received comments in support of and opposed to the proposed determination from the technology review that no revisions were warranted 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 can be found in the comment summary and response document titled *Summary of Public Comments and Responses for the Risk and Technology Review for Solvent Extraction for Vegetable Oil Production*, which is available in the docket for this action.

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

We evaluated all of the comments on the EPA's technology review and determined that no changes to the review are needed. For the reasons explained in the proposed rule, we determined that no cost-effective developments in practices, processes, or control technologies were identified in our technology review to warrant revisions to the standards. More information concerning our technology

review, and how we evaluate cost effectiveness, can be found in the memorandum titled *CAA Section 112(d)(6) Technology Review for the Solvent Extraction for Vegetable Oil Production Source Category*, which is available in the docket for this action, and in the preamble to the proposed rule (84 FR 30825). Therefore, pursuant to CAA section 112(d)(6), we are finalizing our technology review as proposed.

#### *C. SSM for the Solvent Extraction for Vegetable Oil Production Source Category*

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

We proposed removing and revising provisions related to SSM that are not consistent with the requirement that standards apply at all times. We proposed that the emission standards for normal operation apply at all times, except for periods of initial startup, for new or significantly modified sources as described below. We proposed alternate standards for initial startup periods for new or significantly modified sources. Specifically, we proposed that new or significantly modified facilities operating in an initial startup period would operate the mineral oil absorption system and solvent condensers at all times during the initial startup period. We also proposed that facilities establish and follow site-specific operating ranges for temperature and vacuum for the desolventizing and oil distillation units associated with solvent recovery. New and significantly modified facilities would also continue to have the option to meet the requirements for normal operating periods in Table 1 of 40 CFR 63.2850, in lieu of the work practice standards. We also proposed to revise the definition of “Initial startup period” to clarify the time at which an initial startup period ends and a normal operating period begins.

We proposed to remove malfunction periods as a distinct source operating status, which previously allowed sources to exclude data collected during the “malfunction period” when determining compliance with the emission standards. Under the proposed rule, sources that experience an unscheduled shutdown as a result of a malfunction, continue to operate during a malfunction (including the period reasonably necessary to correct the malfunction), or start up after a shutdown resulting from a malfunction must instead meet the emission standard requirements for either a

normal operating period or the work practice standards for an initial startup period (if applicable) in 40 CFR 63.2850 and Table 1 of 40 CFR 63.2850. We also proposed to remove reference to SSM exemptions from the general duty requirements,<sup>3</sup> to remove SSM plans, to remove references to SSM exemptions in requirements related to compliance with the standards and performance testing, and to revise recordkeeping and reporting requirements that are not consistent with the requirement that standards apply at all times. More information concerning our proposal on SSM can be found in the proposed rule (84 FR 30825, June 27, 2019).

## 2. How did the SSM provisions change since proposal?

We are finalizing the SSM provisions as proposed, except for minor clarifications. We are finalizing the proposed alternate work practice standards for initial startup periods for new or significantly modified sources, and we are finalizing our proposal to remove malfunction periods as a source operating status, which previously allowed sources to exclude data collected during the “malfunction period” when calculating their compliance ratio according to 40 CFR 63.2840. We are finalizing the removal and revision of SSM requirements related to general duty, SSM plans, compliance with the standards, and performance testing as proposed (84 FR 30825). We are revising the recordkeeping requirements at 40 CFR 63.2862 and the reporting requirements at 40 CFR 63.2861 as proposed, with the exception of minor revisions to clarify how to designate the date a deviation occurred and the duration of the deviation. For deviations from the compliance ratio for facilities operating under a normal operating period, the date of the deviation is the date the compliance ratio determination is made, and the duration of the deviation is the length of time taken to address the cause of the deviation (including the duration of any malfunction) and to return the affected unit(s) to its normal or usual manner of operation. For deviations from the work practice standard for facilities operating under an initial startup period, the date of the deviation is the date when the facility fails to comply with any of the work practice standards in 40 CFR 63.2840(h), and the duration of the deviation is the length of time taken to return to the work

practice standards. We have also removed the requirement to record and report the time of day the deviation occurred, since deviations from the compliance ratio are determined at the end of the period.

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

We received one comment supporting our proposed removal of the exemption in the regulations for emissions during SSM periods. We received two comments supporting our proposal to establish an option to follow a work practice standard during initial startup periods for new or significantly modified sources, and did not receive any comments opposing the proposed work practice standards during initial startup periods. We received additional comments requesting that startup or shutdown periods be taken into account when setting the MACT standard. We received comments both for and against the proposed removal of “malfunction periods” as a distinct source operating status. We also received comments requesting clarification on the recordkeeping and reporting requirements for the date, time, and duration of a deviation. We evaluated all comments and determined that no changes to the proposed alternate work practice standards for initial startup periods for new or significantly modified sources; no changes to the proposed removal of requirements that allowed sources to designate the operating status as a distinct “malfunction periods” (facilities must instead meet the requirements of normal operation or initial startup); and no changes to the proposed removal or revision of provisions related to SSM are required, with the exception of minor clarifications as discussed in this section.

*Comment:* Two commenters stated that the EPA should take periods of startup and shutdown into account when setting the MACT emissions standards. The commenters stated that if the EPA is removing the exemption of startup and shutdown emissions from the calculation of the compliance ratio, the EPA should recalculate the MACT emission limits based on normal operation plus periods of startup and shutdown. The commenters stated that the EPA has indicated the current NESHAP provides an ample margin of safety to protect public health, and that this indicates there is ample room to increase the MACT limits to more appropriate levels that include the startup and shutdown operations. Another commenter stated that the

proposed elimination of relief for SSM events is not required for the rule to be consistent with *Sierra Club v. EPA*. The commenter asserted that other court opinions have emphasized the need for standards to accommodate higher emission levels that occur at times other than normal operations.

*Response:* We do not agree that the MACT emission limits should be recalculated to include periods of startup and shutdown. We disagree with the commenter's suggestion that the legal precedent established in case law (*i.e.*, *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008)) is not relevant. The *Sierra Club* decision held that emissions limitations under CAA section 112 must apply continuously and meet minimum stringency requirements, even during periods of SSM. Consistent with *Sierra Club v. EPA*, for the reasons explained in the proposal preamble at 83 FR 30285, we are finalizing our proposal to eliminate the SSM language in 40 CFR part 63, subpart GGGG. Subpart GGGG had both rule-specific SSM language and references to SSM language in the part 63 General Provisions in Table 1 of 63.2870, specifically reference to 40 CFR 63.6(f)(1). As we explained in the proposal, our SSM-related rule revisions are in response to the *Sierra Club* Court's vacatur of the SSM exemption in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1). When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempted sources from the requirement to comply with otherwise applicable MACT standards during periods of SSM. The Court's vacatur rendered those provisions null and void prior to this rulemaking. The mandate implementing the Court's decision was issued on October 16, 2009, at which time the vacated SSM provision 40 CFR 63.6(f)(1) referenced by subpart GGGG was no longer in effect. Eliminating reference to this provision, and other related General Provisions referenced in subpart GGGG, is a ministerial action by the EPA to reflect the vacatur by the Court. We also eliminated the rule-specific SSM provisions in subpart GGGG. The final standards will apply at all times, consistent with the *Sierra Club* decision.

As an alternative approach consistent with *Sierra Club*, the EPA may designate different standards to apply during startup and shutdown (as noted in the proposal, the EPA is not obligated to set standards for periods of malfunction). For this category, the compliance approaches required by state regulatory authorities led us to decide special startup/shutdown standards were unnecessary for existing sources. Based

<sup>3</sup> We proposed to add general duty regulatory text at 40 CFR 63.2840(g) to reflect the general duty to minimize emissions, while eliminating the reference to periods covered by an SSM exemption (see 84 FR 30828).

on discussions with industry, there are not significant differences in the production process or operation of solvent recovery equipment during startup or shutdown of an existing facility that would preclude the facility from complying with the existing standards. A review of title V permits identified that approximately 35 percent of existing facilities are already required to account for periods of routine startup (not initial startup) and shutdown in determining their compliance ratio. This requirement was found commonly across states and regions, indicating that existing sources operating during periods of routine startup and shutdown are able to demonstrate compliance with the emission standards. Furthermore, the commenter did not provide any evidence that emissions during routine startup and shutdown vary considerably from normal operation. Consequently, the final rule's elimination of periods of startup and shutdown for existing sources reflects this capability.

For the reasons explained in the proposal preamble, we are finalizing alternate standards for periods of initial startup for new or significantly modified sources. Because the initial startup period reflects a non-steady state of production, emissions testing during this period would not likely be representative or yield meaningful results for the establishment of separate emission limits. As discussed at proposal, control of n-hexane emissions at vegetable oil production facilities is accomplished through solvent recovery and is based on inter-related process equipment that is often custom built to the specific configuration and needs of the plant. During an initial startup period, facility equipment is tested, added, or replaced as the facility gradually increases production, and emissions during this period may reflect variability that is not generally reflective of normal or steady-state operations. New and modified equipment is often brought online in a phased approach, and each phase can necessitate adjustments in both new and existing equipment in the process in order to identify and correct problems, such as equipment that is not operating as designed and that requires repair or replacement. The EPA evaluated the available data for new or significantly modified sources to establish potential standards for periods of initial startup, including review of operating permits from various state and local agencies and EPA Regional offices. We noted that the standards have not previously required—and state, local, and Regional offices have not collected—emissions

data for these facilities during their initial startup periods. Further, where the EPA identified a recently constructed facility with permitted MACT allowable solvent loss for an initial startup period, we determined that the allowable solvent loss for the facility was not based on measured data, and would not be representative of initial startup periods for other facilities in the source category. Although we requested information on emissions and the operation of processes during initial startup periods, we did not receive sufficient information, including additional quantitative emissions data, on which to base a numeric standard for initial startup periods at new or significantly modified facilities. The EPA recognizes that the initial startup period, which is a one-time event for new sources and an infrequent event for significantly modified sources, is not a typical startup period that may occur as part of routine or seasonal startups of a plant. Instead, the initial startup period includes evaluation and replacement of new equipment as each phase is brought online and production is gradually increased. Therefore, emissions testing during initial startup would be both economically and technically infeasible. Consequently, the EPA is finalizing a work practice standard rather than an emissions limit for this period.

Notwithstanding the finding that the MACT-based limits of the initial NESHAP provide and ample margin of safety, the EPA lacks the authority to relax limits developed in the MACT process based on finding that the limits provide an ample margin of safety. Were the EPA to do so, then the limits would not meet the strict structure of MACT. The risk-based limits under CAA section 112(f)(2) were intended to augment MACT when the post-MACT risks did not provide an ample margin of safety to protect public health. There is no indication in the statute that the risk-based standards were intended to revoke the requirements to have MACT standards. A risk-based standard is only required when the MACT-based does not sufficiently reduce risk (see CAA section 112(f)(2)(A)).

Additionally, the EPA's finding is that the existing MACT-based standard does not need to be made more stringent to comply with CAA section 112(f)(2) (*i.e.*, to provide an ample margin of safety). The EPA has not made a finding that the existing standards somehow exceed an ample margin of safety. There is no finding that there is "room to increase" the limits while also complying with the requirement to provide an ample margin of safety required by CAA section 112(f)(2).

*Comment:* One commenter asserted that it would be arbitrary and capricious for the EPA to ignore the existence of malfunctions even at best-performing sources, or to assume that the best-performing sources achieve emission levels that they do not achieve part of the time. The commenter urged that if the EPA adopts MACT standards that it recognizes even the best-performing existing sources cannot achieve part of the time, the EPA would be going beyond the MACT floor. Three commenters stated that the EPA should take malfunctions into account when adopting emissions standards. One commenter stated that it is not apparent from the proposed rule why the EPA believes it needs to remove the current provisions related to malfunctions. The commenter asserted that the EPA cannot change its position and withdraw a previously promulgated provision without providing a full explanation of the reason(s) for the change. The same commenter recommended that the EPA could instead establish numerical emission limitations that have an averaging time of sufficient duration that short, infrequent spikes in emissions due to malfunctions would not cause the source to exceed the emission limitation. Alternatively, the commenter recommended that the EPA could promulgate design, equipment, work practice, or operational standards in lieu of a numerical standard. Two commenters stated that the EPA should maintain an option in 40 CFR 63.2850(e)(2) either to meet the requirements applicable to normal operating periods or to meet the requirements for malfunction periods. These commenters urged that otherwise there could be unavoidable exceedances of the standards. The two commenters recommended that the EPA could adopt similar work practice standards for malfunction periods as proposed for initial startup periods. Another commenter suggested work practices such as monitoring of operating parameters to identify a malfunction and stopping or cutting back the process. One commenter supported the removal of the malfunction exemptions, stating there is no lawful or rational justification for creating non-numerical work practice standards during malfunctions.

*Response:* We disagree with the commenters' assertions that we must set revised or separate standards for periods of malfunction. As discussed in the preamble to the proposed rule, as the Court recognized in *U.S. Sugar Corp.*, accounting for malfunctions in setting 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 [ ] 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.

As noted at proposal, the EPA considers whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. The EPA has also considered the need for a work practice for periods of malfunction for vegetable oil production facilities. Although we requested information on emissions and the operation of processes during malfunction periods in our consultations with state agencies and industry, we did not receive sufficient information for development of proposed standards. Therefore, as part of the proposal, the EPA solicited information on the type of events that constitute a malfunction event, industry best practices, and the best level of emission control during malfunction events. The EPA also requested commenters provide information on the costs associated with any recommended work practices. In addition, the EPA solicited specific supporting data on HAP emissions during malfunction events, including the cause of malfunction, the frequency of malfunction, duration of malfunction, and the estimate of HAP emitted during each malfunction. In this case, although we requested comment and information to support the development of a standard during periods of malfunction, we did not receive sufficient information, including additional quantitative emissions data, on which to base a standard. Absent sufficient information, it is not reasonable at this time to establish a work practice standard for periods of malfunction for this source category. For these reasons, we are not setting separate standards for periods of malfunction. Under the final rule, sources that experience an unscheduled shutdown as a result of a malfunction, continue to operate during a malfunction (including the period reasonably necessary to correct the malfunction), or start up after a shutdown resulting from a malfunction must instead meet the emission standard requirements for either a normal operating period or the work practice standards for an initial startup period (if a new or significantly modified source) in 40 CFR 63.2850 and Table 1 of 40 CFR 63.2850. We note that sources must still meet the general duty requirements in 40 CFR 63.2840(g) and should address malfunctions

expeditiously in order to maintain any affected source, including associated air pollution control equipment and monitoring equipment, and minimize emissions.

Nevertheless, the EPA acknowledges that including solvent loss from a one-time event (like a malfunction) in the 12-month compliance ratio could cause a deviation for one or more monthly compliance ratio determinations, and would remain in the rolling compliance determination for up to 1 year (12 months). We also recognize that it is possible that a malfunction that causes a 12-month compliance ratio to be exceeded might have been corrected well before the first full 12-months have passed. Although a facility would need to retain records of any deviation and the corrective action(s) performed, no additional corrective action would be required at the time the 12-month compliance ratio is officially exceeded in subsequent months if the facility demonstrates the exceedance is from a prior malfunction that has been corrected. Facilities would be able to provide such an explanation in their deviation reports; specifically, we have revised the deviation reporting requirements in the final rule to include a requirement that facilities flag and provide an explanation for any deviation from the compliance ratio for which a deviation report is being submitted for more than 1 consecutive month (*i.e.*, include a reference to the original date and reporting of the deviation) (see 40 CFR 63.2861(b)). Further, as discussed below in this section, we have clarified that the duration of the deviation from the compliance ratio is the length of time taken to address the cause of the deviation (including the duration of any malfunction) and to return the affected unit(s) to its normal or usual manner of operation. Therefore, facilities must retain records of the date and duration of the malfunction, as well as the corrective action(s) performed, to demonstrate the basis for the deviation in subsequent periods.

As further explained at proposal, “[i]n 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 preventive 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 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” (84 FR 30828).

*Comment:* We received one comment requesting clarification on the revised reporting and recordkeeping requirements for deviations. The commenter requested that the EPA clarify how a facility should designate the date a deviation occurred. The commenter recommended that because there is a single compliance ratio determination for an operating month, the rule should specify that a deviation be reported as occurring on the date the compliance ratio determination is made. The commenter also requested clarification on the duration of a deviation, noting that solvent loss from a one-time event (like a malfunction) could cause a deviation for one or more monthly compliance ratio determinations. The commenter stated it is unreasonable to require facilities to report events that may last only 1 day as having a duration of 30 days or even longer, and asked the EPA to clarify if the deviation reporting requirements only apply to work practice standards. Finally, the commenter stated the reporting template should not require facilities to report the time of a deviation; the commenter urged that the time of day a deviation occurs is not needed to determine compliance with the standards.

*Response:* We agree with the commenter and have revised the reporting and recordkeeping requirements for deviations for clarification. Specifically, we have revised the recordkeeping requirements of 40 CFR 63.2862(g)(1) to clarify that for deviations from the compliance ratio, the date of the deviation is the date the compliance ratio determination is made. For deviations from the work practice standard during the initial startup period, the date of the deviation is the date when the facility fails to comply with any of the work practice standard in 40 CFR 63.2840(h) (e.g., if the facility fails to operate the mineral oil absorption system or the solvent

condenser at all times during the initial startup period, or fails to meet the site-specific operating limits established by the facility). These dates must be reported in the deviation notification report according to the final rule requirements at 40 CFR 63.2861(b)(5). We have revised 40 CFR 63.2862(g)(1) to clarify that for deviations from the compliance ratio, the duration of the deviation is the length of time taken to address the cause of the deviation (including the duration of any malfunction) and to return the affected unit(s) to its normal or usual manner of operation. For deviations from the work practice standard during the initial startup period, the duration of the deviation is the length of time taken to return to the work practice standards. The final rule requirements are consistent with the prior requirements of 40 CFR 63.10(b)(2)(ii) to retain a record of the “occurrence and duration of each malfunction” and are necessary to allow the EPA to determine the severity of any failure to meet a standard. Finally, we have revised the final rule requirements to remove the requirement to record or report the time of a deviation, as this information is not necessary to determine compliance with the standard.

Additional comments on the SSM provisions and our specific responses to those comments can be found in the document titled *Summary of Public Comments and Responses for the Risk and Technology Review for Solvent Extraction for Vegetable Oil Production*, which is available in the docket for this action.

4. What is the rationale for our final approach and final decisions to address emissions during periods of SSM?

We evaluated all the comments on the EPA’s proposed amendments to the SSM provisions. For the reasons explained in the proposed rule (84 FR 30812), we determined that these amendments appropriately remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. Therefore, we are finalizing the amendments to remove and revise provisions related to SSM, as proposed, with the exception of the clarifications discussed in this section.

#### *D. Technical Amendments to the MACT Standards for the Solvent Extraction for Vegetable Oil Production Source Category*

1. What other amendments did we propose for the Solvent Extraction for Vegetable Oil Production source category?

We proposed that owners and operators submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports through the EPA’s CDX using the CEDRI. For initial notifications, initial startup reports, annual compliance certifications, and deviation reports, the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. We also proposed two broad circumstances in which we may provide extension to these requirements. We proposed at 40 CFR 63.2862(f) that an extension may be warranted due to outages of the EPA’s CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. We also proposed at 40 CFR 63.2862(g) that an extension may be warranted due to a *force majeure* event, such as an act of nature, act of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

We proposed revisions to several definitions in 40 CFR 63.2872 to harmonize with the proposed removal of the SSM requirements and to clarify existing provisions, include revisions to definitions of “Compliance ratio,” “Nonoperating period,” “Normal operating period,” and “Operating month” to clarify where the malfunction period is excluded, and to the definition of “Normal operating period” to clarify that this definition also applies to “normal operation.” We also proposed to add a definition for “Nonoperating month.” We proposed to revise the definition of “Hazardous air pollutant (HAP)” to remove the reference to the date of April 12, 2001.

We proposed minor revisions to 40 CFR 63.2840(a)(1) and (b)(1), 40 CFR 63.2853(a)(2), and 40 CFR 63.2855(a)(3) to remove text that is redundant with the definition of “Operating month” in 40 CFR 63.2872. We also proposed a minor correction to Table 1 of 63.2850 to correct a typographical error in row “(a)” for malfunction periods.



2. How did the other amendments for the Solvent Extraction for Vegetable Oil Production source category change since proposal?

There are no changes to the proposed requirements for owners and operators to submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports electronically. We also are finalizing, as proposed, the provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility. There are no changes to the proposed definitions in 40 CFR 63.2872, or the minor revisions to 40 CFR 63.2840(a)(1) and (b)(1), 40 CFR 63.2853(a)(2), 40 CFR 63.2855(a)(3), or Table 1 of 40 CFR 63.2850.

3. What key comments did we receive on the other amendments for the Solvent Extraction for Vegetable Oil Production source category and what are our responses?

We received one comment providing input on the proposed requirement for owners and operators of vegetable oil production facilities to submit electronic copies of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports. The commenter stated that the EPA may not lawfully or rationally finalize “exemption provisions” based on CEDRI outages or “*force majeure* events.” The commenter stated the provisions do not set a firm deadline to request an extension of the reporting deadline. No commenters provided significant comments on the proposed definitions in 40 CFR 63.2872, or the proposed minor revisions to 40 CFR 63.2840(a)(1) and (b)(1), 40 CFR 63.2853(a)(2), 40 CFR 63.2855(a)(3), or Table 1 of 40 CFR 63.2850.

*Comment:* One commenter stated that the EPA must not finalize the proposed electronic reporting extension provisions because the definition of a *force majeure* event is too broad, the provisions do not set a firm deadline to request an extension of the reporting deadline, and the decision to allow an extension is solely within the discretion of the Administrator. The commenter urged that the proposed provisions are unlawful and arbitrary because they would create a broad and vague mechanism that a facility owner or operator could use to evade binding emission standards, by evading the binding compliance reporting deadlines set to assure compliance with those

standards. The commenter further stated that the EPA should not import the concept of “*force majeure*” into any part of the CAA, as to do so is a variation of the prior malfunction exemptions that are unlawful under the CAA. The commenter also noted that the EPA has provided that there are no known issues with submission of ERT-formatted performance test and evaluation reports in CEDRI (per the Petroleum Refinery NESHAP), thus, there is no rational basis for providing the proposing reporting extensions. At a minimum, the commenter requested that the EPA set a new firm deadline to assure that the extension request allows only a temporary period when the facility need not report, such as a 10-day extension, rather than an open-ended extension without a deadline.

*Response:* The commenter states that the brief case-by-case extension of report submittal deadlines is a “reporting exemption.” This is not the case. The proposed provisions the commenter questions are in paragraphs 40 CFR 63.2861(h) and (i).

There is no exception or exemption to reporting, much less an exemption from compliance with the numerical emission standards, only a method for requesting an extension of the reporting deadline. Reporters are required to justify their request and identify a reporting date. There is no predetermined timeframe for the length of extension that can be granted, as this is something best determined by the Administrator (*i.e.*, the EPA Administrator or delegated authority as defined in 40 CFR 63.2) when reviewing the circumstances surrounding the request. Different circumstances may require a different length of extension for electronic reporting. For example, a tropical storm may delay electronic reporting for a day, but a Hurricane Katrina scale event may delay electronic reporting much longer, especially if the facility has no power, and as such, the owner or operator has no ability to access electronically stored data or to submit reports electronically. The Administrator will be the most knowledgeable of the events leading to the request for extension and will assess whether an extension is appropriate, and if so, a reasonable length for the extension. The Administrator may even request that the report be sent in hardcopy until electronic reporting can be resumed. While no new fixed duration deadline is set, the regulation requires that the report be submitted electronically as soon as possible after the CEDRI outage or after the *force majeure* event resolves.

The concept of *force majeure* has been implemented by the EPA in this context since May 2007 within the CAA requirements through the performance test extensions provided in 40 CFR 63.7(a)(4) and 60.8(a)(1). Like the performance test extensions, the approval of a requested extension of an electronic reporting deadline is at the discretion of the Administrator.

The EPA disagrees that the ability to request a reporting extension “would create a broad and vague mechanism” that owners and operators “could use to evade binding emissions standards” or evade “binding compliance reporting deadlines” for emissions standards. While reporting is an important mechanism for the EPA and air agencies to assess whether owners and operators are in compliance with emissions standards, reporting obligations are separate from (*i.e.*, in addition to) requirements that an owner or operator be in compliance with an emissions standard, especially where the deadline for meeting the standard has already passed and the owner or operator has certified and is monitoring operations to show that they are in compliance with the standard. The commenter references deadlines set forth in the CAA for demonstrating initial compliance following the effective date of emission standards, which differs from deadlines for submitting reports. There are no such deadlines stated in the CAA for report due dates, meaning the EPA has discretion to establish reporting schedules, and also discretion to allow a mechanism for extension of those schedules on a case-by-case basis. In fact, under the commenter’s reasoning, if the statutory deadlines for compliance with standards were read to strictly apply to continuing reporting requirements, no such reporting could be required after 3 years from the promulgation of the standards. This would not be a reasonable result. Reporting deadlines are often different from compliance deadlines. Rules under 40 CFR part 60 and 63 typically allow months following an initial compliance deadline to conduct testing and submit reports, but compliance with standards is required upon the compliance date.

Additionally, the ability to request a reporting extension does not apply to a broad category of circumstances; on the contrary, the scope for submitting an extension request for an electronic report is very limited in that claims can only be made for an event outside of the owner’s or operator’s control that occurs in the five business days prior to the reporting deadline. The claim must then be approved by the Administrator, and in approving such a claim, the



Administrator agrees that something outside the control of the owner or operator prevented the owner or operator from meeting its reporting obligation. In no circumstance does this electronic reporting extension allow for the owner or operator to be out of compliance with the underlying emissions standards. If the Administrator determines that a facility has not acted in good faith to reasonably report in a timely manner, the Administrator can reject the claim and find that the failure to report timely is a deviation from the regulation. CEDRI system outages are infrequent, but the EPA knows when they occur and whether a facility's claim is legitimate. Force majeure events (e.g., natural disasters impacting a facility) are also usually well-known events.

Finally, EPA disagrees that the existing statistics on the use of CEDRI and e-reporting precludes the need for a provision to account for an outage of the CEDRI system. Prudent management of electronic data systems builds in allowances for unexpected, non-routine delays, such as occurred on July 1, 2016 and October 20–23, 2017, and is consistent with the already-existing provisions afforded for unexpected, non-routine delays in performance testing [see 40 CFR 60.8(a)(1) and (2) and 40 CFR 63.7(a)(4)]. For both electronic reporting and performance testing, owners or operators are to conduct and complete their activities within a short window of time; the EPA believes it is prudent to allow owners or operators to make force majeure claims for situations beyond their reasonable control. The EPA also disagrees that incidental issues with questions on completing the form or the procedures for accessing CEDRI for which the CEDRI Helpdesk is available, are conditions that would be considered either force majeure or a CEDRI system outage. The existence of the Helpdesk for answering questions on procedures in submitting reports to CEDRI have no impact on the availability of CEDRI in such a circumstance. The purpose of these requests for extensions are to accommodate owners and operators in cases where they cannot successfully submit a report electronically for reasons that are beyond their control and occur during a short window of time prior to the reporting deadline. The extension is not automatic, and the Administrator retains the right to accept or reject the request. The language was added as part of the standard electronic reporting language based on numerous comments received on the proposal for the Electronic Reporting and

Recordkeeping Requirements for the New Source Performance Standards (80 FR 15100). As such, we have determined that no changes to the electronic reporting requirements are necessary in the final rule.

Additional comments on the proposed electronic reporting requirements and other amendments and our specific responses to those comments can be found in the memorandum titled *Summary of Public Comments and Responses for the Risk and Technology Review for Solvent Extraction for Vegetable Oil Production*, available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the other amendments for the Solvent Extraction for Vegetable Oil Production source category?

We evaluated the comment on the EPA's proposed amendments to require electronic reporting initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports. For the reasons explained in the proposed rule, we determined that these amendments increase the ease and efficiency of data submittal and improve data accessibility. More information concerning the proposed requirement for owners and operators of vegetable oil production facilities to submit electronic copies of certain notifications and reports is in the preamble to the proposed rule (84 FR 30830, June 27, 2019) and the document, *Summary of Public Comments and Responses for the Risk and Technology Review for the Solvent Extraction for Vegetable Oil Production*, available in the docket for this action. Therefore, we are finalizing our approach for submission of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test reports as proposed.

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

### A. What are the affected facilities?

The EPA estimates that there are 89 vegetable oil production facilities that are currently subject to the Solvent Extraction for Vegetable Oil Production NESHAP and would be affected by the final amendments. The basis of our estimate of affected facilities is provided in the memorandum, *Residual Risk Modeling File Documentation for the Solvent Extraction for Vegetable Oil Production Source Category*, which is available in the docket for this action. We additionally anticipate one new

source per year. The EPA received comment on the proposed rule that some larger facilities may have significant modifications about once a year, therefore, we assume that eight existing vegetable oil production facilities may have a significant modification that could meet the revised requirements for initial startup periods.

### B. What are the air quality impacts?

The EPA estimates that annual HAP emissions from the vegetable oil production facilities that are subject to the NESHAP are approximately 13,500 tpy.<sup>4</sup> Because the EPA is not revising the emission limits, we do not anticipate any quantifiable air quality impacts as a result of these amendments. However, we anticipate that the final requirements, including the work practice standards for the optional initial startup period, are at least as stringent as the current rule requirements. The work practice standards include requirements for facilities to operate controls, including the mineral oil absorption system and solvent condensers, at all times during the initial startup period. Facilities must also establish and follow site-specific operating ranges for temperature and vacuum for the desolventizing and oil distillation units associated with solvent recovery. We anticipate these requirements will minimize emissions during these periods.

### C. What are the cost impacts?

The 89 vegetable oil production facilities that would be subject to the final amendments, and one additional new source per year, would incur minimal net costs to meet revised recordkeeping and reporting requirements, some estimated to have costs and some estimated to have cost savings. Nationwide costs associated with the final requirements are estimated to total \$93,100 over the 3 years following promulgation of amendments (or \$31,033 per year). The EPA believes that the vegetable oil production facilities that are known to be subject to the NESHAP can meet the final requirements without incurring additional capital or operational costs. Therefore, the only costs associated with the final amendments include a one-time burden for reviewing requirements of the amended rule, and a one-time burden associated with recordkeeping and reporting labor costs for initial startup periods for new, reconstructed, or significantly modified

<sup>4</sup> The annual HAP emission estimates include emissions from 88 facilities. Annual emissions are not yet available for one newly constructed facility.

facilities. The EPA assumed in the proposed rule that one potential new or reconstructed vegetable oil production facility would be subject to the revised requirements for initial startup periods each year. However, we received comment on the proposed rule that some larger facilities may have significant modifications about once a year. Therefore, we have revised the costs associated with the final rule to assume that approximately eight existing vegetable oil production facilities (or approximately 10 percent of existing facilities) may have a significant modification that could require that they meet the revised requirements for initial startup periods. The revised assumption results in an increase in the total nationwide annual costs associated with the final requirements to account for the additional facilities anticipated to have a significant modification (actual costs per facility have not changed). For further information on the costs and cost savings associated with the final requirements, see the memorandum, *Cost for the Solvent Extraction for Vegetable Oil Production Source Category Risk and Technology Review—Final Amendments*, and the document, *Supporting Statement for NESHAP for Solvent Extraction for Vegetable Oil Production*, which are both available in the docket for this action.

#### *D. What are the economic impacts?*

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs needed to comply with a final 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 final rule. The total costs associated with the final rule are estimated to be \$93,100 (or \$31,033 per year) for the 3 years following the final rule. This includes a one-time burden for reviewing requirements of the amended rule, and a one-time burden associated with the recordkeeping and reporting for initial startup periods for new, reconstructed, or significantly modified facilities. This is an estimated average cost of approximately \$345 per year per facility. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

#### *E. What are the benefits?*

Although the EPA does not anticipate quantifiable reductions in HAP emissions as a result of the final amendments, we believe that the action will result in improvements to the rule. Specifically, the final amendments revise the standards such that they apply at all times. For facilities that choose to operate under an initial startup period, the EPA is finalizing an alternative work practice standard that will ensure that facilities are operating controls and minimizing emissions while the source operates under non-steady state production, which we expect will protect public health and the environment through better compliance during these periods. Additionally, the final amendments requiring electronic submittal of initial notifications, initial startup reports, annual compliance certifications, deviation reports, and performance test results will streamline reporting for affected sources, increase the usefulness of the data and improve data accessibility for the public, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community. See section IV.D.2 of the preamble to the proposed rule for more information.

#### *F. What analysis of environmental justice did we conduct?*

As discussed in the preamble to the proposed rule, to examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Solvent Extraction for Vegetable Oil Production source category across different demographic groups within the populations living near facilities. When examining the risk levels of those exposed to emissions from solvent extraction for vegetable oil production facilities, we found that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

The documentation for this decision is contained in section IV.A of the preamble to the proposed rule and the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Solvent Extraction for*

*Vegetable Oil Production*, which is available in the docket for this action.

#### *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. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the risk report, *Residual Risk Assessment for the Solvent Extraction for Vegetable Oil Production Source Category in Support of the 2019 Risk and Technology Review Final Rule*, available in the docket for this action.

### **VI. Statutory and Executive Order Reviews**

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

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

This action is not a significant regulatory action and was, therefore, not submitted to 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 Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1947.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is finalizing amendments that revise provisions pertaining to emissions during periods of SSM; add requirements for electronic reporting of certain notifications and reports and performance test results; and make other minor clarifications and corrections. This information will be collected to assure compliance with the Solvent

Extraction for Vegetable Oil Production NESHAP.

*Respondents/affected entities:* Owners or operators of vegetable oil production processes.

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

*Estimated number of respondents:* 90 (assumes one new respondent over the next 3 years).

*Frequency of response:* Initially, occasionally, and annually.

*Total estimated burden:* The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 34,100 hours. Of these, 448 hours (per year) is the incremental burden to comply with the final rule amendments. Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* The annual recordkeeping and reporting cost for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be \$3,490,000 (per year), including \$0 annualized capital or operation and maintenance costs. Of the total, \$31,033 (per year) is the incremental cost to comply with the final amendments to the rule, or approximately \$345 per facility.

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. The small entities subject to the requirements of this action are small vegetable oil production facilities. The Agency has determined that up to 12 small entities, representing approximately 13 percent of the total number of entities subject to the final rule, may experience an impact of less than 1 percent of revenues. See section V.D of this preamble for additional information on the economic impacts of this action.

#### *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. None of the solvent extraction for vegetable oil production facilities that have been identified as being affected by this final action are owned or operated by tribal governments or located within tribal lands. 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 the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections IV.A of this preamble and the document, *Residual Risk Assessment for the Solvent Extraction for Vegetable Oil Production Source Category in Support of the 2019 Risk and Technology Review Final Rule*, which is available 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 involves technical standards. As discussed in the preamble of the proposal, the EPA conducted searches for the Solvent Extraction for Vegetable Oil Production Sector Risk

and Technology Review through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Method 311 of 40 CFR part 63, appendix A. No applicable VCS were identified for EPA Method 311. The search identified two VCS that were potentially applicable for this rule in lieu of EPA reference methods. After reviewing the available standards, the EPA determined that the two candidate VCS (ASTM D6438 (1999), CARB Method 310)) identified for measuring emissions of pollutants or their surrogates subject to emissions standards in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations.

A thorough summary of the search conducted, and results are included in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants for Solvent Extraction for Vegetable Oil Production*, which is available in the docket for this action.

#### *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 IV.A of this preamble and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Vegetable Oil Production Facilities*, available in the docket for this action.

#### *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, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 25, 2020.  
**Andrew R. Wheeler,**  
*Administrator.*

For the reasons set forth in the preamble, the EPA is amending 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.*

**Subpart GGGG—National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production**

■ 2. Section 63.2834 is amended by revising Table 1 of § 63.2834 to read as follows:

**§ 63.2834 When do I have to comply with the standards in this subpart?**

\* \* \* \* \*

TABLE 1 OF § 63.2834—COMPLIANCE DATES FOR EXISTING AND NEW SOURCES

If your affected source is categorized as . . .	And if . . .	Then your compliance date is . . .	Except for certain requirements, as specified in §§ 63.2840, 63.2850, 63.2851, 63.2852, 63.2853, 63.2861, 63.2862, and 63.2870, then your compliance date is . . .
(a) an existing source .....		April 12, 2004 .....	September 15, 2020.
(b) a new source .....	you startup your affected source before April 12, 2001.	April 12, 2004 .....	September 15, 2020.
(c) a new source .....	you startup your affected source on or after April 12, 2001, but before March 18, 2020.	your startup date .....	September 15, 2020.
(d) a new source .....	you startup your affected source on or after March 18, 2020.	your startup date .....	your startup date.

■ 3. Section 63.2840 is amended by:

- a. Revising the introductory text and paragraphs (a)(1) introductory text and (b) introductory text;
- b. Removing and reserving paragraph (b)(1);
- c. Revising paragraphs (b)(3) through (5); and
- d. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

**§ 63.2840 What emission requirements must I meet?**

For each facility meeting the applicability criteria in § 63.2832, you must comply with either the requirements specified in paragraphs (a) through (d), or the requirements in paragraph (e) of this section. You must also comply with the requirements in paragraph (g) of this section. You must comply with the work practice standard provided in paragraph (h) of this section, if you choose to operate your source under an initial startup period subject to § 63.2850(c)(2) or (d)(2).

(a)(1) The emission requirements limit the number of gallons of HAP lost per ton of listed oilseeds processed. For each operating month, as defined in § 63.2872, you must calculate a compliance ratio which compares your actual HAP loss to your allowable HAP loss for the previous 12 operating months as shown in Equation 1 of this section. Equation 1 of this section follows:

\* \* \* \* \*

(b) When your source has processed listed oilseed for 12 operating months, calculate the compliance ratio by the end of each calendar month following an operating month, as defined in § 63.2872, using Equation 2 of this section. When calculating your compliance ratio, consider the conditions and exclusions in paragraphs (b)(1) through (6) of this section:

\* \* \* \* \*

(3) If your source shuts down and processes no listed oilseed for an entire calendar or accounting month, then you must categorize the month as a nonoperating month, as defined in § 63.2872. Exclude any nonoperating months from the compliance ratio determination.

(4) If your source is subject to an initial startup period as defined in § 63.2872, you may exclude from the compliance ratio determination any solvent and oilseed information recorded for the initial startup period, provided you meet the work practice standard in § 63.2850(c)(2) or (d)(2).

(5) Before September 15, 2020, if your source is subject to a malfunction period as defined in § 63.2872, exclude from the compliance ratio determination any solvent and oilseed information recorded for the malfunction period. The provisions of this paragraph (e) do not apply on and after September 15, 2020.

\* \* \* \* \*

(g) On or after September 15, 2020, you must operate and maintain any

affected source, including associated air pollution control equipment and monitoring equipment, at all times in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(h) On and after September 15, 2020, you must meet the requirements in paragraphs (h)(1) through (3) of this section if you choose to operate your source under an initial startup period subject to § 63.2850(c)(2) or (d)(2).

(1) You must operate the mineral oil absorption system at all times during the initial startup period unless doing so is not possible due to safety considerations;

(2) You must operate the solvent condensers at all times during the initial startup period unless doing so is not possible due to safety considerations; and

(3) You must follow site-specific operating limits, established according to the requirements in paragraphs

(h)(3)(i) and (ii) of this section, for temperature and pressure for the desolventizing and oil distillation units associated with solvent recovery at all times, unless doing so is not possible due to safety considerations.

(i) Your site-specific operating limits may be based on equipment design, manufacturer's recommendations, or other site-specific operating values established for normal operating periods.

(ii) The operating limits may be in the form of a minimum, maximum, or operating range.

■ 4. Section 63.2850 is amended by:

■ a. Revising paragraph (a)(3) and

paragraph (a)(5) introductory text;

■ b. Adding paragraph (a)(5)(iv);

■ c. Revising paragraphs (b), (c)(1) and (2), (d)(1) and (2), (e) introductory text, and (e)(2); and

■ d. Revising Table 1 of § 63.2850.

The revisions and addition read as follows:

**§ 63.2850 How do I comply with the hazardous air pollutant emission standards?**

(a) \* \* \*

(3) Develop a written startup, shutdown and malfunction (SSM) plan in accordance with the provisions in § 63.2852. On and after September 15, 2020, an SSM plan is not required.

\* \* \* \* \*

(5) Submit the reports in paragraphs (a)(5)(i) through (iv) of this section, as applicable:

\* \* \* \* \*

(iv) Initial startup period reports in accordance with § 63.2861(e).

\* \* \* \* \*

(b) *Existing sources under normal operation.* You must meet all of the requirements listed in paragraph (a) of this section and Table 1 of this section for sources under normal operation, and the schedules for demonstrating compliance for existing sources under normal operation in Table 2 of this section.

(c) \* \* \*

(1) *Normal operation.* Upon initial startup of your new source, you must meet all of the requirements listed in § 63.2850(a) and Table 1 of this section for sources under normal operation, and the schedules for demonstrating compliance for new sources under normal operation in Table 2 of this section.

(2) *Initial startup period.* For up to 6 calendar months after the startup date of your new source, you must meet all of the requirements listed in paragraph (a) of this section and Table 1 of this section for sources operating under an initial startup period, and the schedules for demonstrating compliance for new sources operating under an initial startup period in Table 2 of this section. On and after September 15, 2020, you must also comply with the work practice standard in § 63.2840(h) for the duration of the initial startup period. At the end of the initial startup period (as defined in § 63.2872), your new source must then meet all of the requirements listed in Table 1 of this section for sources under normal operation.

(d) \* \* \*

(1) *Normal operation.* Upon initial startup of your significantly modified existing or new source, you must meet all of the requirements listed in paragraph (a) of this section and Table 1 of this section for sources under normal operation, and the schedules for demonstrating compliance for an existing or new source that has been significantly modified in Table 2 of this section.

(2) *Initial startup period.* For up to 3 calendar months after the startup date of your significantly modified existing or new source, you must meet all of the requirements listed in paragraph (a) of this section and Table 1 of this section for sources operating under an initial startup period, and the schedules for demonstrating compliance for a significantly modified existing or new source operating under an initial startup period in Table 2 of this section. On and after September 15, 2020, you must also comply with the work practice standard

in § 63.2840(h) for the duration of the initial startup period. At the end of the initial startup period (as defined in § 63.2872), your new or existing source must meet all of the requirements listed in Table 1 of this section for sources under normal operation.

(e) *Existing or new sources experiencing a malfunction.* A *malfunction* is defined in § 63.2. In general, it means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to function in a normal or usual manner. If your existing or new source experiences an unscheduled shutdown as a result of a malfunction, continues to operate during a malfunction (including the period reasonably necessary to correct the malfunction), or starts up after a shutdown resulting from a malfunction, then you must meet the requirements associated with one of two compliance options. Routine or scheduled process startups and shutdowns resulting from, but not limited to, market demands, maintenance activities, and switching types of oilseed processed, are not startups or shutdowns resulting from a malfunction and, therefore, do not qualify for this provision. Within 15 days of the beginning date of the malfunction, you must choose to comply with one of the options listed in paragraphs (e)(1) and (2) of this section. The provisions of this paragraph (e) do not apply on and after September 15, 2020.

\* \* \* \* \*

(2) *Malfunction period.* Throughout the malfunction period, you must meet all of the requirements listed in paragraph (a) of this section and Table 1 of this section for sources operating during a malfunction period. At the end of the malfunction period, your source must then meet all of the requirements listed in Table 1 of this section for sources under normal operation. Table 1 of this section follows:

TABLE 1 OF § 63.2850—REQUIREMENTS FOR COMPLIANCE WITH HAP EMISSION STANDARDS

Are you required to . . .	For periods of normal operation? <sup>a</sup>	For initial startup periods subject to § 63.2850(c)(2) or (d)(2)?	Before September 15, 2020, for malfunction periods subject to § 63.2850(e)(2)? <sup>a</sup>
(a)(1) Operate and maintain your source in accordance with general duty provisions of § 63.6(e) before September 15, 2020?	Yes. Additionally, the HAP emission limits will apply.	Yes, you are required to minimize emissions to the extent practicable throughout the initial startup period. Such measures should be described in the SSM plan.	Yes, you are required to minimize emissions to the extent practicable throughout the initial startup period. Such measures should be described in the SSM plan.

TABLE 1 OF § 63.2850—REQUIREMENTS FOR COMPLIANCE WITH HAP EMISSION STANDARDS—Continued

Are you required to . . .	For periods of normal operation? <sup>a</sup>	For initial startup periods subject to § 63.2850(c)(2) or (d)(2)?	Before September 15, 2020, for malfunction periods subject to § 63.2850(e)(2)? <sup>a</sup>
(a)(2) Operate and maintain your source in accordance with general duty provisions of § 63.6(e) on and after September 15, 2020?	No, you must meet the requirements of § 63.2840(g). Additionally, the HAP emission limits will apply.	No, you must meet the requirements of § 63.2840(g).	
(b) Determine and record the extraction solvent loss in gallons from your source?	Yes, as described in § 63.2853 ..	Yes, as described in § 63.2862(e) (before September 15, 2020) and § 63.2862(f) (on and after September 15, 2020).	Yes, as described in § 63.2862(e).
(c) Record the volume fraction of HAP present at greater than 1 percent by volume and gallons of extraction solvent in shipment received?	Yes .....	Yes .....	Yes.
(d) Determine and record the tons of each oilseed type processed by your source?	Yes, as described in § 63.2855 ..	No .....	No.
(e) Determine the weighted average volume fraction of HAP in extraction solvent received as described in § 63.2854 by the end of the following calendar month?	Yes .....	No. Except for solvent received by a new or reconstructed source commencing operation under an initial startup period, the HAP volume fraction in any solvent received during an initial startup period is included in the weighted average HAP determination for the next operating month.	No, the HAP volume fraction in any solvent received during a malfunction period is included in the weighted average HAP determination for the next operating month.
(f) Determine and record the actual solvent loss, weighted average volume fraction HAP, oilseed processed and compliance ratio for each 12 operating month period as described in § 63.2840 by the end of the following calendar month?	Yes .....	No, these requirements are not applicable because your source is not required to determine the compliance ratio with data recorded for an initial startup period.	No, these requirements are not applicable because your source is not required to determine the compliance ratio with data recorded for a malfunction period.
(g) Submit a Notification of Compliance Status or Annual Compliance Certification as appropriate?	Yes, as described in §§ 63.2860(d) and 63.2861(a).	No. However, you may be required to submit an annual compliance certification for previous operating months, if the deadline for the annual compliance certification happens to occur during the initial startup period.	No. However, you may be required to submit an annual compliance certification for previous operating months, if the deadline for the annual compliance certification happens to occur during the malfunction period.
(h)(1) Submit a Deviation Notification Report by the end of the calendar month following the month in which you determined that the compliance ratio exceeds 1.00 as described in § 63.2861(b) before September 15, 2020?	Yes .....	No, these requirements are not applicable because your source is not required to determine the compliance ratio with data recorded for an initial startup period.	No, these requirements are not applicable because your source is not required to determine the compliance ratio with data recorded for a malfunction period.
(h)(2) Submit a Deviation Notification Report as described in § 63.2861(b) on and after September 15, 2020?	Yes .....	Yes .....	No.
(i) Submit a Periodic SSM Report as described in § 63.2861(c)?	No, a SSM activity is not categorized as normal operation.	Yes, before September 15, 2020	Yes.
(j) Submit an Immediate SSM Report as described in § 63.2861(d)?	No, a SSM activity is not categorized as normal operation.	Yes, only before September 15, 2020 and if your source does not follow the SSM plan.	Yes, only if your source does not follow the SSM plan.
(k) Submit an Initial Startup Report as described in § 63.2861(e) on and after September 15, 2020?	No .....	Yes .....	No.

<sup>a</sup>Beginning on September 15, 2020, you must meet the requirements of this table for normal operating periods or for initial startup periods subject to § 63.2850(c)(2) or (d)(2) at all times. The column "For malfunction periods subject to § 63.2850(e)(2)?" is not applicable beginning on September 15, 2020.

■ 5. Section 63.2851 is amended by revising paragraph (a) introductory text and adding paragraph (a)(8) to read as follows:

**§ 63.2851 What is a plan for demonstrating compliance?**

(a) You must develop and implement a written plan for demonstrating compliance that provides the detailed procedures you will follow to monitor and record data necessary for demonstrating compliance with this subpart. Procedures followed for quantifying solvent loss from the source and amount of oilseed processed vary from source to source because of site-specific factors such as equipment design characteristics and operating conditions. Typical procedures include one or more accurate measurement methods such as weigh scales, volumetric displacement, and material mass balances. Because the industry does not have a uniform set of procedures, you must develop and implement your own site-specific plan for demonstrating compliance before the compliance date for your source. You must also incorporate the plan for demonstrating compliance by reference in the source's title V permit and keep the plan on-site and readily available as long as the source is operational. If you make any changes to the plan for demonstrating compliance, then you must keep all previous versions of the plan and make them readily available for inspection for at least 5 years after each revision. The plan for demonstrating compliance must include

the items in paragraphs (a)(1) through (8) of this section:

\* \* \* \* \*

(8) On and after September 15, 2020, if you choose to operate your source under an initial start-up period subject to § 63.2850(c)(2) or (d)(2), the items in paragraphs (c)(8)(i) and (ii) of this section:

(i) Your site-specific operating limits, and their basis, for temperature and pressure for the desolventizing and oil distillation units associated with solvent recovery.

(ii) A detailed description of all methods of measurement your source will use to measure temperature and pressure, including the measurement frequency.

\* \* \* \* \*

■ 6. Section 63.2852 is revised to read as follows:

**§ 63.2852 What is a startup, shutdown, and malfunction plan?**

Before September 15, 2020, you must develop a written SSM plan in accordance with § 63.6(e)(3). You must complete the SSM plan before the compliance date for your source. You must also keep the SSM plan on-site and readily available as long as the source is operational. The SSM plan provides detailed procedures for operating and maintaining your source to minimize emissions during a qualifying SSM event for which the source chooses the § 63.2850(e)(2) malfunction period, or the § 63.2850(c)(2) or (d)(2) initial startup period. The SSM plan must specify a program of corrective action for malfunctioning process and air

pollution control equipment and reflect the best practices now in use by the industry to minimize emissions. Some or all of the procedures may come from plans you developed for other purposes such as a Standard Operating Procedure manual or an Occupational Safety and Health Administration Process Safety Management plan. To qualify as a SSM plan, other such plans must meet all the applicable requirements of these NESHAP. The provisions of this section do not apply on and after September 15, 2020.

■ 7. Section 63.2853 is amended by:

■ a. Revising paragraph (a)(2) introductory text;

■ b. Revising the heading for Table 1 of § 63.2853 in paragraph (a)(2);

■ c. Adding Table 2 of § 63.2853(a)(2) to paragraph (a)(2); and

■ d. Revising paragraphs (a)(3), (a)(5)(i), and (c)(1), (3), and (4).

The revisions and addition read as follows:

**§ 63.2853 How do I determine the actual solvent loss?**

\* \* \* \* \*

(a) \* \* \*

(2) *Source operating status.* You must categorize the operating status of your source for each recorded time interval in accordance with criteria in Table 1 or Table 2 of this section, as follows:

TABLE 1 OF § 63.2853(a)(2)—CATEGORIZING YOUR SOURCE OPERATING STATUS BEFORE SEPTEMBER 15, 2020

\* \* \* \* \*

TABLE 2 OF § 63.2853(a)(2)—CATEGORIZING YOUR SOURCE OPERATING STATUS ON AND AFTER SEPTEMBER 15, 2020

If during a recorded time interval . . .	Then your source operating status is . . .
(vi) Your source processes any amount of listed oilseed and source is not operating under an initial startup operating period subject to § 63.2850(c)(2) or (d)(2).	A normal operating period.
(vii) Your source processes no agricultural product and your source is not operating under an initial startup period subject to § 63.2850(c)(2) or (d)(2).	A nonoperating period.
(viii) You choose to operate your source under an initial startup period subject to § 63.2850(c)(2) or (d)(2) ..	An initial startup period.
(ix) Your source processes agricultural products not defined as listed oilseed .....	An exempt period.

(3) *Measuring the beginning and ending solvent inventory.* You are required to measure and record the solvent inventory on the beginning and ending dates of each normal operating period that occurs during an operating month. You must consistently follow the procedures described in your plan for demonstrating compliance, as specified in § 63.2851, to determine the extraction solvent inventory, and maintain readily available records of the

actual solvent loss inventory, as described in § 63.2862(c)(1). In general, you must measure and record the solvent inventory only when the source is actively processing any type of agricultural product. When the source is not active, some or all of the solvent working capacity is transferred to solvent storage tanks which can artificially inflate the solvent inventory.

\* \* \* \* \*

(5) \* \* \*

(i) *Solvent destroyed in a control device.* You may use a control device to reduce solvent emissions to meet the emission standard. The use of a control device does not alter the emission limit for the source. If you use a control device that reduces solvent emissions through destruction of the solvent instead of recovery, then determine the gallons of solvent that enter the control device and are destroyed there during each normal operating period. All

solvent destroyed in a control device during a normal operating period can be subtracted from the total solvent loss. Examples of destructive emission control devices include catalytic incinerators, boilers, or flares. Identify and describe, in your plan for demonstrating compliance, each type of reasonable and sound measurement method that you use to quantify the gallons of solvent entering and exiting the control device and to determine the destruction efficiency of the control device. You may use design evaluations to document the gallons of solvent destroyed or removed by the control device instead of performance testing under § 63.7. The design evaluations must be based on the procedures and options described in § 63.985(b)(1)(i)(A) through (C) or § 63.11, as appropriate. All data, assumptions, and procedures used in such evaluations must be documented and available for inspection. If you use performance testing to determine solvent flow rate to the control device or destruction efficiency of the device, follow the procedures as outlined in § 63.997(e)(1) and (2) and the requirements in paragraph (a)(5)(i)(A) of this section. Instead of periodic performance testing to demonstrate continued good operation of the control device, you may develop a monitoring plan, following the procedures outlined in § 63.988(c) and using operational parametric measurement devices such as fan parameters, percent measurements of lower explosive limits, and combustion temperature.

(A) On or after September 15, 2020, you must conduct all performance tests under such conditions as the Administrator specifies to you based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(B) [Reserved]

(c) \* \* \*

(1) Nonoperating periods as described in paragraph (a)(2) of this section.

\* \* \* \* \*

(3) Before September 15, 2020, malfunction periods as described in § 63.2850(e)(2).

(4) Exempt operation periods as described in paragraph (a)(2) of this section.

■ 8. Section 63.2855 is amended by revising paragraphs (a)(3), (a)(5)(i), and (c)(3) to read as follows:

**§ 63.2855 How do I determine the quantity of oilseed processed?**

\* \* \* \* \*

(a) \* \* \*

(3) *Measuring the beginning and ending inventory for each oilseed.* You are required to measure and record the oilseed inventory on the beginning and ending dates of each normal operating period that occurs during an operating month. You must consistently follow the procedures described in your plan for demonstrating compliance, as specified in § 63.2851, to determine the oilseed inventory on an as received basis and maintain readily available records of the oilseed inventory as described by § 63.2862(c)(3).

\* \* \* \* \*

(5) \* \* \*

(i) Oilseed that molds or otherwise become unsuitable for processing.

\* \* \* \* \*

(c) \* \* \*

(3) Before September 15, 2020, malfunction periods as described in § 63.2850(e)(2).

\* \* \* \* \*

■ 9. Section 63.2861 is amended by ■ a. Revising paragraph (b) introductory text;

■ b. Adding paragraphs (b)(5) through (8);

■ c. Revising paragraphs (c) introductory text and (d) introductory text; and

■ d. Adding paragraphs (e) through (i).

The revisions and additions read as follows:

**§ 63.2861 What reports must I submit and when?**

\* \* \* \* \*

(b) *Deviation notification report.* Submit a deviation report for each compliance determination you make in which the compliance ratio exceeds 1.00 as determined under § 63.2840(c) or if you deviate from the work practice standard for an initial startup period subject to § 63.2850(c)(2) or (d)(2). Submit the deviation report by the end of the month following the calendar month in which you determined the deviation. The deviation notification report must include the items in paragraphs (b)(1) through (7) of this section if you exceed the compliance

ratio, and must include the items in paragraphs (b)(1), (2), and (5) through (8) of this section if you deviate from the work practice standard:

\* \* \* \* \*

(5) Beginning on September 15, 2020, the number of deviations and for each deviation the date and duration of each deviation. Flag and provide an explanation for any deviation from the compliance ratio for which a deviation report is being submitted for more than one consecutive month (*i.e.*, include a reference to the original date and reporting of the deviation). If the explanation provides that corrective actions have returned the affected unit(s) to its normal operation, you are not required to include the items in paragraphs (b)(6) and (7) of this section.

(6) Beginning on September 15, 2020, a statement of the cause of each deviation (including unknown cause, if applicable).

(7) Beginning on September 15, 2020, for each deviation, a list of the affected sources or equipment, an estimate of the quantity of HAP emitted over the emission requirements of § 63.2840, and a description of the method used to estimate the emissions.

(8) A description of the deviation from the work practice standard during the initial startup period, including the records of § 63.2862(f) for the deviation.

(c) *Periodic startup, shutdown, and malfunction report.* Before September 15, 2020, if you choose to operate your source under an initial startup period subject to § 63.2850(c)(2) or (d)(2) or a malfunction period subject to § 63.2850(e)(2), you must submit a periodic SSM report by the end of the calendar month following each month in which the initial startup period or malfunction period occurred. The periodic SSM report must include the items in paragraphs (c)(1) through (3) of this section. The provisions of this paragraph (c) do not apply on and after September 15, 2020.

\* \* \* \* \*

(d) *Immediate SSM reports.* Before September 15, 2020, if you handle a SSM during an initial startup period subject to § 63.2850(c)(2) or (d)(2) or a malfunction period subject to § 63.2850(e)(2) differently from procedures in the SSM plan and the relevant emission requirements in § 63.2840 are exceeded, then you must submit an immediate SSM report. Immediate SSM reports consist of a telephone call or facsimile transmission to the responsible agency within 2 working days after starting actions inconsistent with the SSM plan, followed by a letter within 7 working



days after the end of the event. The letter must include the items in paragraphs (d)(1) through (3) of this section. The provisions of this paragraph (d) do not apply on and after September 15, 2020.

\* \* \* \* \*

(e) *Initial startup period reports.* If you choose to operate your source under an initial startup period subject to § 63.2850(c)(2) or (d)(2) on and after September 15, 2020, you must submit an initial startup period report within 30 days after the initial startup period ends. The report must include the items in paragraphs (e)(1) through (3) of this section.

(1) The name and address of the owner or operator.

(2) The physical address of the vegetable oil production process.

(3) A compliance certification indicating whether the source was in compliance with the work practice standard of § 63.2840(h).

(f) *Performance tests.* On and after September 15, 2020, if you conduct performance tests to determine solvent flow rate to a control device or destruction efficiency of a control device according to the requirements of § 63.2853(a)(5)(i), within 60 days after the date of completing each performance test, you must submit the results of the performance test following the procedures specified in paragraphs (f)(1) and (2) of this section.

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

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

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph

(f) or (g) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to EPA. The file must be generated through the use of EPA's ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described in paragraph (f)(1) of this section.

(g) *Submitting reports electronically.* On and after September 15, 2020, you must submit the initial notification required in § 63.2860(b) and the annual compliance certification, deviation report, and initial startup report required in § 63.2861(a), (b), and (e) to the EPA via CEDRI, which can be accessed through the EPA's CDX (<https://cdx.epa.gov>). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. You must use the appropriate electronic report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described earlier in this paragraph.

(h) *Claims of EPA system outage.* If you are required to electronically submit a report through CEDRI in EPA's

CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (h)(1) through (7) of this section.

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

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

(3) The outage may be planned or unplanned.

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

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

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

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

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

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

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

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

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

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility

that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

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

(3) You must provide to the Administrator:

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

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

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

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

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

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

■ 10. Section 63.2862 is amended by:

■ a. Revising paragraph (b) and paragraph (c) introductory text;

■ b. Revising paragraphs (c)(3)(ii), (d) introductory text, and (e) introductory text; and

■ c. Adding paragraphs (f) through (h).

The revisions and additions read as follows:

#### § 63.2862 What records must I keep?

\* \* \* \* \*

(b) Before September 15, 2020, prepare a plan for demonstrating compliance (as described in § 63.2851) and a SSM plan (as described in § 63.2852). In these two plans, describe the procedures you will follow in obtaining and recording data, and determining compliance under normal operations or a SSM subject to the § 63.2850(c)(2) or (d)(2) initial startup period or the § 63.2850(e)(2) malfunction period. Complete both plans before the compliance date for your source and keep them on-site and readily available as long as the source is operational. On and after September 15, 2020, the requirement to prepare a SSM plan no longer applies, and the plan for demonstrating compliance must only describe the procedures you develop

according to the requirements of § 63.2851.

(c) If your source processes any listed oilseed, record the items in paragraphs (c)(1) through (3) of this section:

\* \* \* \* \*

(3) \* \* \*

(ii) The operating status of your source, as described in § 63.2853(a)(2). On the log for each type of listed oilseed that is not being processed during a normal operating period, you must record which type of listed oilseed is being processed in addition to the source operating status.

\* \* \* \* \*

(d) After your source has processed listed oilseed for 12 operating months, record the items in paragraphs (d)(1) through (5) of this section by the end of the calendar month following each operating month:

\* \* \* \* \*

(e) Before September 15, 2020, for each SSM event subject to an initial startup period as described in § 63.2850(c)(2) or (d)(2), or a malfunction period as described in § 63.2850(e)(2), record the items in paragraphs (e)(1) through (3) of this section by the end of the calendar month following each month in which the initial startup period or malfunction period occurred. The provisions of this paragraph (e) do not apply on and after September 15, 2020.

\* \* \* \* \*

(f) On and after September 15, 2020, for each initial startup period subject to § 63.2850(c)(2) or (d)(2), record the items in paragraphs (f)(1) through (6) of this section by the end of the calendar month following each month in which the initial startup period occurred.

(1) A description and dates of the initial startup period, and reason it qualifies as an initial startup.

(2) An estimate of the solvent loss in gallons for the duration of the initial startup or malfunction period with supporting documentation.

(3) Nominal design rate of the extractor and operating rate of the extractor for the duration of the initial startup period, or permitted production rate and actual production rate of your source for the duration of the initial startup period.

(4) Measured values for temperature and pressure for the desolventizing and oil distillation units associated with solvent recovery.

(5) Information to indicate the mineral oil absorption system was operating at all times during the initial startup period.

(6) Information to indicate the solvent condensers were operating at all times during the initial startup period.

(g) On and after September 15, 2020, keep the records of deviations specified in paragraphs (f)(1) through (4) of this section for each compliance determination you make in which the compliance ratio exceeds 1.00 as determined under § 63.2840(c) or if you deviate from the work practice standard for an initial startup period subject to § 63.2850(c)(2) or (d)(2).

(1) The number of deviations, and the date and duration of each deviation. For deviations from the compliance ratio, the date of the deviation is the date the compliance ratio determination is made. The duration of the deviation from the compliance ratio is the length of time taken to address the cause of the deviation, including the duration of any malfunction, and return the affected unit(s) to its normal or usual manner of operation. For deviations from the work practice standard during the initial startup period, the date of the deviation is the date(s) when the facility fails to comply with any of the work practice standard in § 63.2840(h). The duration of the deviation from the work practice standard is the length of time taken to return to the work practice standards.

(2) A statement of the cause of each deviation (including unknown cause, if applicable).

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

(4) Actions taken to minimize emissions in accordance with § 63.2840(g), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(5) If you deviate from the work practice standard for an initial startup period, a description of the deviation from the work practice standard.

(h) Any records required to be maintained by this part that are submitted electronically via 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 EPA as part of an on-site compliance evaluation.

■ 11. Section 63.2870 is amended by revising Table 1 to § 63.2870 to read as follows:

#### § 63.2870 What parts of the General Provisions apply to me?

\* \* \* \* \*

TABLE 1 TO § 63.2870—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR, PART 63, SUBPART GGGG

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.1 .....	Applicability .....	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2 .....	Definitions .....	Definitions for part 63 standards.	Yes .....	Except as specifically provided in this subpart.
§ 63.3 .....	Units and abbreviations.	Units and abbreviations for part 63 standards.	Yes.	
§ 63.4 .....	Prohibited activities and circumvention.	Prohibited activities; compliance date; circumvention; severability.	Yes.	
§ 63.5 .....	Construction/reconstruction.	Applicability; applications; approvals.	Yes .....	Except for subsections of § 63.5 as listed below.
§ 63.5(c) .....	[Reserved].			
§ 63.5(d)(1)(ii)(H) .....	Application for approval.	Type and quantity of HAP, operating parameters.	No .....	All sources emit HAP. Subpart GGGG does not require control from specific emission points.
§ 63.5(d)(1)(ii)(I) .....	[Reserved].			
§ 63.5(d)(1)(iii), (d)(2), (d)(3)(ii).		Application for approval.	No .....	The requirements of the application for approval for new, reconstructed and significantly modified sources are described in § 63.2860(b) and (c) of subpart GGGG. General provision requirements for identification of HAP emission points or estimates of actual emissions are not required. Descriptions of control and methods, and the estimated and actual control efficiency of such do not apply. Requirements for describing control equipment and the estimated and actual control efficiency of such equipment apply only to control equipment to which the subpart GGGG requirements for quantifying.
§ 63.6 .....	Applicability of General Provisions.	Applicability .....	Yes .....	
§ 63.6(b)(1)–(3) .....	Compliance dates, new and reconstructed sources.		No .....	
§ 63.6(b)(6) .....	[Reserved].			
§ 63.6(c)(3)–(4) .....	[Reserved].			
§ 63.6(d) .....	[Reserved].			
§ 63.6(e)(1)(i) .....	Operation and Maintenance.		Yes, before September 15, 2020. No, on or after September 15, 2020.	See § 63.2840(g) for general duty requirement
§ 63.6(e)(1)(ii) .....	Operation and Maintenance.	Requirement to correct malfunctions as soon as practicable.	Yes, before September 15, 2020]. No, on or after September 15, 2020.	See § 63.2840(g) for general duty requirement.
§ 63.6(e)(3)(i) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii).	Operation and maintenance requirements.		Yes, before September 15, 2020.	Minimize emissions to the extent practicable. On or after September 15, 2020, see § 63.2840(g) for general duty requirement.
§ 63.6(e)(3)(iii) .....	Operation and maintenance requirements.		No .....	Minimize emissions to the extent practicable. On or after September 15, 2020, see § 63.2840(g) for general duty requirement.
§ 63.6(e)(3)(iv) .....	Operation and maintenance requirements.		No .....	Report SSM and in accordance with § 63.2861(c) and (d).

TABLE 1 TO § 63.2870—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR, PART 63, SUBPART GGGG—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.6(e)(3)(viii) .....	Operation and maintenance requirements.	.....	Yes, before September 15, 2020. No, on or after September 15, 2020.	Except, before September 15, 2020, report each revision to your SSM plan in accordance with § 63.2861(c) rather than § 63.10(d)(5) as required under § 63.6(e)(3)(viii).
§ 63.6(e)(3)(ix) .....	Title V permit .....	.....	Yes, before September 15, 2020. No, on or after September 15, 2020.	
§ 63.6(f)(1) .....	Compliance with nonopacity emission standards except during SSM.	Comply with emission standards at all times except during SSM.	Yes, before September 15, 2020. No, on or after September 15, 2020.	
§ 63.6(f)(2)–(3) .....	Methods for Determining Compliance.	.....	Yes.	
§ 63.6(g) .....	Use of an Alternative Standard.	.....	Yes.	
§ 63.6(h) .....	Opacity/Visible emission (VE) standards.	.....	No .....	Subpart GGGG has no opacity or VE standards.
§ 63.6(i) .....	Compliance extension.	Procedures and criteria for responsible agency to grant compliance extension.	Yes..	
§ 63.6(j) .....	Presidential compliance exemption.	President may exempt source category from requirement to comply with subpart.	Yes..	
§ 63.7(e)(1) .....	Performance testing requirements.	Representative conditions for performance test.	Yes, before September 15, 2020. No, on or after September 15, 2020.	See § 63.2853(a)(5)(i)(A) for performance testing requirements.
§ 63.7(e)(2)–(4), (f), (g), and (h).	Performance testing requirements.	Schedule, conditions, notifications and procedures.	Yes .....	Subpart GGGG requires performance testing only if the source applies additional control that destroys solvent. Section 63.2850(a)(6) requires sources to follow the performance testing guidelines of the General Provisions if a control is added.
§ 63.8 .....	Monitoring requirements.	.....	No .....	Subpart GGGG does not require monitoring other than as specified therein.
§ 63.9 .....	Notification requirements.	Applicability and state delegation.	Yes .....	Except for subsections of § 63.9 as listed below.
§ 63.9(b)(2) .....	Notification requirements.	Initial notification requirements for existing sources.	No .....	Section 63.2860(a) of subpart GGGG specifies the requirements of the initial notification for existing sources.
§ 63.9(b)(3)–(5) .....	Notification requirements.	Notification requirement for certain new/reconstructed sources.	Yes .....	Except the information requirements differ as described in § 63.2860(b) of subpart GGGG.
§ 63.9(e) .....	Notification of performance test.	Notify responsible agency 60 days ahead.	Yes .....	Applies only if performance testing is performed.
§ 63.9(f) .....	Notification of VE/opacity observations.	Notify responsible agency 30 days ahead.	No .....	Subpart GGGG has no opacity or VE standards.
§ 63.9(g) .....	Additional notifications when using a continuous monitoring system (CMS).	Notification of performance evaluation; Notification using COMS data; notification that exceeded criterion for relative accuracy.	No .....	Subpart GGGG has no CMS requirements.

TABLE 1 TO § 63.2870—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR, PART 63, SUBPART GGGG—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.9(h) .....	Notification of compliance status.	Contents .....	No .....	Section 63.2860(d) of subpart GGGG specifies requirements for the notification of compliance status.
§ 63.10 .....	Recordkeeping/re-reporting.	Schedule for reporting, record storage.	Yes .....	Except for subsections of § 63.10 as listed below.
§ 63.10(b)(2)(i) .....	Recordkeeping .....	Record SSM event ...	Yes, before September 15, 2020. No, on or after September 15, 2020.	Before September 15, 2020, applicable to periods when sources must implement their SSM plan as specified in subpart GGGG. On or after September 15, 2020, meet the requirements of § 63.2862(f).
§ 63.10(b)(2)(ii)–(iii) .....	Recordkeeping .....	Malfunction of air pollution equipment.	No .....	Before September 15, 2020, applies only if air pollution control equipment has been added to the process and is necessary for the source to meet the emission limit. On or after September 15, 2020, meet the requirements of § 63.2862(g).
§ 63.10(b)(2)(iv)–(v) .....	Recordkeeping .....	SSM recordkeeping	Yes, before September 15, 2020. No, on or after September 15, 2020.	
§ 63.10(b)(2)(vi) .....	Recordkeeping .....	CMS recordkeeping	No .....	Subpart GGGG has no CMS requirements.
§ 63.10(b)(2)(viii)–(ix) .....	Recordkeeping .....	Conditions of performance test.	Yes .....	Applies only if performance tests are performed. Subpart GGGG does not have any CMS opacity or VE observation requirements.
§ 63.10(b)(2)(x)–(xii) .....	Recordkeeping .....	CMS, performance testing, and opacity and VE observations recordkeeping.	No .....	Subpart GGGG does not require CMS.
§ 63.10(c) .....	Recordkeeping .....	Additional CMS recordkeeping.	No .....	Subpart GGGG does not require CMS.
§ 63.10(d)(2) .....	Reporting .....	Reporting performance test results.	Yes .....	Applies only if performance testing is performed.
§ 63.10(d)(3) .....	Reporting .....	Reporting opacity or VE observations.	No .....	Subpart GGGG has no opacity or VE standards.
§ 63.10(d)(4) .....	Reporting .....	Progress reports .....	Yes .....	Applies only if a condition of compliance extension exists.
§ 63.10(d)(5) .....	Reporting .....	SSM reporting .....	No .....	Section 63.2861(c) and (d) specify SSM reporting requirements.
§ 63.10(e) .....	Reporting .....	Additional CMS reports.	No .....	Subpart GGGG does not require CMS.
§ 63.11 .....	Control device requirements.	Requirements for flares.	Yes .....	Applies only if your source uses a flare to control solvent emissions. Subpart GGGG does not require flares.
§ 63.12 .....	State authority and delegations.	State authority to enforce standards.	Yes.	
§ 63.13 .....	State/regional addresses.	Addresses where reports, notifications, and requests are sent.	Yes.	
§ 63.14 .....	Incorporation by reference.	Test methods incorporated by reference.	Yes.	
§ 63.15 .....	Availability of information and confidentiality.	Public and confidential information.	Yes.	

■ 12. Section 63.2872 is amended in paragraph (c) by:

■ a. Revising the definitions for “Compliance ratio”, “Hazardous air pollutant (HAP)”, “Initial startup period”, and “Malfunction period”;

■ b. Adding a definition in alphabetical order for “Nonoperating month”; and

■ c. Revising the definitions of “Normal operating period” and “Operating month”.

The revisions and addition read as follows:

**§ 63.2872 What definitions apply to this subpart?**

\* \* \* \* \*

*Compliance ratio* means a ratio of the actual HAP loss in gallons from the previous 12 operating months to an allowable HAP loss in gallons, which is determined by using oilseed solvent loss factors in Table 1 of § 63.2840, the weighted average volume fraction of HAP in solvent received for the previous 12 operating months, and the tons of each type of listed oilseed processed in the previous 12 operating months. Months during which no listed oilseed is processed, or months during which the § 63.2850(c)(2) or (d)(2) initial startup period or, before September 15, 2020, the § 63.2850(e)(2) malfunction period applies, are excluded from this calculation. Equation 2 of § 63.2840 is used to calculate this value. If the value is less than or equal to 1.00, the source is in compliance. If the value is greater than 1.00, the source is deviating from compliance.

\* \* \* \* \*

*Hazardous air pollutant (HAP)* means any substance or mixture of substances listed as a hazardous air pollutant under section 112(b) of the Clean Air Act.

\* \* \* \* \*

*Initial startup period* means a period of time from the initial startup date of a new, reconstructed, or significantly modified source, for which you choose to operate the source under an initial startup period subject to § 63.2850(c)(2) or (d)(2), until the date your source operates for 15 consecutive days at or above 90 percent of the nominal design rate of the extractor or at or above 90 percent of the permitted production rate

for your source. The initial startup period following initial startup of a new or reconstructed source may not exceed 6 calendar months. The initial startup period following a significant modification may not exceed 3 calendar months. Solvent and oilseed inventory information recorded during the initial startup period is excluded from use in any compliance ratio determinations.

\* \* \* \* \*

*Malfunction period* means a period of time between the beginning and end of a process malfunction and the time reasonably necessary for a source to correct the malfunction for which you choose to operate the source under a malfunction period subject to § 63.2850(e)(2). This period may include the duration of an unscheduled process shutdown, continued operation during a malfunction, or the subsequent process startup after a shutdown resulting from a malfunction. During a malfunction period, a source complies with the standards by minimizing HAP emissions to the extent practicable. Therefore, solvent and oilseed inventory information recorded during a malfunction period is excluded from use in any compliance ratio determinations.

\* \* \* \* \*

*Nonoperating month* means any entire calendar or accounting month in which a source processes no agricultural product.

*Nonoperating period* means any period of time in which a source processes no agricultural product. This

operating status does not apply during any period in which the source operates under an initial startup period as described in § 63.2850(c)(2) or (d)(2), or, before September 15, 2020, a malfunction period as described in § 63.2850(e)(2).

*Normal operating period or normal operation* means any period of time in which a source processes a listed oilseed that is not categorized as an initial startup period as described in § 63.2850(c)(2) or (d)(2), or, before September 15, 2020, a malfunction period as described in § 63.2850(e)(2). At the beginning and ending dates of a normal operating period, solvent and oilseed inventory information is recorded and included in the compliance ratio determination.

\* \* \* \* \*

*Operating month* means any calendar or accounting month in which a source processes any quantity of listed oilseed, excluding any entire calendar or accounting month in which the source operated under an initial startup period as described in § 63.2850(c)(2) or (d)(2), or, before September 15, 2020, a malfunction period as described in § 63.2850(e)(2). An operating month may include time intervals characterized by several types of operating status. However, an operating month must have at least one normal operating period.

\* \* \* \* \*

[FR Doc. 2020-04459 Filed 3-17-20; 8:45 am]

BILLING CODE 6560-50-P

immediate information to assist them in meeting their obligations under the Uniform Guidance for the listed RSA and OSEP programs. We noted that, “[w]e intend to publish this further and invite public comments,” and we are doing so now. We will consider these comments in determining whether to take any future action with respect to the Policy Statement. The Policy Statement is available on the Federal eRulemaking portal, [www.regulations.gov](http://www.regulations.gov), under docket no. ED–2020–OSERS–0022.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Mark Schultz,**

*Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2020–04462 Filed 3–6–20; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA–HQ–OAR–2017–0688; FRL–10005–14–OAR]

**RIN 2060–AT00**

### National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines 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 Stationary Combustion Turbines source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action addressing requirements during periods of startup, shutdown, and malfunction (SSM) and to add electronic reporting requirements. The EPA is finalizing our proposed determination that the risks from this source category due to emissions of air toxics are acceptable and that the existing NESHAP provides an ample margin of safety to protect public health. The EPA is also finalizing our proposed determination that we identified no new cost-effective controls under the technology review that would achieve further emissions reductions from the source category.

**DATES:** This final rule is effective on March 9, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of March 9, 2020.

**ADDRESSES:** The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0688. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Melanie King, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–

2469; fax number: (919) 541–4991; and email address: [king.melanie@epa.gov](mailto:king.melanie@epa.gov). For specific information regarding the risk modeling methodology, contact Mark Morris, 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) 541–5416; and email address: [morris.mark@epa.gov](mailto:morris.mark@epa.gov). For information about the applicability of the Stationary Combustion Turbines NESHAP to a particular entity, contact Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (Mail Code E–19J), Chicago, Illinois 60604; telephone number: (312) 353–6266; and email address: [ayres.sara@epa.gov](mailto: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:

ANSI American National Standards Institute  
 ASME American Society of Mechanical Engineers  
 BACT best available control technology  
 CAA Clean Air Act  
 CAER Combined Air Emissions Reporting  
 CDX Central Data Exchange  
 CEDRI Compliance and Emissions Data Reporting Interface  
 CEMS continuous emissions monitoring systems  
 CFR Code of Federal Regulations  
 CMS continuous monitoring system  
 EPA Environmental Protection Agency  
 ERT Electronic Reporting Tool  
 FTIR Fourier transform infrared  
 HAP hazardous air pollutant(s)  
 HQ hazard quotient  
 IBR incorporation by reference  
 km kilometer  
 LAER lowest achievable emission rate  
 MACT maximum achievable control technology  
 MIR maximum individual risk  
 NAICS North American Industry Classification System  
 NESHAP national emission standards for hazardous air pollutants  
 NOx oxides of nitrogen  
 NTTAA National Technology Transfer and Advancement Act  
 O<sub>2</sub> oxygen  
 OMB Office of Management and Budget  
 PB–HAP hazardous air pollutant known to be persistent and bio-accumulative in the environment  
 ppbvd parts per billion by volume, dry basis  
 PRA Paperwork Reduction Act  
 PTC performance test code  
 RACT reasonably available control technology

RBLC RACT/BACT/LAER Clearinghouse  
REL recommended exposure limit  
RFA Regulatory Flexibility Act  
RTR residual risk and technology review  
SCR selective catalytic reduction  
SSM startup, shutdown, and malfunction  
TOSHI target organ-specific hazard index  
tpy tons per year  
UMRA Unfunded Mandates Reform Act  
U.S. United States  
U.S.C. United States Code  
v. versus  
VCS voluntary consensus standard  
XML extensible markup language

**Background information.** On April 12, 2019, the EPA proposed the RTR for the Stationary Combustion Turbines NESHAP as well as amendments addressing periods of SSM and requiring electronic reporting. In this action, we are finalizing certain 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 *National Emission Standards for Hazardous Air Pollutants from Stationary Combustion Turbines (40 CFR part 63, subpart YYYY), Residual Risk and Technology Review, Final Amendments, Summary of Public Comments and Responses on Proposed Rule*, Docket ID No. EPA-HQ-OAR-2017-0688. A "track changes" version of the regulatory language that incorporates the changes in this action is available in the docket.

At this time, the EPA is not finalizing the proposed removal of the administrative stay of the effectiveness of the standards for new lean premix and diffusion flame gas-fired turbines to allow for additional time to review the public comments on the proposed removal of the stay, as well as a petition to delist the Stationary Combustion

Turbines source category that was filed in August 2019. This final rule does not include responses to comments on lifting the stay. The EPA is still reviewing the comments on lifting the stay and will respond to them in any subsequent action.

**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 Stationary Combustion Turbines source category and how does the NESHAP regulate HAP emissions from the source category?
  - C. What changes did we propose for the Stationary Combustion Turbines source category in our April 12, 2019, proposal?
- III. What is included in this final rule?
  - A. What are the final rule amendments based on the risk review for the Stationary Combustion Turbines source category?
  - B. What are the final rule amendments based on the technology review for the Stationary Combustion Turbines source category?
  - C. What are the final rule amendments addressing emissions during periods of SSM?
  - D. What other changes have been made to the NESHAP?
  - E. What are the effective and compliance dates of the standards?
- IV. What is the rationale for our final decisions and amendments for the Stationary Combustion Turbines source category?
  - A. Residual Risk Review for the Stationary Combustion Turbines Source Category
  - B. Technology Review for the Stationary Combustion Turbines Source Category
  - C. SSM for the Stationary Combustion Turbines Source Category

- D. Electronic Reporting Requirements for the Stationary Combustion Turbines Source Category
- V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
  - A. What are the affected facilities?
  - B. What are the air quality impacts?
  - C. What are the cost impacts?
  - D. What are the economic impacts?
  - E. What are the benefits?
  - F. What analysis of environmental justice did we conduct?
  - G. What analysis of children's environmental health did we conduct?
- VI. Statutory and Executive Order Reviews
  - A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. 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 <sup>1</sup> code
Stationary Combustion Turbines .....	2211, 486210, 211111, 211113, 221.

<sup>1</sup> 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/stationary-combustion-turbines-national-emission-standards>. Following publication in the **Federal Register**, the EPA will post the **Federal**



**Register** version and key technical documents at this same website.

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

### *C. Judicial Review and Administrative Reconsideration*

Under Clean Air Act (CAA) section 307(b)(1), judicial review of the final actions is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the court) by May 8, 2020. 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).<sup>1</sup> For more information on the statutory authority for this rule, see 84 FR 15046.

### *B. What is the Stationary Combustion Turbines source category and how does the NESHAP regulate HAP emissions from the source category?*

The EPA promulgated the Stationary Combustion Turbines NESHAP on March 5, 2004 (69 FR 10512). The standards are codified at 40 CFR part 63, subpart YYYY, and apply to stationary combustion turbines at major sources of HAP. The stationary combustion turbine industry consists of facilities that own and operate stationary combustion turbines. The source category covered by this MACT standard currently includes 243 facilities. Stationary combustion turbines are typically located at power plants, compressor stations, landfills and industrial facilities such as chemical plants.

Stationary combustion turbines have been divided into the following eight subcategories: (1) Emergency stationary combustion turbines, (2) stationary combustion turbines which burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis or where gasified municipal solid waste is used to generate 10 percent or more of the gross heat input to the stationary combustion turbine on an annual basis, (3) stationary combustion turbines of less than 1 megawatt rated peak power output, (4) stationary lean premix combustion turbines when firing gas

<sup>1</sup> The court 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.”).

and when firing oil at sites where all turbines fire oil no more than an aggregate total of 1,000 hours annually (also referred to herein as “lean premix gas-fired turbines”), (5) stationary lean premix combustion turbines when firing oil at sites where all turbines fire oil more than an aggregate total of 1,000 hours annually (also referred to herein as “lean premix oil-fired turbines”), (6) stationary diffusion flame combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than an aggregate total of 1,000 hours annually (also referred to herein as “diffusion flame gas-fired turbines”), (7) stationary diffusion flame combustion turbines when firing oil at sites where all turbines fire oil more than an aggregate total of 1,000 hours annually (also referred to herein as “diffusion flame oil-fired turbines”), and (8) stationary combustion turbines operated on the North Slope of Alaska (defined as the area north of the Arctic Circle (latitude 66.5 degrees North)).

The sources of emissions are the exhaust gases from combustion of gaseous and liquid fuels in a stationary combustion turbine. The HAP that are present in the exhaust gases from stationary combustion turbines include formaldehyde, toluene, benzene, and acetaldehyde. Metallic HAP are present in the exhaust from distillate oil-fired turbines; these metallic HAP are generally carried over from the fuel constituents.

The NESHAP requires new or reconstructed stationary combustion turbines in the lean premix gas-fired, lean premix oil-fired, diffusion flame gas-fired, and diffusion flame oil-fired subcategories to meet a formaldehyde limit of 91 parts per billion by volume, dry basis (ppbvd) at 15-percent oxygen (O<sub>2</sub>). Compliance is demonstrated through initial and annual performance testing and continuous monitoring of operating parameters. The requirements of the rule are currently under a stay of effectiveness for new lean premix and diffusion flame gas-fired turbines.

### *C. What changes did we propose for the Stationary Combustion Turbines source category in our April 12, 2019, proposal?*

On April 12, 2019, the EPA published a proposed rule in the **Federal Register** for the Stationary Combustion Turbines NESHAP, 40 CFR part 63, subpart YYYY, that took into consideration the RTR analyses. In the proposed rule, we proposed to find that risks from the Stationary Combustion Turbines source category due to emissions of air toxics are acceptable and that the existing NESHAP provides an ample margin of

safety to protect public health. No new cost-effective controls were identified in the technology review for the proposed rule. The EPA also proposed to eliminate the exemption for periods of SSM, and our risk analysis assumed removal of that exemption. We proposed a new requirement to electronically submit performance test results and semiannual compliance reports. Finally, we proposed to remove the stay of the standards for new lean premix and diffusion flame gas-fired turbines. We did not propose any revisions to the emission standards based on our RTR.

### **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 Stationary Combustion Turbines source category. This action also finalizes other changes to the NESHAP, including amendments to the SSM provisions and the addition of electronic reporting requirements. This action reflects changes to the April 19, 2019, proposal in consideration of comments received during the public comment period described in section IV of this preamble.

As stated previously, the EPA is not finalizing the proposed removal of the stay of the effectiveness of the standards for new lean premix and diffusion flame gas-fired turbines at this time. The EPA received numerous comments on the proposed stay indicating that 180 days is not sufficient time for owners and operators to conduct all of the activities that are needed for their turbines to come into compliance with the standards, which include the design, procurement, and installation of emission controls and parametric monitoring equipment that can fit within existing sites (as compared to new facilities where the controls are incorporated into the facility design), performance testing, and implementation of procedures for monitoring, recordkeeping, and reporting. More time is needed to review these comments on the removal of the stay. In addition, the EPA received a petition to delist the Stationary Combustion Turbines source category from regulation under CAA section 112 in August 2019. As discussed in more detail in the April 12, 2019, proposal, the EPA proposed to delist certain subcategories of stationary combustion turbines in 2004 under CAA section 112(c)(9)(B) and stayed the effectiveness of the standards for those subcategories, pending the outcome of the proposed delisting. A subsequent

2007 decision by the court<sup>2</sup> held that the EPA has no authority to delist subcategories under CAA section 112(c)(9)(B). Consequently, the EPA proposed to remove the stay in the April 12, 2019, proposal. In recognition of the EPA's inability to delist subcategories under CAA section 112(c)(9)(B), the new August 2019 petition requests delisting of the entire Stationary Combustion Turbines source category and provides an assessment of the risks for the entire source category. A copy of the petition is in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2017-0688). The EPA is in the process of reviewing the petition and has not made a determination regarding whether the information included in the petition supports delisting the entire source category, but notes that the petitioners provided an analysis of the risks from the source category and, based on their analysis, the petitioners concluded that a demonstration can be made that delisting is appropriate under CAA section 112(c)(9)(B). The EPA has determined that it would be reasonable to delay taking final action on the stay until we have made a determination regarding the source category delisting petition, so that turbine owners and operators do not make expenditures on emission controls and performance testing that will not be required if the source category is delisted. Such expenditures would be wasteful and unwarranted if the source category is delisted. Moreover, the EPA has no legal obligation to lift the stay in this RTR rulemaking. Although the EPA often uses the RTR rulemaking vehicle to revise or update various aspects of a NESHAP, as it did here with respect to its proposal to eliminate a stay provision in the rule, the EPA did not do so nor is the EPA required to do so under CAA section 112(d)(6) or (f)(4).

### *A. What are the final rule amendments based on the risk review for the Stationary Combustion Turbines source category?*

We are finalizing our proposed finding that risks remaining after implementation of the existing MACT standards for this source category (as revised in this action to remove the SSM exemption) are acceptable. We are also finalizing our proposed determination that the current NESHAP (as revised in this action to remove the SSM exemption) provides an ample margin of safety to protect public health. Therefore, we are not finalizing any revisions to the numerical emission

<sup>2</sup> *NRDC v. EPA*, 489 F.3d 1364 (D.C. Cir. 2007).

limits based on these analyses conducted under CAA section 112(f).

*B. What are the final rule amendments based on the technology review for the Stationary Combustion Turbines 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 SSM?*

In its 2008 decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 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 7 (the General Provisions applicability table) in several respects as is explained in more detail in the proposal. 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 requirements that are related to the SSM exemption as described in detail in the proposed rule and in section IV.C of this preamble.

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

The EPA is requiring owners and operators of stationary combustion turbine facilities to submit electronic copies of certain required performance test results and semiannual compliance reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The final rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT)

as listed on the ERT website<sup>3</sup> at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format using the attachment module of the ERT. The test methods required by 40 CFR part 63, subpart YYYYY that are currently supported by the ERT are EPA Methods 3A and 4 of 40 CFR part 60, appendix A. For periodic compliance reports, the final rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. The final version of the template for these reports is located on the CEDRI website.<sup>4</sup>

The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. For a more thorough discussion of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, available in Docket ID No. EPA-HQ-OAR-2017-0688.

*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 March 9, 2020. The compliance date for affected sources to comply with the amendments pertaining to SSM and electronic reporting is 180 days after the effective date of the final rule. As discussed elsewhere in this preamble, we are adding a requirement that performance test results and semiannual compliance

reports be submitted electronically, and we are changing the requirements for periods of SSM by removing the exemption from the requirement to meet the emission standards during periods of SSM and promulgating an operational standard for startup. Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results and compliance reports electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days and, more typically, 180 days, is generally necessary to successfully accomplish these revisions. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plans to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is requiring that affected sources must be in compliance with all of the revised requirements within 180 days of the regulation's effective date. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart YYYYY, until the applicable compliance date of the amended rule.

**IV. What is the rationale for our final decisions and amendments for the Stationary Combustion Turbines source category?**

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

<sup>3</sup> <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

<sup>4</sup> <https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>.

*A. Residual Risk Review for the Stationary Combustion Turbines Source Category*

1. What did we propose pursuant to CAA section 112(f) for the Stationary Combustion Turbines 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 April 12, 2019, proposed rule for 40 CFR part 63, subpart YYYY (84 FR 15046). The results of the risk assessment for the proposal are presented briefly below in Table 2 of this preamble. More detail is

in the residual risk technical support document, *Residual Risk Assessment for the Stationary Combustion Turbines Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, available in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2017-0688).

TABLE 2—STATIONARY COMBUSTION TURBINES INHALATION RISK ASSESSMENT RESULTS

Number of facilities <sup>1</sup>	Maximum individual cancer risk (in 1 million) <sup>2</sup>		Population at increased risk of cancer ≥1-in-1 million		Annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI <sup>3</sup>		Maximum screening acute noncancer HQ <sup>4</sup>
	Based on . . .		Based on . . .		Based on . . .		Based on . . .		Based on actual emissions level
	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	
253	3	3	42,000	42,000	0.04	0.04	0.04	0.04	HQ <sub>REL</sub> = 2 (acrolein), HQ <sub>AEGL-1</sub> = 0.07

<sup>1</sup> Number of facilities evaluated in the risk analysis.

<sup>2</sup> Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.

<sup>3</sup> Maximum target organ specific hazard index (TOSHI). The target organ system with the highest TOSHI for the source category is respiratory. The respiratory TOSHI was calculated using the California Environmental Protection Agency chronic recommended exposure limit (REL) for acrolein. The EPA is in the process of updating the Integrated Risk Information System reference concentration for acrolein.

<sup>4</sup> 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 REL. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

The results of the proposal inhalation risk modeling using actual and allowable emissions data, as shown in Table 2 of this preamble, indicate that the maximum lifetime individual cancer risk (MIR) is 3-in-1 million, the maximum chronic noncancer TOSHI is 0.04, and the maximum screening acute noncancer HQ (off-facility site) is 2 (driven by acrolein). Only one facility has an HQ (REL) that exceeds 1. At proposal, the total annual cancer incidence (national) from these facilities was estimated to be 0.04 excess cancer cases per year, or one case in every 25 years. The facility-wide maximum lifetime cancer MIR was estimated to be 2,000-in-1 million at proposal, driven by ethylene oxide emissions from chemical manufacturing. At proposal, the total estimated cancer incidence from whole facility emissions was estimated to be 0.7 excess cancer cases per year, or one excess case in every 1 to 2 years. Approximately 2.8 million people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources at the facilities in the source category. The estimated maximum chronic noncancer TOSHI based on facility-wide emissions is 4 (respiratory), driven by emissions of chlorine from chemical manufacturing, and approximately 360 people are exposed to a TOSHI above 1.

At proposal, potential multipathway human health risks were estimated using a three-tier screening assessment of the persistent bio-accumulative HAP (PB-HAP) emitted by facilities in this

source category. The only pollutants with elevated Tier 1 and Tier 2 screening values were arsenic (cancer), cadmium (noncancer), and mercury (noncancer). The Tier 3 screening values for these pollutants were low. For cancer, the Tier 3 screening value for arsenic was 4. For noncancer, the Tier 3 screening value for cadmium was less than 1, and the screening value for mercury was 1.

Several environmental HAP are emitted by sources within this source category: Arsenic, dioxins/furans, and polycyclic organic matter. Therefore, at proposal we conducted a three-tier screening assessment of the potential adverse environmental risks associated with emissions of these pollutants. Based on this assessment (through Tier 2), there were no exceedances of any of the ecological benchmarks evaluated for any of the pollutants, and we proposed that we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Stationary Combustion Turbines source category are acceptable (section IV.B.1 of proposal preamble, 84 FR 15062, April 12, 2019). We then considered whether 40 CFR part 63, subpart YYYY 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 all health factors evaluated in the risk assessment and evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to this source category to further reduce the risks (or potential risks) due to emissions of HAP identified in our risk assessment. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of our MACT rule review to determine whether there are any emission reduction measures necessary to provide an ample margin of safety with respect to the risks associated with these emissions. Our risk analysis indicated the risks from the source category are low for both cancer and noncancer health effects, and, therefore, any risk reductions from further available control options would result in minimal health benefits. Moreover, as noted in our discussion of the technology review, no additional cost-effective measures were identified for reducing HAP emissions from affected sources in the Stationary Combustion Turbines source category. Thus, we determined that the current Stationary Combustion Turbines NESHAP provides an ample margin of safety to protect public health.

Our technology review focused on identifying developments in practices, processes, and control technologies that

have occurred since the Stationary Combustion Turbines NESHAP was originally promulgated in 2004. Our review of the developments in technology for the Stationary Combustion Turbines source category did not reveal any changes that require revisions to the emission standards. The only add-on HAP emission control technology identified in the original NESHAP rulemaking was an oxidation catalyst. No new or improved add-on control technologies that reduce HAP emissions from turbines were identified during the technology review. Our review also did not identify any new or improved operation and maintenance practices, process changes, pollution prevention approaches, or testing and monitoring techniques for stationary combustion turbines. Therefore, we determined that no revisions are necessary pursuant to CAA section 112(d)(6).

2. How did the risk review change for the Stationary Combustion Turbines source category?

The only change in the risk assessment for the final rule is that the EPA modeled an additional 46 turbines that were identified in a public comment (Docket ID Item No. EPA-HQ-OAR-2017-0688-0116) as subject to the Stationary Combustion Turbines NESHAP. The emissions data used to model those additional turbines and the results of the modeling are discussed in the memorandum titled *Emissions Data Used in Modeling Files for Additional Turbines for Stationary Combustion Turbines Risk and Technology Review (RTR)*, which is in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2017-0688). The modeling input files are also available in the docket. The risks for the additional turbines were all lower than the risks for the turbines modeled for the proposed rule, so the additional risk analysis did not result in changes to our proposed decisions on risk acceptability, ample margin of safety, and adverse environmental effect.

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) for the Stationary Combustion Turbines source category. Generally, the comments that were not supportive of the determination from the risk review suggested changes to the underlying risk assessment methodology. For example, some

commenters stated that the EPA should lower the acceptability benchmark so that risks below 100-in-1 million are unacceptable, include emissions outside of the source categories in question in the risk assessment, and assume that pollutants with noncancer health risks have no safe level of exposure. After review of all the comments received, we determined that no changes were necessary. The comments and our specific responses can be found in the document, *National Emission Standards for Hazardous Air Pollutants from Stationary Combustion Turbines (40 CFR part 63, subpart YYYYY) Residual Risk and Technology Review, Final Amendments: Summary of Public Comments and Responses on Proposed Rule*, available in the docket for this action (Docket ID No. EPA-HQ-OAR-2017-0688).

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

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

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed, even considering the additional 46 turbines modeled. Therefore, for the reasons explained in the proposed rule, we determined that the risks from this source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not revising this subpart to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).

#### *B. Technology Review for the Stationary Combustion Turbines Source Category*

1. What did we propose pursuant to CAA section 112(d)(6) for the Stationary Combustion Turbines 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 control of HAP emissions from stationary combustion turbines. No cost-effective developments in practices, processes, or control technologies were identified in our technology review to warrant revisions to the standards. More information concerning our technology review can be found in the *Technology Review for Stationary Combustion Turbines Risk and Technology Review (RTR)* memorandum, which is in the docket for this action (Docket ID No. EPA-HQ-OAR-2017-0688), and in the preamble for the proposed rule (84 FR 15046).

2. How did the technology review change for the Stationary Combustion Turbines source category?

The technology review has not changed since the proposal.

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

We received both supportive and adverse comments on the proposed technology review. Most commenters supported the EPA's proposed technology review determination. The summarized comments and the EPA's responses are provided in the *National Emission Standards for Hazardous Air Pollutants from Stationary Combustion Turbines (40 CFR part 63, subpart YYYYY), Residual Risk and Technology Review, Final Amendments, Summary of Public Comments and Responses on Proposed Rule* document referenced in section IV.A.3 of the preamble. The most significant adverse comments and the EPA's responses are also provided below.

*Comment:* One commenter stated that the EPA reviewed only the technology used to limit formaldehyde in the technology review and does not evaluate selective catalytic reduction (SCR) or any other of the technologies identified as "developments" within the meaning of CAA section 112(d)(6), which is unlawful and arbitrary.

The commenter stated that the EPA ignored other HAP controls in the technology review—such as wet controls (water or steam injection), lean premixed combustion, and SCR—without any rational explanation. The

commenter noted that the EPA is aware of evidence showing that SCR can and does reduce HAP, such as benzene. The commenter cited a 2016 study, *Catalytic Destruction of a Surrogate Organic Hazardous Air Pollutant as a Potential Co-benefit for Coal-fired Selective Catalyst Reduction Systems* (C.W. Lee et al.), which found that “significant destruction of benzene occurred under a broad range of SCR operating conditions, suggesting that a large number of coal-fired utility boilers which are equipped with SCR for NO<sub>x</sub> control have potential to achieve reduction of organic HAP emissions as a co-benefit.”

The commenter stated that the EPA must consider ways to reduce emissions through developments such as: Methods to assure more efficient use of turbines; use of lower HAP fuels; and/or alternative energy generation altogether through renewables and/or battery storage systems. According to the commenter, the EPA must consider battery storage in particular because this has the potential to increase efficiency and reduce emissions, and to reduce all of the turbine-based risks the EPA found to zero by reducing the emissions completely if paired with a renewable energy source such as solar. The commenter stated that the EPA does not evaluate or take into account any of these developments, and this is unlawful, arbitrary, and capricious under CAA section 112(d)(6).

The commenter noted that there are also developments in volatile organic compounds, acid gas, and metal controls, leak detection and repair, and monitoring that the EPA must consider and ensure that the standards “tak[e] into account” for this source category and these facilities. The commenter stated that since the EPA finalized the original standards, the EPA has recognized such developments in other contexts. The commenter concluded that the EPA would violate CAA section 112(d)(6) by failing to consider and account for the “developments” in fenceline monitoring, leak detection and repair, and pollution controls—particularly where data show significant health risks from a range of emitted pollutants, including cancer, chronic noncancer, and acute risk. The commenter stated that refusing to consider these developments is also arbitrary. The commenter explained that many facilities that include turbines are similar to refineries, in their significant potential for leaks and emission spikes that cause health and safety threats, and in their complexity. The commenter concluded that all of the developments discussed are readily available, would

improve emission control, reduce health risks and refusing to consider them and revise the standards to “account” for them would be unlawful and arbitrary.

Conversely, another commenter stated that, setting aside whether fenceline monitoring technology constitutes a “development” under CAA section 112(d)(6), it would be arbitrary and capricious to adopt fenceline monitoring requirements for stationary combustion turbines as part of this RTR. Fenceline monitoring is used to identify sources of fugitive emissions. According to the commenter, stationary combustion turbines do not have fugitive HAP emissions. According to the commenter, even if some combustion turbine facilities may also contain other equipment with the potential for fugitive emissions, such as natural gas transmission pipelines, that other equipment is not part of the source category under review here and cannot be the basis for new requirements adopted pursuant to CAA section 112(d)(6) review for combustion turbines.

*Response:* The EPA disagrees with the commenter that it only reviewed technologies used to limit formaldehyde emissions. As discussed in the memorandum, *Technology Review for Stationary Combustion Turbines Risk and Technology Review (RTR)* (Docket ID Item No. EPA–HQ–OAR–2017–0688–0066), the EPA reviewed a variety of sources of information during the technology review. Those sources of information included the EPA’s RACT/BACT/LAER Clearinghouse (RBLC), construction and operating permits for stationary combustion turbines, information provided by owners and operators of stationary combustion turbines, and manufacturers of emission control technologies and testing equipment. The review was not limited to technologies that limit formaldehyde emissions, as evidenced by the RBLC search criteria documented in Appendix A of the memorandum and the questions asked of industry stakeholders described in Appendix B of the memorandum.

The 2016 study cited by the commenter as evidence that SCR reduces HAP such as benzene evaluated the HAP reductions from SCR applied to simulated coal combustion flue gases. The chemical composition of the coal combustion flue gases is very different from the chemical composition of the exhaust from stationary combustion turbines, and there is no evidence provided that the use of SCR in coal combustion exhaust and the resulting catalytic chemical reactions that cause the destruction of benzene would occur

in the same way if SCR is applied to stationary combustion turbines. The information provided to the EPA regarding “dual-purpose” catalysts that include SCR for nitrogen oxides (NO<sub>x</sub>) removal and oxidation for carbon monoxide (CO) and HAP removal indicates that the HAP reduction occurs due to the oxidation and not from the SCR.<sup>5</sup> The commenter did not provide any evidence that water or steam injection would reduce HAP emissions, or that fuels that lead to lower HAP emissions have been developed. Lean premix combustion is not a new technology (and is one of the subcategories established in the original 2004 40 CFR part 63, subpart YYY) (rulemaking) and the commenter did not provide any evidence that there have been any developments in the technology. As discussed in the memorandum cited above, the trade organization representing gas turbine manufacturers indicated that there have not been any changes in turbine design since the 2004 rulemaking. We disagree that the EPA must consider alternative energy generation altogether through renewables and/or battery storage and that the use of batteries if paired with renewable energy such as solar would reduce emissions completely. The commenter’s suggested technology (renewables and batteries) is not a revision to the emissions standard for the Stationary Combustion Turbines source category, which is what the EPA is required to review and revise as appropriate, under CAA section 112(d)(6). The commenter is suggesting elimination of combustion turbines as a source category and that is beyond the scope of this rulemaking. Even if such an approach were an appropriate “revision” of the emission standards for combustion turbines under CAA section 112(d)(6), the commenter did not provide any information to show that using renewables or battery storage has been demonstrated on the scale that would be needed to replace the generation produced by the combustion turbines subject to subpart YYY.

Regarding the comment that the EPA should consider leak detection and repair and fenceline monitoring requirements, the EPA notes that those requirements were included in the NESHAP for Petroleum Refineries (40 CFR part 63, subpart CC). Those requirements for refineries target refinery MACT-regulated fugitive emission sources (e.g., storage tanks,

<sup>5</sup> See the memorandum, *Technology Review for Stationary Combustion Turbines Risk and Technology Review (RTR)* (Docket ID Item No. EPA–HQ–OAR–2017–0688–0066).

equipment leaks, and wastewater). Fenceline monitoring, as discussed in the preamble to the proposed Petroleum Refinery rule (79 FR 36920), may identify significant increases in emissions, but small increases in emissions are unlikely to impact the fenceline concentrations. Fenceline monitoring would not be beneficial for the Stationary Combustion Turbines source category because stationary turbines have very low fugitive HAP emissions and their operation does not involve storage and transport of large volumes of volatile organic materials unlike the refinery sector. The potential for fugitive volatile organic HAP emissions, as a result of the reduced amount of transport and the reduced storage of volatile organic materials, is vastly lower.

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

We evaluated all of the comments on the EPA's technology review and determined that no changes to the review are needed based on the comments. For the reasons explained in the proposed rule, we determined that no cost-effective developments in practices, processes, or control technologies were identified in our technology review to warrant revisions to the standards. More information concerning our technology review and how we evaluate cost effectiveness can be found in the *Technology Review for Stationary Combustion Turbines Risk and Technology Review (RTR)* memorandum, which is in the docket for this action (Docket ID No. EPA-HQ-OAR-2017-0688), and in the preamble to the proposed rule (84 FR 15046). Therefore, pursuant to CAA section 112(d)(6), we are finalizing our technology review as proposed.

#### C. SSM Provisions for the Stationary Combustion Turbines Source Category

##### 1. What did we propose for the Stationary Combustion Turbines source category?

In its 2008 decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the court vacated portions of two provisions in the EPA's CAA section 112 General Provisions 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.

The EPA proposed to revise provisions related to SSM that are not consistent with the requirement that standards apply at all times. More information concerning our proposal on SSM can be found in the proposed rule (84 FR 15046). As discussed in the proposal, the EPA proposed an operational standard in lieu of a numeric emission limit during periods of startup, in accordance with CAA section 112(h). The EPA proposed that during turbine startup, owners and operators must minimize the turbine's time spent at idle or holding at low load levels and minimize the turbine's startup time to a period needed for appropriate and safe loading of the turbine, not to exceed 1 hour for simple cycle stationary combustion turbines and 3 hours for combined cycle stationary combustion turbines, after which time the formaldehyde emission limitation of 91 ppbvd at 15-percent O<sub>2</sub> would apply. We did not propose a different standard that would apply during shutdown.

##### 2. How did the SSM provisions change for the Stationary Combustion Turbines source category?

In the final rule, we revised aspects of the operational standard for startup from the proposal based on public comments. We removed the language specifying that the owner or operator must minimize the turbine's time spent at idle or holding at low levels and minimize the turbine's startup time to a period needed for appropriate and safe loading of the turbine. We have also added a definition for startup that is specific to stationary combustion turbines, rather than using the general definition in the General Provisions (subpart A) of 40 CFR part 63. The definition specifies that startup begins at the first firing of fuel in the stationary combustion turbine.

In response to comments regarding the proposed operational standard for startup and the proposed conclusion that a standard for shutdown is not necessary, the EPA evaluated Acid Rain Program hourly emissions data for stationary combustion turbines from 2018.<sup>6</sup> The stabilization of NO<sub>x</sub> emissions, an indicator of stable combustion and post-combustion processes, was used to determine startup and shutdown times for turbines subject to 40 CFR part 63, subpart YYYY. Based on the Acid Rain Program emissions data, the EPA determined that

the majority of turbine startup times were less than 1 hour for simple cycle turbines and the majority of startup times were less than 3 hours for combined cycle turbines. Upper prediction limits for the best performers for startup time were also determined following statistical methods used to define upper prediction limits for MACT emission standards (e.g., methods detailed in the memorandum, *CO CEMS MACT Floor Analysis August 2012 for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants Major Source*, Docket ID Item No. EPA-HQ-OAR-2002-0058-3877). Upper prediction limits were less than 1 hour for simple cycle turbines and less than 3 hours for combined cycle turbines regardless of startup type (i.e., cold, warm, and hot starts). Additionally, the majority of shutdown times were less than 30 minutes for both simple cycle and combined cycle turbines. Finally, utilizing oxidation catalyst had minimal effect on startup and shutdown times.

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

*Comment:* Commenters stated that the proposed rule does not define what constitutes the period of startup, including the beginning and the ending. The commenters added that 40 CFR part 63 defines startup as "the setting in operation of an affected source or portion of an affected source for any purpose." The commenters stated that this definition is vague and does not specify when startup ends. The commenters suggested that the EPA provide a definition of startup as it applies to simple cycle and combined cycle combustion turbines. A commenter also stated that some combined cycle combustion turbines can operate in simple cycle mode. Therefore, the EPA also needs to address these types of turbines in the definitions or the standard itself, according to the commenter. A commenter added that the definition used in the standard should not interfere with the definition of startup in other parts of the CAA or in operating permits, nor should it constrain normal operations. The commenter specifically suggested that the EPA revise the operational standard to apply only upon the first firing of fuel in the combustion turbine.

*Response:* The EPA agrees with the commenters that it would be appropriate to define startup as beginning at the first firing of fuel in the stationary combustion turbine and to

<sup>6</sup> See the memorandum titled *Stationary combustion turbine startups and shutdowns based on Acid Rain Program CEMS data*, which can be found in the rulemaking docket (Docket ID No. EPA-HQ-OAR-2017-0688).



specify when the startup standard ends. The EPA has specified different startup times for simple cycle and combined cycle turbines, as discussed elsewhere in this section. For simple cycle turbines, the EPA has specified in the final rule that startup ends when the stationary combustion turbine has reached stable operation or after 1 hour, whichever is less. For combined cycle turbines, startup ends when the stationary combustion turbine has reached stable operation or after 3 hours, whichever is less. If a turbine in a combined cycle configuration is operating as a simple cycle turbine, it must follow the requirements for simple cycle turbines. Regarding the comment that the definition should not interfere with the definition of startup in other parts of the CAA or in operating permits or constrain normal operations, the EPA does not anticipate any interference. As discussed elsewhere in this section, the standard is based on turbine startup times gathered from emissions data, and it also allows the turbine to take longer to start up if needed (while requiring that the turbine meet the applicable formaldehyde limit).

*Comment:* Many commenters expressed support for the establishment of the operational standard during startup operations but asserted that the EPA must allow more time for certain startup operations for combined cycle stationary combustion turbines. Some commenters stated that they believe the record does not demonstrate the feasibility of a 3-hour startup time for combined cycle units. They added that it appears the 3-hour limit was taken from a document from the Gas Turbine Association (Docket ID Item No. EPA–HQ–OAR–2017–0688–0033). These commenters stated that while this document discusses a period of 3 hours for startup, the document also discusses the wide range of variability in the time needed. Several commenters explained that the startup time for a combined cycle turbine is impacted by its integration with other site facilities and the type of startup. Some commenters cited specific instances when additional startup time beyond what was proposed for combined cycle turbines may be expected, including:

- Startups following extended downtime or a unit turnaround which commenters asserted may take up to 10 hours. A commenter provided a list of nine major steps for startup following a unit turnaround in their comment letter to support the need for additional startup time;
- startup involving combined heat and power units as the startup typically involves purging and setup of the heat

recovery steam generator, followed by gas speed-up and loading, followed by the steam turbine speedup and loading;

- various types of startup including a “warm” start (*i.e.*, when the steam turbine first stage or reheat inner metal temperature is between 400 and 700 degrees Fahrenheit) and a “cold” start (*i.e.*, when the steam turbine first stage or reheat inner metal temperature is less than 400 degrees Fahrenheit). One commenter reviewed operating data from 2017–2019 for some of its stationary combined cycle combustion turbines, noting that 32 out of 82 “warm” startups exceeded a 3-hour duration with an average duration of 3.3–4 hours, and all 23 of the “cold” startups exceeded the 3-hour duration with an average duration of 5–6 hours. Another commenter stated that member companies will be submitting facility-specific data showing the impact of startup type on duration;

- startup involving gas fuel turbines integrated with other systems associated with multiple boilers to produce electricity and steam for a large manufacturing complex; and
- pre-startup commissioning activities and initial startup at liquid natural gas terminals.

These commenters suggested that the EPA provide additional time in the startup operational standard for combined cycle turbines.

Some commenters suggested that 4 hours be provided in the standard. Other commenters suggested that the EPA allow 5.5 hours as the baseline with provisions for site-specific requests for additional time. Some commenters suggested that the final action should provide a procedure for the EPA or state permitting authorities to provide application of an alternative standard for combined cycle turbines if an operator demonstrates that it is needed. A commenter suggested that the EPA allow between 6–8 hours in the standard. Another commenter suggested that the EPA allow up to 10 hours in the standard. One commenter suggested that, consistent with their state operating permit requirements and due to the unique nature of their operations, the EPA should allow up to 12 hours in the standard. Another commenter added that the EPA could provide different time frames if they differentiated between different startup types (*i.e.*, provide the most time for cold startups and the least time for hot startups).

Alternatively, other commenters suggested that the EPA could maintain the 3-hour standard for combined cycle turbines but allow a more extended startup time to facilities if they

document the need for the additional startup time; maintain associated records; provide semi-annual reporting; and take steps during the startup to minimize emissions consistent with good air pollution control practices.

Commenters suggested the standard should require that owners and operators of combined cycle units minimize the time the turbines spend at idle or low load operations, and that they complete the startup process while operating the equipment in a manner consistent with good air pollution control practices for minimizing emissions, rather than having the EPA impose a one-size-fits-all hour limit. One commenter suggested that the end of the startup period should be when the unit begins to operate in “normal mode” as signaled from the turbine control system. Commenters also suggested that if the EPA maintains an hour limit, the standard should be amended to exclude malfunctions encountered during startup from the calculation of the startup time as such events could cause sources to exceed the window.

One commenter recommended that the final rule not supersede site-specific requirements with a one-size-fits-all approach. The commenter suggested that the final standard include approved procedural work practices to provide additional assurance of an efficient and expeditious startup process (*i.e.*, a procedural startup work practice could specify that ammonia injection would begin when the catalyst temperature meets a certain minimum temperature). According to the commenter, these procedural work practices can be maintained, submitted, and approved by the administrator outside of the air permit to minimize permit changes similar to the way quality assurance/quality control manuals are handled.

One commenter suggested that if a more generic startup requirement cannot not be implemented, the EPA should address any imposition of a time limit for startup of a reconstructed combined cycle unit on a case-by-case basis in recognition of the diverse combined cycle plant designs and how such designs impact the rate at which startup can be achieved.

As with the proposed operational standard for combined cycle turbines, several commenters expressed support for the proposed operational standard for simple cycle turbines during startup but expressed concern with the amount of time provided for startup. Commenters noted that 1 hour for a simple cycle turbine is sufficient in most cases, however, the commenter explained that the EPA should provide



additional time for extenuating circumstances including the startup of associated post-combustion control technology which can take over an hour to warm-up and achieve the required destruction rate. One commenter added that initial commissioning or maintenance may require additional startup time. The commenter suggested that the EPA allow longer startup times and require facilities utilizing a longer startup time to document the circumstance in their periodic report to ensure there was a reasonable basis.

Similarly, other commenters stated that more time should be provided for simple cycle turbines and suggested that the EPA provide 2 hours consistent with some state permits. One commenter asserted that the federal requirements should not contradict state operating permit conditions already in place which provide more time than the proposed rule. Commenters stated that the final action should provide a procedure for the EPA or state permitting authority to provide application of an alternative standard if an operator demonstrates that it is needed.

**Response:** In the final action, the definition of startup is specified to begin at the initial combustion of fuel in the turbine. Other operations prior to this event are not included in the time period allocated for startup in this rule.

In response to the comments that the proposed time limit for startup in the operational standard for startup was not sufficient, as discussed previously in this section, the EPA reviewed continuous emission monitoring systems (CEMS) data from 2018 for 182 turbines subject to 40 CFR part 63, subpart YYYYY. This includes both simple and combined cycle turbines representing a range of different designs. The analysis is documented in the memorandum titled *Stationary Combustion Turbine Startups and Shutdowns Based on Acid Rain Program CEMS Data*, which can be found in the rulemaking docket (Docket ID No. EPA-HQ-OAR-2017-0688). As discussed in the memorandum, the stabilization of NO<sub>x</sub> emission rates indicates stable operation (*i.e.*, of combustion and post-combustion controls) and was used to determine the length of startup and shutdown periods. For simple cycle turbines, 90 percent of startups were less than 1 hour for stabilization of emissions for all startup types (*i.e.*, “cold,” “warm,” “hot”; turbine out of operation for more than 48 hours, 8–48 hours, and 0–8 hours, respectively). For combined cycle turbines, 90 percent of “warm” and “hot” startups were less

than 3 hours and 72 percent of “cold” startups were less than 3 hours.

In a second part of the analysis, the EPA reviewed CEMS data from 2018 for turbines with oxidation catalyst. For simple cycle turbines with oxidation catalyst, 80 percent of cold startups, 76 percent of warm startups, and 93 percent of hot startups were less than 1 hour. For combined cycle turbines with oxidation catalyst, at least 93 percent of startups were less than 3 hours for each startup type. Finally, in all cases the 99-percent upper prediction limits for startup of turbines were within the proposed time limits (at most 0.92 hours for cold starts for simple cycle turbines with oxidation catalyst and 2.93 hours for cold starts for combined cycle turbines subject to 40 CFR part 63, subpart YYYYY). Upper prediction limits were determined for the best performing turbines in terms of startup time based on NO<sub>x</sub> emission stabilization.

As noted in the memorandum, NO<sub>x</sub> emissions were not used as a surrogate for HAP emissions. Rather, NO<sub>x</sub> emissions were only used as an indicator for when stabilization of combustion and post-combustion processes may occur. Collectively, the analyses demonstrate that time limits in the proposed operational standards for startup are justified. Furthermore, upper prediction limits for the startup time to stabilization of NO<sub>x</sub> emissions were near the startup time limits of 1 hour for simple cycle turbines and 3 hours for combined cycle turbines, suggesting that the startup time limits are generally neither too short nor too long with respect to emissions stabilization.

Based on the review of CEMS data, the EPA determined that the proposed time limits for the application of the operational standard for startup are reasonable and consistent with what the best performers achieve. Therefore, the EPA is not changing the proposed time limits based on public comments. Regarding the comments that the EPA should address time limits on a case-by-case basis, if situations occur that warrant an alternative standard, the owner/operator can request an alternative standard pursuant to the requirements specified in CAA section 112(h)(3) and 40 CFR 63.6(g).

**Comment:** Commenters stated that the requirement within the proposed operational standard to “minimize the turbine’s time spent at idle or holding at low load levels” is problematic in their opinion.

One commenter stated that greater clarity is needed between what is termed “startup” and what is termed “idle” in the process. The commenter explained that startup by its very nature

begins at “low load levels” before the turbine is safely loaded and questioned where is the dividing line between which levels are considered startup and which levels are considered idle, or, alternatively, at what point in time do low load levels of startup become idle low load levels? The commenter stated that implicit in the proposed distinction seems to be the assumption that operators would run a turbine at “idle” for unknown reasons during the startup process. The commenter asserted that this is contrary to generally accepted operating practices. See, *e.g.*, *Sierra Club v. EPA*, 884 F.3d 1185, 1203 (D.C. Cir. 2018) (“Boiler operators lack incentives to combust fuel for no useful purpose, simply as a means to avoid engaging pollution controls, so presumably they do not tarry in heating their equipment to that point.”).

One commenter stated that the terms “idle” and “holding at low load levels” have not been defined. The commenter asserted that without defining these terms and how the EPA intends for units to measure compliance with the operational standard, it is unclear what standards combustion turbine operators need to meet outside of their existing permit terms. The commenter stated that the proposed language in Table 1 to 40 CFR part 63, subpart YYYYY, therefore, creates confusion as to whether these combustion turbines can continue to operate as intended. Other commenters explained that combustion turbines are often designed, built, permitted, and operated to be load-following and to sometimes idle or be held at low load, when necessary, to enable faster ramping as support for intermittent renewable resources (*e.g.*, solar panels). A commenter stated that some operators may need to hold a combustion turbine at low load to allow the heat recovery steam generator and steam turbine associated with a combined cycle to reach normal operating temperature. According to the commenter, the metal in the steam turbine must be warmed in a controlled manner to allow the proper expansion of moving parts. The commenter stated that once the heat recovery steam generator and steam turbine metal are properly warmed and expanded, the combined cycle can, at that time, ramp up load to meet demand. The commenter contended that any artificial restrictions on the amount of minimum operating time allowed may require turbine operators to risk damaging critical equipment. The commenter added that good engineering practices require testing at low loads following a planned maintenance outage to ensure

the equipment is operating safely and performing as expected. The commenter stated that some manufacturers require this type of testing as part of contractual agreement. Therefore, the commenter suggested that the operational standard be revised as follows: "During turbine startup, you must minimize the turbine's time needed to achieve the operating limitations provided in Table 2, taking into account the appropriate and safe loading of the turbine and auxiliary equipment, not to exceed 1 hour for simple cycle stationary combustion turbines and 3 hours for combined cycle stationary combustion turbines, after which time the operating limitation and continuous compliance requirements in Table 2 and 5 apply." Another commenter provided an example of a Prevention of Significant Deterioration permit that has specifically authorized operation at low loads in order to provide fast-ramping capacity to support the integration of renewable resources (e.g., Maricopa County Air Quality Permit Department, Title V Permit No. V95-007, "Ocotillo PSD Permit"). The commenter noted that the permit conditions clearly distinguish between "startup" and operation at low load. The commenter also noted that the EPA's Environmental Appeals Board reviewed and approved the Prevention of Significant Deterioration limits in this permit.

One commenter suggested that the EPA amend the proposed language to allow adequate time to ensure safe loading of the turbine even if it is beyond the otherwise applicable startup time limits.

Another commenter stated that, at a minimum, the standard should not be written to prohibit low loads, especially if the unit is equipped with an oxidation catalyst and can meet its 4-hour average catalyst inlet temperature operating limit during low load operation.

One commenter recommended that the EPA either eliminate the proposed requirement, "minimize the turbine's time spent at idle or holding at low load levels" or clarify the proposed language by replacing the phrase "time spent at idle or holding at low load levels" with the phrase "operating time outside normal operations."

Other commenters concluded that the EPA should not finalize this requirement as part of the operational standard.

One commenter encouraged the EPA to revise the operational standard for startup in a manner that distinguishes between continuous, stable operation at low loads and true startup conditions.

*Response:* Based on these comments, the EPA is not finalizing the proposed

requirement to minimize a turbine's time spent at idle or holding at low load levels. As stated by the commenters, some turbines are designed and permitted to operate at idle or low load conditions. For the final rule, there will not be an operational requirement to minimize time spent operating in an idle or low load status. Operation in such a status (except during startup) will be treated as normal operation and will not have a separate standard. As discussed elsewhere in this section, the EPA has clarified the definition for startup to distinguish the beginning and end of the startup operational standard.

*Comment:* One commenter noted that 40 CFR 63.6125 states, "If you are operating a stationary combustion turbine that is required to comply with the formaldehyde emission limitation and you use an oxidation catalyst emission control device, you must monitor on a continuous basis your catalyst inlet temperature in order to comply with the operating limitation in Table 2 and as specified in Table 5 of this subpart." The commenter then pointed out that Tables 2 and 5 refer to the calculation of a 4-hour rolling average catalyst inlet temperature. The commenter explained that the catalyst must achieve a certain inlet temperature before formaldehyde emissions are controlled, so the inlet temperature monitoring should begin at the conclusion of startup. The commenter suggested that the EPA clarify that the calculation of the 4-hour rolling average begins at the start of the first full clock hour after startup.

For the same reasons (*i.e.*, turbines using an oxidation catalyst will need time to reach the desired temperature), other commenters suggested that the EPA clarify that the operating limitations in Table 2 do not apply during startup. These commenters also suggested that the operating limits in Table 2 not apply during shutdown as the inlet temperature may fall below the desired level as the combustion turbine transitions out of operation.

One commenter also requested that the EPA clarify that the demonstration of continuous compliance with the operating limits specified in Table 5 do not include hours containing SSM in the calculation. The commenter recommended that the EPA revise the operating limitations in Table 5 of 40 CFR part 63, subpart YYYY to include the following language, "Any hour during which the startup work practice standard is applicable or during which shutdown or malfunction occurs must not be included in the calculation to demonstrate continuous compliance with the operating limitation."

*Response:* The EPA agrees with the commenter that the catalyst inlet temperature operating limitation should not apply during startup, since the catalyst needs time to heat up to the required temperature. The EPA has revised the rule to reflect this change. The EPA does not agree that the catalyst inlet temperature recorded during periods of shutdown should not be included in the 4-hour rolling average catalyst inlet temperature used for compliance with the catalyst inlet temperature operating limitation. Our information is that shutdown periods are usually brief and there is no information that the catalyst temperature would fall below the required levels while the turbine is still operating. Since compliance with the operating limitation is demonstrated on a 4-hour rolling average, factoring in brief periods of shutdown should not result in exceedances of the operating limitation.

With respect to malfunctions, the EPA is not establishing separate emission standards for periods of malfunction and the formaldehyde emission standards and the associated catalyst inlet temperature monitoring requirements apply during periods of malfunction. Therefore, we did not accept the commenter's recommendation that the catalyst inlet temperature during a malfunction should be excluded from the calculation of the 4-hour rolling average catalyst inlet temperature. The EPA also notes that catalyst inlet temperatures may not be affected by all types of malfunction. In addition, as discussed in the proposed rule, if a source fails to comply with a requirement as a result of a malfunction event, the EPA would determine an appropriate response and 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. 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).

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

For the reasons explained in the proposed rule (84 FR 15046), these amendments revise provisions related to SSM that are not consistent with the requirement that the standards must apply at all times. We evaluated all of the comments received on the EPA's

proposed amendments to the SSM provisions and made some changes to the proposed amendments for the reasons stated above and in the *Summary of Public Comments and Responses* document. We are finalizing the proposed amendments to revise provisions related to SSM, as revised based on public comments.

*D. Electronic Reporting Requirements for the Stationary Combustion Turbines Source Category*

1. What did we propose for the Stationary Combustion Turbines source category?

The April 12, 2019, proposal included requirements for owners and operators of stationary combustion turbines subject to 40 CFR part 63, subpart YYYY to submit electronic copies of required performance test results and semiannual compliance reports through the EPA's CDX using CEDRI. The original 2004 rule did not include any requirements for electronic reporting.

2. How did the electronic reporting requirements change for the Stationary Combustion Turbines source category?

The proposed amendments to require owners and operators to submit performance test results and semiannual compliance reports through the EPA's CDX using CEDRI are being finalized with minor corrections and clarifications. The language at 40 CFR 63.6150(a) was amended from the proposal to specify that the electronic report submitted semiannually also incorporates the excess emissions and monitoring system performance reports. The delegation of authority provision at 40 CFR 63.6170(c) was amended to specify that the EPA does not delegate the authority to modify electronic reporting requirements to states, to ensure that the reported information is submitted to the EPA. Table 7 of 40 CFR part 63, subpart YYYY was modified to make inapplicable the requirements in 40 CFR 63.13 for submission of additional copies to the EPA Regional office for electronically submitted reports.

3. What key comments did we receive on the electronic reporting requirements, and what are our responses?

*Comment:* Commenters stated that the electronic reporting provisions should clarify the electronic reporting requirements as they relate to reports submitted to state agencies and should consider the increase in burden if owners/operators must submit reports to both entities rather than submitting one

combined report to their delegated authority.

One commenter stated that as proposed, the owner/operator would be required to submit one report to the EPA through the CEDRI system and then be required to prepare a written report for state agencies such as the Texas Commission on Environmental Quality to satisfy the regulatory reporting obligation, thus creating a redundant reporting requirement. The commenter requested that the final rule clarify whether the electronic reporting requirement also applies to affected sources that are not currently required to submit copies of reports to the EPA because they are located in states like Texas that have received delegation for NESHAP under 40 CFR part 63.

One commenter stated that when developing electronic reporting provisions, the EPA should work with other regulatory authorities (*i.e.*, states, local agencies) to establish comparable or compatible electronic systems. The commenter noted that companies reporting electronically to the EPA will likely still have to submit hardcopy reports to other agencies that do not have electronic systems, thereby reducing or eliminating any burden savings associated with EPA electronic reporting. In one example, based on the template structure, an annual number for landfill gas fuel rate and heating values would be supplied to the EPA but monthly values would still have to be supplied to the state.

One commenter stated that if the EPA finalizes a requirement for submission of electronic reports to CEDRI, the EPA should make inapplicable the requirement in 40 CFR 63.13 for submission of additional copies to the EPA Regional office. According to the commenter, submission to CEDRI should be deemed compliance with that requirement, because EPA Regional employees can access the reports on CEDRI. The commenter recommended that the EPA also should include a procedure for state agencies to similarly opt out of receiving a paper copy.

Similarly, one commenter noted that the EPA did not add an additional burden related to the requirement to report emissions test data using the ERT within the Supporting Statement for the Information Collection Request. The commenter stated that most state or local permitting authorities will still require submittal of a paper copy of the test report, so the ERT entry and electronic submittal to the EPA does not replace the submittal of a test report to the local agency.

*Response:* To clarify the EPA's intent that electronic reporting is required for

all sources subject to the subpart, regardless of state, local, or tribal reporting requirements, the final rule has been amended at 63.6170(c) to add (6), that the EPA does not delegate authority for electronic reporting requirements. The EPA is not delegating the authority in order to ensure that the information required to be reported is received by the EPA. The reported information is needed for several purposes, including assessing compliance, developing emission factors (in the case of emissions data), and future reviews of the NESHAP. Table 7 has been revised for the final rule to reflect that 63.13(a) is only applicable to those reports not required to be submitted electronically.

We acknowledge that certain sources may be required to submit a report electronically through CEDRI and a hard copy report to an air agency that has delegation to enforce the NESHAP. The ERT is designed to provide PDF or printed copies of reports, and these copies can be mailed to an air agency that does not wish to use the EPA's electronic reporting system. The burden associated with creating an emission test report is incorporated in the cost of the emission test presented in the Supporting Statement for the Information Collection Request (Docket ID Item No. EPA-HQ-OAR-2017-0688-0073). This includes the development of the test report through the ERT.

The EPA routinely discusses electronic reporting with air agencies and EPA Regional offices. Quarterly calls are conducted with EPA Regional offices to provide information that will be helpful in their outreach efforts to the air agencies in their regions. The EPA has performed demonstrations of the CEDRI reporting program and the ERT for EPA Regional offices and their associated air agencies, as well as for air agency groups like the Mid-Atlantic Regional Air Management Association.

Additionally, through the E-Enterprise's Combined Air Emissions Reporting (CAER) project, the EPA is working with air agencies to streamline multiple emissions reporting processes. Currently, air emissions information is collected by the EPA and air agencies through numerous separate regulations, in a variety of formats, according to different reporting schedules, and using multiple routes of data transfer. The CAER project seeks to reduce the cost to industry and government for providing and managing important environmental data. More information on CAER can be found at: <https://www.epa.gov/e-enterprise/e-enterprise-combined-air-emissions-reporting-caer>.

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

The EPA evaluated all of the comments on the proposed electronic reporting requirements for this subpart. For the reasons explained in the proposed rule and this final rule, including the document in the docket summarizing the public comments and our responses,<sup>7</sup> we are finalizing the amendments with minor changes.

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

### A. What are the affected facilities?

The EPA has identified 777 turbines at 243 facilities that are currently subject to the Stationary Combustion Turbines NESHAP. We are projecting that 51 new stationary combustion turbines at 20 facilities will become subject to the NESHAP over the next 3 years. The 51 new turbines include 48 natural gas-fired units, one oil-fired unit, and two landfill gas or digester gas-fired units. More information about the number of new turbines projected over the next 3 years can be found in the *Projected Number of Turbine Units and Facilities Subject to the Stationary Combustion Turbine National Emission Standards for Hazardous Air (NESHAP)* memorandum in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2017-0688).

### B. What are the air quality impacts?

The baseline emissions of HAP for 777 stationary combustion turbines at 243 facilities subject to 40 CFR part 63, subpart YYYY are estimated to be 5,466 tpy. The HAP that is emitted in the largest quantity is formaldehyde. The final amendments will require turbines subject to the Stationary Combustion Turbines NESHAP to operate without the SSM exemption. We were unable to quantify emission reductions associated with eliminating the SSM exemption. However, eliminating the SSM exemption will reduce emissions by requiring facilities to meet the applicable standard during periods of SSM. We are not making any other revisions to the emission limits, so there are no other air quality impacts as a result of the final amendments.

### C. What are the cost impacts?

Owners or operators of stationary combustion turbines that are subject to the amendments to 40 CFR part 63, subpart YYYY, will incur costs to review the final rule. Nationwide annual costs associated with reviewing the final rule are estimated to be a total of \$42,362 (2017 dollars) for the first year after the final rule only, or approximately \$174 (2017 dollars) per facility. We do not expect that the amendments revising the SSM provisions and requiring electronic reporting will impose additional burden and may result in a cost savings.

### D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs needed to comply with a proposed 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 proposed rule. The total costs associated with reviewing the final rule are estimated to be \$42,362 (2017 dollars), or \$174 (2017 dollars) per facility, for the first year after the final rule. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

### E. What are the benefits?

The EPA is not making changes to the emission limits and estimates that the changes to the SSM requirements and requirements for electronic reporting are not economically significant. Because these amendments are not considered economically significant, as defined by Executive Order 12866, and because no emission reductions were projected, we did not estimate any benefits from reducing emissions.

### F. What analysis of environmental justice did we conduct?

As discussed in the preamble to the proposed rule, to examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Stationary Combustion Turbines source category across different demographic groups

within the populations living near facilities. The results of this analysis indicated 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. The documentation for this decision is contained in section IV.A of the preamble to the proposed rule and the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Stationary Combustion Turbines Source Category Operations*, which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2017-0688).

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

This action's health and risk assessments are contained in sections IV.A and B of this preamble and further documented in the risk report titled *Residual Risk Assessment for the Stationary Combustion Turbines Source Category in Support of the 2020 Risk and Technology Review Final Rule*, which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2017-0688).

## VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to 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 2060-0540. We do not expect that the final amendments revising the SSM provisions and requiring electronic reporting will impose additional burden

<sup>7</sup> National Emission Standards for Hazardous Air Pollutants from Stationary Combustion Turbines (40 CFR part 63, subpart YYYY) Residual Risk and Technology Review, Final Amendments, Summary of Public Comments and Responses on Proposed Rule, January 2020.

not already accounted for under the existing approved burden.

#### *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. The small entities subject to the requirements of this action are small energy companies or governmental jurisdictions. The Agency has determined that 10 small entities representing approximately 4 percent of the total number of entities subject to the final rule may experience an impact of less than 0.1 percent of revenues.

#### *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. None of the stationary combustion turbines that have been identified as being affected by this action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

#### *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 III.A and B and sections IV.A and B of this preamble, and further documented in the risk document.

#### *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. The EPA has decided to use ANSI/ASME PTC 19.10–1981 Part 10 (1981), “Flue and Exhaust Gas Analyses” (the manual portion only) as an alternative to EPA Method 3B and to incorporate the alternative method by reference. The ANSI/ASME PTC 19.10–1981 Part 10 (1981) method incorporates both manual and instrumental methodologies for the determination of O<sub>2</sub> content. The manual method segment of the O<sub>2</sub> determination is performed through the absorption of O<sub>2</sub>. The method is reasonably available from the American Society of Mechanical Engineers at <http://www.asme.org>; by mail at Three Park Avenue, New York, NY 10016–5990; or by telephone at (800) 843–2763. The EPA has decided to use ASTM D6522–11, “Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers” as an alternative to EPA Method 3A for turbines fueled by natural gas and to incorporate the alternative method by reference. The ASTM D6522–11 method is an electrochemical cell based portable analyzer method which may be used for the determination of NO<sub>x</sub>, CO, and O<sub>2</sub> in emission streams from stationary sources. Also, instead of the current ASTM D6348–12e1 standard (“Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy”), the Stationary Combustion Turbines NESHAP currently references ASTM D6348–03 as an alternative to EPA Method 320. We are updating the NESHAP to reference the most current version of the ASTM D6348 method as an alternative to EPA Method 320. When using this method, the test plan preparation and implementation requirements in Annexes A1 through A8 to ASTM D6348–12e1 are mandatory. The ASTM D6348–12e1 method is an extractive FTIR spectroscopy-based field test method and is used to quantify gas

phase concentrations of multiple target compounds in emission streams from stationary sources. The ASTM standards are reasonably available from the American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See <http://www.astm.org/>.

The EPA identified an additional seven voluntary consensus standards (VCS) as being potentially applicable to this rule. After reviewing the available standards, the EPA determined that the seven VCS would not be practical due to lack of equivalency, documentation, validation data, and/or other important technical and policy considerations. For further information, see the memorandum titled *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines Risk and Technology*, in the docket for this rule (Docket ID No. EPA–HQ–OAR–2017–0688).

#### *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 IV.A of this preamble and the technical report, *Risk and Technology Review Analysis of Demographic Factors for Populations Living Near Stationary Combustion Turbines Source Category Operations*.

#### *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: January 31, 2020.

**Andrew R. Wheeler,**  
Administrator.

For the reasons set forth in the preamble, the EPA 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.*

### Subpart A—General Provisions

■ 2. Section 63.14 is amended by revising paragraphs (e)(1) and (h)(85), redesignating paragraphs (h)(94) through (111) as (h)(95) through (112), and adding new paragraph (h)(94) to read as follows.

#### § 63.14 Incorporations by reference.

\* \* \* \* \*

(e) \* \* \*

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.1282(d) and (g), 63.1625(b), 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), 63.5160(d), table 4 to subpart UUUU, table 3 to subpart YYYY, 63.9307(c), 63.9323(a), 63.1148(e), 63.1155(e), 63.1162(f), 63.1163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, table 4 to subpart KKKKK, tables 4 and 5 to subpart UUUUU, table 1 to subpart ZZZZZ, and table 4 to subpart JJJJJ.

\* \* \* \* \*

(h) \* \* \*

(85) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for § 63.1571(a) and table 3 to subpart YYYY.

\* \* \* \* \*

(94) ASTM D6522–11, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, Approved December 1, 2011, IBR approved for table 3 to subpart YYYY.

\* \* \* \* \*

### Subpart YYYY—National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

■ 3. Revise § 63.6105 to read as follows:

#### § 63.6105 What are my general requirements for complying with this subpart?

(a) Before September 8, 2020, you must be in compliance with the emission limitations and operating limitations which apply to you at all times except during startup, shutdown, and malfunctions. After September 8, 2020, you must be in compliance with the emission limitations, operating limitations, and other requirements in this subpart which apply to you at all times.

(b) Before September 8, 2020, if you must comply with emission and operating limitations, you must operate and maintain your stationary combustion turbine, oxidation catalyst emission control device or other air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction.

(c) After September 8, 2020, 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 63.6120 is amended by revising paragraphs (b) and (c) to read as follows:

#### § 63.6120 What performance tests and other procedures must I use?

\* \* \* \* \*

(b) Each performance test must be conducted according to the requirements in Table 3 of this subpart. Before September 8, 2020, each performance test must be conducted according to the requirements of the General Provisions at § 63.7(e)(1).

(c) Performance tests must be conducted at high load, defined as 100 percent plus or minus 10 percent. Before September 8, 2020, do not conduct performance tests or

compliance evaluations during periods of startup, shutdown, or malfunction. After September 8, 2020, performance tests shall be conducted under such conditions based on representative performance 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.

\* \* \* \* \*

■ 5. Section 63.6125 is amended by adding paragraph (e) to read as follows:

#### § 63.6125 What are my monitor installation, operation, and maintenance requirements?

\* \* \* \* \*

(e) After September 8, 2020, if you are required to use a continuous monitoring system (CMS), you must develop and implement a CMS quality control program that included written procedures for CMS according to § 63.8(d)(1) through (2). You must keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan 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).

■ 6. Section 63.6140 is amended by revising paragraph (c) to read as follows:

#### § 63.6140 How do I demonstrate continuous compliance with the emission and operating limitations?

\* \* \* \* \*

(c) Before September 8, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, and malfunction are not violations if you have operated your stationary combustion turbine in accordance with § 63.6(e)(1)(i).

■ 7. Section 63.6150 is amended by:

- a. Revising paragraph (a) introductory text, paragraph (a)(4) introductory text, paragraph (c) introductory text, and paragraph (e) introductory text, and
- b. Adding paragraphs (a)(5), (f), (g), (h) and (i).

The revisions and additions read as follows:

**§ 63.6150 What reports must I submit and when?**

(a) *Compliance report.* Anyone who owns or operates a stationary combustion turbine which must meet the emission limitation for formaldehyde must submit a semiannual compliance report according to Table 6 of this subpart. The semiannual compliance report must contain the information described in paragraphs (a)(1) through (5) of this section. The semiannual compliance report, including the excess emissions and monitoring system performance reports of § 63.10(e)(3), must be submitted by the dates specified in paragraphs (b)(1) through (5) of this section, unless the Administrator has approved a different schedule. After September 8, 2020, or once the reporting template has been available on the Compliance and Emissions Data Reporting Interface (CEDRI) website for 180 days, whichever date is later, you must submit all subsequent reports to the EPA following the procedure specified in paragraph (g) of this section.

(4) Before September 8, 2020, for each deviation from an emission limitation, the compliance report must contain the information in paragraphs (a)(4)(i) through (iii) of this section.

(5) After September 8, 2020, report each deviation in the semiannual compliance report. Report the information specified in paragraphs (a)(5)(i) through (iv) of this section.

(i) Report the number of deviations. For each instance, report the start date, start time, duration, and cause of each deviation, and the corrective action taken.

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

(iii) Information on the number, duration, and cause for monitor downtime incidents (including unknown cause, if applicable, other than downtime associated with zero and span and other daily calibration checks),

as applicable, and the corrective action taken.

(iv) Report the total operating time of the affected source during the reporting period.

(c) If you are operating as a stationary combustion turbine which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, or a stationary combustion turbine where gasified MSW is used to generate 10 percent or more of the gross heat input on an annual basis, you must submit an annual report according to Table 6 of this subpart by the date specified unless the Administrator has approved a different schedule, according to the information described in paragraphs (d)(1) through (5) of this section. You must report the data specified in (c)(1) through (3) of this section. After September 8, 2020, you must submit all subsequent reports to the EPA following the procedure specified in paragraph (g) of this section.

(e) If you are operating a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart, and you use any quantity of distillate oil to fire any new or existing stationary combustion turbine which is located at the same major source, you must submit an annual report according to Table 6 of this subpart by the date specified unless the Administrator has approved a different schedule, according to the information described in paragraphs (d)(1) through (5) of this section. You must report the data specified in (e)(1) through (3) of this section. After September 8, 2020, you must submit all subsequent reports to the EPA following the procedure specified in paragraph (g) of this section.

(f) *Performance test report.* After September 8, 2020, within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test (as specified in § 63.6145(f)) following the procedures specified in paragraphs (f)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test.* Submit the results of the performance test to the EPA via the CEDRI, which can be accessed

through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

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

(3) *Confidential business information (CBI).* If you claim some of the information submitted under paragraph (f)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (f)(1) of this section.

(g) If you are required to submit reports following the procedure specified in this paragraph, you must submit reports to the EPA via CEDRI, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). You must use the appropriate electronic report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium



as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

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

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

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

(3) The outage may be planned or unplanned.

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

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

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

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

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

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

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

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

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

(1) You may submit a claim if a force majeure event is about to occur, occurs,

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

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

(3) You must provide to the Administrator:

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

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

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

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

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

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

■ 8. Section 63.6155 is amended by revising paragraph (a) introductory text and paragraphs (a)(3) through (5) and adding paragraphs (a)(6), (a)(7), and (d) to read as follows:

**§ 63.6155 What records must I keep?**

(a) You must keep the records as described in paragraphs (a)(1) through (7) of this section.

\* \* \* \* \*

(3) Before September 8, 2020, records of the occurrence and duration of each startup, shutdown, or malfunction as required in § 63.10(b)(2)(i).

(4) Before September 8, 2020, records of the occurrence and duration of each malfunction of the air pollution control equipment, if applicable, as required in § 63.10(b)(2)(ii).

(5) Records of all maintenance on the air pollution control equipment as required in § 63.10(b)(2)(iii).

(6) After September 8, 2020, records of the date, time, and duration of each startup period, recording the periods when the affected source was subject to the standard applicable to startup.

(7) After September 8, 2020, keep records as follows.

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

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

(iii) Record actions taken to minimize emissions in accordance with § 63.6105(c), 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 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.

■ 9. Section 63.6170 is amended by adding paragraph (c)(6) to read as follows:

**§ 63.6170 Who implements and enforces this subpart?**

\* \* \* \* \*

(c) \* \* \*

(6) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

\* \* \* \* \*

■ 10. Section 63.6175 is amended by revising the definition for "Deviation" and adding a definition for "Startup" to read as follows:

**§ 63.6175 What definitions apply to this subpart?**

\* \* \* \* \*

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

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

(2) Fails to meet any term or condition that is adopted to implement an



applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit;

(3) Fails to meet any emission limitation or operating limitation in this subpart during malfunction, regardless of whether or not such failure is permitted by this subpart;

(4) Before September 8, 2020, fails to satisfy the general duty to minimize emissions established by § 63.6(e)(1)(i), or

(5) After September 8, 2020, fails to satisfy the general duty to minimize emissions established by § 63.6105.

\* \* \* \* \*

*Startup* begins at the first firing of fuel in the stationary combustion turbine. For simple cycle turbines, startup ends when the stationary combustion turbine has reached stable operation or after 1 hour, whichever is less. For combined cycle turbines, startup ends when the stationary combustion turbine has reached stable operation or after 3 hours, whichever is less. Turbines in

combined cycle configurations that are operating as simple cycle turbines must meet the startup requirements for simple cycle turbines while operating as simple cycle turbines.

\* \* \* \* \*

■ 11. Table 1 to Subpart YYYYY of Part 63 is revised to read as follows:

**Table 1 to Subpart YYYYY of Part 63—Emission Limitations**

As stated in § 63.6100, you must comply with the following emission limitations.

For each new or reconstructed stationary combustion turbine described in § 63.6100 which is . . .	You must meet the following emission limitations . . .
1. a lean premix gas-fired stationary combustion turbine as defined in this subpart, 2. a lean premix oil-fired stationary combustion turbine as defined in this subpart, 3. a diffusion flame gas-fired stationary combustion turbine as defined in this subpart, or 4. a diffusion flame oil-fired stationary combustion turbine as defined in this subpart.	limit the concentration of formaldehyde to 91 ppbvd or less at 15-percent O <sub>2</sub> , except during turbine startup. The period of time for turbine startup is subject to the limits specified in the definition of startup in § 63.6175.

■ 12. Table 2 to Subpart YYYYY of Part 63 is revised to read as follows:

**Table 2 to Subpart YYYYY of Part 63—Operating Limitations**

As stated in §§ 63.6100 and 63.6140, you must comply with the following operating limitations.

For . . .	You must . . .
1. each stationary combustion turbine that is required to comply with the emission limitation for formaldehyde and is using an oxidation catalyst.	maintain the 4-hour rolling average of the catalyst inlet temperature within the range suggested by the catalyst manufacturer. You are not required to use the catalyst inlet temperature data that is recorded during engine startup in the calculations of the 4-hour rolling average catalyst inlet temperature.
2. each stationary combustion turbine that is required to comply with the emission limitation for formaldehyde and is not using an oxidation catalyst.	maintain any operating limitations approved by the Administrator.

■ 13. Table 3 to Subpart YYYYY of Part 63 is revised to read as follows:

**Table 3 to Subpart YYYYY of Part 63—Requirements for Performance Tests and Initial Compliance Demonstrations**

As stated in § 63.6120, you must comply with the following requirements

for performance tests and initial compliance demonstrations.

You must . . .	Using . . .	According to the following requirements . . .
a. demonstrate formaldehyde emissions meet the emission limitations specified in Table 1 by a performance test initially and on an annual basis AND.	Test Method 320 of 40 CFR part 63, appendix A; ASTM D6348–12e1 <sup>1</sup> provided that the test plan preparation and implementation provisions of Annexes A1 through A8 are followed and the %R as determined in Annex A5 is equal or greater than 70% and less than or equal to 130%; <sup>2</sup> or other methods approved by the Administrator.	formaldehyde concentration must be corrected to 15-percent O <sub>2</sub> , dry basis. Results of this test consist of the average of the three 1-hour runs. Test must be conducted within 10 percent of 100-percent load.
b. select the sampling port location and the number of traverse points AND.	Method 1 or 1A of 40 CFR part 60, appendix A.	if using an air pollution control device, the sampling site must be located at the outlet of the air pollution control device.
c. determine the O <sub>2</sub> concentration at the sampling port location AND.	Method 3A or 3B of 40 CFR part 60, appendix A; ANSI/ASME PTC 19.10–1981 <sup>1</sup> (Part 10) manual portion only; ASTM D6522–11 <sup>1</sup> if the turbine is fueled by natural gas.	measurements to determine O <sub>2</sub> concentration must be made at the same time as the performance test.

You must . . .	Using . . .	According to the following requirements . . .
d. determine the moisture content at the sampling port location for the purposes of correcting the formaldehyde concentration to a dry basis.	Method 4 of 40 CFR part 60, appendix A or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–12e1 <sup>1</sup> .	measurements to determine moisture content must be made at the same time as the performance test.

<sup>1</sup> Incorporated by reference, see § 63.14.

<sup>2</sup> The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound using the following equation:

Reported Results = ((Measured Concentration in Stack)/(%R)) × 100.

■ 14. Table 7 to Subpart YYYY of Part 63 is revised to read as follows:

**Table 7 to Subpart YYYY of Part 63—  
Applicability of General Provisions to  
Subpart YYYY**

You must comply with the applicable General Provisions requirements:

Citation	Subject	Applies to subpart YYYY	Explanation
§ 63.1 .....	General applicability of the General Provisions.	Yes .....	Additional terms defined in § 63.6175. Additional terms defined in § 63.6175.
§ 63.2 .....	Definitions .....	Yes .....	
§ 63.3 .....	Units and abbreviations .....	Yes.	
§ 63.4 .....	Prohibited activities .....	Yes.	
§ 63.5 .....	Construction and reconstruction.	Yes.	
§ 63.6(a) .....	Applicability .....	Yes.	
§ 63.6(b)(1)–(4) ..	Compliance dates for new and reconstructed sources.	Yes.	
§ 63.6(b)(5) .....	Notification .....	Yes.	
§ 63.6(b)(6) .....	[Reserved].		
§ 63.6(b)(7) .....	Compliance dates for new and reconstructed area sources that become major.	Yes.	
§ 63.6(c)(1)–(2) ..	Compliance dates for existing sources.	Yes.	
§ 63.6(c)(3)–(4) ..	[Reserved].		
§ 63.6(c)(5) .....	Compliance dates for existing area sources that become major.	Yes.	
§ 63.6(d) .....	[Reserved].		
§ 63.6(e)(1)(i) ....	General duty to minimize emissions.	Yes before September 8, 2020. No after September 8, 2020. See § 63.6105 for general duty requirement.	
§ 63.6(e)(1)(ii) ....	Requirement to correct malfunctions ASAP.	Yes before September 8, 2020. No after September 8, 2020.	Subpart YYYY does not contain opacity or visible emission standards.
§ 63.6(e)(1)(iii) ....	Operation and Maintenance Requirements.	Yes.	
§ 63.6(e)(2) .....	[Reserved].		
§ 63.6(e)(3) .....	SSMP .....	Yes before September 8, 2020. No after September 8, 2020.	
§ 63.6(f)(1) .....	Applicability of standards except during startup, shutdown, or malfunction (SSM).	Yes before September 8, 2020. No after September 8, 2020.	
§ 63.6(f)(2) .....	Methods for determining compliance.	Yes.	
§ 63.6(f)(3) .....	Finding of compliance .....	Yes.	
§ 63.6(g)(1)–(3) ..	Use of alternative standard ...	Yes.	
§ 63.6(h) .....	Opacity and visible emission standards.	No .....	
§ 63.6(i) .....	Compliance extension procedures and criteria.	Yes.	Subpart YYYY contains performance test dates at § 63.6110.
§ 63.6(j) .....	Presidential compliance exemption.	Yes.	
§ 63.7(a)(1)–(2) ..	Performance test dates .....	Yes .....	
§ 63.7(a)(3) .....	Section 114 authority .....	Yes.	
§ 63.7(b)(1) .....	Notification of performance test.	Yes.	
§ 63.7(b)(2) .....	Notification of rescheduling ...	Yes.	

Citation	Subject	Applies to subpart YYYY	Explanation
§ 63.7(c) .....	Quality assurance/test plan ...	Yes.	Subpart YYYY specifies test methods at § 63.6120.
§ 63.7(d) .....	Testing facilities .....	Yes.	
§ 63.7(e)(1) .....	Conditions for conducting performance tests.	Yes before September 8, 2020. No after September 8, 2020.	
§ 63.7(e)(2) .....	Conduct of performance tests and reduction of data.	Yes .....	
§ 63.7(e)(3) .....	Test run duration .....	Yes.	
§ 63.7(e)(4) .....	Administrator may require other testing under section 114 of the CAA.	Yes.	
§ 63.7(f) .....	Alternative test method provisions.	Yes.	
§ 63.7(g) .....	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h) .....	Waiver of tests .....	Yes.	Subpart YYYY contains specific requirements for monitoring at § 63.6125.
§ 63.8(a)(1) .....	Applicability of monitoring requirements.	Yes .....	
§ 63.8(a)(2) .....	Performance specifications ....	Yes.	
§ 63.8(a)(3) .....	[Reserved].		
§ 63.8(a)(4) .....	Monitoring for control devices	No.	
§ 63.8(b)(1) .....	Monitoring .....	Yes.	
§ 63.8(b)(2)–(3) ..	Multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1) .....	Monitoring system operation and maintenance.	Yes.	
§ 63.8(c)(1)(i) .....	General duty to minimize emissions and CMS operation.	Yes before September 8, 2020. No after September 8, 2020.	Except that subpart YYYY does not require continuous opacity monitoring systems (COMS).
§ 63.8(c)(1)(ii) .....	Parts for repair of CMS readily available.	Yes.	
§ 63.8(c)(1)(iii) .....	Requirement to develop SSM Plan for CMS.	Yes before September 8, 2020. No after September 8, 2020.	
§ 63.8(c)(2)–(3) ..	Monitoring system installation	Yes.	
§ 63.8(c)(4) .....	Continuous monitoring system (CMS) requirements.	Yes .....	
§ 63.8(c)(5) .....	COMS minimum procedures	No.	
§ 63.8(c)(6)–(8) ..	CMS requirements .....	Yes .....	
§ 63.8(d)(1)–(2) ..	CMS quality control .....	Yes.	Except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(d)(3) .....	Written procedures for CMS ..	Yes before September 8, 2020. No after September 8, 2020.	
§ 63.8(e) .....	CMS performance evaluation	Yes .....	
§ 63.8(f)(1)–(5) ..	Alternative monitoring method	Yes.	
§ 63.8(f)(6) .....	Alternative to relative accuracy test.	Yes.	
§ 63.8(g) .....	Data reduction .....	Yes .....	
§ 63.9(a) .....	Applicability and State delegation of notification requirements.	Yes.	
§ 63.9(b)(1)–(5) ..	Initial notifications .....	Yes .....	Subpart YYYY does not contain opacity or VE standards.
§ 63.9(c) .....	Request for compliance extension.	Yes.	
§ 63.9(d) .....	Notification of special compliance requirements for new sources.	Yes.	
§ 63.9(e) .....	Notification of performance test.	Yes.	
§ 63.9(f) .....	Notification of visible emissions/opacity test.	No .....	
§ 63.9(g)(1) .....	Notification of performance evaluation.	Yes.	

Citation	Subject	Applies to subpart YYYY	Explanation
§ 63.9(g)(2) .....	Notification of use of COMS data.	No .....	Subpart YYYY does not contain opacity or VE standards.
§ 63.9(g)(3) .....	Notification that criterion for alternative to relative accuracy test audit (RATA) is exceeded.	Yes.	
§ 63.9(h) .....	Notification of compliance status.	Yes .....	
§ 63.9(i) .....	Adjustment of submittal deadlines.	Yes.	Except that notifications for sources not conducting performance tests are due 30 days after completion of performance evaluations. § 63.9(h)(4) is reserved.
§ 63.9(j) .....	Change in previous information.	Yes.	
§ 63.10(a) .....	Administrative provisions for recordkeeping and reporting.	Yes.	
§ 63.10(b)(1) .....	Record retention .....	Yes.	
§ 63.10(b)(2)(i) ..	Recordkeeping of occurrence and duration of startups and shutdowns.	Yes before September 8, 2020. No after September 8, 2020.	
§ 63.10(b)(2)(ii) ..	Recordkeeping of failures to meet a standard.	Yes before September 8, 2020. No after September 8, 2020. See § 63.6155 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).	Records related to actions during SSM.	Yes before September 8, 2020. No after September 8, 2020.	
§ 63.10(b)(2)(vi)–(xi).	CMS records .....	Yes.	
§ 63.10(b)(2)(xii) ..	Record when under waiver ....	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to RATA.	Yes.	
§ 63.10(b)(2)(xiv)	Records of supporting documentation.	Yes.	
§ 63.10(b)(3) .....	Records of applicability determination.	Yes.	
§ 63.10(c)(1)–(14).	Additional records for sources using CMS.	Yes .....	
§ 63.10(c)(15) .....	Use of SSM Plan .....	Yes before September 8, 2020. No after September 8, 2020.	
§ 63.10(d)(1) .....	General reporting requirements.	Yes.	Subpart YYYY does not contain opacity or VE standards.
§ 63.10(d)(2) .....	Report of performance test results.	Yes.	
§ 63.10(d)(3) .....	Reporting opacity or VE observations.	No .....	
§ 63.10(d)(4) .....	Progress reports .....	Yes.	Subpart YYYY does not require COMS.
§ 63.10(d)(5) .....	Startup, shutdown, and malfunction reports.	No. After September 8, 2020, see 63.6150(a) for malfunction reporting requirements.	
§ 63.10(e)(1) and (2)(i).	Additional CMS reports .....	Yes.	
§ 63.10(e)(2)(ii) ..	COMS-related report .....	No .....	After September 8, 2020 submitted with the compliance report through CEDRI according to § 63.6150(a). Subpart YYYY does not require COMS.
§ 63.10(e)(3) .....	Excess emissions and parameter exceedances reports.	Yes .....	
§ 63.10(e)(4) .....	Reporting COMS data .....	No .....	
§ 63.10(f) .....	Waiver for recordkeeping and reporting.	Yes.	
§ 63.11 .....	Flares .....	No.	
§ 63.12 .....	State authority and delegations.	Yes.	

Citation	Subject	Applies to subpart YYYY	Explanation
§ 63.13 .....	Addresses .....	Yes .....	After September 8, 2020 not applicable to reports required to be submitted through CEDRI by 63.6150(c), (e), (f), or (g).
§ 63.14 .....	Incorporation by reference .....	Yes.	
§ 63.15 .....	Availability of information .....	Yes.	

[FR Doc. 2020-02714 Filed 3-6-20; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2018-0571; FRL-10003-94]

#### **Chrysodeixis includens; Nucleopolyhedrovirus Isolate #460; Exemption From the Requirement of a Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of *Chrysodeixis includens* nucleopolyhedrovirus isolate #460 in or on all food commodities when used in accordance with label directions and good agricultural practices. AgBiTech Pty Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Chrysodeixis includens* nucleopolyhedrovirus isolate #460 in or on all food commodities under FFDCA.

**DATES:** This regulation is effective March 9, 2020. Objections and requests for hearings must be received on or before May 8, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2018-0571, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

###### *B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

###### *C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2018-0571 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 8, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2018-0571, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (2822T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.
- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

## **II. Background**

In the **Federal Register** of December 21, 2018 (83 FR 65660) (FRL-9985-67), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 7F8641) by AgBiTech Pty Ltd., 8 Rocla Ct., Glenvale, Queensland 4350, Australia (c/o MacIntosh & Associates,

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

[EPA-HQ-OAR-2017-0684, EPA-HQ-OAR-2017-0685; FRL-10003-81-OAR]

RIN 2060-AT51

## National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans and Surface Coating of Metal Coil Residual Risk and Technology Reviews

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is taking final action on the residual risk and technology reviews (RTRs) conducted for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories regulated under national emission standards for hazardous air pollutants (NESHAP). The EPA is also taking final action on amendments for the two source categories to address emissions during periods of startup, shutdown, and malfunction (SSM); electronic reporting of performance test results and compliance reports; the addition of EPA Method 18 and updates to several measurement methods; and the addition of requirements for periodic performance testing. Additionally, several miscellaneous technical amendments are being made to improve the clarity of the rule requirements. We are making no revisions to the numerical emission limits for the two source categories based on the residual risk and technology reviews.

**DATES:** This final rule is effective on February 25, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of February 25, 2020.

**ADDRESSES:** The EPA has established dockets for this action under Docket ID No. EPA-HQ-OAR-2017-0684 for 40 Code of Federal Regulations (CFR) part 63, subpart KKKK, Surface Coating of Metal Cans, and Docket ID No. EPA-HQ-OAR-2017-0685 for 40 CFR part 63, subpart SSSS, Surface Coating of Metal Coil. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Ms. Paula Hirtz, Minerals and Manufacturing Group, Sector Policies and Programs Division (D243-04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2618; fax number: (919) 541-4991; and email address: [hirtz.paula@epa.gov](mailto:hirtz.paula@epa.gov). For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4843; fax number: (919) 541-0840; and email address: [sarsony.chris@epa.gov](mailto:sarsony.chris@epa.gov). For information about the applicability of these NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-1395; and email address: [cox.john@epa.gov](mailto: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:

ASTM American Society for Testing and Materials  
BPA bisphenol A  
BPA-NI not intentionally containing BPA  
CAA Clean Air Act  
CBI Confidential Business Information  
CDX Central Data Exchange  
CEDRI Compliance and Emissions Data Reporting Interface  
CEMS continuous emissions monitoring systems  
CFR Code of Federal Regulations  
DGME diethylene glycol monobutyl ether

EPA Environmental Protection Agency  
ERT Electronic Reporting Tool  
HAP hazardous air pollutant(s)  
HCl hydrochloric acid  
HF hydrogen fluoride  
HI hazard index  
HQ hazard quotient  
HQREL hazard quotient recommended exposure limit  
IBR incorporation by reference  
ICR Information Collection Request  
kg kilogram  
km kilometer  
MACT maximum achievable control technology  
MIR maximum individual risk  
NAAQS National Ambient Air Quality Standards  
NAICS North American Industry Classification System  
NESHAP national emission standards for hazardous air pollutants  
NSPS new source performance standard  
NSR New Source Review  
NTTAA National Technology Transfer and Advancement Act  
OAQPS Office of Air Quality Planning and Standards  
OMB Office of Management and Budget  
OSHA Occupational Safety and Health Administration  
PB-HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment  
PDF portable document format  
PRA Paperwork Reduction Act  
PTE permanent total enclosure  
REL reference exposure level  
RFA Regulatory Flexibility Act  
RTR residual risk and technology review  
SSM startup, shutdown, and malfunction  
TOSHI target organ-specific hazard index  
tpy tons per year  
µg/m<sup>3</sup> micrograms per cubic meter  
UMRA Unfunded Mandates Reform Act  
VCS voluntary consensus standards

*Background information.* On June 4, 2019, the EPA proposed revisions to the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP based on our RTRs. In this action, we are finalizing decisions and revisions to the rules. In this preamble, we summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses. A summary of all the public comments on the proposed rules and the EPA's responses to those comments is available in the "Summary of Public Comments and Responses for the Risk and Technology Reviews for the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP," in Docket ID Nos. EPA-HQ-OAR-2017-0684 and EPA-HQ-OAR-2017-0685. A "track changes" version of the regulatory language that incorporates the changes in this action is available in the docket for each rule.

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

## I. General Information

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

## II. Background

- A. What is the statutory authority for this action?  
 B. What are the source categories and how does the NESHAP regulate HAP emissions from the source categories?  
 C. What changes did we propose for the source categories in our June 4, 2019, RTR proposal?

## III. What is included in these final rules?

- A. What are the final rule amendments based on the risk reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?  
 B. What are the final rule amendments based on the technology reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?  
 C. What are the final rule amendments addressing emissions during periods of SSM?  
 D. What other changes have been made to the NESHAP?  
 E. What are the effective and compliance dates of the revisions to 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 Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?

- A. Residual Risk Reviews  
 B. Technology Reviews  
 C. Electronic Reporting Provisions  
 D. SSM Provisions  
 E. Ongoing Compliance Demonstrations  
 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 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 source category	NAICS <sup>1</sup> code	Regulated entities <sup>2</sup>
Surface Coating of Metal Cans .....	332431	Two-piece Beverage Can Facilities, Three-piece Food Can Facilities, Two-piece Draw and Iron Facilities, One-piece Aerosol Can Facilities.
	332115	
	332116	
	332812	
	332999	
	332431	Can Assembly Facilities.
	332812	End Manufacturing Facilities.
Surface Coating of Metal Coil .....	325992	Photographic Film, Paper, Plate, and Chemical Manufacturing.
	326199	All Other Plastics Product Manufacturing.
	331110	Iron and Steel Mills and Ferroalloy Manufacturing.
	331221	Rolled Steel Shape Manufacturing.
	331315	Aluminum Sheet, Plate, and Foil Manufacturing.
	331318	Other Aluminum Rolling, Drawing, and Extruding.
	331420	Copper Rolling, Drawing, Extruding, and Alloying.
	332311	Prefabricated Metal Building and Component Manufacturing.
	332312	Fabricated Structural Metal Manufacturing.
	332322	Sheet Metal Work Manufacturing.
	<sup>3</sup> 332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.
	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
	333249	Other Industrial Machinery Manufacturing.
	337920	Blind and Shade Manufacturing.

<sup>1</sup> North American Industry Classification System.

<sup>2</sup> Regulated entities are major source facilities that apply surface coatings to these parts or products.

<sup>3</sup> The majority of coil coating facilities are included in NAICS Code 332812.

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 categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate

NESHAP. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

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

copies of this final action at: <https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-cans-national-emission-standards-hazardous> and <https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-coil-national-emission-standards-hazardous>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at these same websites.

Additional information is available on the RTR website at <https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous>. This information includes an overview of the RTR program, links to project websites for the RTR source categories, and detailed emissions data and other data we used as inputs to the risk assessments.

### C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by April 27, 2020. Under CAA section 307(b)(2), the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

1200 Pennsylvania Ave. NW, Washington, DC 20460.

## II. Background

### A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of 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 floor 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).<sup>1</sup> For more information on the statutory authority for this rule, see the proposal preamble (84 FR 25908, June 4, 2019) and the memorandum, *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology*, December 14, 2017, in the Surface Coating of Metal Cans Docket and the Surface Coating of Metal Coil Docket.

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

1. What is the Surface Coating of Metal Cans source category and how does the current NESHAP regulate its HAP emissions?

The EPA promulgated the Surface Coating of Metal Cans NESHAP on November 13, 2003 (68 FR 64432). The standards are codified at 40 CFR part 63, subpart KKKK. The Surface Coating of Metal Cans industry consists of facilities that are engaged in the surface coating of metal cans and ends (including decorative tins) and metal crowns and

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



closures. The source category covered by this MACT standard currently includes five facilities.

The Surface Coating of Metal Cans NESHAP (40 CFR 63.3561) defines a “metal can” as “a single-walled container manufactured from metal substrate equal to or thinner than 0.3785 millimeter (mm) (0.0149 inch)” and includes coating operations for four subcategories: (1) One- and two- piece draw and iron can body coating; (2) sheetcoating; (3) three-piece can body assembly coating; and (4) end coating. The Surface Coating of Metal Cans NESHAP also defines a “coating” as “a material that is applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants.” This source category is further described in the June 4, 2019, RTR proposal. See 84 FR 25908.

The primary HAP emitted from this source category are organic HAP and include glycol ethers, formaldehyde, xylenes, toluene, methyl isobutyl ketone, 2-(hexyloxy) ethanol, ethyl benzene, and methanol. These HAP account for 99 percent of the HAP emissions from the source category. The HAP emissions from the Surface Coating of Metal Cans source category are emitted from the coating materials which include the coatings, thinners, and cleaning materials used in the coating operations. The coating operations include: The equipment used to apply the coatings; the equipment to dry or cure the coatings after application; all storage containers and mixing vessels; all manual and automated equipment and containers used to convey the coating materials; and all storage containers and manual and automated equipment used for conveying waste materials generated by the coating operations. The coating application lines and the drying and curing ovens are the largest sources of HAP emissions. The coating application lines apply an exterior base coat to two- and three-piece cans using a lithographic/printing (*i.e.*, roll) application process. The inside, side seam, and repair coatings are spray applied using airless spray equipment and are a minor portion of the can coating operations. As indicated by the name, repair spray coatings are used to cover breaks in the coating that are caused during the formation of the score in easy-open ends or to provide, after the manufacturing process, an additional protective layer for corrosion resistance.

The Surface Coating of Metal Cans NESHAP specifies numerical emission

limits for existing sources and for new or reconstructed sources for organic HAP emissions from four subcategories of can coating operations. Within the four subcategories are several different types of coatings with separate emission limits. The specific organic HAP emission limits are provided in Tables 1 and 2 of 40 CFR part 63, subpart KKKK.

The Surface Coating of Metal Cans NESHAP provides that emission limits can be achieved using several different options, including a compliant material option, an emission rate without add-on controls option (averaging option), an emission rate with add-on controls option, or a control efficiency/outlet concentration option. For any coating operation(s) on which the facility uses the compliant material option or the emission rate without add-on controls option, the facility is not required to meet any work practice standards.

If the facility uses the emission rate with add-on controls option, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) using that option. The plan must specify practices and procedures to ensure that a set of minimum work practices specified in the NESHAP are implemented. The facility must also comply with site-specific operating limits for the emission capture and control system.

## 2. What is the Surface Coating of Metal Coil source category and how does the current NESHAP regulate its HAP emissions?

The EPA promulgated the Surface Coating of Metal Coil source category NESHAP on June 10, 2002 (67 FR 39794). The standards are codified at 40 CFR part 63, subpart SSSS. The Surface Coating of Metal Coil industry consists of facilities that operate a metal coil coating line. The source category covered by this MACT standard currently includes 48 facilities.

The Surface Coating of Metal Coil NESHAP (40 CFR 63.5110) defines a “coil coating line” as “a process and the collection of equipment used to apply an organic coating to the surface of metal coil.” A coil coating line includes a web unwind or feed section, a series of one or more work stations, and any associated curing oven, wet section, and quench station. A work station is “a unit on a coil coating line where the coating material is deposited onto the metal coil substrate” or a coating application station. This source category is further

described in the June 4, 2019, RTR proposal. See 84 FR 25909.

The primary HAP emitted from metal coil coating operations are organic HAP and include xylenes, glycol ethers, naphthalene, isophorone, toluene, diethylene glycol monobutyl ether (DGME), and ethyl benzene. The majority of organic HAP emissions are from the coating application stations and the curing ovens.

The Surface Coating of Metal Coil NESHAP specifies numerical emission limits for organic HAP emissions from the coating application stations and associated curing ovens. The Surface Coating of Metal Coil NESHAP provides that emission limits can be achieved using several different options: (1) Use only individually compliant coatings with an organic HAP content that does not exceed 0.046 kilogram (kg)/liter of solids applied, (2) use coatings with an average organic HAP content that does not exceed 0.046 kg/liter of solids on a rolling 12-month average, (3) use a capture system and add-on control device to either reduce emissions by 98 percent or use a 100-percent efficient capture system (permanent total enclosure (PTE)) and an oxidizer to reduce organic HAP emissions to no more than 20 parts per million by volume as carbon, or (4) use a combination of compliant coatings and control devices to maintain an average equivalent emission rate of organic HAP not exceeding 0.046 kg/liter of solids on a rolling 12-month average basis. These compliance options apply to an individual coil coating line, to multiple lines as a group, or to the entire affected source.

## C. What changes did we propose for the source categories in our June 4, 2019, RTR proposal?

On June 4, 2019, the EPA published proposed rule amendments in the **Federal Register** for the Surface Coating of Metal Cans NESHAP, 40 CFR part 63, subpart KKKK, and the Surface Coating of Metal Coil NESHAP, 40 CFR part 63, subpart SSSS, that took into consideration the RTR analyses.

For each source category, we proposed that the risks are acceptable, and that additional emission controls for each source category are not necessary to provide an ample margin of safety. For the technology reviews, we did not identify any developments in practices, processes, or control technologies, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6).

We also proposed the following amendments:

- For each source category, a requirement for electronic submittal of notifications, semi-annual reports, and compliance reports (which include performance test reports);
- for each source category, revisions to the SSM provisions of each NESHAP in order to ensure that they are consistent with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted source owners and operators from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM;
- for the Surface Coating of Metal Coil NESHAP, adding the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, "Measurement of Gaseous Organic Compound Emissions by Gas Chromatography," to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon;
- for the Surface Coating of Metal Coil NESHAP, revising 40 CFR 63.5090 to clarify that the NESHAP does not apply to the application of markings (including letters, numbers, or symbols) to bare metal coils that are used for product identification or for product inventory control;
- for each source category, removing references to paragraph (d)(4) of the Occupational Safety and Health Administration's (OSHA's) Hazard Communication standard (29 CFR 1910.1200), which dealt with OSHA-defined carcinogens, and replacing that reference with a list of HAP that must be regarded as potentially carcinogenic based on EPA guidelines;
- for each source category, a requirement to conduct performance testing and reestablish operating limits no less frequently than every 5 years for sources that are using add-on controls to demonstrate compliance; and
- for each source category, Incorporation by Reference (IBR) of alternative test methods and references to updated alternative test methods; and several minor editorial and technical changes in each subpart.

### III. What is included in these final rules?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Surface Coating of Metal Cans source category and the Surface Coating of Metal Coil source category. This action also finalizes other changes to the NESHAP for each source category, including:

- A requirement for electronic submittal of notifications, semi-annual

reports, and compliance reports (which include performance test reports);

- revisions to the SSM provisions;
- removing references to paragraph (d)(4) of OSHA's Hazard Communication standard (29 CFR 1910.1200), which dealt with OSHA-defined carcinogens, and replacing that reference with a list of HAP that must be regarded as potentially carcinogenic based on EPA guidelines;
- adding a requirement to conduct performance testing and reestablish operating limits no less frequently than every 5 years for sources that are using add-on controls to demonstrate compliance, unless they are already required to perform comparable periodic testing as a condition of renewing their title V operating permit;
- IBR of alternative test methods and references to updated alternative test methods; and
- several minor editorial and technical changes.

This action also finalizes the proposed changes to the NESHAP for the Surface Coating of Metal Coil source category by adding the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, "Measurement of Gaseous Organic Compound Emissions by Gas Chromatography," to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon; and by revising 40 CFR 63.5090 to clarify that the NESHAP does not apply to the application of markings (including letters, numbers, or symbols) to bare metal coils that are used for product identification or for product inventory control.

#### *A. What are the final rule amendments based on the risk reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?*

This section describes the final amendments to the Surface Coating of Metal Cans NESHAP (subpart KKKK) and the Surface Coating of Metal Coil NESHAP (subpart SSSS) being promulgated pursuant to CAA section 112(f). In this action, we are finalizing our proposed determinations that risks from these two subparts are acceptable, and that the standards provide an ample margin of safety to protect public health and to prevent an adverse environmental effect. The EPA proposed no changes to these two subparts based on the risk reviews conducted pursuant to CAA section 112(f). The EPA received no new data or other information during the public comment period that causes us to change those proposed determinations. Therefore, we are not requiring additional controls under

CAA section 112(f)(2) for either of the two subparts in this action.

#### *B. What are the final rule amendments based on the technology reviews for the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories?*

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for these source categories. 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?*

We are finalizing the proposed amendments to the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), the EPA is establishing standards in these rules that apply at all times. As detailed in section IV.C of the proposal preamble (84 FR 25904, June 4, 2019), Table 5 to Subpart KKKK of Part 63 and Table 2 to Subpart SSSS of Part 63 (General Provisions applicability tables) are being revised to change several references related to the provisions that apply during periods of SSM. We also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made other harmonizing changes to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. We determined that facilities in both of these source categories can meet the applicable emission standards in the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP at all times, including periods of startup and shutdown. Therefore, the EPA determined that no additional standards are needed to address emissions during these periods. The legal rationale and explanation of the changes for SSM periods are set forth in the proposed rule. See 84 FR 25925 through 25929 and 25936 through 25939.

Further, the EPA is not finalizing standards for malfunctions. As discussed in section IV.C of the June 4, 2019, proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. For these

source categories, it is unlikely that a malfunction would result in a violation of the standards, and no comments or information were submitted that support a contrary conclusion. Refer to section IV.C of the June 4, 2019 proposal preamble for further discussion of the EPA's rationale for the decision not to set standards for malfunctions, as well as a discussion of the actions a source could take in the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, given that administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and the EPA can consider all relevant information when determining the appropriate response to those situations.

We are finalizing a revision to the performance testing requirements at 40 CFR 63.4164 and 40 CFR 63.5160. The final performance testing provisions prohibit performance testing during startup, shutdown, or malfunction as these conditions are not representative of steady state operating conditions. The final rules also require that operators maintain records to document that operating conditions during performance tests represent steady state conditions.

#### *D. What other changes have been made to the NESHAPs?*

For both the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP, the EPA is finalizing, as proposed, several other revisions that are described in the following paragraphs.

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners and operators of facilities in the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories submit electronic copies of required performance test reports through the EPA's Central Data Exchange (CDX) website using an electronic performance test report tool called the Electronic Reporting Tool (ERT). We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.*, for a possible outage in the CDX or Compliance and Emissions Data Reporting Interface (CEDRI) or for a *force majeure* event in the time just prior to a report's due date, as well as the process to assert such a claim.

For each subpart, we also are changing the format of references to test

methods in 40 CFR part 60, appendix A to indicate where, in the eight sections of appendix A, each method is found.

For each subpart, we are finalizing the proposal to re-designate the list of applicable organic HAP that must be used when a facility chooses to use the compliant material option (*i.e.*, for calculating total organic HAP content of a coating material present at 0.1 percent or greater by mass). To specify the applicable HAP, we are changing the rule to remove the reference to paragraph (d)(4) of OSHA's Hazard Communication standard (29 CFR 1910.1200) and replace it with a new table in each subpart (Table 8 in 40 CFR part 63, subpart KKKK and Table 3 in 40 CFR part 63, subpart SSSS) that lists the applicable HAP. The organic HAP in these new tables are those HAP that were categorized in the EPA's "Prioritized Chronic Dose-Response Values for Screening Risk Assessments" (dated May 9, 2014) as a "human carcinogen," "probable human carcinogen," or "possible human carcinogen" according to *The Risk Assessment Guidelines of 1986* (EPA/600/8-87/045, August 1987)<sup>2</sup> or as "carcinogenic to humans," "likely to be carcinogenic to humans," or with "suggestive evidence of carcinogenic potential" according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P-03/001F, March 2005).

We are including in the final rule for each subpart a requirement for facilities that use control devices to conduct control device performance testing no less frequently than once every 5 years. For facilities with title V permits that require comparable periodic testing prior to permit renewal, no additional testing is required, and we included provisions in the rule to allow sources to harmonize the NESHAP testing schedule with a facility's current title V testing schedule.

#### 1. Technical Amendments to the Surface Coating of Metal Cans NESHAP

In the final rule, we are amending 40 CFR 63.3481(c)(5), as proposed, to revise the reference to "future subpart MMMM" of this part by removing the word "future" because subpart MMMM was promulgated in 2004.

We are revising the monitoring provisions for thermal and catalytic oxidizers, as proposed, to clarify that a thermocouple is part of the temperature sensor referred to in 40 CFR 63.3547(c)(3) and 40 CFR 63.3557(c)(3)

for purposes of performing periodic calibration and verification checks.

Currently, 40 CFR 63.3513(a) allows records, "where appropriate," to be maintained as "electronic spreadsheets" or a "database." As proposed, we are adding a clarification to this provision that the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We are also adding text to the same provision, as proposed, clarifying that 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.

In the final rule, as proposed, we are adding and updating test methods that are incorporated by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following voluntary consensus standards (VCS) described in the amendments to 40 CFR 63.14:

- ASTM D1475-13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.3521(c) and 63.3531(c);
- ASTM D2111-10 (2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.3521(c) and 63.3531(c);
- ASTM D2369-10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.3521(a)(2) and 63.3541(i)(3);
- ASTM D2697-03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, proposed to be IBR approved for 40 CFR 63.3521(b)(1); and
- ASTM D6093-97 (2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, proposed to be IBR approved for 40 CFR 63.3521(b)(1).

#### 2. Technical Amendments to the Surface Coating of Metal Coil NESHAP

We are finalizing, as proposed, changes to 40 CFR 63.5090 to clarify that 40 CFR part 63, subpart SSSS does not apply to the application to bare metal coils of markings (including letters, numbers, or symbols) that are used for product identification or for product inventory control.

We are finalizing amendments to 40 CFR 63.5160(d) in 40 CFR part 63, subpart SSSS, as proposed, to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60,

<sup>2</sup> See <https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants>.

“Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,” to measure and then subtract methane emissions from measured total gaseous organic mass emissions, as carbon, for those facilities using the emission rate with add-on control compliance option and EPA Method 25A to measure control device destruction efficiency.

Currently 40 CFR 63.5190 specifies records that must be maintained. We are adding, as proposed, clarification to 40 CFR 63.5190(c) that specifies the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA’s CEDRI. We are also adding text to the same provision clarifying that 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.

We are clarifying and harmonizing, as proposed, the general duty requirement in 40 CFR 63.5140(a) with the reporting requirements in 40 CFR 63.5180(g)(2)(v) and 40 CFR 63.5180(h)(4) and the recordkeeping requirement in 40 CFR 63.5190(a)(5), by including new language in 40 CFR 63.5140(a) to read as, “. . . you must be in compliance with the applicable emission standards in § 63.5120 and the operating limits in Table 1 of this subpart at all times.”

We are revising, as proposed, the text in the semi-annual reporting provisions of 40 CFR 63.5180(g)(2)(v) to read, “A statement that there were no deviations from the applicable emission limit in § 63.5120 or the applicable operating limit(s) established according to § 63.5121 during the reporting period, and that no continuous emissions monitoring systems (CEMS) were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.” Conforming changes are also being made to the reporting requirement at 40 CFR 63.5180(h)(4) and the recordkeeping requirement at 40 CFR 63.5190(a)(5).

We are revising, as proposed, one instance in 40 CFR 63.5160(e) in which an erroneous rule citation, “§ 63.5170(h)(2) through (4),” is made by correcting the citation to “§ 63.5170(g)(2) through (4).”

We are amending, as proposed, 40 CFR 63.5130(a) to clarify that the compliance date for existing affected sources is June 10, 2005.

We are amending, as proposed, 40 CFR 63.5160(d)(3)(ii)(D) to correct a typographical error in a reference to paragraphs “(d)(3)(ii)(D)(1 (3).” The

correct reference is to paragraphs (d)(3)(ii)(D)(1)–(3).

We are amending, as proposed, 40 CFR 63.5170(c)(1) and (2) to correct the cross references to 40 CFR 63.5120(a)(1) or (2). The correct cross references are to 40 CFR 63.5120(a)(1) or (3).

We are amending, as proposed, Equation 11 in 40 CFR 63.5170 so that the value calculated by the equation is correctly identified as “H<sub>c</sub>” instead of just “e.”

In the final rule, as proposed, we are adding and updating test methods that are incorporated by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following methods and VCS described in the amendments to 40 CFR 63.14:

- ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.5160(c);
- ASTM D2111–10 (2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.5160(c);
- ASTM D2369–10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.5160(b)(2);
- ASTM D2697–03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, proposed to be IBR approved for 40 CFR 63.5160(c); and
- ASTM D6093–97 (2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, proposed to be IBR approved for 40 CFR 63.5160(c).

#### *E. What are the effective and compliance dates of the revisions to the standards?*

The revisions to the MACT standards being promulgated in this action are effective on February 25, 2020.

The compliance date for existing affected sources in both the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories is August 24, 2020, with the exception of the electronic format for submitting semiannual compliance reports. New sources must comply with all of the standards immediately upon the effective date of the standard, February 25, 2020, or upon startup, whichever is later, with the exception of the electronic format for submitting semiannual compliance reports. For the electronic format for submitting semiannual compliance reports, both existing and new affected sources will

have 1 year after the electronic reporting templates are available on CEDRI, or 1 year after February 25, 2020, whichever is later. The EPA selected these compliance dates based on experience with similar industries and the EPA’s detailed justification for the selected compliance dates is included in the preamble to the proposed rule (84 FR 25931 and 25942).

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

As proposed, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is finalizing the requirement for owners and operators of facilities in the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories 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 ERT. The ERT will generate an electronic report package which will be submitted to CEDRI and then archived to the EPA’s CDX. A description of the ERT and instructions for using ERT can be found at <https://www3.epa.gov/ttn/chief/ert/index.html>. The CEDRI interface can be accessed through the CDX website (<https://cdx.epa.gov/>).

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing requirements 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. Through this approach, industry will save time in the performance test submittal process. Additionally, this rulemaking will benefit 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 agencies may benefit from a 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 proposed rules (84 FR 25904, June 24, 2019) and the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, August 8, 2018, in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets.

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/tribal agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations.

#### IV. What is the rationale for our final decisions and amendments for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?

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

##### A. Residual Risk Reviews

1. What did we propose pursuant to CAA section 112(f)?

a. Surface Coating of Metal Cans (40 CFR Part 63, subpart KKKK) 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 sections IV.A.2.a and b of the proposed rule preamble (84 FR 25904, June 24, 2019). The results of this review are presented briefly below in Table 2 of this preamble. Additional detail is provided in the residual risk technical support document titled, *Residual Risk Assessment for the Surface Coating of Metal Cans Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, which is available in the Surface Coating of Metal Cans Docket.

TABLE 2—SURFACE COATING OF METAL CANS SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS AT PROPOSAL

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI <sup>1</sup>		Maximum screening acute noncancer HQ <sup>2</sup>
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	
Source Category .....	3	3	700	800	0.0009	0.001	0.02	0.02	HQREL = 0.4.
Whole Facility .....	8	.....	1,500	.....	0.002	.....	0.2	.....	

<sup>1</sup> The target organ-specific hazard index (TOSHI) is the sum of the chronic noncancer hazard quotients (HQ) values for substances that affect the same target organ or organ system.

<sup>2</sup> The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values (HQREL = hazard quotient reference exposure level).

The results of the proposal inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) is 3-in-1 million (driven by formaldehyde), the maximum chronic noncancer TOSHI value based on actual emissions is 0.02 (driven by formaldehyde), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 0.4 (driven by formaldehyde). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.0009 excess cancer cases per year, or one case in every 1,100 years.

The results of the proposal inhalation risk modeling using allowable emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on allowable emissions (lifetime) is 3-in-1 million (driven by formaldehyde), and the maximum chronic noncancer TOSHI value based on allowable emissions is 0.02 (driven by formaldehyde). At proposal, the total annual cancer incidence (national) from these facilities

based on allowable emissions was estimated to be 0.001 excess cancer cases per year, or one case in every 1,000 years.

The maximum individual cancer risk (lifetime) for the whole facility was determined to be 8-in-1 million at proposal, driven by formaldehyde from miscellaneous industrial processes (other/not classified) and acetaldehyde from beer production (brew kettle). At proposal, the total estimated cancer incidence from the whole facility was determined to be 0.002 excess cancer cases per year, or one excess case in every 500 years. Approximately 1,500 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources at three of the five facilities in this source category. The maximum facility-wide TOSHI for the source category was estimated to be 0.2, mainly driven by emissions of acetaldehyde from beer production (brew kettle) and formaldehyde from miscellaneous industrial processes (other/not classified).

There are no persistent and bioaccumulative HAP (PB HAP) emitted

by facilities in this source category; therefore, we did not estimate any human health multi-pathway risks from this source category. Two environmental HAP are emitted by sources within this source category: Hydrochloric acid (HCl) and hydrogen fluoride (HF). Therefore, at proposal, we conducted a screening-level evaluation of the potential adverse environmental risks associated with emissions of HCl and HF. Based on this evaluation, we proposed that we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Surface Coating of Metal Cans source category are acceptable (section IV.A.2.a of proposal preamble, 84 FR 25922, June 4, 2019).

We then considered whether 40 CFR part 63, subpart KKKK 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 further reduce risk associated with emissions from the source category. Related to risk, the baseline risks were low, and regardless of the availability of further control options, little risk reduction could be realized. As discussed further in section IV.B of this preamble, the only development identified in the technology review was the ongoing development and the

potential future conversion from conventional interior can coatings that contain bisphenol A (BPA) to interior coatings that do not intentionally contain BPA (BPA-NI). Since BPA and BPA-NI are not HAP, this change would have no effect on the HAP emissions. There were no other technological developments identified that affect HAP emissions for the Surface Coating of Metal Cans source category. Therefore, given the low baseline risks and lack of options for further risk reductions, we proposed that additional emission controls for this source category are not necessary to provide an ample margin of safety (section IV.A.2.b of proposal preamble, 84 FR 25922, June 4, 2019).

b. Surface Coating of Metal Coil (40 CFR Part 63, Subpart KKKK) 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 sections IV.B.2.a and b of the proposed rule preamble (84 FR 25904, June 24, 2019). The results of this review are presented briefly below in Table 3 of this preamble. Additional detail is provided in the residual risk technical support document titled, *Residual Risk Assessment for the Surface Coating of Metal Coil Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, which is available in the Surface Coating of Metal Coil Docket.

TABLE 3—SURFACE COATING OF METAL COIL SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS AT PROPOSAL

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI <sup>1</sup>		Maximum screening acute noncancer HQ <sup>2</sup>
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	
Source Category .....	10	10	19,000	24,000	0.005	0.006	0.1	0.1	HQREL = 3.
Whole Facility .....	40	.....	270,000	.....	0.03	.....	5	.....	

<sup>1</sup> The TOSHI is the sum of the chronic noncancer HQ values for substances that affect the same target organ or organ system.

<sup>2</sup> The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values (HQREL = hazard quotient reference exposure level).

The results of the proposal inhalation risk modeling using actual emissions data, as shown in Table 3 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) is 10-in-1 million (driven by naphthalene from solvent storage), the maximum chronic noncancer TOSHI value based on actual emissions is 0.1 (driven by glycol ethers from prime and finish coating application), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 3 (driven by DGME). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.005 excess cancer cases per year, or one case in every 200 years.

The results of the proposal inhalation risk modeling using allowable emissions data, as shown in Table 3 of this preamble, indicate that the maximum individual cancer risk based on allowable emissions (lifetime) is 10-in-1 million (driven by naphthalene from solvent storage), and the maximum chronic noncancer TOSHI value based on allowable emissions is 0.1 (driven by glycol ethers from prime and finish coating application). At proposal, the

total annual cancer incidence (national) from these facilities based on allowable emissions was estimated to be 0.006 excess cancer cases per year, or one case in every 167 years.

The maximum individual cancer risk (lifetime) for the whole facility was determined to be 40-in-1 million at proposal, driven by naphthalene from equipment cleanup of metal coil coating processes. At proposal, the total estimated cancer incidence from the whole facility was determined to be 0.03 excess cancer cases per year, or one excess case in every 30 years. Approximately 270,000 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources of the 48 facilities in this source category. The maximum facility-wide TOSHI for the source category was estimated to be 5, driven by emissions of chlorine from a secondary aluminum fluxing process.

One PB HAP is emitted by facilities in the source category: lead. In evaluating the potential for multipathway effects from emissions of lead, the modeled maximum annual lead concentration of 0.0004 micrograms per cubic meter (µg/m<sup>3</sup>) was compared to the National

Ambient Air Quality Standards (NAAQS) for lead of 0.15 microgram per cubic meter (µg/m<sup>3</sup>). Results of this analysis confirmed that the NAAQS for lead would not be exceeded by any facility. Based on this evaluation, we proposed that there is no significant potential for human health multipathway risks as a result of HAP emissions from this source category. Two environmental HAP are emitted by sources within this source category: HF and lead. Therefore, at proposal we conducted a screening-level evaluation of the potential adverse environmental risks associated with emissions of HF and lead. Based on this evaluation, we proposed that we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 3 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Surface Coating of Metal Coil source category are acceptable (section IV.B.2.a of proposal preamble, 84 FR 25933 June 4, 2019).

We then considered whether 40 CFR part 63, subpart SSSS 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 further reduce risk associated with emissions from the source category. As discussed further in section IV.B of this preamble, based on our technology review, we did not identify any developments in practices, processes, or control technologies, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6).

Due to the low baseline risks for the Surface Coating of Metal Coil source category and lack of options for further risk reductions, we proposed that additional emission controls for this source category are not necessary to provide an ample margin of safety (section IV.B.2.b of proposal preamble, 84 FR 25934, June 4, 2019).

#### 2. How did the risk reviews change?

We have not changed any aspect of the risk assessment for either of these two source categories as a result of public comments received on the June 2019 proposal.

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

We received comments in support of and against the proposed residual risk reviews and our determinations that no revisions were warranted under CAA section 112(f)(2) for either source category. Generally, the comments that were not supportive of our determinations based on the risk reviews suggested changes to the underlying risk assessment methodology. For example, one commenter stated that the EPA should lower the acceptability benchmark so that risks below 100-in-1 million are deemed unacceptable, include emissions outside of the source categories in question in the risk assessment, and assume that pollutants with noncancer health risks have no safe level of exposure. After review of all the comments received, we determined that no changes to our Science Advisory Board-approved residual risk review process were necessary. The comments and our specific responses can be found in the document, *Summary of Public*

*Comments and Responses for the Risk and Technology Reviews for Surface Coating of Metal Cans and Surface Coating of Metal Coil*, available in the dockets for these actions (Docket ID Nos. EPA-HQ-OAR-2017-0684 and EPA-HQ-OAR-2017-0685).

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

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

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rule, we determined that the risks from the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories are acceptable, and that the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not revising either subpart to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).

#### B. Technology Reviews

##### 1. What did we propose pursuant to CAA section 112(d)(6)?

Based on our review, we did not identify any developments in practices, processes, or control technologies for the Surface Coating of Metal Cans source category, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6). A brief summary of the EPA’s findings in conducting the technology review of metal can coating operations was included in the preamble to the proposed rule (84 FR 25922, June 4, 2019), and a detailed discussion of the

EPA’s technology review and findings was included in the memorandum, *Technology Review for Surface Coating Operations in the Metal Can Category*, April 24, 2019, in the Surface Coating of Metal Cans Docket.

Based on our review, we did not identify any developments in practices, processes, or control technologies for the Surface Coating of Metal Coil source category, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6). A brief summary of the EPA’s findings in conducting the technology review of coil coating operations was included in the preamble to the proposed rule (84 FR 25934, June 4, 2019), and a detailed discussion of the EPA’s technology review and findings was included in the memorandum, *Technology Review for Surface Coating Operations in the Metal Coil Category*, September 2017, in the Surface Coating of Metal Coil Docket.

##### 2. How did the technology reviews change?

We are making no changes to the conclusions of the technology reviews and are finalizing the results of the technology reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories as proposed.

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

We received two general comments supporting the results of our technology reviews for metal cans and metal coil surface coating and one comment objecting to our conclusions that there have been no technology developments in these two source categories.

*Comment:* One commenter alleged that the EPA has not met the legal obligation under CAA section 112(d)(6) to review and revise emission standards “as necessary” to account for “developments in practices, processes, and control technologies.” The commenter objected that the EPA proposed no revisions to the emission limits and claimed the EPA provided no legally valid or rational explanation for its determination of a lack of “developments” for these two source categories. The commenter pointed out that the EPA identified several HAP control advancements, including alternative coatings, developments for similar source categories, and work practices and housekeeping measures for metal coil facilities, which would reduce emissions and are in use at a number of facilities, yet failed to determine that it was “necessary” to revise the standard. In addition, the



commenter alleged that the EPA technology review analysis did not consider some relevant sources to determine “developments.” As examples, the commenter stated that the EPA did not analyze any control methods or requirements from other national or state or local jurisdictions that might have proven more effective; did not appear to analyze the different methods or brands of emission controls implemented to see which was most effective, efficient, or reliable; and did not examine facility procedures or best practices, including records of malfunctions, to identify best practices to mitigate malfunctions.

*Response:* We disagree with the commenter that the EPA has failed to meet the CAA’s legal obligation to complete the technology reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories. The EPA concluded there were no HAP control advancements for these source categories as a result of the technology reviews. The technology reviews included review of coatings currently used by these source categories and any advancements in the coatings; review of HAP control requirements in NESHAP for similar coating source categories and application of those HAP controls to the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories; state and local HAP control requirements in facility title V operating permits and application of those HAP controls to the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories; and work practices and housekeeping measures currently used by these source categories and any advances that were applicable to these source categories.

As stated in the proposal preamble (84 FR 25935) for the Surface Coating of Metal Coil source category, alternatives to solvent borne coatings have been in use by the coil coating industry since development of the 2002 Surface Coating of Metal Coil NESHAP but are not considered to be suitable for all end-product applications. The 2002 proposed NESHAP provided an alternative facility HAP emission limit of 0.24 pounds of HAP per gallon of solids applied which was established to provide a compliance option for facilities that chose to limit their coating line HAP emissions either through a combination of low-HAP coatings and add-on controls or through the use of waterborne, high solids, or other pollution prevention coatings. The EPA found no developments in alternative coating technologies during the technology review that would result in

achievable emission rates that are substantially lower than those reflected in the current emission limits.

The commenter also asserted that the EPA did not consider developments in control methods for similar source categories and did not analyze the regulations set by state or local jurisdictions that might have proven more effective than the NESHAP requirements. We disagree with the commenter and refer the commenter to the technology review memorandums titled *Technology Review for Surface Coating Operations in the Metal Can Category* and *Technology Review for Surface Coating Operations in the Metal Coil Category* which summarizes the EPA’s review of the title V operating permits for the five metal can facilities and for 39 metal coil facilities that are major sources and subject to these NESHAP. The title V operating permits incorporate all relevant local, state, or Regional emission limitations, as well as federal limitations. In no case did the EPA find a facility subject to a HAP limit more stringent than the limits in the current NESHAP or a facility using a control technology that was not considered during development of the NESHAP and reflected in the current standards. The results of the technology reviews were documented in these memorandums in the respective docket for each proposed rule.

The technology basis for MACT for metal coil coating operations in the 2002 Surface Coating of Metal Coil NESHAP was emission capture and add on control with an overall control efficiency of 98 percent for new or reconstructed sources and existing sources. This overall control efficiency represents the use of PTE to achieve 100-percent capture of application station HAP emissions and a thermal oxidizer to achieve a destruction efficiency of 98 percent. No technology was identified during the technology review that could achieve a better overall control efficiency than the use of a PTE to capture HAP emissions from the coating application station and a thermal oxidizer to destroy HAP emissions from the coating application and the curing oven.

It would not be feasible, nor is it required under CAA section 112(d)(6), for the EPA to evaluate HAP control advancement by examining different brands of emission controls to see which was most effective, efficient, or reliable, as suggested by the commenter. Similarly, it would not be feasible to examine facility procedures or best practices, nor review records of malfunctions to identify best practices to mitigate malfunctions. That

information is not currently available to the EPA. If the information was available, it would be difficult, if not impossible, to correlate that information with emissions performance and develop practical regulatory requirements. Instead, the current emission limits are based on actual performance of existing sources in the two categories determined to represent the MACT level of control for new and existing sources. The performance data used to develop the emission limits were collected during emission tests when the control devices were performing properly and the emission sources were at steady-state operating conditions. Data collected during periods of startup, shutdown, or malfunction were not used to establish the emission limits. After the initial compliance demonstration, facilities using add-on controls must comply with operating limits to ensure the add-on controls continue to be properly operated and maintained to achieve the same level of performance as during the performance test. Facilities experiencing deviations from the emission limits or the operating limits must report these deviations to the EPA, and the EPA will then determine on a case-by-case basis whether the deviation constitutes a violation. Because of the diversity of factors that could lead to a malfunction in these source categories, it would not be practical for the EPA to prescribe specific actions that must be taken to reduce the frequency of malfunctions or to minimize emissions in the event of a malfunction.

The commenter also asserted that the EPA identified work practices and housekeeping measures for metal coil facilities, which would reduce emissions and are in use at a number of facilities yet failed to determine that it was “necessary” to revise the standard. The commenter’s assertion appears to be based on a statement in the preamble to the proposal where we note that the facility survey conducted as part of the development of the 2002 MACT standard for Surface Coating of Metal Coil had revealed several types of work practices and housekeeping measures in use at that time. (84 FR at 25935). We also noted in the preamble, however, that we had identified no developments in work practices or procedures for the Surface Coating of Metal Coil source category. As the commenter has provided no additional information regarding possible developments and as the EPA has no information about developments in such work practices and housekeeping measures, we do not agree that it is necessary to revise the



standard for this source category as a result of the technology review.

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

For the reasons explained in the preamble to the proposed rules (84 FR 25922 and 25934, June 4, 2019), and in the comment responses above in section IV.B.3 of this preamble, we are making no changes and are finalizing the results of the technology reviews as proposed.

### C. Electronic Reporting Provisions

#### 1. What did we propose?

In the June 4, 2019, notice we proposed to require owners and operators of surface coating of metal can and metal coil facilities to submit electronic copies of notifications, reports, and performance tests through the EPA's CDX, using the CEDRI. These include the initial notifications required in 40 CFR 63.9(b) and 63.3510(b) for metal can coating and 63.5180(b) for metal coil coating; notifications of compliance status required in 40 CFR 63.9(h) and 63.3510(c) for metal can coating and 63.5180(d) for metal coil coating; the performance test reports required in 40 CFR 63.3511(b) for metal can coating and 63.5160(d) for metal coil coating; and the semiannual reports required in 40 CFR 63.3511(a) for metal can coating and 63.5180(g) for metal coil coating. A description of the electronic submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)*, August 8, 2018, in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets. The proposed rule requirements would replace the current rule requirements to submit the notifications and reports to the Administrator at the appropriate address listed in 40 CFR 63.13. The proposed rule requirement would not affect submittals required by state air agencies. For metal can facilities, the proposed compliance schedule language in 40 CFR 63.3511(f) for submission of semiannual compliance reports would have provided 181 days after the final rule is published to begin electronic reporting or 1 year after the 40 CFR part 63, subpart KKKK semiannual compliance report template is available in CEDRI, whichever is later. For metal coil facilities, the proposed compliance schedule language in 40 CFR 63.5181(c) for submission of semiannual compliance reports would have provided 1 year after the final rule is published to begin electronic reporting

or 1 year after the 40 CFR part 63, subpart SSSS semiannual compliance report template is available in CEDRI, whichever is later.

#### 2. What changed since proposal?

For metal can facilities, the compliance schedule language in proposed 40 CFR 63.3511(f) for submission of semiannual compliance reports has been revised from the proposed 181 days, to either 1 year after the final rule is published or 1 year after the 40 CFR part 63, subpart KKKK, semiannual compliance report template is available in CEDRI, whichever is later. No changes were made to the metal coil compliance schedule.

#### 3. What key comments did we receive and what are our responses?

*Comment:* One commenter suggested that the EPA change the metal can compliance schedule language in proposed 40 CFR 63.3511(f) for submission of semiannual compliance reports to give facilities either 1 year (instead of 181 days) after the final rule is published to begin electronic reporting or 1 year after the 40 CFR part 63, subpart KKKK, semiannual compliance report template is available in CEDRI, whichever is later. The commenter recommended revising 40 CFR 63.3511(f) to say that on and after the date 1 year (instead of 181 days) after the date of publication of the final rule in the **Federal Register**, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator is required to submit the semiannual compliance report via the CEDRI. The commenter noted that the proposed 181-day requirement for 40 CFR part 63, subpart KKKK, is not consistent with the 1-year requirement the EPA is proposing for 40 CFR 63.5181(c) in 40 CFR part 63, subpart SSSS for the Surface Coating of Metal Coil source category. The commenter also argued that 1 year would be justified because metal can coating facilities are not currently using CEDRI and would need to learn how to access and use CEDRI.

*Response:* The EPA agrees that both rules should be consistent and that the owners and operators should have 1 year after the date of publication of the final rule or 1 year after the reporting template has been on CEDRI, whichever is later, before they are required to submit semiannual compliance reports via CEDRI. This will provide users 1 year to become familiar with the template and electronic reporting system prior to being required to submit reports electronically. This will provide adequate time for facilities to adjust to

electronic reporting, as well as assure that the forms will work properly, prior to the date that owners and operators must start submitting these reports electronically. The EPA encourages users to become familiar with the system well in advance of being required to use it. For previous rulemakings with reports required to be submitted electronically via CEDRI, prior to a compliance reporting deadline, the EPA has provided webinars to our various stakeholders on the access and reporting of the given report in CEDRI. The EPA is planning to provide this same service to the industry trade association and facilities subject to the 40 CFR part 63, subparts KKKK and SSSS electronic reporting requirements, if requested to do so. The EPA plans to publish the final template on CEDRI about the same time the final rule is signed and published. Although facilities will have up to 1 year after the final template is on CEDRI to begin using the template and submitting reports via CEDRI, facilities may begin submitting reports via CEDRI as soon as the final template is available.

*Comment:* One commenter stated they will need an interactive discussion with the EPA (e.g., by conference call or webinar) to answer questions about how to use CEDRI and about the draft electronic reporting template before they can effectively comment on whether the template is appropriate and workable for metal can surface coating facilities subject to subpart 40 CFR part 63, KKKK. The commenter further asked that the EPA not finalize the reporting template until after the proposed rule is finalized.

*Response:* The EPA agrees that interactive discussions via conference calls or a webinar with the industry trade organization and members would be appropriate to review the electronic reporting process using CEDRI and to collaborate on improvements to the draft electronic reporting template. The EPA has arranged interactive discussions with both the metal can and metal coil industry trade organizations and members in an attempt to finalize the electronic reporting templates concurrent with the final rule promulgation. If that is the case facilities will have 1 year after the final rule is published to submit notifications and semiannual compliance reports using the electronic reporting template in CEDRI. If the reporting templates are not finalized concurrent with the final rule promulgation, the EPA will continue to work with the industry trade organizations and members to finalize the templates and will make the final templates available on the CEDRI

website. Facilities would then be required to submit notifications and semiannual compliance reports using the electronic reporting template in CEDRI one year after the reporting template has been available on the CEDRI website.

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

For the reasons explained in the preamble to the proposed rules (84 FR 25922 and 25934, June 4, 2019), and in the comment responses above in section IV.C.3 of this preamble, we are finalizing the electronic reporting provisions for both 40 CFR parts 63, subparts KKKK and SSSS, as proposed with the exception of the change in date by which electronic reporting must commence for the Surface Coating of Metal Cans source category (described in section IV.C.2 of this preamble).

#### D. SSM Provisions

1. What did we propose?

In the June 4, 2019, action, we proposed amendments to the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 25909, June 4, 2019).

2. What changed since proposal?

We are finalizing the SSM provisions as proposed with no changes (84 FR 25909, June 4, 2019).

3. What key comments did we receive and what are our responses?

*Comment:* One commenter noted that new language has been proposed for 40 CFR 63.5150(a) which states that on and after the compliance date sources must also maintain the monitoring equipment at all times in accordance with 40 CFR 63.5140(b) and keep the necessary parts readily available for routine repairs of the monitoring equipment. The commenter expressed concern that different inspectors could have different interpretations of what parts would be “necessary” to be kept readily available and what repairs would be “routine.” The commenter recommended revising the proposed language for 40 CFR 63.5150(a) to omit “and keep the necessary parts readily available for routine repairs of the monitoring equipment.”

The commenter argued that the compliance requirement language will always be open to some degree of

interpretation, but the suggested change would minimize differences in how this new language is interpreted and allow the individual facilities to manage and defend their compliance practices required in this section as they see best.

*Response:* The EPA disagrees with the commenter and is not accepting this recommended change. The requirement is not new, it was simply moved from the 40 CFR part 63 General Provisions to subparts KKKK and SSSS. The language proposed for 40 CFR 63.5150(a) replaces language in 40 CFR 63.8(c)(1)(i) and (ii) that no longer applies. The EPA is amending Table 5 to Subpart KKKK of Part 63 so that 40 CFR 63.8(c)(1) no longer applies because 40 CFR 63.8(c)(1)(iii) requires, “The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).” Because 40 CFR 63.8(c)(1) no longer applies as part of the amendments to remove the SSM exemptions, the provisions of 40 CFR 63.8(c)(1)(i) and (ii) are being added to each subpart. The EPA disagrees that the proposed language would lead to differences in interpretation and the commenter provided no evidence that the same language led to compliance issues when it was located only in 40 CFR 63.8(c)(1)(ii).

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

For the reasons explained in the proposed rule and after evaluation of the comments on the proposed amendments to the SSM provisions for the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP, we are finalizing the proposed revisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the proposed amendments to the SSM provisions is in the preamble to the proposed rule (84 FR 25909, June 4, 2019).

#### E. Ongoing Compliance Demonstrations

1. What did we propose?

In the June 4, 2019, action we proposed to require owners and operators of surface coating of metal can facilities and surface coating of metal coil facilities to conduct periodic performance testing of add-on control devices on a regular frequency of every 5 years to ensure the equipment continues to operate properly for facilities using the emission rate with add-on controls compliance option. This proposed periodic testing

requirement included an exception to the general requirement for periodic testing for facilities using the catalytic oxidizer control options and following catalyst maintenance procedures that are found in both 40 CFR part 63, subparts KKKK and SSSS. These catalyst maintenance procedures include annual testing of the catalyst and other maintenance procedures that provide ongoing demonstrations that the control system is operating properly and may, thus, be considered comparable to conducting a performance test. The proposed periodic performance testing requirement also allows an exception from periodic testing for facilities using CEMS to show actual emissions. The use of CEMS to demonstrate compliance would obviate the need for periodic testing.

This proposed requirement did not require periodic testing or CEMS monitoring of facilities using the compliant materials option or the emission-rate without add-on controls compliance option because these two compliance options do not use any add-on controls or control efficiency measurements in the compliance calculations.

The proposed periodic performance testing requirement requires facilities complying with the standards using emission capture systems and add-on controls and which are not already on a 5-year testing schedule to conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, they would generally conduct periodic testing before they renew their title V operating permits, but in no case more than 5 years following the previous performance test. Additionally, facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule.

2. What changed since proposal?

We have revised the proposed periodic testing language in 40 CFR part 63, subparts KKKK and SSSS, since proposal to clarify that facilities already conducting comparable periodic testing as a requirement of renewing their title V operating permit under 40 CFR part 70 or part 71 may continue with their current testing schedule. We also reformatted the electronic reporting language in 40 CFR part 63, subparts KKKK and SSSS, to provide clarification on the requirements for asserting a claim of EPA system outage or *force majeure* for failure to timely comply with the reporting requirements.

3. What key comments did we receive and what are our responses?

*Comment:* One commenter recommended that language in the proposed rule for 40 CFR part 63, subpart KKKK should be revised to more clearly state that facilities are permitted to use the performance tests conducted under their title V permits, as required by state and local permitting authorities, to meet the proposed requirement for periodic performance testing under 40 CFR part 63, subpart KKKK. The commenter suggested that the EPA modify the proposed language for 40 CFR 63.3540(a)(1)(ii), 63.3540(b)(1)(ii), 63.3550(a)(1)(ii), and 63.3550(b)(1)(ii) and offered clarifying language to say that if a source is not required to complete periodic performance tests as a requirement of renewing its title V operating permit under 40 CFR part 70 or 40 CFR part 71, it must conduct the first periodic performance test before the date 3 years after date of publication of the final rule in the **Federal Register**, unless the source has already conducted a performance test on or after the date 2 years before the date of publication of the final rule in the **Federal Register**. The commenter then suggested adding language to say that if a source is already required to complete periodic performance tests as a requirement of renewing its title V operating permit under 40 CFR part 70 or 40 CFR part 71, it must conduct the periodic testing in accordance with the terms and schedule required by its permit conditions.

*Response:* The EPA agrees that the recommended changes would clarify that facilities can continue to use tests conducted under title V to meet the 40 CFR part 63, subpart KKKK requirement to conduct periodic performance tests. The EPA is making the recommended changes to 40 CFR 63.3540(a)(1)(ii), 63.3540(b)(1)(ii), 63.3550(a)(1)(ii), and 63.3550(b)(1)(ii) and is making comparable changes to Table 1 To 40 CFR 63.5160—Required Performance Testing Summary, in 40 CFR part 63, subpart SSSS.

4. What is the rationale for our final approach for the ongoing compliance demonstrations?

For the reasons explained in the preamble to the proposed rules (84 FR 25922 and 25934, June 4, 2019), and in the comment responses above in section IV.C.3 of this preamble, we are finalizing the periodic testing provisions for both 40 CFR part 63, subparts KKKK and SSSS, as proposed with the exception of the rule clarification change described for 40 CFR part 63,

subparts KKKK and SSSS in section IV.D.2 of this preamble.

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

### A. What are the affected sources?

Currently, five major sources subject to the Surface Coating of Metal Cans NESHAP are operating in the United States. The affected source under the NESHAP is the collection of all equipment used to apply coating to a metal can or end (including decorative tins), or metal crown or closure, and to dry or cure the coating after application; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by the coating operations. A coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source.

Currently, 48 major sources subject to the Surface Coating of Metal Coil NESHAP are operating in the United States. The affected source under the NESHAP is the collection of all the coil coating lines at a facility, including the equipment used to apply an organic coating to the surface of metal coil. A coil coating line includes a web unwind or feed section, a series of one or more work stations, and any associated curing oven, wet section, and quench station. A coil coating line does not include ancillary operations such as mixing/thinning, cleaning, wastewater treatment, and storage of coating material. Metal coil is a continuous metal strip that is at least 0.15 mm (0.006 inch) thick, which is packaged in a roll or coil prior to coating. Material less than 0.15 mm (0.006 inch) thick is considered metal foil, not metal coil. The NESHAP applies to coating lines on which more than 15 percent of the material coated, based on surface area, meets the definition of metal coil. There may be multiple coating operations in an affected source.

### B. What are the air quality impacts?

The EPA estimates the current emissions of volatile organic HAP from the Surface Coating of Metal Cans source category are approximately 77 tpy and the current emissions of volatile

organic HAP from the Surface Coating of Metal Coil source category are approximately 291 tpy.

The amendments require that all 53 major sources in the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories comply with the relevant emission standards at all times, including periods of SSM. We were unable to quantify the emissions that occur during periods of SSM or the specific emissions reductions that will occur as a result of this action. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

The amendments will have no effect on the energy needs of the affected facilities in either of the two source categories and will, therefore, have no adverse energy impacts or indirect or secondary air emissions impacts. Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. Indirect or secondary air emissions impacts are impacts that would result from the increased energy usage associated with the operation of control devices (*e.g.*, increased secondary emissions of criteria pollutants from power plants).

### C. What are the cost impacts?

We estimate that each facility in these two source categories will experience increased costs as a result of these final amendments for recordkeeping and reporting. Each facility will experience costs to read and understand the rule amendments. Costs associated with elimination of the SSM exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating and modifying, as necessary, previously developed SSM record systems. Costs associated with the requirement to electronically submit notifications and semi-annual compliance reports using CEDRI were estimated as part of the reporting and recordkeeping costs and include time for becoming familiar with CEDRI and the reporting template for semi-annual compliance reports. The recordkeeping and reporting costs are presented in section VI.C of this preamble.

We are also finalizing a requirement for performance testing no less frequently than every 5 years for sources in each source category that use the add-on controls compliance options. We estimate that the new periodic testing requirement will impose additional costs for 22 facilities across the two source categories. We estimate that one facility using three add-on control devices subject to the Surface Coating of

Metal Cans NESHAP will incur costs to conduct control device performance testing because it is using the emission rate with add-on controls compliance option and is not required by its title V operating permit to conduct testing every 5 years. We estimate that 21 facilities subject to the Surface Coating of Metal Coil NESHAP will incur costs to conduct periodic testing because they are currently using the emission rate with add-on controls compliance option and are not required by their title V operating permits to conduct testing every 5 years. These 21 metal coil coating facilities have a total of 30 add-on control devices. This total does not include facilities in the Surface Coating of Metal Coil source category that have add-on controls and are currently required to perform periodic performance testing as a condition of their title V operating permit. The cost for a facility to conduct a destruction or removal efficiency performance test using EPA Method 25 or 25A is estimated to be about \$19,000, with tests of additional control devices at the same facility costing 25 percent less due to reduced travel costs. The estimated total cost for the one metal can surface coating facility to test three add-on control devices in a single year would be \$47,000. The estimated total cost for all 21 metal coil facilities to test 30 add-on control devices in a single year, plus two retests to account for 5 percent of control devices failing to pass the first test, would be \$560,000. The total annualized testing cost is estimated to be approximately \$11,000 per year for the Surface Coating of Metal Cans source category, and \$130,000 per year for the Surface Coating of Metal Coil source category, including retests. In addition to the testing costs, each facility performing a test will have an estimated additional \$5,500 in reporting costs in the year in which the test occurs.

As a result of changes to recordkeeping and reporting requirements, a one-time review of the updated rule language, and the addition of the periodic testing requirement for facilities using add-on controls, the costs of the final amendments are estimated to be \$21,800 for the Surface Coating of Metal Cans source category and \$271,000 for the Surface Coating of Metal Coil source category averaged over the first 3 years after the amendments are finalized. For further information on the estimated costs, see the cost tables in the memoranda titled *Estimated Costs/Impacts of the 40 CFR part 63 Subparts KKKK and SSSS Monitoring Review Revisions*, February

2019, and the *Economic Impact and Small Business Screening Assessments for Hazardous Air Pollutants for Metal Cans Coating Plants (Subpart KKKK) and the Economic Impact and Small Business Screening Assessments for Hazardous Air Pollutants for Metal Coil Coating Plants (Subpart SSSS)* in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets.

#### *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 revisions, the EPA estimated the cost of becoming familiar with the rule and re-evaluating and revising, as necessary, previously developed SSM record systems and performing periodic emissions testing at certain facilities with add-on controls that are not already required to perform testing. To assess the maximum potential impact, the largest cost expected to be experienced in any 1 year is compared to the total sales for the ultimate owners of the affected facilities to estimate the total burden for each ultimate owner.

For the final revisions to the NESHAP for the Surface Coating of Metal Cans, the annualized cost is estimated to be \$11,000 for the five affected entities. The five affected facilities are owned by three different parent companies, and the total costs associated with the final requirements range from 0.00002 to 0.77 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

For the final revisions to the NESHAP for the Surface Coating of Metal Coil, the annualized cost is estimated to be \$130,000 for the 48 affected entities. The 48 affected facilities are owned by 25 different parent companies, and the total costs associated with the proposed requirements range from 0.00001 to 0.28 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. One of the facilities potentially affected by the final revisions to the NESHAP for the Surface Coating of Metal Cans is a small entity. Ten of the facilities potentially affected by the final revisions to the NESHAP for

the Surface Coating of Metal Coil are small entities. However, the annualized costs associated with the final revisions for the seven ultimate owners of these eleven affected small entities range from 0.0029 to 0.77 percent of annual sales revenues per ultimate owner. Therefore, there are no significant economic impacts on a substantial number of small entities from these final amendments.

More information and details of this analysis are provided in the technical documents titled *Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Surface Coating of Metal Cans (Subpart KKKK) and Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Surface Coating of Metal Coil (Subpart SSSS)*, available in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets, respectively.

#### *E. What are the benefits?*

As stated above in section V.B of this preamble, we were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption or as a result of adding the requirement to conduct periodic add-on control device performance tests, although these final revisions have the potential to reduce emissions of volatile organic HAP.

Because these final amendments are not considered economically significant, as defined by Executive Order 12866, and because we were unable to quantify the specific emission reductions that will occur as a result of this action, we did not monetize the benefits of reducing these emissions. This does not mean that there are no benefits associated with the potential reduction in volatile organic HAP from this rule.

#### *F. What analysis of environmental justice did we conduct?*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

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

#### 1. Surface Coating of Metal Cans

The results of the demographic analysis for the Surface Coating of Metal Cans source category are summarized in Table 4 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

The results of the Surface Coating of Metal Cans source category demographic analysis indicate that emissions from the source category expose approximately 700 people to a cancer risk at or above 1-in-1 million and no one to a chronic noncancer

TOSHI greater than 1. The percentages of the population exposed to emissions from the source category in three demographic groups (White, Above Poverty Level, and Over 25 with a High School Diploma) are greater than their respective nationwide percentages. The methodology and the results of the demographic analysis are presented in more detail in the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Cans Source Category Operations*, May 2018, in the Surface Coating of Metal Cans Docket.

TABLE 4—SURFACE COATING OF METAL CANS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of metal cans	Population with chronic noncancer HI above 1 due to surface coating of metal cans
Total Population .....	317,746,049	700	0
<b>White and Minority by Percent</b>			
White .....	62	92	0
Minority .....	38	8	0
<b>Minority by Percent</b>			
African American .....	12	0	0
Native American .....	0.8	0	0
Hispanic .....	18	4	0
Other and Multiracial .....	7	4	0
<b>Income by Percent</b>			
Below Poverty Level .....	14	4	0
Above Poverty Level .....	86	96	0
<b>Education by Percent</b>			
Over 25 and without High School Diploma. ....	14	4	0
Over 25 and with a High School Diploma. ....	86	96	0
<b>Linguistically Isolated by Percent</b>			
Linguistically Isolated .....	6	0	0

#### 2. Surface Coating of Metal Coil

The results of the demographic analysis for the Surface Coating of Metal Coil source category are summarized in Table 5 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

The results of the Surface Coating of Metal Coil source category demographic

analysis indicate that emissions from the source category expose approximately 19,000 people to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer TOSHI greater than 1. The percentages of the population exposed to emissions from the source category in three demographic groups (White, African American, and Over 25 and with a High

School Diploma) are greater than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Coil Source Category Operations*, May 2017, available in the Surface Coating of Metal Coil Docket.

TABLE 5—SURFACE COATING OF METAL COIL SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of metal coil	Population with chronic noncancer HI above 1 due to surface coating of metal coil
Total Population .....	317,746,049	19,000	0
<b>White and Minority by Percent</b>			
White .....	62	70	0
Minority .....	38	30	0
<b>Minority by Percent</b>			
African American .....	12	21	0
Native American .....	0.8	0.1	0
Hispanic .....	18	4	0
Other and Multiracial .....	7	5	0
<b>Income by Percent</b>			
Below Poverty Level .....	14	15	0
Above Poverty Level .....	86	85	0
<b>Education by Percent</b>			
Over 25 and without High School Diploma .....	14	10	0
Over 25 and with a High School Diploma .....	86	90	0
<b>Linguistically Isolated by Percent</b>			
Linguistically Isolated .....	6	1	0

*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. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the *Residual Risk Assessment for the Surface Coating of Metal Cans Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, and the *Residual Risk Assessment for the Surface Coating of Metal Coil Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets, respectively.

**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 not a significant regulatory action and was, therefore, not submitted to 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 action have been submitted for approval to OMB under the PRA, as discussed for each source category covered by this action in sections VI.C.1 and 2.

**1. Surface Coating of Metal Cans**

The Information Collection Request (ICR) document that the EPA prepared for this source category has been assigned EPA ICR number 2079.08. You can find a copy of the ICR document in the Surface Coating of Metal Cans Docket (Docket ID No. EPA-HQ-OAR-2017-0684), and it is briefly summarized here. The information

collection requirements are not enforced until OMB approves them.

As part of the RTR for the Surface Coating of Metal Cans NESHAP, the EPA is not revising the emission limit requirements. The EPA is revising the SSM provisions of the rule and requiring the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart KKKK.

*Respondents/affected entities:* Facilities performing surface coating of metal cans.

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

*Estimated number of respondents:* In the 3 years after the amendments are final, approximately five respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

*Frequency of response:* The total number of responses in year 1 is 15 and in year 3 is one. Year 2 would have no responses.

*Total estimated burden:* The average annual information collection burden to the five metal can facilities over the 3 years after the amendments are finalized is estimated to be 54 hours (per year). The average annual burden to the

Agency over the 3 years after the amendments are finalized is estimated to be 23 hours (per year). Burden is defined at 5 CFR 1320.3(b).

**Total estimated cost:** The average annual labor cost to the metal can facilities is estimated to be \$6,200 in the first 3 years after the amendments are finalized. The average annual capital and operation and maintenance (O&M) cost is estimated to be \$15,600 over this period. The average annual Agency cost over the first 3 years after the amendments are finalized is estimated to be \$1,090.

## 2. Surface Coating of Metal Coil

The ICR document that the EPA prepared for this source category has been assigned EPA ICR number 1957.10. You can find a copy of the ICR document in the Surface Coating of Metal Coil Docket (Docket ID No. EPA–HQ–OAR–2017–0685), and it is briefly summarized here. The information collection requirements are not enforced until OMB approves them.

As part of the RTR for the Surface Coating of Metal Coil NESHAP, the EPA is not revising the emission limit requirements. The EPA is revising the SSM provisions of the rule and requiring the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart SSSS.

**Respondents/affected entities:** Facilities performing surface coating of metal coil.

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

**Estimated number of respondents:** In the 3 years after the amendments are finalized, approximately 48 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

**Frequency of response:** The total number of responses in year 1 is 144 and in year 3 is 69. Year 2 would have no responses.

**Total estimated burden:** The average annual burden to the 48 metal coil coating facilities over the 3 years after the amendments are finalized is estimated to be 738 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are finalized is estimated to be 179 hours (per year). Burden is defined at 5 CFR 1320.3(b).

**Total estimated cost:** The average annual cost to the 48 metal coil coating facilities is estimated to be \$85,000 in labor costs and \$186,000 in capital and

O&M costs in the first 3 years after the amendments are finalized. The average annual Agency cost over the first 3 years after the amendments are finalized is estimated to be \$8,530.

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 the ICRs, 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 actions contained in the 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. The eleven small entities that are subject to the requirements of this action are small businesses. The Agency has determined that the seven ultimate owners of these eleven affected small entities (21 percent of the facilities affected by this action) so impacted may experience an impact of 0.0029 to 0.77 percent of annual sales revenues per ultimate owner. Details of this analysis are described in section V.D above and in the economic impact memorandums located in the dockets for this action.

## 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. No tribal facilities are known to be engaged in any of the industries that would be affected by this action (metal can surface coating and

metal coil surface coating). 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 III.A and C, IV.A.1 and 2, IV.B.1 and 2, and IV.C.1 and 2 of the proposal preamble (84 FR 25904, June 4, 2019) and are further documented in the *Residual Risk Assessment for the Surface Coating of Metal Cans Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and the *Residual Risk Assessment for the Surface Coating of Metal Coil Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* in the Surface Coating of Metal Cans Docket and the Surface Coating of Metal Coil Docket, respectively.

## 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 rulemaking involves technical standards. The EPA amended the Surface Coating of Metal Coil NESHAP in this action to provide owners and operators with the option of conducting two new methods: EPA Method 18 of appendix A to 40 CFR part 60, "Measurement of Gaseous Organic Compound Emissions by Gas Chromatography," to measure and subtract methane emissions from measured total gaseous organic mass emissions as carbon, and ASTM Method D1475–13, "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products." We are incorporating ASTM Method D1475–13 by reference. We are adding these two standards to the Surface Coating of Metal Coil NESHAP only, as these methods are already provided in the Surface Coating of Metal Cans NESHAP.

The EPA is also amending the Surface Coating of Metal Cans NESHAP to update three ASTM test methods and



amend the Surface Coating of Metal Coil NESHAP to update two ASTM test methods. We are updating ASTM Method D1475–90, “Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,” in the Surface Coating of Metal Cans NESHAP by incorporating by reference ASTM Method D1475–13. The updated version, ASTM Method D1475–13, clarifies units of measure and reduces the number of determinations required. We are updating ASTM Method D2697–86 (1998), “Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,” in both the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP by incorporating by reference ASTM D2697–03 (2014), which is the updated version of the previously approved method. We are also updating ASTM Method D6093–97 (2003), “Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer,” in both the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP by incorporating by reference ASTM D6093–97 (2016), which is the updated version of the previously approved method. ASTM D2697–03 (2014) is a test method that can be used to determine the volume of nonvolatile matter in clear and pigmented coatings and ASTM D6093–97 (2016) is a test method that can be used to determine the percent volume of nonvolatile matter in clear and pigmented coatings.

For the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP, we are incorporating by reference ASTM D2369–10 (2015), “Test Method for Volatile Content of Coatings,” as an alternative to EPA Method 24 for the determination of the volatiles emitted by the surface coatings. The test method determines the weight percent volatile content of solvent borne and water borne coatings under specified test conditions. It is viable for coatings wherein one or more parts may, at ambient conditions, contain liquid co-reactants that are volatile until a chemical reaction has occurred with another component of a multi-package system.

For the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP, we are incorporating by reference ASTM D2111–10 (2015), “Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures,” for the determination of the specific gravity of halogenated organic solvents and solvent admixtures

in surface coatings. ASTM D2111–10 (2015) includes three test methods to measure specific gravity using suitable apparatus (*i.e.*, a hydrometer, a pycnometer, or an electronic densitometer), procedures, and details underlying the interpretation of test data and the selection of numerical limits.

The ASTM standards are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See <http://www.astm.org/>.

The EPA decided not to include certain other VCS; these methods are impractical as alternatives because of the lack of equivalency, documentation, validation date, and other important technical and policy considerations. The search and review results have been documented and are in the memoranda titled *Voluntary Consensus Standard Results for Surface Coating of Metal Cans*, August 16, 2018, and *Voluntary Consensus Standard Results for Surface Coating of Metal Coil*, August 16, 2018, in the Surface Coating of Metal Cans Docket and the Surface Coating of Metal Coil Docket, respectively.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

*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) because it does not significantly affect the level of protection provided to human health or the environment. The documentation for this decision is contained in section IV of this preamble and the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Cans Source Category Operations*, May 2018, and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Coil Source Category Operations*, May 2018, which are available in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets, respectively.

*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, Surface Coating of Metal Cans, Surface Coating of Metal Coil, Reporting and recordkeeping requirements, Appendix A.

Dated: December 20, 2019.

**Andrew R. Wheeler,**  
*Administrator.*

For the reasons stated in the preamble, the EPA 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.*

**Subpart A—General Provisions**

- 2. Section 63.14 is amended by revising paragraphs (h)(13), (21), (26), (29), (30), (78) and (79) to read as follows:

**§ 63.14 Incorporations by reference.**

\* \* \* \* \*

(h) \* \* \*

(13) ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, approved November 1, 2013, IBR approved for §§ 63.3521(c), 63.3531(c), 63.4141(b) and (c), 63.4741(b) and (c), 63.4751(c), 63.4941(b) and (c), and 63.5160(c).

\* \* \* \* \*

(21) ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, approved June 1, 2015, IBR approved for §§ 63.3531(c), 63.4141(b) and (c), 63.4741(a), and 63.5160(c).

\* \* \* \* \*

(26) ASTM D2369–10 (Reapproved 2015)<sup>e</sup>, Standard Test Method for Volatile Content of Coatings, approved June 1, 2015, IBR approved for §§ 63.3521(a), 63.3541(i), 63.4141(a) and (b), 63.4161(h), 63.4321(e), 63.4341(e), 63.4351(d), 63.4741(a), 63.4941(a) and (b), 63.4961(j), and 63.5160(b).

\* \* \* \* \*



(29) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.3161(f), 63.3941(b), 63.4141(b), 63.4741(b), and 63.4941(b).

(30) ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, approved July 1, 2014, IBR approved for §§ 63.3521(b), 63.4141(b), 63.4741(a) and (b), 63.4941(b), and 63.5160(c).

\* \* \* \* \*

(78) ASTM D6093–97 (Reapproved 2003), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.3161 and 63.3941.

(79) ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, Approved December 1, 2016, IBR approved for §§ 63.3521(b), 63.4141(b), 63.4741(a) and (b), 63.4941(b), and 63.5160(c).

\* \* \* \* \*

#### **Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans**

■ 3. Section 63.3481 is amended by revising paragraph (c)(5) to read as follows:

##### **§ 63.3481 Am I subject to this subpart?**

\* \* \* \* \*

(c) \* \* \*

(5) Surface coating of metal pails, buckets, and drums. Subpart MMMM of this part covers surface coating of all miscellaneous metal parts and products not explicitly covered by another subpart.

■ 4. Section 63.3492 is amended by revising paragraph (b) to read as follows:

##### **§ 63.3492 What operating limits must I meet?**

\* \* \* \* \*

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.3541(i), you must meet the operating limits specified in Table 4 to this subpart. Those operating limits apply to the emission capture and control systems for the coating operation(s) used for purposes of complying with this subpart. You must

establish the operating limits during the performance tests required in § 63.3540 or § 63.3550 according to the requirements in § 63.3546 or § 63.3556. You must meet the operating limits established during the most recent performance tests required in § 63.3540 or § 63.3550 at all times after they have been established during the performance test.

\* \* \* \* \*

■ 5. Section 63.3500 is amended by revising paragraphs (a)(1), (b), and (c) to read as follows:

##### **§ 63.3500 What are my general requirements for complying with this subpart?**

(a) \* \* \*

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3491(a) and (b), must be in compliance with the applicable emission limit in § 63.3490 at all times.

\* \* \* \* \*

(b) Before August 24, 2020, you must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i). On and after August 24, 2020, 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 that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(c) Before August 24, 2020, if your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-

on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures. On and after August 24, 2020, the SSMP is not required.

■ 6. Section 63.3511 is amended by:

■ a. Revising paragraphs (a)(4), (a)(5) introductory text, (a)(5)(i), and (a)(5)(iv);

■ b. Adding paragraph (a)(5)(v);

■ c. Revising paragraph (a)(6) introductory text and (a)(6)(iii);

■ d. Adding paragraph (a)(6)(iv);

■ e. Revising paragraphs (a)(7) introductory text, (a)(7)(iii), (a)(7)(vi) through (viii), (a)(7)(x), and (a)(7)(xiii) and (xiv);

■ f. Adding paragraph (a)(7)(xv);

■ g. Revising paragraphs (a)(8) introductory text, (a)(8)(i), (a)(8)(iv) through (vi), (a)(8)(viii), and (a)(8)(xi) and (xii);

■ f. Adding paragraph (a)(8)(xiii);

■ g. Revising paragraph (c) introductory text; and

■ h. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

##### **§ 63.3511 What reports must I submit?**

(a) \* \* \*

(4) *No deviations.* If there were no deviations from the emission limits, operating limits, or work practice standards in §§ 63.3490, 63.3492, and 63.3493 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

(i) Identification of each coating used that deviated from the emission limit, each thinner used that contained organic HAP, and the date, time, and duration each was used.

\* \* \* \* \*

(iv) Before August 24, 2020, a statement of the cause of each deviation. On and after August 24, 2020, a statement of the cause of each deviation (including unknown cause, if applicable).

(v) On and after August 24, 2020, the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3500(b).

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iv) of this section.

\* \* \* \* \*

(iii) Before August 24, 2020, a statement of the cause of each deviation. On and after August 24, 2020, a statement of the cause of each deviation (including unknown cause, if applicable).

(iv) On and after August 24, 2020, the number of deviations, date, time, duration, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3500(b).

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from the applicable emission limit in § 63.3490 or the applicable operating limit(s) in Table 4 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before August 24, 2020, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. That includes periods of startup, shutdown, and malfunction during which deviations occurred. On and after August 24, 2020, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xii), (a)(7)(xiv), and (a)(7)(xv) of this section. If you use the emission rate with add-on controls option and there was a deviation from the applicable work practice standards in § 63.3493(b), the semiannual

compliance report must contain the information in paragraph (a)(7)(xiii) of this section.

\* \* \* \* \*

(iii) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

\* \* \* \* \*

(vi) Before August 24, 2020, the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after August 24, 2020, the number of instances that the CPMS was inoperative, and for each instance, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(vii) Before August 24, 2020, the date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8). On and after August 24, 2020, the number of instances that the CPMS was out of control as specified in § 63.8(c)(7) and, for each instance, the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before August 24, 2020, the date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after August 24, 2020, the number of deviations from an operating limit in Table 4 to this subpart and, for each deviation, the date, time, and duration of each deviation; the date, time, and duration of any bypass of the add-on control device.

\* \* \* \* \*

(x) Before August 24, 2020, a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after August 24, 2020, a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems,

process problems, other known causes, and other unknown causes.

\* \* \* \* \*

(xiii) Before August 24, 2020, for each deviation from the work practice standards, a description of the deviation; the date, and time period of the deviation; and the actions you took to correct the deviation. On and after August 24, 2020, for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(7)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(B) The description required in paragraph (a)(7)(xiii)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable).

(xiv) Before August 24, 2020, a statement of the cause of each deviation. On and after August 24, 2020, for deviations from an emission limit in § 63.3490 or an operating limit in Table 4 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable) and the actions you took to minimize emissions in accordance with § 63.3500(b).

(xv) On and after August 24, 2020, for each deviation from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3490 or operating limit in Table 4 to this subpart, and a description of the method used to estimate the emissions.

(8) *Deviations: control efficiency/outlet concentration option.* If you used the control efficiency/outlet concentration option, and there was a deviation from the applicable emission limit in § 63.3490 or the applicable operating limit(s) in Table 4 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before August 24, 2020, the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred. On and after August 24, 2020, the semiannual compliance report must specify the number of deviations during the compliance period and contain the

information in paragraphs (a)(8)(i) through (x), (xii), and (xiii) of this section. If you use the control efficiency/outlet concentration option and there was a deviation from the applicable work practice standards in § 63.3493(b), the semiannual compliance report must contain the information in paragraph (a)(8)(xi) of this section.

(i) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

\* \* \* \* \*

(iv) Before August 24, 2020, the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after August 24, 2020, for each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(v) For each instance that the CPMS was out of control as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out of control; the cause (including unknown cause) for the CPMS being out of control; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(vi) Before August 24, 2020, the date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after August 24, 2020, the date, time, and duration of each deviation from an operating limit in Table 4 to this subpart; and the date, time, and duration of any bypass of the add-on control device.

\* \* \* \* \*

(viii) Before August 24, 2020, a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after August 24, 2020, a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems,

process problems, other known causes, and other unknown causes.

\* \* \* \* \*

(xi) Before August 24, 2020, for each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation. On and after August 24, 2020, for deviations from the work practice standards in § 63.3493(b), the number of deviations, and, for each deviation, the information in paragraphs (a)(8)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(B) The description required in paragraph (a)(8)(xi)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable).

(xii) Before August 24, 2020, a statement of the cause of each deviation. On and after August 24, 2020, for deviations from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable).

(xiii) On and after August 24, 2020, for each deviation from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3490, and a description of the method used to estimate the emissions.

\* \* \* \* \*

(c) *Startup, shutdown, malfunction reports.* Before August 24, 2020, if you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after August 24, 2020, the reports specified in paragraphs (c)(1) and (2) of this section are not required.

\* \* \* \* \*

(d) On and after August 24, 2020, you must submit the results of the performance test required in §§ 63.3540 and 63.3550 following the procedure specified in paragraphs (d)(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 website

(<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test in portable document format (PDF) using the attachment module of the ERT.

(3) If you claim that some of the performance test information being submitted under paragraph (d)(1) 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 website, 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/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 in paragraph (c)(1) of this section.

(e) On and after August 24, 2020, the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in §§ 63.9(h) and 63.3510(c) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in PDF. The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's

CEDRI website, 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.

(f) On and after March 25, 2021, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (<https://cdx.epa.gov>). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>). The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report 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 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. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI, 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.

(g) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, you may assert a claim of the EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of the EPA system outage, you must meet the

requirements outlined in paragraphs (g)(1) through (7) of this section.

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

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

(3) The outage may be planned or unplanned.

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

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

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

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

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

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

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

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

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

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

earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

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

(3) You must provide to the Administrator:

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

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

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

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

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

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

■ 7. Section 63.3512 is amended by revising paragraphs (i), (j) introductory text, and (j)(1) and (2) to read as follows:

**§ 63.3512 What records must I keep?**

\* \* \* \* \*

(i) Before August 24, 2020, a record of the date, time, and duration of each deviation. On and after August 24, 2020, for each deviation from an emission limitation reported under § 63.3511(a)(5) through (8), a record of the information specified in paragraphs (i)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, as reported under § 63.3511(a)(5) through (8).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.3511(a)(5) through (8).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490 or any applicable operating limit in Table 4 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.3511(a)(5) through (8).

(4) A record of actions taken to minimize emissions in accordance with § 63.3500(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(j) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must also keep the records specified in paragraphs (j)(1) through (8) of this section.

(1) Before August 24, 2020, for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction. On and after August 24, 2020, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction is not required.

(2) Before August 24, 2020, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. On and after August 24, 2020, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction are not required.

\* \* \* \* \*

■ 8. Section 63.3513 is amended by revising paragraph (a) to read as follows:

**§ 63.3513 In what form and for how long must I keep my records?**

(a) Your records must be kept in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after August 24, 2020, any records required to be maintained by this subpart that are in reports that were 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.

\* \* \* \* \*

■ 9. Section 63.3521 is amended by revising paragraphs (a)(1)(i), (a)(2), (a)(4), (b)(1), and (c) to read as follows:

**§ 63.3521 How do I demonstrate initial compliance with the emission limitations?**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) Count each organic HAP in Table 8 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 8 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (e.g., 0.3791).

\* \* \* \* \*

(2) *Method 24 (appendix A to 40 CFR part 60)*. For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using Method 24, you may use ASTM D2369–10 (2015), “Test Method for Volatile Content of Coatings” (incorporated by reference, see § 63.14).

\* \* \* \* \*

(4) *Information from the supplier or manufacturer of the material*. You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 8 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 8 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation, a regulated source can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

\* \* \* \* \*

(b) \* \* \*

(1) *ASTM Method D2697–03 (2014) or D6093–97 (2016)*. You may use ASTM D2697–03 (2014), “Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,” (incorporated by reference, see § 63.14) or ASTM D6093–97 (2016), “Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer” (incorporated by reference, see § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids. If these values cannot be determined using these methods, the owner/operator may submit an alternative technique for determining the values for approval by the Administrator.

\* \* \* \* \*

(c) *Determine the density of each coating*. Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–13 “Standard Test Method for Density of Liquid Coatings, Inks, and Related Products” (incorporated by reference, see § 63.14)

or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–13 test results and the supplier's or manufacturer's information, the test results will take precedence.

\* \* \* \* \*

■ 10. Section 63.3531 is amended by revising paragraph (c) to read as follows:

**§ 63.3531 How do I demonstrate initial compliance with the emission limitations?**

\* \* \* \* \*

(c) *Determine the density of each material*. Determine the density of each coating and thinner used during each month from test results using ASTM D1475–13 or ASTM D2111–10 (2015) (both incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM D1475–13 or ASTM D2111–10 (2015) test results and such other information sources, the test results will take precedence.

\* \* \* \* \*

■ 11. Section 63.3540 is amended by revising the section heading and paragraphs (a)(1), (a)(4), and (b)(1) to read as follows:

**§ 63.3540 By what date must I conduct performance tests and initial compliance demonstrations?**

(a) \* \* \*

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3541(i), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) If you are not required to complete periodic performance tests as a requirement of renewing your facility's

operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions.

\* \* \* \* \*

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section for your affected source on the date you complete the performance tests. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3541(i).

(b) \* \* \*

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct according to the schedule in paragraphs (b)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3541(i), you must initiate the first material balance no later than the compliance date specified in § 63.3483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) If you are not required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions.

\* \* \* \* \*

■ 12. Section 63.3541 is amended by revising paragraphs (h) introductory text and (i)(3) to read as follows:

**§ 63.3541 How do I demonstrate initial compliance?**

\* \* \* \* \*

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.3542(c) or (d) occurs in the controlled coating operation, you must assume zero efficiency for the emission capture system and add-on control device, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device, and the use of these data has been approved by the Administrator. Equation 1 of this section treats the materials used during such a deviation as if they were used on

an uncontrolled coating operation for the time period of the deviation.

\* \* \* \* \*

(i) \* \* \*

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, in kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, ASTM D2369–10 (2015), "Test Method for Volatile Content of Coatings" (incorporated by reference, see § 63.14), or an EPA approved alternative method. Alternatively, you may determine the volatile organic matter mass fraction using information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, ASTM D2369–10 (2015) or an approved alternative method, the test method results will take precedence unless, after consultation, a regulated source can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

\* \* \* \* \*

■ 13. Section 63.3542 is amended by revising paragraphs (f) and (h) to read as follows:

**§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?**

\* \* \* \* \*

(f) As part of each semiannual compliance report required in § 63.3511, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limits in § 63.3490, the operating limits in § 63.3492, and the work practice standards in § 63.3493, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490, and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493 during each compliance period.

\* \* \* \* \*

(h) Before August 24, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may

affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e). On and after August 24, 2020, deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.3500(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.3500(b).

\* \* \* \* \*

■ 14. Section 63.3543 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 63.3543 What are the general requirements for performance tests?**

(a) Before August 24, 2020, you must conduct each performance test required by § 63.3540 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after August 24, 2020, you must conduct each performance test required by § 63.3540 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the 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.

\* \* \* \* \*

■ 15. Section 63.3544 is amended by revising the introductory text to read as follows:

**§ 63.3544 How do I determine the emission capture system efficiency?**

You must use the procedures and test methods in this section to determine

capture efficiency as part of each performance test required by § 63.3540.

\* \* \* \* \*

■ 16. Section 63.3545 is amended by revising the introductory text, paragraph (b) introductory text, and paragraphs (b)(1) through (4) to read as follows:

**§ 63.3545 How do I determine the add-on control device emission destruction or removal efficiency?**

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance tests required by § 63.3540. For each performance test, you must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

\* \* \* \* \*

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously using either Method 25 or 25A of appendix A–7 to 40 CFR part 60 as specified in paragraphs (b)(1) through (5) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 ppm at the control device outlet.

(2) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is not an oxidizer.

(4) You may use Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

\* \* \* \* \*

■ 17. Section 63.3546 is amended by revising the introductory text and paragraphs (a)(1) and (2), (b)(1) through (3), (d)(1), (e)(1) and (2), (f)(1) through (3), and (f)(5) and (6) to read as follows:

**§ 63.3546 How do I establish the emission capture system and add-on control device operating limits during the performance test?**

During performance tests required by § 63.3540 and described in §§ 63.3543, 63.3544, and 63.3545, you must establish the operating limits required by § 63.3492 unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) \* \* \*

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) \* \* \*

(1) During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The average temperature difference is the minimum operating limit for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed at least once every 15 minutes during each of the three test runs. For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed during the performance test. That is the minimum operating limit for your catalytic oxidizer.

\* \* \* \* \*

(d) \* \* \*

(1) During performance tests, you must monitor and record the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

\* \* \* \* \*



(e) \* \* \*

(1) During performance tests, monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(f) \* \* \*

(1) During performance tests, monitor and record the inlet temperature to the desorption/reactivation zone of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption/reactivation zone inlet temperature.

(3) During each performance test, monitor and record an indicator(s) of performance for the desorption/reactivation fan operation at least once every 15 minutes during each of the three runs of the performance test. The indicator can be speed in revolutions per minute (rpm), power in amps, static pressure, or flow rate.

\* \* \* \* \*

(5) During each performance test, monitor the rotational speed of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(6) For each performance test, use the data collected during the performance test to calculate and record the average rotational speed. This is the minimum operating limit for the rotational speed of the concentrator. However, the indicator range for the rotational speed may be changed if an engineering evaluation is conducted and a determination made that the change in speed will not affect compliance with the emission limit.

\* \* \* \* \*

■ 18. Section 63.3547 is amended by revising paragraphs (a)(4) and (5), (a)(7), and (c)(3) introductory text to read as follows:

**§ 63.3547 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?**

(a) \* \* \*

(4) Before August 24, 2020, you must maintain the CPMS at all times and

have available necessary parts for routine repairs of the monitoring equipment. On and after August 24, 2020, you must maintain the CPMS at all times in accordance with § 63.3500(b) and keep necessary parts readily available for routine repairs of the monitoring equipment.

(5) Before August 24, 2020, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after August 24, 2020, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.3500(b).

\* \* \* \* \*

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. Before August 24, 2020, any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements. On and after August 24, 2020, except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

\* \* \* \* \*

(c) \* \* \*

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (ii) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

\* \* \* \* \*

■ 19. Section 63.3550 is amended by revising the section heading and paragraphs (a)(1), (a)(4), and (b)(1) to read as follows:

**§ 63.3550 By what date must I conduct performance tests and initial compliance demonstrations?**

(a) \* \* \*

(1) All emission capture systems, add-on control devices, and CPMS must be

installed and operating no later than the applicable compliance date specified in § 63.3483. You must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to §§ 63.3553, 63.3554, and 63.3555 and establish the operating limits required by § 63.3492.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) If you are not required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions.

\* \* \* \* \*

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section on the date you complete the performance tests.

(b) \* \* \*

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct



according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) If you are not required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions.

\* \* \* \* \*

■ 20. Section 63.3552 is amended by revising paragraph (g) to read as follows:

**§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?**

\* \* \* \* \*

(g) Before August 24, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). On and after August 24, 2020 deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.3500(b). The Administrator will determine whether

the deviations are violations according to the provisions in § 63.3500(b).

\* \* \* \* \*

■ 21. Section 63.3553 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 63.3553 What are the general requirements for performance tests?**

(a) Before August 24, 2020, you must conduct each performance test required by § 63.3550 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after August 24, 2020, you must conduct each performance test required by § 63.3550 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation(s). Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the 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.

\* \* \* \* \*

■ 22. Section 63.3555 is amended by revising the introductory text, paragraph (b) introductory text, and paragraphs (b)(1) through (4) to read as follows:

**§ 63.3555 How do I determine the outlet THC emissions and add-on control device emission destruction or removal efficiency?**

You must use the procedures and test methods in this section to determine either the outlet THC emissions or add-on control device emission destruction or removal efficiency as part of the performance tests required by § 63.3550. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

\* \* \* \* \*

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously using either Method 25 or 25A of appendix A–7 to 40 CFR part 60 as specified in paragraphs (b)(1) through (3) of this section. You must use

the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be more than 50 ppm at the control device outlet.

(2) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is not an oxidizer.

(4) You may use Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

\* \* \* \* \*

■ 23. Section 63.3556 is amended by revising the introductory text and paragraphs (a)(1) and (2), (b)(1) through (3), (d)(1), (e)(1) and (2), (f)(1) through (3), and (f)(5) and (6) to read as follows:

**§ 63.3556 How do I establish the emission capture system and add-on control device operating limits during the performance test?**

During the performance tests required by § 63.3550 and described in §§ 63.3553, 63.3554, and 63.3555, you must establish the operating limits required by § 63.3492 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) \* \* \*

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) \* \* \*

(1) During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The average temperature difference is the minimum operating limit for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during each performance test to calculate and record the average temperature at the inlet to the catalyst bed during the performance test. That is the minimum operating limit for your catalytic oxidizer.

\* \* \* \* \*

(d) \* \* \*

(1) You must monitor and record the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following performance tests.

\* \* \* \* \*

(e) \* \* \*

(1) During performance tests, monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(f) \* \* \*

(1) During performance tests, monitor and record the inlet temperature to the desorption/reactivation zone of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption/reactivation zone inlet temperature.

(3) During performance tests, monitor and record an indicator(s) of performance for the desorption/reactivation fan operation at least once every 15 minutes during each of the three runs of the performance test. The indicator can be speed in rpm, power in amps, static pressure, or flow rate.

\* \* \* \* \*

(5) During performance tests, monitor the rotational speed of the concentrator at least once every 15 minutes during each of the three runs of a performance test.

(6) For each performance test, use the data collected during the performance test to calculate and record the average rotational speed. This is the minimum operating limit for the rotational speed of the concentrator. However, the indicator range for the rotational speed may be changed if an engineering evaluation is conducted and a determination made that the change in speed will not affect compliance with the emission limit.

\* \* \* \* \*

■ 24. Section 63.3557 is amended by revising paragraphs (a)(4) and (5), (a)(7), and (c)(3) introductory text to read as follows:

**§ 63.3557 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?**

(a) \* \* \*

(4) You must maintain the CPMS at all times in accordance with § 63.3500(b) and have readily available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.3500(b) that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

\* \* \* \* \*

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. Before August 24, 2020, any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements. On and after August 24, 2020, except for periods of required quality assurance or control activities, any period for which the

CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

\* \* \* \* \*

(c) \* \* \*

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (ii) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

\* \* \* \* \*

■ 25. Section 63.3561 is amended by removing the definition for “Deviation” and adding definitions for “Deviation, before” and “Deviation, on and after” in alphabetical order to read as follows:

**§ 63.3561 What definitions apply to this subpart?**

\* \* \* \* \*

*Deviation*, before August 24, 2020, means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction regardless of whether or not such failure is permitted by this subpart.

*Deviation*, on and after August 24, 2020, means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

\* \* \* \* \*

■ 26. Table 5 to subpart KKKK of part 63 is revised to read as follows:

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes.	Applicability to subpart KKKK is also specified in § 63.3481.
§ 63.1(a)(6)	Source Category Listing	Yes.	
§ 63.1(a)(10)–(12)	Timing and Overlap Clarifications	Yes.	
§ 63.1(b)(1)	Initial Applicability Determination	Yes	
§ 63.1(b)(3)	Applicability Determination Recordkeeping.	Yes.	Area sources are not subject to subpart KKKK.
§ 63.1(c)(1)	Applicability after Standard Established.	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	No	
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program before Relevant Standard is Set.	Yes.	Additional definitions are specified in § 63.3561.
§ 63.2	Definitions	Yes	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1), (3), (4), (6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4).	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	Section 63.3483 specifies the compliance dates.
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(5), (b)(7)	Compliance Dates for New and Reconstructed Sources.	Yes	
§ 63.6(c)(1), (2), (5)	Compliance Dates for Existing Sources.	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(e)(1)(i)–(ii)	Operation and Maintenance	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)(i), (e)(3)(iii)–(ix)	SSMP	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.6(f)(1)	Compliance Except during Start-up, Shutdown, and Malfunction.	Yes before August 24, 2020, No on and after August 24, 2020.	Subpart KKKK does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance with Opacity/Visible Emission Standards.	No	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes.	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3543, 63.3544, 63.3545, 63.3554, and 63.3555.
§ 63.6(i)(16)	Compliance Extensions and Administrator's Authority.	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	
§ 63.7(a)(2) except (a)(2)(i)–(viii)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Sections 63.3540 and 63.3550 specify the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.7(a)(3) .....	Performance Tests Required by the Administrator.	Yes.	
§ 63.7(b)–(d) .....	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes .....	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(e)(1) .....	Conduct of Performance Tests ....	Yes before August 24, 2020, No on and after August 24, 2020.	See §§ 63.3543 and 63.3553.
§ 63.7(e)(2)–(4) .....	Conduct of Performance Tests ....	Yes.	
§ 63.7(f) .....	Performance Test Requirements—Use of Alternative Test Method.	Yes .....	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h) .....	Performance Test Requirements—Data Analysis, Record-keeping, Reporting, Waiver of Test.	Yes .....	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(2) .....	Monitoring Requirements—Applicability.	Yes .....	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in §§ 63.3547 and 63.3557.
§ 63.8(a)(4) .....	Additional Monitoring Requirements.	No .....	Subpart KKKK does not have monitoring requirements for flares.
§ 63.8(b) .....	Conduct of Monitoring .....	Yes.	
§ 63.8(c)(1) .....	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes before August 24, 2020, No on and after August 24, 2020.	Sections 63.3547 and 63.3557 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3) .....	CMS Operation and Maintenance	Yes .....	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in §§ 63.3547 and 63.3557.
§ 63.8(c)(4) .....	CMS .....	No .....	Sections 63.3547 and 63.3557 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5) .....	COMS .....	No .....	Subpart KKKK does not have opacity or visible emission standards.
§ 63.8(c)(6) .....	CMS Requirements .....	No .....	Sections 63.3547 and 63.3557 specify the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7) .....	CMS Out-of-Control Periods .....	Yes.	
§ 63.8(c)(8) .....	CMS Out-of-Control Periods Reporting.	No .....	Section 63.3511 requires reporting of CMS out of control periods.
§ 63.8(d)–(e) .....	Quality Control Program and CMS Performance Evaluation.	No.	
§ 63.8(f)(1)–(5) .....	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6) .....	Alternative to Relative Accuracy Test.	No .....	Section 63.8(f)(6) provisions are not applicable because subpart KKKK does not require CEMS.

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.8(g) .....	Data Reduction .....	No .....	Sections 63.3542, 63.3547, 63.3552 and 63.3557 specify monitoring data reduction.
§ 63.9(a) .....	Notification Applicability .....	Yes.	
§ 63.9(b)(1)–(2) .....	Initial Notifications .....	Yes.	
§ 63.9(b)(4)(i), (b)(4)(v), (b)(5) .....	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.9(c) .....	Request for Extension of Compliance.	Yes.	
§ 63.9(d) .....	Special Compliance Requirement Notification.	Yes.	
§ 63.9(e) .....	Notification of Performance Test ..	Yes .....	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f) .....	Notification of Visible Emissions/Opacity Test.	No .....	Subpart KKKK does not have opacity or visible emission standards.
§ 63.9(g) .....	Additional Notifications When Using CMS.	No.	
§ 63.9(h)(1)–(3) .....	Notification of Compliance Status	Yes .....	Section 63.3510 specifies the dates for submitting the notification of compliance status.
§ 63.9(h)(5)–(6) .....	Clarifications .....	Yes.	
§ 63.9(i) .....	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j) .....	Change in Previous Information ...	Yes.	
§ 63.10(a) .....	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1) .....	General Recordkeeping Requirements.	Yes .....	Additional requirements are specified in §§ 63.3512 and 63.3513.
§ 63.10(b)(2)(i)–(ii) .....	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards.	Yes before August 24, 2020, No on and after August 24, 2020.	See § 63.3512(i).
§ 63.10(b)(2)(iii) .....	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v) .....	Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction.	Yes before August 24, 2020, No on and after August 24, 2020.	See § 63.3512(i)(4) for a record of actions taken to minimize emissions duration a deviation from the standard.
§ 63.10(b)(2)(vi) .....	Recordkeeping for CMS Malfunctions.	Yes before August 24, 2020, No on and after August 24, 2020.	See § 63.3512(i) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2) (vii)–(xii) .....	Records .....	Yes.	
§ 63.10(b)(2) (xiii) .....	.....	No.	
§ 63.10(b)(2) (xiv) .....	.....	Yes.	
§ 63.10(b)(3) .....	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1) .....	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(5)–(6) .....	.....	Yes.	
§ 63.10(c)(7)–(8) .....	Additional Recordkeeping Requirements for Sources with CMS.	No .....	See § 63.3512(i) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14) .....	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15) .....	Records Regarding the Startup, Shutdown, and Malfunction Plan.	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.10(d)(1) .....	General Reporting Requirements	Yes .....	Additional requirements are specified in § 63.3511.

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.10(d)(2) .....	Report of Performance Test Results.	Yes .....	Additional requirements are specified in § 63.3511(b). Subpart KKKK does not require opacity or visible emissions observations.
§ 63.10(d)(3) .....	Reporting Opacity or Visible Emissions Observations.	No .....	
§ 63.10(d)(4) .....	Progress Reports for Sources with Compliance Extensions.	Yes.	See § 63.3511(a)(7) and (8).
§ 63.10(d)(5) .....	Startup, Shutdown, Malfunction Reports.	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.10(e)(1)–(2) .....	Additional CMS Reports .....	No.	Section 63.3511(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(3) .....	Excess Emissions/CMS Performance Reports.	No .....	
§ 63.10(e)(4) .....	COMS Data Reports .....	No .....	Subpart KKKK does not specify requirements for opacity or COMS.
§ 63.10(f) .....	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11 .....	Control Device Requirements/Flares.	No .....	Subpart KKKK does not specify use of flares for compliance.
§ 63.12 .....	State Authority and Delegations ...	Yes.	
§ 63.13(a) .....	Addresses .....	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.13(b) .....	Submittal to State Agencies .....	Yes.	
§ 63.13(c) .....	Submittal to State Agencies .....	Yes before August 24, 2020, No unless the state requires the submittal via CEDRI, on and after August 24, 2020.	
§ 63.14 .....	Incorporation by Reference .....	Yes.	
§ 63.15 .....	Availability of Information/Confidentiality.	Yes.	

■ 27. Table 8 to subpart KKKK of part 63 is added to read as follows:

TABLE 8 TO SUBPART KKKK OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane .....	79–34–5
1,1,2-Trichloroethane .....	79–00–5
1,1-Dimethylhydrazine .....	57–14–7
1,2-Dibromo-3-chloropropane .....	96–12–8
1,2-Diphenylhydrazine .....	122–66–7
1,3-Butadiene .....	106–99–0
1,3-Dichloropropene .....	542–75–6
1,4-Dioxane .....	123–91–1
2,4,6-Trichlorophenol .....	88–06–2
2,4/2,6-Dinitrotoluene (mixture) .....	25321–14–6
2,4-Dinitrotoluene .....	121–14–2
2,4-Toluene diamine .....	95–80–7
2-Nitropropane .....	79–46–9
3,3'-Dichlorobenzidine .....	91–94–1
3,3'-Dimethoxybenzidine .....	119–90–4
3,3'-Dimethylbenzidine .....	119–93–7
4,4'-Methylene bis(2-chloroaniline) .....	101–14–4
Acetaldehyde .....	75–07–0
Acrylamide .....	79–06–1
Acrylonitrile .....	107–13–1
Allyl chloride .....	107–05–1
alpha-Hexachlorocyclohexane (a-HCH) .....	319–84–6
Aniline .....	62–53–3
Benzene .....	71–43–2
Benzidine .....	92–87–5
Benzotrichloride .....	98–07–7
Benzyl chloride .....	100–44–7
beta-Hexachlorocyclohexane (b-HCH) .....	319–85–7
Bis(2-ethylhexyl)phthalate .....	117–81–7

TABLE 8 TO SUBPART KKKK OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Bis(chloromethyl)ether .....	542-88-1
Bromoform .....	75-25-2
Captan .....	133-06-2
Carbon tetrachloride .....	56-23-5
Chlordane .....	57-74-9
Chlorobenzilate .....	510-15-6
Chloroform .....	67-66-3
Chloroprene .....	126-99-8
Cresols (mixed) .....	1319-77-3
DDE .....	3547-04-4
Dichloroethyl ether .....	111-44-4
Dichlorvos .....	62-73-7
Epichlorohydrin .....	106-89-8
Ethyl acrylate .....	140-88-5
Ethylene dibromide .....	106-93-4
Ethylene dichloride .....	107-06-2
Ethylene oxide .....	75-21-8
Ethylene thiourea .....	96-45-7
Ethylidene dichloride (1,1-Dichloroethane) .....	75-34-3
Formaldehyde .....	50-00-0
Heptachlor .....	76-44-8
Hexachlorobenzene .....	118-74-1
Hexachlorobutadiene .....	87-68-3
Hexachloroethane .....	67-72-1
Hydrazine .....	302-01-2
Isophorone .....	78-59-1
Lindane (hexachlorocyclohexane, all isomers) .....	58-89-9
m-Cresol .....	108-39-4
Methylene chloride .....	75-09-2
Naphthalene .....	91-20-3
Nitrobenzene .....	98-95-3
Nitrosodimethylamine .....	62-75-9
o-Cresol .....	95-48-7
o-Toluidine .....	95-53-4
Parathion .....	56-38-2
p-Cresol .....	106-44-5
p-Dichlorobenzene .....	106-46-7
Pentachloronitrobenzene .....	82-68-8
Pentachlorophenol .....	87-86-5
Propoxur .....	114-26-1
Propylene dichloride .....	78-87-5
Propylene oxide .....	75-56-9
Quinoline .....	91-22-5
Tetrachloroethene .....	127-18-4
Toxaphene .....	8001-35-2
Trichloroethylene .....	79-01-6
Trifluralin .....	1582-09-8
Vinyl bromide .....	593-60-2
Vinyl chloride .....	75-01-4
Vinylidene chloride .....	75-35-4

**Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil**

■ 28. Section 63.5090 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

**§ 63.5090 Does this subpart apply to me?**

(a) The provisions of this subpart apply to each facility that is a major source of HAP, as defined in § 63.2, at which a coil coating line is operated,

except as provided in paragraphs (b) and (e) of this section.

\* \* \* \* \*

(e) This subpart does not apply to the application of incidental markings (including letters, numbers, or symbols) that are added to bare metal coils and that are used for only product identification or for product inventory control. The application of letters, numbers, or symbols to a coated metal coil is considered a coil coating process and part of the coil coating affected source.

■ 29. Section 63.5110 is amended by removing the definition for “*Deviation*” and adding definitions for “*Deviation, before*” and “*Deviation, on and after*” in alphabetical order to read as follows:

**§ 63.5110 What special definitions are used in this subpart?**

\* \* \* \* \*

*Deviation, before* August 24, 2020, means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any

emission limitation (including any operating limit) or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during start-up, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Deviation*, on and after August 24, 2020, means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

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

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

\* \* \* \* \*

■ 30. Section 63.5121 is amended by revising paragraph (a) to read as follows:

**§ 63.5121 What operating limits must I meet?**

(a) Except as provided in paragraph (b) of this section, for any coil coating line for which you use an add-on control device, unless you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.5170(e)(1), you must meet the applicable operating limits specified in Table 1 to this subpart. You must establish the operating limits during performance tests according to the requirements in § 63.5160(d)(3) and Table 1 to § 63.5160. You must meet the operating limits established during the most recent performance test required in § 63.5160 at all times after you establish them.

\* \* \* \* \*

■ 31. Section 63.5130 is amended by revising paragraph (a) to read as follows:

**§ 63.5130 When must I comply?**

(a) For an existing affected source, the compliance date is June 10, 2005.

\* \* \* \* \*

■ 32. Section 63.5140 is amended by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraph (b) as (c); and

■ c. Adding paragraph (b).

The revision and addition read as follows:

**§ 63.5140 What general requirements must I meet to comply with the standards?**

(a) Before August 24, 2020, you must be in compliance with the applicable emission standards in § 63.5120 and the operating limits in Table 1 to this subpart at all times, except during periods of start-up, shutdown, and malfunction of any capture system and control device used to comply with this subpart. On and after August 24, 2020 you must be in compliance with the applicable emission standards in § 63.5120 and the operating limits in Table 1 to this subpart at all times. If you are complying with the emission standards of this subpart without the use of a capture system and control device, you must be in compliance with the standards at all times.

(b) Before August 24, 2020, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1). On and after August 24, 2020, at all times, you must operate and maintain your 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 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.

\* \* \* \* \*

■ 33. Section 63.5150 is amended by revising paragraph (a) introductory text, paragraph (a)(4)(i), and paragraph (b) to read as follows:

**§ 63.5150 If I use a control device to comply with the emission standards, what monitoring must I do?**

\* \* \* \* \*

(a) To demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device required to comply with § 63.5120 following the date on which the initial performance test of the capture system and control device is completed. You must install and operate the monitoring equipment as specified in paragraphs (a)(1) through (4) of this section. On and after August 24, 2020, you must also maintain the monitoring equipment at all times in accordance with § 63.5140(b) and keep the necessary parts readily available for routine repairs of the monitoring equipment.

\* \* \* \* \*

(4) \* \* \*

(i) The monitoring plan must identify the operating parameter to be monitored to ensure that the capture efficiency measured during compliance tests is maintained, explain why this parameter is appropriate for demonstrating ongoing compliance, and identify the specific monitoring procedures.

\* \* \* \* \*

(b) If an operating parameter monitored in accordance with paragraphs (a)(3) and (4) of this section is out of the allowed range specified in Table 1 to this subpart it will be considered a deviation from the operating limit.

■ 34. Section 63.5160 is amended by revising Table 1 and paragraphs (b)(1)(i), (b)(2), (b)(4), (c), (d) introductory text, (d)(1) introductory text, (d)(1)(vi) introductory text, (d)(1)(vii), (d)(2), (d)(3) introductory text, (d)(3)(i)(A), (d)(3)(ii)(D) introductory text, and (e) introductory text to read as follows:

**§ 63.5160 What performance tests must I complete?**

TABLE 1 TO § 63.5160—REQUIRED PERFORMANCE TESTING SUMMARY

If you control HAP on your coil coating line by:	You must:
1. Limiting HAP or Volatile matter content of coatings.	Determine the HAP or volatile matter and solids content of coating materials according to the procedures in § 63.5160(b) and (c).



TABLE 1 TO § 63.5160—REQUIRED PERFORMANCE TESTING SUMMARY—Continued

If you control HAP on your coil coating line by:	You must:
2. Using a capture system and add-on control device.	Except as specified in paragraph (a) of this section, conduct an initial performance test within 180 days of the applicable compliance date in § 63.5130, and conduct periodic performance tests within 5 years following the previous performance test, as follows: If you are not required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018; thereafter, you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions. For each performance test: (1) For each capture and control system, determine the destruction or removal efficiency of each control device according to § 63.5160(d) and the capture efficiency of each capture system according to § 63.5160(e), and (2) confirm or re-establish the operating limits.

\* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Count only those organic HAP in Table 3 to this subpart that are measured to be present at greater than or equal to 0.1 weight percent and greater than or equal to 1.0 weight percent for other organic HAP compounds.

\* \* \*

(2) *Method 24 in appendix A–7 of part 60.* For coatings, you may determine the total volatile matter content as weight fraction of nonaqueous volatile matter and use it as a substitute for organic HAP, using Method 24 in appendix A–7 of part 60. As an alternative to using Method 24, you may use ASTM D2369–10 (2015), “Test Method for Volatile Content of Coatings” (incorporated by reference, see § 63.14). The determination of total volatile matter content using a method specified in this paragraph (b)(2) or as provided in paragraph (b)(3) of this section may be performed by the manufacturer of the coating and the results provided to you.

\* \* \*

(4) *Formulation data.* You may use formulation data provided that the information represents each organic HAP in Table 3 to this subpart that is present at a level equal to or greater than 0.1 percent and equal to or greater than 1.0 percent for other organic HAP compounds in any raw material used, weighted by the mass fraction of each raw material used in the material. Formulation data may be provided to you by the manufacturer of the coating material. In the event of any inconsistency between test data obtained with the test methods specified in paragraphs (b)(1) through (3) of this section and formulation data, the test data will govern.

(c) *Solids content and density.* You must determine the solids content and the density of each coating material applied. You may determine the volume solids content using ASTM D2697–03(2014) Standard Test Method for

Volume Nonvolatile Matter in Clear or Pigmented Coatings (incorporated by reference, see § 63.14) or ASTM D6093–97 (2016) Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer (incorporated by reference, see § 63.14), or an EPA approved alternative method. You must determine the density of each coating using ASTM D1475–13 “Standard Test Method for Density of Liquid Coatings, Inks, and Related Products” (incorporated by reference, see § 63.14) or ASTM D2111–10 (2015) “Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures” (incorporated by reference, see § 63.14). The solids determination using ASTM D2697–03(2014) or ASTM D6093–97 (2016) and the density determination using ASTM D1475–13 or ASTM 2111–10 (2015) may be performed by the manufacturer of the material and the results provided to you. Alternatively, you may rely on formulation data provided by material providers to determine the volume solids. In the event of any inconsistency between test data obtained with the ASTM test methods specified in this section and formulation data, the test data will govern.

(d) *Control device destruction or removal efficiency.* If you are using an add-on control device, such as an oxidizer, to comply with the standard in § 63.5120, you must conduct performance tests according to Table 1 to § 63.5160 to establish the destruction or removal efficiency of the control device or the outlet HAP concentration achieved by the oxidizer, according to the methods and procedures in paragraphs (d)(1) and (2) of this section. During performance tests, you must establish the operating limits required by § 63.5121 according to paragraph (d)(3) of this section.

(1) Performance tests conducted to determine the destruction or removal efficiency of the control device must be

performed such that control device inlet and outlet testing is conducted simultaneously. To determine the outlet organic HAP concentration achieved by the oxidizer, only oxidizer outlet testing must be conducted. The data must be reduced in accordance with the test methods and procedures in paragraphs (d)(1)(i) through (ix).

\* \* \*

(vi) Method 25 or 25A in appendix A–7 of part 60 is used to determine total gaseous non-methane organic matter concentration. You may use Method 18 in appendix A–6 of part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon. Use the same test method for both the inlet and outlet measurements, which must be conducted simultaneously. You must submit notification of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7 (b). You must use Method 25A if any of the conditions described in paragraphs (d)(1)(vi)(A) through (D) of this section apply to the control device.

\* \* \*

(vii) Each performance test must consist of three separate runs, except as provided by § 63.7(e)(3); each run must be conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic matter concentrations and mass flow rates, the average of the results of all runs will apply. If you are demonstrating compliance with the outlet organic HAP concentration limit in § 63.5120(a)(3), only the average outlet volatile organic matter concentration must be determined.

\* \* \*

(2) You must record such process information as may be necessary to determine the conditions in existence at the time of the performance test. Before August 24, 2020, operations during periods of start-up, shutdown, and

malfunction will not constitute representative conditions for the purpose of a performance test. On and after August 24, 2020, you must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of start-up, shutdown, or nonoperation do not constitute representative conditions for the purpose of a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the 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.

(3) *Operating limits.* If you are using a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance to comply with the requirements in § 63.5120, you must

establish the applicable operating limits required by § 63.5121. These operating limits apply to each capture system and to each add-on emission control device that is not monitored by CEMS, and you must establish the operating limits during performance tests required by paragraph (d) of this section according to the requirements in paragraphs (d)(3)(i) through (iii) of this section.

(i) \* \* \*

(A) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

\* \* \* \* \*

(ii) \* \* \*

(D) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (d)(3)(ii)(C) of this section. The plan must address, at a minimum, the

elements specified in paragraphs (d)(3)(ii)(D) (1) through (3) of this section.

\* \* \* \* \*

(e) *Capture efficiency.* If you are required to determine capture efficiency to meet the requirements of § 63.5170(e)(2), (f)(1) and (2), (g)(2) through (4), or (i)(2) and (3), you must determine capture efficiency using the procedures in paragraph (e)(1), (2), or (3) of this section, as applicable.

\* \* \* \* \*

■ 35. Section 63.5170 is amended by revising Table 1 and paragraphs (c)(1) and (2), (c)(4) introductory text, (e)(2) introductory text, (f)(1) introductory text, (f)(2), (g)(2) introductory text, (g)(3) introductory text, (g)(4) introductory text, Equation 11 of paragraph (h)(6), (i) introductory text, and (i)(1) to read as follows:

**§ 63.5170 How do I demonstrate compliance with the standards?**

\* \* \* \* \*

TABLE 1 TO § 63.5170—COMPLIANCE DEMONSTRATION REQUIREMENTS INDEX

If you choose to demonstrate compliance by:	Then you must demonstrate that:
1. Use of “as purchased” compliant coatings ....	a. Each coating material used during the 12-month compliance period does not exceed 0.046 kg HAP per liter solids, as purchased. Paragraph (a) of this section.
2. Use of “as applied” compliant coatings .....	a. Each coating material used does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraphs (b)(1) of this section; or b. Average of all coating materials used does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraph (b)(2) of this section.
3. Use of a capture system and control device ..	Overall organic HAP control efficiency is at least 98 percent on a monthly basis for individual or groups of coil coating lines; or overall organic HAP control efficiency is at least 98 percent during performance tests conducted according to Table 1 to § 63.5170 and operating limits are achieved continuously for individual coil coating lines; or oxidizer outlet HAP concentration is no greater than 20 ppmv and there is 100-percent capture efficiency during performance tests conducted according to Table 1 to § 63.5170 and operating limits are achieved continuously for individual coil coating lines. Paragraph (c) of this section.
4. Use of a combination of compliant coatings and control devices and maintaining an acceptable equivalent emission rate.	Average equivalent emission rate does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraph (d) of this section.

\* \* \* \* \*

(c) \* \* \*

(1) If the affected source uses one compliance procedure to limit organic HAP emissions to the level specified in § 63.5120(a)(1) or (3) and has only always-controlled work stations, then you must demonstrate compliance with the provisions of paragraph (e) of this section when emissions from the affected source are controlled by one or more solvent recovery devices.

(2) If the affected source uses one compliance procedure to limit organic HAP emissions to the level specified in § 63.5120(a)(1) or (3) and has only always-controlled work stations, then you must demonstrate compliance with

the provisions of paragraph (f) of this section when emissions are controlled by one or more oxidizers.

\* \* \* \* \*

(4) The method of limiting organic HAP emissions to the level specified in § 63.5120(a)(3) is the installation and operation of a PTE around each work station and associated curing oven in the coating line and the ventilation of all organic HAP emissions from each PTE to an oxidizer with an outlet organic HAP concentration of no greater than 20 ppmv on a dry basis. An enclosure that meets the requirements in § 63.5160(e)(1) is considered a PTE. Compliance of the oxidizer with the outlet organic HAP concentration limit

is demonstrated either through continuous emission monitoring according to paragraph (c)(4)(ii) of this section or through performance tests according to the requirements of § 63.5160(d) and Table 1 to § 63.5160. If this method is selected, you must meet the requirements of paragraph (c)(4)(i) of this section to demonstrate continuing achievement of 100 percent capture of organic HAP emissions and either paragraph (c)(4)(ii) or paragraph (c)(4)(iii) of this section, respectively, to demonstrate continuous compliance with the oxidizer outlet organic HAP concentration limit through continuous

emission monitoring or continuous operating parameter monitoring:

\* \* \* \* \*

(e) \* \* \*

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors to demonstrate recovery efficiency, conduct performance tests of capture efficiency and volumetric flow rate, and continuously monitor a site specific operating parameter to ensure that capture efficiency and volumetric flow rate are maintained following the procedures in paragraphs (e)(2)(i) through (xi) of this section:

\* \* \* \* \*

(f) \* \* \*

(1) *Continuous monitoring of capture system and control device operating parameters.* Demonstrate compliance through performance tests of capture efficiency and control device efficiency and continuous monitoring of capture system and control device operating parameters as specified in paragraphs (f)(1)(i) through (xi) of this section:

\* \* \* \* \*

(2) *Continuous emission monitoring of control device performance.* Use

continuous emission monitors, conduct performance tests of capture efficiency, and continuously monitor a site specific operating parameter to ensure that capture efficiency is maintained. Compliance must be demonstrated in accordance with paragraph (e)(2) of this section.

(g) \* \* \*

(2) *Solvent recovery system using performance test and continuous monitoring compliance demonstration.* For each solvent recovery system used to control one or more coil coating stations for which you choose to comply by means of performance testing of capture efficiency, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, each month of the 12-month compliance period you must meet the requirements of paragraphs (g)(2)(i) and (ii) of this section:

\* \* \* \* \*

(3) *Oxidizer using performance tests and continuous monitoring of operating parameters compliance demonstration.*

For each oxidizer used to control emissions from one or more work

stations for which you choose to demonstrate compliance through performance tests of capture efficiency, control device efficiency, and continuous monitoring of capture system and control device operating parameters, each month of the 12-month compliance period you must meet the requirements of paragraphs (g)(3)(i) through (iii) of this section:

\* \* \* \* \*

(4) *Oxidizer using continuous emission monitoring compliance demonstration.* For each oxidizer used to control emissions from one or more work stations for which you choose to demonstrate compliance through capture efficiency testing, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, each month of the 12-month compliance period you must meet the requirements in paragraphs (g)(4)(i) and (ii) of this section:

\* \* \* \* \*

(h) \* \* \*

(6) \* \* \*

$$He = \sum_{A=1}^{w_i} \left[ \left( \sum_{i=1}^p M_{ci} C_{hi} + \sum_{j=1}^q M_{cj} C_{hj} \right) (1 - DRE_k CE_A) \right] + \left[ \sum_{i=1}^p M_{Bi} C_{hi} + \sum_{j=1}^q M_{Bj} C_{hj} \right] \quad (\text{Eq. 11})$$

\* \* \* \* \*

(i) *Capture and control system compliance demonstration procedures using a CPMS for a coil coating line.* If you use an add-on control device, to demonstrate compliance for each capture system and each control device through performance tests and continuous monitoring of capture system and control device operating parameters, you must meet the requirements in paragraphs (i)(1) through (3) of this section.

(1) Conduct performance tests according to the schedule in Table 1 to § 63.5160 to determine the control device destruction or removal efficiency, DRE, according to § 63.5160(d) and Table 1 to § 63.5160.

\* \* \* \* \*

■ 36. Section 63.5180 is amended by:

■ a. Revising paragraphs (f) introductory text and (f)(1);

■ b. Removing and reserving paragraph (f)(2);

■ c. Revising paragraphs (g)(2)(v), (h) introductory text, (h)(2) and (3);

■ d. Adding paragraph (h)(4); and

■ e. Revising paragraphs (i) introductory text, (i)(1) through (4), (i)(6), and (i)(9).

The revisions and addition read as follows:

#### § 63.5180 What reports must I submit?

\* \* \* \* \*

(f) Before August 24, 2020, you must submit start-up, shutdown, and malfunction reports as specified in § 63.10(d)(5) if you use a control device to comply with this subpart.

(1) Before August 24, 2020, if your actions during a start-up, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's start-up, shutdown, and malfunction plan specified in § 63.6 (e)(3) and required before August 24, 2020, you must state such information in the report. The start-up, shutdown, or malfunction report will consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy, that will be submitted to the Administrator. Separate start-up, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (g) of this

section. The start-up, shutdown, and malfunction plan and start-up, shutdown, and malfunction report are no longer required on and after August 24, 2020.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(v) A statement that there were no deviations from the applicable emission limit in § 63.5120 or the applicable operating limit(s) established according to § 63.5121 during the reporting period, and that no CEMS were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(h) You must submit, for each deviation occurring at an affected source where you are not using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section and the information in paragraphs (h)(1) through (4) of this section:

\* \* \* \* \*

(2) Before August 24, 2020, you must provide information on the number, duration, and cause of deviations

(including unknown cause, if applicable) as applicable, and the corrective action taken. On and after August 24, 2020, you must provide information on the number, date, time, duration, and cause of deviations from an emission limit in § 63.5120 or any applicable operating limit established according to § 63.5121 (including unknown cause, if applicable) as applicable, and the corrective action taken.

(3) Before August 24, 2020, you must provide information on the number, duration, and cause for continuous parameter monitoring system downtime incidents (including unknown cause other than downtime associated with zero and span and other daily calibration checks, if applicable). On and after August 24, 2020, you must provide the information specified in paragraphs (h)(3)(i) and (ii) of this section.

(i) Number, date, time, duration, cause (including unknown cause), and descriptions of corrective actions taken for continuous parameter monitoring systems that are inoperative (except for zero (low-level) and high-level checks).

(ii) Number, date, time, duration, cause (including unknown cause), and descriptions of corrective actions taken for continuous parameter monitoring systems that are out of control as specified in § 63.8(c)(7).

(4) On and after August 24, 2020, for each deviation from an emission limit in § 63.5120 or any applicable operating limit established according to § 63.5121, you must provide a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.5120, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.5140(b).

(i) You must submit, for each deviation from the applicable emission limit in § 63.5120 or the applicable operation limit(s) established according to § 63.5121 occurring at an affected source where you are using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section, and the information in paragraphs (i)(1) through (12) of this section:

(1) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

(2) Before August 24, 2020, the date and time that each CEMS was inoperative, except for zero (low-level) and high-level checks. On and after

August 24, 2020, for each instance that the CEMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CEMS was inoperative; the cause (including unknown cause) for the CEMS being inoperative; and a description of corrective actions taken.

(3) Before August 24, 2020, the date and time that each CEMS was out-of-control, including the information in § 63.8(c)(8). On and after August 24, 2020, for each instance that the CEMS was out-of-control, as specified in § 63.8(c)(7), the date, time, and duration that the CEMS was out-of-control; the cause (including unknown cause) for the CEMS being out-of-control; and descriptions of corrective actions taken.

(4) Before August 24, 2020, the date and time that each deviation started and stopped, and whether each deviation occurred during a period of start-up, shutdown, or malfunction or during another period. On and after August 24, 2020, the date, time, and duration of each deviation from an emission limit in § 63.5120. For each deviation, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.5120 to this subpart, and a description of the method used to estimate the emissions.

\* \* \* \* \*

(6) Before August 24, 2020, a breakdown of the total duration of the deviations during the reporting period into those that are due to start-up, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after August 24, 2020, a breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

\* \* \* \* \*

(9) Before August 24, 2020, a brief description of the metal coil coating line. On and after August 24, 2020, a list of the affected source or equipment, including a brief description of the metal coil coating line.

\* \* \* \* \*

■ 37. Section 63.5181 is added to read as follows:

**§ 63.5181 What are my electronic reporting requirements?**

(a) Beginning no later than August 24, 2020, you must submit the results of each performance test as required in § 63.5180(e) following the procedure specified in paragraphs (a)(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 website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test in portable document format (PDF) using the attachment module of the ERT.

(3) If you claim that some of the performance test information being submitted under paragraph (a)(1) 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 website, 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 (a)(1) of this section.

(b) Beginning on August 24, 2020, the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in §§ 63.9(h) and 63.5180(d) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in PDF. The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an

alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, 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) Beginning on March 25, 2021, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in § 63.5180(g) through (i), as applicable, to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (<https://cdx.epa.gov>). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>). The date on which the report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report 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 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. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI, 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.

(d) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the

reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (g)(1) through (7) of this section.

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

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

(3) The outage may be planned or unplanned.

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

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

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

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

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

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

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

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

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

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period

prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

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

(3) You must provide to the Administrator:

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

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

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

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

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

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

■ 38. Section 63.5190 is amended by adding paragraphs (a)(5) and (c) to read as follows:

**§ 63.5190 What records must I maintain?**

(a) \* \* \*

(5) On and after August 24, 2020, for each deviation from an emission limitation reported under § 63.5180(h) or (i), a record of the information specified in paragraphs (a)(5)(i) through (iv) of this section, as applicable.

(i) The date, time, and duration of the deviation, as reported under § 63.5180(h) and (i).

(ii) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.5180(h) and (i).

(iii) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.5120 to this subpart or any applicable operating limit established according to § 63.5121 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.5180(h) and (i).

(iv) A record of actions taken to minimize emissions in accordance with § 63.5140(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

\* \* \* \* \*

(c) Any records required to be maintained by this subpart that are in reports that were 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.

■ 39. Table 2 to subpart SSSS of part 63 is revised to read as follows:

Table 2 to Subpart SSSS of Part 63—Applicability of General Provisions to Subpart SSSS

You must comply with the applicable General Provisions requirements according to the following table:

General provisions reference	Subject	Applicable to subpart SSSS	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes.	Applicability to Subpart SSSS is also specified in § 63.5090.
§ 63.1(a)(6)	Source Category Listing	Yes.	
§ 63.1(a)(10)–(12)	Timing and Overlap Clarifications	Yes.	
§ 63.1(b)(1)	Initial Applicability Determination	Yes	
§ 63.1(b)(3)	Applicability Determination Recordkeeping.	Yes.	
§ 63.1(c)(1)	Applicability after Standard Established.	Yes.	Additional definitions are specified in § 63.5110.
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	Yes.	
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	
§ 63.3	Units and Abbreviations	Yes.	Only total HAP emissions in terms of tons per year are required for § 63.5(d)(1)(ii)(H).
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1), (3), (4), (6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4).	Application for Approval of Construction/Reconstruction.	Yes	See § 63.5140(b) for general duty requirement.
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance Requirements-Applicability.	Yes.	
§ 63.6(b)(1)–(5), (b)(7)	Compliance Dates for New and Reconstructed Sources.	Yes	
§ 63.6(c)(1), (2), (5)	Compliance Dates for Existing Sources.	Yes	Subpart SSSS does not establish opacity standards or visible emission standards.
§ 63.6(e)(1)(i)–(ii)	General Duty to Minimize Emissions and Requirement to Correct Malfunctions As Soon As Possible.	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements.	Yes.	
§ 63.6(e)(3)(i), (e)(3)(iii)–(ix)	SSMP Requirements	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.6(f)(1)	SSM Exemption	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.6(f)(2)–(3)	Compliance with Non-Opacity Emission Standards.	Yes.	See § 63.5160(d)(2).
§ 63.6(g)	Alternative Non-Opacity Emission Standard.	Yes.	
§ 63.6(h)	Compliance with Opacity/Visible Emission Standards.	No	
§ 63.6(i)(1)–(14), (i)(16)	Extension of Compliance and Administrator's Authority.	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)–(d) except (a)(2)(i)–(viii)	Performance Test Requirements	Yes.	EPA retains approval authority.
§ 63.7(e)(1)	Performance Testing	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.7(e)(2)–(4)	Conduct of Performance Tests	Yes.	
§ 63.7(f)	Alternative Test Method	Yes	

General provisions reference	Subject	Applicable to subpart SSSS	Explanation
§ 63.7(g)–(h) .....	Data Analysis and Waiver of Tests.	Yes.	
§ 63.8(a)(1)–(2) .....	Monitoring Requirements—Applicability.	Yes .....	Additional requirements for monitoring are specified in § 63.5150(a).
§ 63.8(a)(4) .....	Additional Monitoring Requirements.	No .....	Subpart SSSS does not have monitoring requirements for flares.
§ 63.8(b) .....	Conduct of Monitoring .....	Yes.	
§ 63.8(c)(1) .....	Operation and Maintenance of Continuous Monitoring System (CMS).	Yes before August 24, 2020, No on and after August 24, 2020.	Section 63.5150(a) specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3) .....	CMS Operation and Maintenance	Yes .....	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.5170.
§ 63.8(c)(4)–(5) .....	CMS Continuous Operation Procedures.	No .....	Subpart SSSS does not require COMS.
§ 63.8(c)(6)–(8) .....	CMS Requirements .....	Yes .....	Provisions only apply if CEMS are used.
§ 63.8(d)–(e) .....	CMS Quality Control, Written Procedures, and Performance Evaluation.	Yes .....	Provisions only apply if CEMS are used.
§ 63.8(f)(1)–(5) .....	Use of an Alternative Monitoring Method.	Yes .....	EPA retains approval authority.
§ 63.8(f)(6) .....	Alternative to Relative Accuracy Test.	No .....	Section 63.8(f)(6) provisions are not applicable because subpart SSSS does not require CEMS.
§ 63.8(g) .....	Data Reduction .....	No .....	Sections 63.5170, 63.5140, 63.5150, and 63.5150 specify monitoring data reduction.
§ 63.9(a) .....	Notification of Applicability .....	Yes.	
§ 63.9(b)(1) .....	Initial Notifications .....	Yes.	
§ 63.9(b)(2) .....	Initial Notifications .....	Yes .....	With the exception that § 63.5180(b)(1) provides 2 years after the proposal date for submittal of the initial notification for existing sources.
§ 63.9(b)(4)(i), (b)(4)(v), (b)(5) .....	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.9(c)–(e) .....	Request for Extension of Compliance, New Source Notification for Special Compliance Requirements, and Notification of Performance Test.	Yes .....	Notification of performance test requirement applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f) .....	Notification of Visible Emissions/Opacity Test.	No .....	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.9(g) .....	Additional Notifications When Using CMS.	No .....	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(3) .....	Notification of Compliance Status	Yes .....	Section 63.5130 specifies the dates for submitting the notification of compliance status.
§ 63.9(h)(5)–(6) .....	Clarifications .....	Yes.	
§ 63.9(i) .....	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j) .....	Change in Previous Information ...	Yes.	
§ 63.10(a) .....	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1) .....	General Recordkeeping Requirements.	Yes .....	Additional requirements are specified in § 63.5190.
§ 63.10(b)(2)(i)–(ii) .....	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and Recordkeeping of Failures to Meet Standards.	Yes before August 24, 2020, No on and after August 24, 2020.	See § 63.5190(a)(5).
§ 63.10(b)(2)(iii) .....	Maintenance Records .....	Yes.	

General provisions reference	Subject	Applicable to subpart SSSS	Explanation
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction.	Yes before August 24, 2020, No on and after August 24, 2020.	See § 63.5190(a)(5).
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	Yes before August 24, 2020, No on and after August 24, 2020.	See § 63.5190(a)(5).
§ 63.10(b)(2)(vii)–(xiv)	Other CMS Requirements	Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)	Additional CMS Recordkeeping Requirements.	No	See § 63.5190(a)(5).
§ 63.10(d)(1)–(2)	General Reporting Requirements and Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.5180(e).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources with Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, Malfunction Reports.	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.10(e)	Additional Reporting Requirements for Sources with CMS.	No.	
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart SSSS does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13(a)	Addresses	Yes before August 24, 2020, No on and after August 24, 2020.	
§ 63.13(b)	Submittal to State Agencies	Yes.	
§ 63.13(c)	Submittal to State Agencies	Yes before August 24, 2020, No unless the state requires the submittal via CEDRI, on and after August 24, 2020.	
§ 63.14	Incorporation by Reference	Yes	Subpart SSSS includes provisions for alternative ASTM and ASME test methods that are incorporated by reference.
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 40. Table 3 to subpart SSSS of part 63 is added to read as follows:

TABLE 3 TO SUBPART SSSS OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3'-Dichlorobenzidine	91–94–1
3,3'-Dimethoxybenzidine	119–90–4
3,3'-Dimethylbenzidine	119–93–7
4,4'-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2



TABLE 3 TO SUBPART SSSS OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Benzidine .....	92-87-5
Benzotrichloride .....	98-07-7
Benzyl chloride .....	100-44-7
beta-Hexachlorocyclohexane (b-HCH) .....	319-85-7
Bis(2-ethylhexyl)phthalate .....	117-81-7
Bis(chloromethyl)ether .....	542-88-1
Bromoform .....	75-25-2
Captan .....	133-06-2
Carbon tetrachloride .....	56-23-5
Chlordane .....	57-74-9
Chlorobenzilate .....	510-15-6
Chloroform .....	67-66-3
Chloroprene .....	126-99-8
Cresols (mixed) .....	1319-77-3
DDE .....	3547-04-4
Dichloroethyl ether .....	111-44-4
Dichlorvos .....	62-73-7
Epichlorohydrin .....	106-89-8
Ethyl acrylate .....	140-88-5
Ethylene dibromide .....	106-93-4
Ethylene dichloride .....	107-06-2
Ethylene oxide .....	75-21-8
Ethylene thiourea .....	96-45-7
Ethylidene dichloride (1,1-Dichloroethane) .....	75-34-3
Formaldehyde .....	50-00-0
Heptachlor .....	76-44-8
Hexachlorobenzene .....	118-74-1
Hexachlorobutadiene .....	87-68-3
Hexachloroethane .....	67-72-1
Hydrazine .....	302-01-2
Isophorone .....	78-59-1
Lindane (hexachlorocyclohexane, all isomers) .....	58-89-9
m-Cresol .....	108-39-4
Methylene chloride .....	75-09-2
Naphthalene .....	91-20-3
Nitrobenzene .....	98-95-3
Nitrosodimethylamine .....	62-75-9
o-Cresol .....	95-48-7
o-Toluidine .....	95-53-4
Parathion .....	56-38-2
p-Cresol .....	106-44-5
p-Dichlorobenzene .....	106-46-7
Pentachloronitrobenzene .....	82-68-8
Pentachlorophenol .....	87-86-5
Propoxur .....	114-26-1
Propylene dichloride .....	78-87-5
Propylene oxide .....	75-56-9
Quinoline .....	91-22-5
Tetrachloroethene .....	127-18-4
Toxaphene .....	8001-35-2
Trichloroethylene .....	79-01-6
Trifluralin .....	1582-09-8
Vinyl bromide .....	593-60-2
Vinyl chloride .....	75-01-4
Vinylidene chloride .....	75-35-4