ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0043; FRL–7416–8]

RIN 2060–AH03

National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for primary magnesium refining facilities. The EPA has identified primary magnesium refining facilities as a major source of hazardous air pollutant (HAP) emissions. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the primary magnesium refining source category include chlorine, hydrochloric acid, dioxin/furan, and trace amounts of several HAP metals. Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system. Some of these pollutants are considered to be carcinogens, and all can cause toxic effects in humans following sufficient exposure.

DATES: *Comments.* Submit comments on or before February 21, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by February 3, 2003, a public hearing will be held on February 6, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Lula Melton, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2910, electronic mail address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS*	Examples of regulated entities
Primary Magnesium Refining	331419	Primary refiners of nonferrous metals by electrolytic methods.

*North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.9881 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0043. The official public docket is the collection of materials that is available for public viewing in the Primary Magnesium Refining NESHAP Docket at the EPA Docket Center (Air Docket), EPA West, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center 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 Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or review public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statue, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statue. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search'' and then key in Docket ID No. OAR–2002–0043. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in Wordperfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: Primary Magnesium Refining NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mail Code 6102T, Room B108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0043.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, U.S. EPA West, Mail Code 6102T, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0043. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566–1741, Attention Primary Magnesium Refining NESHAP Docket, Docket ID No. OAR–2002–0043.

Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Ms. Lula Melton, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0043. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Cassie Posey, Metals Group, Emission Standards Division (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–0069, in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Cassie Posey to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

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I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP

and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed NESHAP, Primary Magnesium Refining, was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that emit or have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum level allowed for NESHAP and is defined under section 112 (d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which we have emissions information) in the category or subcategory or by the best-performing five sources (for which we have or could reasonably obtain emissions information) for categories or subcategories with fewer than 30 sources.

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, nonair quality health and environmental impacts, and energy impacts.

C. What Source Category Is Affected by the Proposed Rule?

Section 112(c) of the CAA requires us to list all categories of major and area sources of HAP for which we will develop national emission standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). ''Primary Magnesium Refining'' is one of the source categories on the initial list. The listing was based on our determination that primary magnesium refining facilities may reasonably be anticipated to emit a variety of HAP listed in section 112(b) in quantities sufficient to be major sources.

The source category is comprised of one plant, US Magnesium Corporation located in Rowley, Utah. The plant produces magnesium from brine (salt water) taken from the Great Salt Lake. The production process concentrates the magnesium salts in the brine, then processes the brine to remove impurities that would affect metal quality. After the brine solution is converted to a powder mixture of magnesium chloride ($MgCl_2$) and magnesium oxide in the spray dryers, the powder is conveyed to the melt/reactors. The melt/reactors melt the powder mixture and convert the remaining magnesium oxide to magnesium chloride by injecting chlorine into the molten salt. The purified molten salt is then transferred to the electrolytic cells where the molten magnesium chloride salt is separated into magnesium metal and chlorine by electrolysis. The electrolysis process passes a direct electric current through the molten magnesium chloride, causing the dissociation of the salt and results in the generation of chlorine gas and magnesium metal. The magnesium metal is then transferred to the foundry for casting into ingots for sale. The chlorine produced is piped to a chlorine plant where it is liquefied for reuse or sale.

The HAP emitted from the primary magnesium refining process are chlorine, hydrochloric acid, dioxin/furan, and trace amounts of HAP metals. Emission controls include various combinations of wet scrubbers (venturi and packed-bed) for acid gas and particulate matter (PM) control.

Chlorine is emitted from the melting and purification of reactor cell product and is controlled by conversion to hydrochloric acid in the chlorine reduction burner and subsequent absorption of the hydrochloric acid in venturi and packed-bed scrubber. Using these control technologies, upwards of 99.9 percent control of chlorine is achieved. The electrowinning of the melted magnesium chloride to magnesium metal produces as a by-product chlorine gas which is recovered at the chlorine plant. When the chlorine plant is inoperable, the chlorine produced at the electrolytic cells is routed to a series of packed-bed scrubbers which use ferrous chloride as the adsorbing medium.

Hydrochloric acid is emitted from the spray drying and storage of magnesium chloride powder and the melting and purification of reactor cell product prior to the electrowinning process. Hydrochloric acid emissions are controlled by venturi and packed-bed scrubbers.

Dioxin/furan are generated in the melt reactor and are subject to incidental control by the chlorine reduction burner and wet scrubbers used to control chlorine, hydrochloric acid (HCl), and PM.

D. What Are the Health Effects Associated With Emissions From Primary Magnesium Refiners?

Acute (short-term) exposure to high levels of chlorine in humans can result in chest pain, vomiting, toxic pneumonitis, and pulmonary edema. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs. Chronic long-term exposure to chlorine gas in workers has resulted in respiratory effects including eye and throat irritation and airflow obstruction. Animal studies have reported decreased body weight gain, eye and nose irritation, non-neoplastic nasal lesions, and respiratory epithelial hyperplasia from chronic inhalation exposure to chlorine. No information is available on the carcinogenic effects of chlorine in humans from inhalation exposure. We have not classified chlorine for potential carcinogenicity.

Hydrochloric acid is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of hydrochloric acid to humans. In rats exposed to hydrochloric acid by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified hydrochloric acid for carcinogenicity.

There are a variety of metal HAP contained in the PM emitted from the primary magnesium refining process. The principal HAP metals emitted include trace quantities of phosphorous and manganese. Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day. Chronic exposure to high levels of manganese by inhalation in humans

results primarily in central nervous system effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese in Group D, not classifiable as to carcinogenicity in humans.

Organic HAP such as chlorinated dibenzodioxins and furans (CDD/F) have been detected in the melt/reactor exhaust. One CDD/F compound, 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD), commonly called dioxin) is listed singly as a HAP. Other CDD/F compounds, many of which cause adverse health effects in the same way as dioxin, are HAP under the definition of polycyclic organic matter. Exposure to CDD/F mixtures causes chloracne, a severe acne-like condition and has been shown to be extremely toxic in animal studies. Dioxin is known to be a developmental toxicant in animals causing skeletal deformities, kidney defects, and weakened immune responses in the offspring of animals exposed during pregnancy. Human studies have shown an association between dioxin and soft-tissue sarcomas, lymphomas, and stomach carcinomas. We have classified dioxin as a probable human carcinogen (Group B2).

In addition to HAP, the proposed rule would also reduce particulate matter emissions which are controlled under national ambient air quality standards. Brief exposure to particulate matter has caused aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

We recognize that the degree of adverse effects to health experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depends on:

- Pollutant-specific characteristics (*e.g.*, toxicity, half-life in the environment, bioaccumulation, and persistence);
- The ambient concentrations observed in the area (*e.g.*, as influenced by emission rates, meteorological conditions, and terrain);
- The frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.*, genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population.

II. Summary of Proposed Rule

A. What Are the Affected Sources and Emission Points?

The affected source is each new or existing primary magnesium refinery. A new affected source is one constructed or reconstructed after January 22, 2003. An existing affected source is one constructed or reconstructed on or before January 22, 2003. The proposed rule covers emissions from spray dryers, the melt reactor system, the launder off gas system, and magnesium chloride storage bins.

B. What Are the Compliance Deadlines?

The owner or operator of an existing affected source would have to comply by [DATE 12 MONTHS AFTER THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. New or reconstructed sources that startup on or before [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] must comply by [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. New or reconstructed sources that startup after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] must comply upon initial startup.

C. What Are the Emission Limitations?

The proposed rule includes mass rate emission limits in pounds per hour (lbs/hr) for chlorine, hydrochloric acid, PM, and PM_{10}. The emission limits are shown in Table 1 of this preamble.

TABLE 1.—PROPOSED MASS RATE EMISSION LIMITS

Emission point	Chlorine (lbs/hr)	HCL (lbs/hr)	PM (lbs/hr)	PM–10 (lbs/hr)
Spray Dryers	.....	200	100	.....
Magnesium Chloride Storage Bins	.....	47.5	.....	2.7
Melt/Reactor System	100	7.2	.....	13.1
Launder Off-Gas System	26.0	46.0	37.5	.....

The proposed rule also includes emission limits for dioxin/furan expressed in nanograms of toxicity equivalents per dry standard cubic meter (ng TEQ/dscm) corrected to 7 percent oxygen. Dioxins/furans include a group of 17 chemicals or congeners that share certain similar chemical structures and biological characteristics. The 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin congener is the most well studied and the most toxic of these compounds. Scientists believe that dioxins cause effects in similar ways. Because of this and because exposure is typically to variable mixtures of dioxin-like compounds, we use toxicity equivalency factors (TEF) that compare the potential toxicity of each of the individual dioxin-like compounds to the relative toxicity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin. With such factors, the toxicity for a mixture can be expressed in terms of its Toxicity Equivalents (TEQ), which is the amount of TCDD it would take to equal the combined toxic effect of all the dioxin-like compounds found in the mixture. To calculate the TEQ, the concentration of each dioxin-like compound is multiplied by its respective TEF.

D. What Are the Operation and Maintenance Requirements?

All plants subject to the proposed rule would be required to prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in § 63.6(e) of the NESHAP General Provisions. All plants must establish and meet operating limits for pressure drop and scrubber water flow rate. A written operation and maintenance plan is also required for control devices subject to an operating limit. The plan must describe procedures for monthly inspections and preventative maintenance requirements for control devices.

E. What Are the Initial Compliance Requirements?

The proposed rule requires a performance test for each control device

to demonstrate initial compliance with the applicable emission limits of chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. The EPA Method 26 or 26A in 40 CFR part 60, appendix A is the reference method for chlorine and hydrochloric acid. The reference method for PM is EPA Method 5 or 5D in 40 CFR part 60, appendix A. The reference method for PM_{10} is EPA Method 201 in 40 CFR part 60, appendix A. The EPA Method 23 of 40 CFR part 60, appendix A is the reference method for dioxin/furan. The proposed rule would also require owners/operators to establish operating limits for scrubber pressure drop and scrubber water flow rate concurrent with the performance of the initial compliance tests.

F. What Are the Continuous Compliance Requirements?

The proposed rule would require primary magnesium refineries to conduct performance tests at least twice during each title V operating permit term (at midterm and renewal) to demonstrate continuous compliance with the emission limits. Plants would also be required to monitor operating parameters for control devices subject to operating limits and carry out the procedures in their operation and maintenance plan.

For wet scrubbers, plants would be required to use continuous parameter monitoring systems (CPMS) to measure and record the hourly average pressure drop and scrubber water flow rate. To demonstrate continuous compliance, plants would keep records documenting conformance with the monitoring requirements and the installation, operation, and maintenance requirements for CPMS.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

We selected the proposed notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by EPA to know what facilities are subject to the standards, if a facility has complied with the proposed rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from the proposed rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes need to be made to the plan. Records would be required of information needed to document compliance with the rule requirements. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Affected Source?

Affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a CAA section 112(c) source category or subcategory for which a CAA section 112(d) standard or other relevant standard is established pursuant to CAA section 112. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

We considered three different approaches for designating the affected source: the entire primary magnesium refinery, groups of emission points, and individual emission points. In selecting the affected sources for the proposed rule, we identified the HAP-emitting operations, the HAP emitted, and the quantity of HAP emissions from the individual or groups of emission points. We concluded that designating the entire primary magnesium refinery as the affected source is the most appropriate approach. This conclusion is consistent with the requirements for defining affected source provided in § 63.2 of the General Provisions. The major emission points include each spray dryer, magnesium chloride storage bin, melt/reactor, and launder off-gas system. Therefore, the proposed rule includes requirements for the control of emissions from each spray dryer, magnesium chloride storage bin, melt/reactor, and launder off-gas system.

B. How Did We Select the Pollutants?

The proposed standards would establish emission limits for chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. Particulate matter was selected as a surrogate for HAP metal emissions which account for less than one-tenth of one percent of total PM emissions. The principal HAP metals emitted include trace quantities of phosphorous, manganese, and chromium, with lesser quantities of arsenic, antimony, and mercury. With the exception of elemental mercury, metal HAP emissions, when released, are a constituent of total PM. As a result, control technologies applied for PM control will coincidentally achieve comparable levels of control of these pollutants. Standards requiring good control of PM emissions will also achieve good control of metal HAP emissions. Establishing separate standards for these individual HAP would result in no additional reductions beyond that achieved using PM as a surrogate pollutant.

Given that the US Magnesium refinery generates about three pounds of chlorine to each pound of magnesium produced, chlorine and hydrochloric acid are by far the most significant HAP pollutants potentially emitted from primary magnesium refining. As such, both chlorine and hydrochloric acid were selected for the proposed rule.

Lastly, the proposed rule would establish a separate emission limit for dioxin/furan discharged from the melt/reactor stack because of the high toxicity associated with very low exposures to these compounds and their persistence and bioaccumulative effects in the environment.

C. How Did We Determine the Bases and Levels of the Proposed Standards?

Since there is only one primary magnesium refinery in the source category, the MACT floor for both existing and new sources is established by the performance of each emissions control system operating at that source. We do not anticipate the construction of any new sources in this source category. The State of Utah, Department of Environmental Quality (UDEQ) issued a title V operating permit dated October 11, 2001 for US Magnesium Corporation. The permit contains emission limitations for chlorine, hydrochloric acid, PM, and PM_{10} established by the UDEQ. The permit does not contain limits for dioxin/furan.

We conducted our own independent assessment of the emissions test data and concluded that the emission limitations established in the source's title V operating permit are appropriate and achievable. Although the limited test results indicate the permit limits are achievable, the data also show that the

plant is not significantly overachieving the limits. Therefore, we believe that the permit limits reasonably approximate actual emissions and performance and present an accurate picture of the level of control achieved by the best performing source.

An underlying presumption when setting MACT standards is that all emission limitations must be complied with at all times. Consequently, when establishing MACT floors and ultimately a MACT standard, we must consider the long-term variability in performance expected to occur under reasonable worst-case conditions. We must assure that an ensuing standard reflects the level of emission control determined to be MACT. We must also assure that the standard is achievable under normal and recurring worst-case circumstances.

As part of our development of the proposed MACT standard, we assessed the viability of requiring additional or different control equipment to obtain beyond-the-floor emissions reductions. Each control system on the four emission points (*i.e.,* spray dryer stack, magnesium chloride storage bin stack, melt/reactor system stack, and launder off-gas system stack) was evaluated to see if it was the best control equipment to achieve the maximum amount of reduction of chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. For all four emission points, US Magnesium uses wet scrubbers (packed-bed and venturi scrubbers) to achieve the emission limits. We concluded that wet scrubbing systems are the most appropriate and practical control systems for chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan and that there is no other control equipment or methods of control that would be more effective for reducing their emissions taking into consideration cost and feasibility. Therefore, we determined that the emission limitations at the MACT floors also represent MACT.

We also propose that the source prepare and operate according to a fugitive dust emission control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from all unpaved roads and other unpaved operational areas. The existing fugitive dust emission control plan that has been approved as part of the source's title V permit would be acceptable.

Spray Dryers

There are three spray dryers in the source category. The exhaust gas from each is controlled by two venturi scrubbers followed by a packed-bed scrubber. All three dryers are subject to Utah's PM emission limit of 100 lbs/hr. Each test was conducted according to EPA Method 5, and, as far as we know, under normal and representative operating conditions.

We have seven PM emission tests for the three dryers. Dryers 01 and 03 were tested in May 1997; dryers 01 and 02 were tested in December 1997; and all three dryers were tested in June 2002. The May 1997 test includes seven runs, and the other two tests include three runs each. The test results of all seven tests range from 25 to 53 lbs/hr. The average and median values are 37 lbs/hr and 36 lbs/hr, respectively.

We evaluated the existing State PM emission limit as an option for establishing the MACT floor. The test results recorded range from about one-fourth to one-half of the standard and average a little more than one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 100 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for spray dryers to be the level of control indicated by the existing State limit of 100 lbs/hr of PM.

All three dryers are subject to Utah's hydrochloric acid emission limit of 200 lbs/hr. We have seven hydrochloric acid emission tests conducted according to EPA Method 26A for the three dryers. Dryers 01 and 03 were tested in May 1997; dryers 01 and 02 were tested in December 1997; and all three dryers were tested in June 2002. The May 1997 test included seven runs, and the other two tests included three runs each. Again, as far as we can determine, each test was performed under normal and representative conditions. The test results of all seven tests range from 51 to 82 lbs/hr and average 68 lbs/hr. The median value is also 68 lbs/hr.

We evaluated the existing State hydrochloric acid emission limit as an option for establishing the MACT floor. The test results recorded range from about one-fourth to almost one-half of the standard and average about one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 200 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for spray dryers to be the level of control indicated by the existing State limit of 200 lbs/hr of hydrochloric acid.

We next examined possibilities for beyond-the-floor options. We concluded that the current multi-stage wet scrubbing system is the best available control technology for the removal of hydrochloric acid and particulate matter contained in the spray dryer discharge. Therefore, we have selected the mass rate emission limits established in the source's title V operating permit as MACT for both new and existing spray dryers.

Magnesium Chloride Storage Bins

Magnesium chloride powder from the spray dryers is pneumatically conveyed to storage bins. The exhaust air from the conveyor contains particle matter and low levels of hydrochloric acid. The exhaust gases are directed to vertical packed-bed scrubbers where hydrochloric acid and particulate matter are removed.

The source's title V operating permit limits hydrochloric acid to 47.5 lbs/hr and PM_{10} to 2.7 lbs/hr. Packed bed scrubbers are used to achieve these emission limits. We do not have any emissions test data for this emission point. As such, we decided to adopt the source's title V operating permit limits for PM_{10} and hydrochloric acid. Emissions testing was recently conducted on the magnesium chloride storage bins, and we expect test results within a few weeks of publishing the proposed rule. This data will be added to the public docket as soon as we receive it, and we will consider the data and public comments prior to publication of the final rule.

We evaluated this wet scrubbing system for any potential beyond-the-floor control technology and concluded that the packed-bed scrubber system is the best available control technology for the removal of hydrochloric acid and particulate matter. Thus, we adopted the emission limits established in the source's title V operating permit as MACT.

Melt/Reactor

The melt/reactor system melts and chlorinates dehydrated brine powder to produce high purity molten magnesium chloride feed for electrolysis. The melt/reactor off-gases are cooled in a quench tower and then enter a venturi scrubber where PM is removed. The off-gases are then directed to the chlorine reduction burner where they are combined with tail gases from the chlorine plant and burned with natural gas to form hydrochloric acid.

The gases exit the chlorine reduction burner and enter a scrubber train where hydrochloric acid is recovered. The train consists of three packed bed

scrubbers in series followed by a venturi scrubber.

We have two PM_{10} emission tests for the melt/reactor which were conducted in May 1995 and May 2000. Both tests were conducted in accordance with EPA Method 201, and as far as we can determine, each test was performed under normal and representative operating conditions. The test results range from 2.1 to 5.7 lbs/hr and average 3.9 lbs/hr.

We evaluated the existing State limit as an option for establishing the MACT floor. The test results average about one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 13.1 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 13.1 lbs/hr of PM_{10}.

We have two hydrochloric acid emission tests for the melt/reactor. The tests were conducted in May 1995 and May 2000 in accordance with Method 26A. We believe that each test was performed under normal and representative operating conditions. The May 1995 test results average 3.2 lbs/hr, and the May 2000 test results average 2.8 lbs/hr. We evaluated the existing State limit as an option for establishing the MACT floor. A comparison of the State limit of 7.2 lbs/hr to the actual hydrochloric acid emissions data indicates that the State limit is a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Consequently, we determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 7.2 lbs/hr of hydrochloric acid.

We have two chlorine emission tests for the melt/reactor. The test were conducted in May 1995 and May 2000 in accordance with EPA Method 26. The May 1995 test results average 21 lbs/hr, and the May 2000 test results average 50 lbs/hr. Again, we believe that each test was performed under normal and representative operating conditions. We evaluated the existing State limit as an option for establishing the MACT floor. A comparison of the State limit of 100 lbs/hr to the actual chlorine emissions data indicates that the State limit is a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Therefore, we determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 100 lbs/hr of chlorine.

We have source test data on dioxin/furan emissions from the melt/reactor stack which indicates total dioxin/furan emissions on the order of 80 grams per year (g/year) and emissions expressed in terms of TEQ of less than 3 g/year. The current title V operating permit includes no limitations on the emissions of dioxin/furan or any surrogate pollutant.

As previously stated, emission controls applied to the melt/reactor discharge include three packed bed scrubbers in series followed by a venturi scrubber for the control of hydrochloric acid and PM. Although not installed specifically for dioxin/furan control, we believe that some incidental control of dioxin/furan is in fact achieved by these scrubbers and that the floor level of control is represented by the available information on actual emissions. Specifically, we have data on two tests conducted in March of 1998 and May of 2000. Each test is comprised of three test runs conducted in accordance with EPA Method 23.[1] The 1998 TEQ test results range from 12.0 to 25.2 ng/dscm corrected to 7 percent oxygen and average 19 ng/dscm corrected to 7 percent oxygen. The 2000 TEQ results range from 10.4 to 35.9 ng/dscm corrected to 7 percent oxygen and average 24 ng/dscm corrected to 7 percent oxygen. The precision evidenced in the two tests, suggests that the variability due to process variations and control device performance is narrow, with the average results of both tests within ±20 percent. We chose the highest of the individual runs, *i.e.*, 36 ng TEQ/dscm corrected to 7 percent oxygen as a representative value of the performance level that can be achieved. Thus, we have chosen 36 ng TEQ/dscm as the MACT floor. The source plans to conduct additional emissions testing in the near-term. We expect the testing to occur between proposal and promulgation. In determining the final standard for dioxin/furan, we will consider the results of the new test in addition to public comments that we receive.

We evaluated this multi-stage scrubbing system for any potential improvement to go beyond-the-floor. We concluded that the current scrubbing system is the best control option for removal of chlorine, hydrochloric acid, and PM_{10}. For dioxin/furan, we examined a beyond-the-floor alternative, and determined that the next increment of control beyond-the-floor is the installation of a baghouse equipped with a catalytic filter that destroys gaseous dioxins and furans. We estimate the additional capital cost of adding baghouses to be $650,000 and the total annualized cost to be $390,000 per year. We estimate the emissions reductions to be 2.4 grams per year resulting in a cost per gram of total dioxin/furan reduction of $163,865. We believe that the high cost, coupled with the small reduction in dioxin/furan emissions, does not justify the beyond-the-floor alternative at this time. Consequently, we chose the floor level of control of 36 ng TEQ/dscm as MACT.

Launder Off-Gas System

The launder off-gas system (LOG) collects fugitive emissions from the melt reactor area (*i.e.* hoods and launders). The collected fugitive gases enter a horizontally aligned packed scrubber where chlorine, hydrochloric acid, and particulate matter are removed by scrubbing with water. The LOG scrubbed gases are exhausted to the atmosphere, and the scrubber water is returned to the waste water collection system.

We have three PM emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993, July 1998, and January 1999 using EPA Method 5, and as far as we know, under normal and representative operating conditions. The test results of the three tests range from 2.6 to 19.1 lbs/hr and average 7.0 lbs/hr.

We evaluated the existing State PM emission limit as an option for establishing the MACT floor. We compared the State limit of 37.5 lbs/hr to the actual PM emissions data. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 37.5 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Therefore, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 37.5 lbs/hr of PM.

We have three hydrochloric acid emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993, July 1998, and January 1999 using EPA Method 26A. We believe that the tests were performed under normal and representative operating conditions. The test results of the three tests range from 6.84 to 32.6 lbs/hr and average 15.6 lbs/hr.

We evaluated the existing State hydrochloric acid emission limit as an option for establishing the MACT floor.

[1] Method 23—Determination of Polychlorinated Dibenzo-P-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources.

Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 46.0 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor.

Consequently, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 46.0 lbs/hr of hydrochloric acid.

We have three chlorine emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993 and January 1999 using EPA Method 26. We believe the tests were performed under normal and representative operating conditions. The test results of the three tests range from 16.6 to 25.9 lbs/hr and average 19.9 lbs/hr.

We evaluated the existing State chlorine emission limit as an option for establishing the MACT floor. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 26.0 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Consequently, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 26.0 lbs/hr of chlorine.

We evaluated potential beyond-the-floor options and concluded that the existing scrubber is the best available control technology for the removal of chlorine, hydrochloric acid, and PM contained in the launder off-gas system discharge. Therefore, we selected the emission limits established in the source's title V operating permit as MACT.

D. How Did We Select the Initial Compliance Requirements?

The proposed rule requires a performance test for each control device to demonstrate initial compliance with the applicable PM, PM_{10}, chlorine and hydrochloric acid limits using the specified testing methods in 40 CFR part 60, appendix A. We have also specified procedures to ensure that control equipment is operating properly for initial compliance. Venturi scrubbers and packed-bed scrubbers must be monitored for scrubber water flow rate and pressure drop. If a facility uses controls other than wet scrubbers or packed-bed scrubbers to control emissions from an affected source, the owner or operator would be required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

E. How Did We Select the Continuous Compliance Requirements?

For continuous compliance, we chose periodic performance testing for PM, PM_{10}, chlorine, hydrochloric acid, and dioxin/furan which is consistent with current permit requirements. In general, performance tests are repeated every 2.5 to 5 years, depending on the magnitude of the source. Consequently, we decided that performance tests should be repeated no less frequently than twice per permit term of a source's title V operating permit (at mid-term and renewal).

We also specified procedures to ensure that control equipment is operated properly on a continuous basis. Venturi scrubbers and packed-bed scrubbers must be monitored for pressure drop and scrubber water flow rate. If a facility uses controls other than wet scrubbers to control emissions from an affected source, the owner or operator would be required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by EPA to know what facilities are subject to the standard, if a facility has complied with the rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from the proposed rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes to the plan need to be made. Records would be required of information needed to document compliance with the proposed rule requirements. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

IV. Summary of Environmental, Energy and Economic Impacts

Generally, we do not expect the impacts of the proposed rule to be very significant. Currently, the one operating refinery has all of the required air pollution control equipment in place and operating. The only impacts will be the estimated cost of $48,000 for the additional monitoring, recordkeeping and reporting requirements required by the proposed rule.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of the proposed rule from all interested parties. You need to submit full supporting data and detailed analysis with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. OAR–2002–0043 (*see* **ADDRESSES**).

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule is not a

''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, the proposed rule was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule does not have federalism implications. None of the affected facilities are owned or operated by State governments, and the proposed rule would not preempt any State laws that are more stringent. Therefore, it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In addition, the proposed rule is required by statute and, if implemented, will not impose any substantial direct compliance costs. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus Executive order 13175 does not apply to the proposed rule.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, the proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory

proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of the proposed rule for any year has been estimated to be less than $48,000. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

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

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

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards for NAICS code 331419 (*i.e.*, Primary Magnesium Refining) of 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the above definition of small entities, the Agency has determined that there are no small businesses within this source category that would be subject to the proposed rule. Therefore, because the proposed rule will not impose any requirements on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2098.01), and a copy may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The proposed rule would require applicable one-time notifications required by the NESHAP General Provisions (40 CFR part 63, subpart A) for each affected source. As required by the NESHAP General Provisions (40 CFR part 63, subpart A), all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan. Plants also would be required to prepare an operation and maintenance plan for capture systems and control devices subject to operating limits. Records would be required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for capture systems, control devices, and monitoring systems. Semiannual compliance reports also are required. These reports would describe any deviation from the standards, any period a continuous monitoring system was out-of-control, or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection of information averaged over the first 3 years after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] is estimated to total 731 labor hours per year at a total annual cost of $43,289, including labor, capital, and operation and maintenance.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after January 22, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 21, 2003. The final rule will respond to any OMB or public comments on the information

collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rule involves technical standards. The EPA proposes to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 26, 26A, and 210 in 40 CFR part 60, appendix A. We conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, 26, 26A and 201. The search and review results have been documented and placed in Docket OAR–2002–0043.

The EPA invites comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why the proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data.

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

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

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

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart TTTTT to read as follows:

Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

Sec.

What This Subpart Covers

63.9880 What is the purpose of this subpart?
63.9881 Am I subject to this subpart?
63.9882 What parts of my plant does this subpart cover?
63.9883 When do I have to comply with this subpart?

Emission Limitations

63.9890 What emission limitations must I meet?
63.9891 What work practice standards must I meet for my fugitive dust sources?

Operation and Maintenance Requirements

63.9900 What are my operation and maintenance requirements?

General Compliance Requirements

63.9910 What are my general requirements for complying with this subpart?

Initial Compliance Requirements

63.9911 By what date must I conduct performance tests or other initial compliance demonstrations?
63.9912 When must I conduct subsequent performance tests?
63.9913 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter and PM_{10}?
63.9914 What test methods and other procedures must I use to demonstrate initial compliance with chlorine and hydrochloric acid emission limits?
63.9915 What test methods and other procedures must I use to demonstrate initial compliance with dioxin/furan limits?
63.9916 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?
63.9917 How do I demonstrate initial compliance with the emission limitations that apply to me?
63.9918 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

Continuous Compliance Requirements

63.9920 What are my continuous monitoring requirements?
63.9921 What are the installation, operation, and maintenance requirements for my monitors?
63.9922 How do I monitor and collect data to demonstrate continuous compliance?
63.9923 How do I demonstrate continuous compliance with the emission limitations that apply to me?
63.9924 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?
63.9925 What other requirements must I meet to demonstrate continuous compliance?

Notifications, Reports, and Records

63.9930 What notifications must I submit and when?
63.9931 What reports must I submit and when?
63.9932 What records must I keep?
63.9933 In what form and how long must I keep my records?

Other Requirements and Information

63.9940 What parts of the General Provisions apply to me?
63.9941 Who implements and enforces this subpart?
63.9942 What definitions apply to this subpart?

Tables to Subpart TTTTT of Part 63

Table 1 to Subpart TTTTT of Part 63—Emission Limitations
Table 2 to Subpart TTTTT of Part 63—Toxic Equivalency Factors
Table 3 to Subpart TTTTT of Part 63—Initial Compliance with Emission Limits
Table 4 to Subpart TTTTT of Part 63—Continuous Compliance with Emission Limits
Table 5 to Subpart TTTTT of Part 63—Applicability of General Provisions to Subpart TTTTT of Part 63

Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

What This Subpart Covers

§ 63.9880 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) emitted from primary magnesium refineries. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and operation and maintenance requirements.

§ 63.9881 Am I subject to this subpart?

You are subject to this subpart if you own or operate a primary magnesium refinery that is (or is part of) a major

source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your primary magnesium refinery is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.9882 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your primary magnesium refining facility.

(b) The affected sources are each new and existing primary magnesium refining facility.

(c) This subpart covers emissions from each spray dryer stack, magnesium chloride storage bins scrubber stack, melt/reactor system stack, and launder off-gas system stack at your primary magnesium refining facility.

(d) Each spray dryer, magnesium chloride storage bins scrubber, launder off-gas system, and melt/reactor system at your primary magnesium refining facility is existing if you commenced construction or reconstruction of the affected source before January 22, 2003.

(e) Each spray dryer, magnesium chloride storage bins scrubber, melt/reactor system, and launder off-gas system at your primary magnesium refining facility is new if you commence construction or reconstruction of the affected source on or after January 22, 2003. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

§ 63.9883 When do I have to comply with this subpart?

(a) If you have an existing source, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you no later than [DATE 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new affected source and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emissions limitation and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have a new affected source and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your primary magnesium refinery is an area source that becomes a major source of HAP, the following compliance dates apply to you:

(1) Any portion of the existing primary magnesium refinery that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the primary magnesium refinery must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.9930. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations

§ 63.9890 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) For each wet scrubber applied to meet any particulate matter, particulate matter 10 (PM_{10}), chlorine, hydrochloric acid, or dioxins/furans limit in Table 1 to this subpart, you must maintain the hourly average pressure drop and scrubber liquid flow rate at or above the minimum level established during the initial or subsequent performance test.

§ 63.9891 What work practice standards must I meet for my fugitive dust sources?

(a) You must prepare, and at all times operate according to, a fugitive dust emissions control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from all unpaved roads and other unpaved operational areas.

(b) A copy of your fugitive dust emissions control plan must be submitted for approval to the Administrator or delegated authority on or before the applicable compliance date for the affected sources as specified in § 63.9881. The requirement to operate according to the fugitive dust emissions control plan must be incorporated by reference in the source's operating permit issued by the permitting authority under part 70 or 71 of this chapter.

(c) You can use an existing fugitive dust emissions control plan provided it meets the requirements in paragraphs (c)(1) through (3) of this section.

(1) The plan satisfies the requirements of paragraph (a) of this section.

(2) The plan describes the current measures to control fugitive dust emission sources.

(3) The plan has been approved as part of a State Implementation Plan or title V permit.

(d) You must maintain a current copy of the fugitive dust emissions control plan on-site and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

Operation and Maintenance Requirements

§ 63.9900 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each control device subject to an operating limit in § 63.9890(b). Each plan must address preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

General Compliance Requirements

§ 63.9910 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) You must develop and implement a written startup, shutdown and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.9911 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.9883 for your affected source to demonstrate initial compliance with each emission limit in Table 1 to this subpart that applies to you.

(b) For each operation and maintenance requirement that applies to you where initial compliance is not

demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.9883.

(c) If you commenced construction or reconstruction between January 22, 2003 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than [DATE 180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between January 22, 2003 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [DATE 1 YEAR AND 180 DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.9912 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate continuous compliance with all applicable emission limits in Table 1 to this subpart no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

§ 63.9913 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter and PM_{10}?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the specific conditions in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for particulate matter in Table 1 to this subpart, you must follow the test methods and procedures in paragraph (b)(1) and (2) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable to determine the concentration of particulate matter.

(vi) Method 201 or 201A, as applicable to determine the concentration of PM_{10}.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter or PM_{10} test run. Three valid test runs are needed to comprise a performance test.

(c) Compute the mass emissions rate for each test run using Equation 1 of this section as follows:

$$E_{lb/hr} = \frac{C_s \times Q_{std} \times 60}{7000} \qquad \text{(Eq. 1)}$$

Where:

$E_{lb/hr}$ = Mass emissions rate of particulate matter or PM_{10} (lb/hr);
C_s = Concentration of particulate matter or PM_{10} in the gas stream (gr/dscf);
Q_{std} = Volumetric flow rate of stack gas(dscfm);
60 = Conversion factor (min/hr); and
7000 = Conversion factor (gr/lb).

§ 63.9914 What test methods and other procedures must I use to demonstrate initial compliance with chlorine and hydrochloric acid emission limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for chlorine and hydrochloric acid in Table 1 to this subpart, you must follow the test methods and procedures specified in paragraphs (b)(1) and (2)of this section.

(1) Determine the concentration of chlorine and hydrochloric acid according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 26 or 26A, as applicable, to determine the concentration of hydrochloric acid and chlorine.

(2) Collect a minimum sample of 60 dry standard cubic feet during each test run for chlorine and hydrochloric acid. Three valid test runs are needed to comprise a performance test.

(c) Compute the mass emissions rate for each test run using Equation 1 of this section.

$$E_{lb/hr} = \frac{C_s \times Q_{std} \times 60}{35.31 \times 454{,}000} \qquad \text{(Eq. 1)}$$

Where:

$E_{lb/hr}$ = Mass emissions rate of chlorine or hydrochloric acid (lb/hr);
C_s = Concentration of chlorine or hydrochloric acid in the gas stream (mg/dscm);
Q_{std} = Volumetric flow rate of stack gas (dscfm);
60 = Conversion factor (min/hr);
35.31 = Conversion factor (dscf/dscm); and
454,000 = Conversion factor (mg/lb).

§ 63.9915 What test methods and other procedures must I use to demonstrate initial compliance with dioxin/furan limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for dioxins/furans in Table 1 to this subpart, you must follow the test methods and procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of dioxin and furan according to the following test methods in appendix A to part 60 of this chapter.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 23, as applicable to determine the concentration of dioxins/furans. For each dioxin/furan congener measured in accordance with this paragraph, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 2 to this subpart.

(2) Collect a minimum sample of 100 dry standard cubic feet during each test

run. Three valid test runs are needed to comprise a performance test.

§ 63.9916 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?

(a) For a wet scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.9890(b, you must establish site-specific operating limits according to the procedures in paragraphs (a)(1) and (2) of this section.

(1) Using the continuous parameter monitoring system (CPMS) required in § 63.9920, measure and record the pressure drop and scrubber water flow rate at least every 15 minutes during each run of the particulate matter performance test.

(2) Compute and record the average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average individual pressure drop and scrubber water flow rate values in any of the three runs that meet the applicable emission limit.

(b) [Reserved]

§ 63.9917 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 to this subpart, you have demonstrated initial compliance if:

(1) You meet the conditions in Table 3 to this subpart; and

(2) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9890(b), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.9915(a).

(b) [Reserved]

§ 63.9918 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) You must demonstrate initial compliance by certifying in your notification of compliance status that you have met the requirements in paragraphs (a)(1) through (3) of this section.

(1) You have prepared the operation and maintenance plan according to the requirements in § 63.9910; and

(2) You will operate each control device according to the procedures in the plan; and

(3) You submit a notification of compliance status according to the requirements in § 63.9930.

(b) [Reserved]

Continuous Compliance Requirements

§ 63.9920 What are my continuous monitoring requirements?

For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rates in § 63.9890(b), you must at all times monitor the hourly average pressure drop and liquid flow rate using a CPMS according to the requirements in § 63.9921(a).

§ 63.9921 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each wet scrubber subject to the operating limits in § 63.9890(b) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must:

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(b) You must install, operate, and maintain each CPMS for a wet scrubber according to the requirements in paragraphs (b)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 5-minute period.

(2) Each CPMS must have valid data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the average of all recorded readings.

§ 63.9922 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.9923 How do I demonstrate continuous compliance with the emission limitations that apply to me?

For each affected source subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance according to the requirements in Table 4 to this subpart.

§ 63.9924 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each emission point subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.9900 by performing preventive maintenance for each control device according to § 63.9900(b) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.9900(b) on site and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.9925 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in § 63.9890 that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet each operation and maintenance requirement required in § 63.9900 that applies to you. These instances are deviations from the emission limitations and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.9931.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) 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).

Notifications, Reports, and Records

§ 63.9930 What notifications must I submit and when?

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

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [DATE 120 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register,** you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, 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).

§ 63.9931 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9883 and ending on June 30 or December 31, whichever date comes after the compliance date that is specified for your source in § 63.9883.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 20 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(iii)(A) or 40 CFR 71.6(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) 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).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.9923 and 63.9924 that apply to you, a statement that there were no deviations from the emission limitations or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in § 63.9890 that occurs at an affected source where you are not using a CPMS to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the

information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) 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.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6 (a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of compliance does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.9932 What records must I keep?

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in §§ 63.9932 and 63.9933 to show continuous compliance with each emission limitation and operating and maintenance requirement that applies to you.

§ 63.9933 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years.

Other Requirements and Information

§ 63.9940 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9941 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA) or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (3) of this section.

(1) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(2) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(3) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9942 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows;

Chlorine plant bypass scrubber means the wet scrubber that captures chlorine gas during a chlorine plant shut down or failure.

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 operating limits) or operation and maintenance 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 in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, or operating limit.

Launder off-gas system means a system that collects chlorine and

hydrochloric acid fumes from collection points within the melt/reactor system building. The system then removes particulate matter and hydrochloric acid from the collected gases prior to discharge to the atmosphere.

Magnesium chloride storage bins means vessels that store dried magnesium chloride powder produced from the spray drying operation.

Melt/reactor system means a system that melts and chlorinates dehydrated brine to produce high purity molten magnesium chloride feed for electrolysis.

Primary magnesium refining means the production of magnesium metal and magnesium metal alloys from natural sources of magnesium chloride such as sea water or water from the Great Salt Lake and magnesium bearing ores.

Responsible official means responsible official as defined in § 63.2.

Spray dryer means dryers that evaporate brine to form magnesium powder by contact with high temperature gases exhausted from gas turbines.

Wet scrubber means a device that contacts an exhaust gas with a liquid to remove particulate matter and acid gases from the exhaust. Examples are packed-bed wet scrubbers and venturi scrubbers.

Tables to Subpart TTTTT of Part 63

As required in § 63.9890(a), you must comply with each applicable emission limit in the following table:

TABLE 1 TO SUBPART TTTTT OF PART 63.—EMISSION LIMITATIONS

For . . .	You must comply with each of the following . . .
1. Each spray dryer stack	a. You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 100 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 200 lbs/hr.
2. Each magnesium chloride storage bins scrubber stack.	a. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 47.5 lbs/hr or 0.35 gr/dscf; and b. You must not cause to be discharged to the atmosphere any gases that contain PM_{10} in excess of 2.7 lbs/hr or 0.016 gr/dscf.
3. Each melt/reactor system stack	a. You must not cause to be discharged to the atmosphere any gases that contain PM_{10} in excess of 13.1 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 7.2 lbs/hr; and c. You must not cause to be discharged to the atmosphere any gases that contain chlorine in excess of 100 lbs/hr; and d. You must not cause to be discharged to the atmosphere any gases that contain 36 ng TEQ/dscm to 7% oxygen.
4. Each launder off-gas system stack	a. You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 37.5 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 46.0 lbs/hr; and c. You must not cause to be discharged to the atmosphere any gases that contain chlorine in excess of 26.0 lbs/hr.

TABLE 2 TO SUBPART TTTTT OF PART 63.—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

TABLE 3 TO SUBPART TTTTT OF PART 63.—INITIAL COMPLIANCE WITH EMISSIONS LIMITS

As required in 63.9916, you must demonstrate initial compliance with the emission limits according to the following table:

For . . .	You have demonstrated initial compliance if . . .
1. Each spray dryer stack	a. The average mass flow of particulate matter from the control system applied to emissions from each spray dryer, measured according to the performance test procedures in § 63.9913(c), did not exceed 100 lbs/hr; and

TABLE 3 TO SUBPART TTTTT OF PART 63.—INITIAL COMPLIANCE WITH EMISSIONS LIMITS—Continued

As required in 63.9916, you must demonstrate initial compliance with the emission limits according to the following table:

For . . .	You have demonstrated initial compliance if . . .
	b. The average mass flow of hydrochloric acid from the control system applied to emissions from each spray dryer, determined according to the performance test procedures in § 63.9914(c), did not exceed 200 lbs/hr.
2. Each magnesium chloride storage bins scrubber stack.	a. The average mass flow of hydrochloric acid from the control system applied to the magnesium chloride storage bins scrubber exhaust, measured according to the performance test procedure in § 63.9914, did not exceed 47.5 lbs/hr; and b. The average mass flow of PM_{10} from the control system applied to the magnesium chloride storage bins scrubber exhaust, determined according to the performance test procedures in § 63.9913, did not exceed 2.7 lbs/hr.
3. Each melt/reactor system stack	a. The average mass flow of PM_{10} from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9913, did not exceed 13.1 lbs/hr; and b. The average mass flow of hydrochloric acid from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 7.2 lbs/hr; and c. The average mass flow of chlorine from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 100 lbs/hr. d. The average concentration of dioxins/furans from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9915, did not exceed 36 ng TEQ/dscm to 7% oxygen.
4. Each launder off-gas system stack.	a. The average mass flow of particulate matter from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9913, did not exceed 37.5 lbs/hr; and b. The average mass flow of hydrochloric acid from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 46.0 lbs/hr; and c. The average mass flow of chlorine from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 26.0 lbs/hr.

TABLE 4 TO SUBPART TTTTT OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

As required in § 63.9923, you must demonstrate continuous compliance with the emission limits according to the following table:

For . . .	You must demonstrate continuous compliance by . . .
1. Each spray dryer stack	a. Maintaining emissions of PM_{10} at or below 100 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 200 lbs/hr; and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).
2. Magnesium chloride storage bins scrubber stack.	a. Maintaining emissions of hydrochloric acid at or below 47.5 lbs/hr or 0.35 gr/dscf; and b. Maintaining emissions of PM_{10} at or below 2.7 lbs/hr or 0.016 gr/dscf; and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).
3. Each melt/reactor system stack	a. Maintaining emissions of PM_{10} at or below 13.1 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 7.2 lbs/hr; and c. Maintaining emissions of chlorine at or below 100 lbs/hr; and d. Maintaining emissions of dioxins/furans at or below 36 ng TEQ/dscm to 7% oxygen. e. Conducting subsequent performance test at least twice during each term of your title V operating permit (at mid-term and renewal).
4. Each launder off-gas system stack.	a. Maintaining emissions of particulate matter at or below 37.5 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 46.0 lbs/hr; and c. Maintaining emissions of chlorine at or below 26.0 lbs/hr; and d. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).

TABLE 5 TO SUBPART TTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63

As required in § 63.9950, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

Citation	Subject	Applies to Subpart TTTTT	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities	Yes.	

TABLE 5 TO SUBPART TTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63—Continued

As required in § 63.9950, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

Citation	Subject	Applies to Subpart TTTTT	Explanation
63.5	Construction and Reconstruction	Yes.	
63.6(a)–(g)	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(h)	Determining Compliance with Opacity and Visible Emission standards.	No.	
63.6(i)–(j)	Extension of Compliance and Presidential Compliance Exemption.	Yes.	
63.7(a)(1)–(2)	Applicability and Performance Test Dates	No	Subpart TTTTT specifies performance test applicability and dates.
63.7(a)(3), (b)–(h)	Performance Testing Requirements	Yes.	
63.8 except for (a)(4),(c)(4), and (f)(6).	Monitoring Requirements	Yes.	
63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart TTTTT does not require flares.
63.8(c)(4)	Continuous Monitoring System Requirements	No	Subpart TTTTT specifies requirements for operation of CMS.
63.8(f)(6)	Relative Accuracy Test Alternative (RATA)	No	Subpart TTTTT does not require continuous emission monitoring systems.
63.9	Notification Requirements	Yes	
63.9(g)(5)	Data Reduction	No	Subpart TTTTT specifies data reduction requirements.
63.10 except for(b)(2)(xiii) and (c)(7)–(8).	Recordkeeping and Reporting Requirements	Yes.	
63.10(b)(2)(xiii)	Continuous Monitoring System (CMS) Records for RATA Alternative.	No	Subpart TTTTT does not require continuous emission monitoring systems.
63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Accedences for CMS.	No	Subpart TTTTT specifies recordkeeping requirements.
63.11	Control Device Requirements	No	Subpart TTTTT does not require flares.
63.12	State Authority and Delegations	Yes.	
63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1511 and 1552

[FRL–7441–1]

Acquisition Regulation: Background Checks for Environmental Protection Agency Contractors Performing Services On-Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to add a clause requiring contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on or within Federally-owned or leased space and facilities, commercial space primarily occupied by Federal employees, and Superfund, Oil Pollution Act, and Stafford Act sites. The clause will require contractors (and subcontractors) to perform background checks and make suitability determinations on their employees before the employees can perform on-site contract services for the EPA. Contracting Officers will be allowed to waive the requirements of the clause on a case-by-case basis. The process contemplated by the clause will allow EPA to mitigate any actual or potential threat to the public health, welfare and the environment.

DATES: Comments should be submitted no later than March 24, 2003.

ADDRESSES: Comments may be submitted by mail, electronically, or through hand delivery/courier. For comments submitted by mail, send three copies of your comments to: OEI Docket, Title: Background Checks for EPA Contractors Performing Services On-Site, EPA Docket Center (28221T), 1200 Pennsylvania Ave., NW, Washington DC, 20460, Attention Docket ID No. OARM–2002–0001. For comments submitted electronically or through hand delivery/courier, please follow the detailed instructions as provided in Unit I of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4522.

SUPPLEMENTARY INFORMATION: Information on the proposed regulation for background checks for contractors (and subcontractors) performing on-site work is organized as follows:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

EPA has established an official public docket for this action under Docket ID No. OARM–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available