

Dated: March 31, 2006.

**Stephen L. Johnson,**  
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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.*

**Subpart Q—[Amended]**

■ 2. Section 63.400 is amended by revising paragraph (a) to read as follows:

**§ 63.400 Applicability.**

(a) The provisions of this subpart apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals and are either major sources or are integral parts of facilities that are major sources as defined in § 63.401.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2002-0057; FRL-8055-6]

RIN 2060-AM25

**National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production**

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action finalizes amendments to national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid (HCl) production facilities, including HCl production at fume silica facilities. The amendments to the final rule clarify certain applicability provisions, emission standards, and testing, maintenance, and reporting requirements. The amendments also correct several omissions and typographical errors in the final rule. We are finalizing the amendments to facilitate compliance and improve understanding of the final rule requirements.

**DATES:** The final rule is effective April 7, 2006.

**ADDRESSES:** Docket. EPA has established a docket for this action including Docket ID No. EPA-HQ-OAR-2002-0057, legacy EDOCKET ID No. OAR-2002-0057, and legacy Docket ID No. A-99-41. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the following address: Air and Radiation Docket and Information Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Avenue,

NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-1744. The Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final amendments, contact Mr. Randy McDonald, Coatings and Chemicals Group, Sectors Policies and Programs Division (C439-01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5402; fax number (919) 541-3470; electronic mail address: [mcdonald.randy@epa.gov](mailto:mcdonald.randy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

Category	SIC <sup>a</sup>	NAICS <sup>b</sup>	Regulated entities
Industry .....	2819 2821 2869	325188 325211 325199	Hydrochloric Acid Production.

<sup>a</sup> Standard Industrial Classification.

<sup>b</sup> North American Information Classification System.

This list 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 section 63.8985 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's action is available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>.

*Judicial Review.* Under section 307(b) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S.

Court of Appeals for the District of Columbia Circuit on or before June 6, 2006. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "only an objection

to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for EPA to convene a proceeding for reconsideration, “if the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20004.

*Outline.* The information in this preamble is organized as follows:

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  - F. EO 13175: Consultation and Coordination With Indian Tribal Governments
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  - H. EO 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

- I. National Technology Transfer and Advancement Act
- J. Congressional Review Act

## I. Background

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

Section 112 of the CAA requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Hydrochloric acid production and fume silica production were listed as source categories under the production of inorganic chemicals group on EPA's initial list of major source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576).<sup>1</sup> On September 18, 2001, we combined these two source categories for regulatory purposes under the production of inorganic chemicals group and renamed the source category as HCl production (66 FR 48174). Major sources of HAP are those that have the potential to emit greater than 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.68 Mg/yr (25 tpy) of any combination of HAP.

### B. How Did the Public Participate in Developing the Amendments to the Final Rule?

The final rule was published in the **Federal Register** on April 17, 2003 (68 FR 19076). The final rule contains emission limitations and standards applicable to HCl and chlorine (Cl<sub>2</sub>). These limits apply to each new or existing HCl process vent, HCl storage tank, HCl transfer operation, and leaks from equipment in HCl service located at a major source of HAP. Following promulgation of the final rule, EPA became aware of certain aspects of the applicability provisions, emission standards, and testing, maintenance, and reporting requirements that required clarification along with several omissions and typographical errors in the final rule that required correction. On August 24, 2005, we published proposed amendments (70 FR 49530) to address these issues and sought public comment on the proposed amendments. Today's action finalizes those clarifications and corrections. The preamble to the proposed amendments discussed the availability of technical support documents, which described in detail the information gathered during the standards development process.

We received four public comment letters on the proposed amendments.

The commenters represent HCl producers and industrial trade associations. All of the comments have been carefully considered, and, where appropriate, changes have been made for the amendments to the final rule.

## II. Summary of the Final Amendments

We are finalizing amendments to 40 CFR part 63, subpart NNNNN, to change the applicability provisions, to clarify testing, monitoring, and reporting requirements, and to correct inadvertent omissions and typographical errors. A summary of each of the amendments to 40 CFR part 63, subpart NNNNN, and the rationale for each is presented below.

### A. Applicability

In order to avoid regulatory overlap, the HCl Production NESHAP exempt certain HCl production facilities that are part of other source categories and subject to other Federal standards. We intended the HCl Production NESHAP to cover only those HCl production facilities that were not subject to any other NESHAP and not to cover those HCl production facilities that were subject to other NESHAP. Today's final amendments adjust the applicability provisions to rectify three situations that came to our attention after promulgation of the HCl Production NESHAP in which this intent was not satisfied.

First, the final amendments will address the HCl Production NESHAP's exemptions for HCl production facilities that are subject to certain other regulations, including 40 CFR part 63, subpart EEE (the Hazardous Waste Combustors NESHAP), and 40 CFR 266.107, subpart H (regulations issued under the Resource Conservation and Recovery Act governing the Burning of Hazardous Wastes in Boilers and Industrial Furnaces). As worded in the final rule, the exemptions were overly broad, because neither of the above final rules covers emissions of HCl from HCl storage tanks, HCl transfer operations, or leaks from equipment in HCl service at these facilities. This leaves these emission points not subject to any Federal standards, which was not our intent. Therefore, we are amending subpart NNNNN of 40 CFR part 63 to exempt facilities that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the applicability requirements of subpart NNNNN from only the HCl process vent provisions of subpart NNNNN, rather than from all of the requirements of subpart NNNNN. Because the purpose of 40 CFR 63.8985(b) and (c) is to provide exemptions from all of the requirements

<sup>1</sup> Later listing notices (e.g., 66 FR 8220) refer to the source category as “fumed” silica.

of subpart NNNNN for entire HCl production facilities subject to certain other rules, we are removing 40 CFR 63.8985(b)(4) and (c)(3) to eliminate the overly broad exemptions and instead are adding new paragraphs to 40 CFR 63.9000(c) to accomplish the exemptions. The purpose of 40 CFR 63.9000(c) is to exempt certain emission streams from subpart NNNNN. Under 40 CFR 63.9000(c), plants that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the other applicability provisions of subpart NNNNN would be affected sources under subpart NNNNN but would be exempt from the process vents provisions of subpart NNNNN.

Second, the amendments revise the HCl Production NESHAP's exemptions for specific emission streams to eliminate duplicative regulation. Some emission points that are not themselves subject to subpart EEE of 40 CFR part 63 have their emissions controlled under subpart EEE because their emissions are routed directly through equipment that is subject to subpart EEE (e.g., an HCl process vent emission stream routed to a hazardous waste combustor (HWC) for use as supplemental combustion air). Currently, these emissions (e.g., from the combustor) are regulated by both subpart EEE and subpart NNNNN of 40 CFR part 63. To rectify this situation, we are adding a new paragraph to 40 CFR 63.9000(c) to include an emission stream-specific exemption for HCl process vents, HCl storage tanks, and HCl transfer operations that are routed directly to HWC units subject to subpart EEE. This means that HCl production facility emission streams that are routed to subpart EEE HWC units are exempt from the requirements of subpart NNNNN.

Finally, the amendments remove the HCl Production NESHAP's exemption for HCl production facilities subject to 40 CFR 264.343(b), subpart O (Incinerators), which will no longer be necessary. A combustor that burns hazardous waste and meets the subpart NNNNN of 40 CFR part 63 definition of an HCl production facility would be defined as a halogen acid furnace (currently subject to 40 CFR 266.107, subpart H, and that will be subject to 40 CFR part 63, subpart EEE, on the compliance date (October 14, 2008) of EPA's final rule promulgated on October 12, 2005 (70 FR 59402)), not an incinerator (subject to 40 CFR 264.343(b), subpart O). As discussed above, we are amending the applicability provisions of the HCl Production NESHAP to properly address HCl production facilities that are subject to 40 CFR part 266, subpart

H. Therefore, the exemption for 40 CFR part 264, subpart O, is no longer necessary, and we are removing 40 CFR 63.8985(c)(2), which provided this exemption. Consequently, we are incorporating the exemption provided in 40 CFR 63.8985(c)(1) into 40 CFR 63.8985(c), and, thus, removing 40 CFR 63.8985(c)(1).

#### B. Definitions

We are clarifying the meaning of "equipment in HCl service," which is defined in the HCl Production NESHAP as "each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time" (40 CFR 63.9075). This definition could be interpreted to include equipment that is located at the same plant site as an "HCl production facility" (40 CFR 63.8985(a)(1)) but is not part of the HCl production facility. We intended to include only equipment that meets the above definition and is located within an HCl production facility. Therefore, we are amending the definition of "equipment in HCl service" in 40 CFR 63.9075 to clarify that the definition applies only to equipment within an HCl production facility.

#### C. Emission Standards

The HCl Production NESHAP specify the emission limits for existing and new HCl process vents, HCl storage tanks, and HCl transfer operations in two forms—a percent reduction and an outlet concentration—and allows HCl production facilities to comply with either one. However, the wording of the emission limits could be construed to require the use of an add-on control device even when an emission point meets the outlet concentration emission limit without an add-on control device. It was not our intent to require add-on control devices when they are unnecessary for compliance. Although a percent reduction emission limit would need to be achieved through the use of an add-on control device, we recognize that an outlet concentration emission limit could be achieved through other means (e.g., process changes, pollution prevention). Therefore, we are amending table 1 to subpart NNNNN of 40 CFR part 63 to clarify that it is not necessary to use an add-on control device in order to meet the outlet concentration form of the emission limits. In addition, we are amending tables 3 and 5 to subpart NNNNN to specify the sampling port location and

continuous compliance requirements, respectively, for sources that are not equipped with an add-on control device. Also, we are amending 40 CFR 63.9015(a) to require that emission points meeting the outlet concentration limits without the use of a control device conduct subsequent performance tests when process changes are made that could reasonably be expected to change the outlet concentration. Finally, we are amending 40 CFR 63.9050 by adding paragraph (c)(9), which specifies that compliance reports must include verification that no process changes that could reasonably be expected to change the outlet concentration have been made since the last performance test.

#### D. Storage Tank Maintenance

The HCl Production NESHAP are silent on the issue of how maintenance is to be conducted on HCl storage tank control devices. This could lead to uncertainty over whether an HCl storage tank would need to be emptied before the associated control device could be disconnected for maintenance purposes. It was not our intent that an HCl storage tank would need to be emptied prior to maintenance because the standing losses associated with a full or partially-full HCl storage tank are low, when compared to the emissions that occur from filling and emptying the tank. To clarify our intent, we are amending 40 CFR 63.9000, by adding paragraph (d), to allow HCl production facilities to perform planned routine maintenance on each HCl storage tank control device for up to 240 hours per year without emptying the contents of the tank. During this time, the storage tank emission limitations would not apply. Also, we are amending 40 CFR 63.9050, by adding paragraph (c)(10), and 40 CFR 63.9055, by adding paragraph (b)(6), to specify the reporting and recordkeeping requirements for planned routine maintenance events. These provisions are consistent with other NESHAP to which plant sites containing HCl production facilities may be subject.

#### E. Notification and Reporting Requirements

##### 1. Notification of Compliance Status

The HCl Production NESHAP require the submission of a Notification of Compliance Status (NOCS) to the Administrator when a performance test is conducted (40 CFR 63.9045(a), table 7 to subpart NNNNN of 40 CFR part 63, and 40 CFR 63.9(h)). It could be interpreted that 40 CFR 63.9045(e) and (f) require the submission of a separate NOCS for each performance test that is conducted (e.g., on each emission

point). It is more efficient and no less effective for HCl production facilities to submit one NOCS for the entire affected source, rather than one NOCS for each emission point tested, and it was not our intent to require unnecessary paperwork. Therefore, we are amending 40 CFR 63.9045 to change the submission procedures for NOCS. We will allow NOCS to be submitted within 240 calendar days of the compliance dates for subpart NNNNN of 40 CFR part 63. The final amendments allow for the submission of only one NOCS per affected source because the notification is due 60 days after all performance tests are required to be conducted. We are also amending table 7 to subpart NNNNN to reflect this change to the NOCS submission procedures.

## 2. Monitoring and Leak Detection and Repair (LDAR) Plans

The HCl Production NESHAP require submission of the initial site-specific monitoring (40 CFR 63.9005(d)) and LDAR (LDAR; table 1 to subpart NNNNN of 40 CFR part 63) plans to the Administrator with a source's NOCS. The final rule does not, however, specify when or how revisions to these plans should be submitted, only that they should be submitted (40 CFR 63.9055(b)(5)). Submission of revisions to these plans is most efficiently done in conjunction with the semi-annual compliance report required by 40 CFR 63.9050. Therefore, we are amending 40 CFR 63.9050(c) by adding paragraph (c)(8) to require submission of revisions to site-specific monitoring plans and LDAR plans with semi-annual compliance reports, if revisions have been made during the reporting period.

## F. Omissions and Typographical Corrections

We are adding an exemption which was inadvertently omitted from the HCl Production NESHAP. In the preamble to the final rule (68 FR 19082), we indicated that we would include an exemption for HCl production facilities subject to 40 CFR 63.994, subpart SS. Because this exemption was not included in the final rule text, we are amending the rule to include it. Because we are removing 40 CFR 63.8985(b)(4), we are replacing it with the exemption for 40 CFR 63.994, subpart SS.

We are removing the phrase “/Cl<sub>2</sub>” from 40 CFR 63.8990(b)(4) to reflect a change made between the proposed rule and the final rule which was retained incorrectly in the final rule. The proposed rule used the term “in HCl/Cl<sub>2</sub> service,” but we wrote this term as “equipment in HCl service” in the final rule. We are making the same change in

the first column of table 1, item 4, to subpart NNNNN of 40 CFR part 63.

We are correcting an inaccurate reference in 40 CFR 63.9025(a) regarding operating parameters. The reference should be to 40 CFR 63.9020(e), which requires operating parameters to be established, rather than to 40 CFR 63.9020(d). This was a typographical error in the final rule.

We are correcting an inaccurate reference in the definition of “HCl production facility” in 40 CFR 63.9075. The reference to 40 CFR 63.8985(a)(i) should be to 40 CFR 63.8985(a)(1) because 40 CFR 63.8985(a)(i) does not exist. This was a typographical error in the final rule.

## III. Significant Comments and Changes Since Proposal

This section includes discussion of the significant comments received on the proposed amendments, particularly where we made changes to address those comments in the amendments to the final rule. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the “RESPONSE TO SIGNIFICANT PUBLIC COMMENTS Received in response to Proposed amendments to National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production” in Docket ID No. EPA-HQ-OAR-2002-0057. The docket also contains the actual comment letters and supporting documentation developed for the final amendments.

### A. Applicability

*Comment:* One commenter recommends that EPA need not include proposed 40 CFR 63.9000(c)(4) as proposed 40 CFR 63.9000(c)(5) is more inclusive and includes the conditions addressed in 40 CFR 63.9000(c)(4).

*Response:* EPA agrees with the concept put forward by the commenter and has reworded paragraph (c)(4) to encompass the language proposed in paragraphs (c)(4), (c)(5), and (c)(6).

### B. Retesting Requirements

*Comment:* Two commenters request that EPA clarify the change provisions in proposed 40 CFR 63.9015(a) to explain that the provisions to retest process vent emissions should be tied to a change that could cause an increase in emissions rather than, as currently worded, “whenever process changes are made that could reasonably be expected to change the outlet concentration.” A similar change was requested to the language in 40 CFR 63.9050(c)(9).

*Response:* EPA agrees with the commenters and has made the suggested

changes. This language is consistent with other rulemaking actions.

*Comment:* One commenter requests that EPA define “temporary process changes,” in proposed 40 CFR 63.9015(a) to be changes of less than 1 year in duration where the owner/operator believes that the source will continue to demonstrate compliance without changing the compliance demonstration method.

*Response:* EPA disagrees with the commenter. As mentioned in the previous response, without emissions test data, no one can determine the effect of a change—temporary or not—on an existing facility. Moreover, the commenter errs by excluding the term “unintentional” in discussing “temporary process changes.” As written, the final rule identifies “unintentional, temporary process changes” (emphasis added) as not being process changes. Surely a process change lasting up to 1 year could not be considered unintentional. Absent any information as to the length of time “unintentional temporary” process changes should or could last, we have not revised the final rule.

### C. Monitoring of pH

*Comment:* One commenter believes that the requirement to measure the pH of the scrubber water as provided in 40 CFR 63.9020(e)(1) and Table 5 to subpart NNNNN is an inappropriate operational parameter and should be removed from the final rule. The commenter believes that monitoring the water flow of the scrubber is a sufficient measurement of scrubber performance, as seen during performance testing. The Pesticide Active Ingredient Production NESHAP (40 CFR 63.1366(b)(ii)) allows for either minimum liquid flow rate or pressure drop to be chosen as operating parameters during the period in which the scrubber is controlling HAP from an emission stream and only requires the measurement of pH if a caustic scrubber is being used. The commenter believes that a rule change is more efficient than going through the alternative monitoring request process.

*Response:* EPA disagrees with the commenter's suggestion to replace monitoring of the scrubber water effluent pH with monitoring of the minimum liquid flow rate or pressure drop only. Apart from directly measuring HCl emissions, monitoring of the outlet pH of the scrubber water, as well as the water flow rate into the scrubber, provides the most complete depiction of parametric monitoring and best measure for process control. Parametric monitoring that provides a less certain depiction, and

corresponding level of process control, would include scrubber water outlet pH monitoring and flow monitoring. The least-certain depiction, and corresponding level of process control, would arise from monitoring only the scrubber water flow. Although such least-certain monitoring may be appropriate under certain circumstances, sources subject to the HCl production NESHAP may rely on techniques other than once-through scrubber water use. In order not to prescribe any control technique, source owners or operators are able to choose an approach that works best for them. The Pesticide NESHAP cited by the commenter differs from the HCl NESHAP and what is applicable for sources subject to the Pesticide NESHAP may not be relevant for sources subject to the HCl Production NESHAP. Further, the commenter fails to note that other standards that regulate HCl emissions require the monitoring of effluent pH. A more comparable example is that of 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. In this NESHAP, where the HCl production process is very similar to that of the HCl Production NESHAP, monitoring of effluent pH is required whenever a wet scrubber, water or caustic, is used (40 CFR 63.1209(o)(3)(iv)).

EPA is unaware of any difficulty faced by source owners or operators subject to the HCl Production NESHAP in getting approval for alternative monitoring as suggested by the commenter. In fact, at least two HCl Production NESHAP source owners/operators have demonstrated a need for an alternative monitoring technique, requested approval for such technique, and received approval for that technique by the Regional offices.

#### D. Engineering Evaluations

*Comment:* Two commenters request that the provision allowing the use of engineering evaluations in lieu of emission testing, as proposed in 40 CFR 9020(e)(3), be amended to include process vents as well as the currently proposed allowance for storage tanks and transfer operations. The commenters note that EPA has historically allowed such assessments for process vents in other NESHAP (e.g., 40 CFR 63.1258(b)(3)(i); 40 CFR 63.1365(c)(3)(i)(A); 40 CFR 63.1426(f)) and continues to support the use of design evaluations (40 CFR 63.2450(h)).

*Response:* EPA disagrees with the commenters' suggestion. The standards cited by the commenters all deal

primarily with organic HAP, with HCl occurring in more limited quantities, as opposed to the primacy of HCl emissions encountered in the HCl Production NESHAP. The commenters provide no data to support their contention about use of engineering evaluations in lieu of emissions testing for HCl and Cl<sub>2</sub> for the process vents. Design values as supplied by such engineering evaluations may be appropriate for small emitters (i.e., those below the NESHAP applicability level) as was done for at least some of the cited NESHAP, but substantial, uncontrolled emissions "such as those that could come from process vents—should be measured.

Again, EPA feels that a more comparable example is the Hazardous Waste Combustor NESHAP (40 CFR part 63, subpart EEE). In this standard (40 CFR 63.1207(m)), conservative engineering evaluations are allowed in lieu of emissions testing for sources that can comply with the emission standards assuming all chlorine in the feed is emitted as total chlorine (HCl + Cl<sub>2</sub>)—if the maximum theoretical emission concentration does not (cannot) exceed the emission standards, emissions testing is waived. However, HCl production furnaces could not comply with this waiver of the emission test because they rely on wet scrubbers/absorbers to produce HCl product and control emissions of HCl/Cl<sub>2</sub>. We believe this situation is analogous to that encountered in the HCl Production NESHAP where we have allowed engineering evaluations to be utilized for those emission sources that could possibly emit below the emission standard (i.e., the storage tanks and transfer operations) but have required emission testing for the emission sources that are not likely to emit below the standard without the use of a control device (i.e., the process vents).

#### E. Compliance Date

*Comment:* Two commenters request that EPA clarify the deadline for compliance with the final rule and the dates when the initial reports are due in 40 CFR 63.9050(b)(1) and (2), believing that there could be confusion among the various entities affected by the rule concerning the submittal date for the first compliance report. They suggest that the rule language specifically state that January 31, 2007, is the date on which the first compliance report is due.

*Response:* EPA agrees that the wording could be confusing and has added clarification to the language of the regulation to indicate that, for sources in existence on April 17, 2006,

the initial compliance period ends June 30, 2006, and the initial compliance report is due on July 31, 2006.

#### F. Planned Maintenance

*Comment:* Two commenters expressed concern about the planned maintenance advance notification requirements in proposed 40 CFR 63.9050(c)(10)(ii) in that planned maintenance schedules are subject to change with little or no notice. One of the commenters believes that a facility could, in good faith, report advance plans of maintenance to the permit authority and EPA but then, due to an unforeseen change of plans, not conduct the planned maintenance on the proposed schedule or identify additional, required work that was not in the maintenance plan. The commenter believes that EPA should not establish a regulation where a decision is required to respond to plant-specific conditions that have no impact on emissions becomes a regulatory enforcement matter. The commenter believes that EPA already has sufficient authority through the existing startup, malfunction, and shutdown (SSM) provisions to review such maintenance activities without requiring the additional reporting required by 40 CFR 63.9050(c)(10)(ii). The other commenter requests that tracking of compliance with any needed notification requirements only be included in the required periodic reports (as proposed in 40 CFR 63.9050(c)(10)(i)) or that such reporting not be required unless a deviation of a monitoring condition or an exceedance of an emission limit occurs during the periodic reporting period. One commenter believes that the proposed requirement is overly burdensome and unnecessary. Further, the commenter states that it is not aware of any other NESHAP that requires advance reporting of anticipated planned routine maintenance activities on emission control devices.

*Response:* EPA disagrees with the commenters. In adding this requirement, EPA was responding to concerns that the rule language was unclear on whether an HCl storage tank would need to be emptied before the associated control device could be disconnected for maintenance purposes. In the proposed amendments to the final rule, EPA provided language that allowed owners/operators to perform maintenance on each HCl storage tank for up to 240 hours per year without emptying the storage tank. During this period, the storage tank emissions would not apply. The notification requirement was included to ensure that the recipient of the periodic reports is

aware of planned maintenance activities related to the HCl storage tanks, including the type of maintenance to be performed and the duration of the maintenance (which would be the length of time during which the emission standards would not apply). Further, EPA does not believe that an out-of-compliance period should suddenly become a "maintenance period." EPA does not see the dilemma the commenters believe themselves subject to. If a planned maintenance period does not occur, EPA sees no harm or liability for having reported it. EPA recognizes that planned maintenance activities may, on occasion, not occur as scheduled. In cases where an owner/operator had included planned maintenance in a periodic report but the maintenance did not occur, EPA would expect that the owner/operator would merely explain the situation in the next periodic report. EPA understands that occasionally additional unplanned maintenance needs are discovered in the course of a planned maintenance and believes that the regulations are sufficiently flexible to accommodate such circumstances. EPA believes that 240 hours is sufficient time to effect maintenance on HCl storage tank control devices. However, should planned maintenance on such devices require 240 or greater hours per year, the owner/operator would be required to drain the HCl storage tank or comply with the emission limits without the control device in-place.

#### G. Work Practice Standards

*Comment:* One commenter expressed concern about changes made to item 4 in table 1 to subpart NNNNN where the term "and new" sources was added to the existing language. The commenter believes that this change was not discussed in the preamble to the proposed amendments and that this addition significantly broadens the impact of the rule and should be justified.

*Response:* Item 4 in table 1 to subpart NNNNN only addressed leaking equipment at existing sources. EPA acknowledges that it was an oversight in the regulatory language in the final rule to omit leaking equipment at new sources and, so as a technical correction, added "and new" to the language of item 4 in the proposed amendments. The text of the final rule preamble related to the emission limitations and work practice standards (68 FR 19079) provides discussion for process vents, storage tanks, and transfer operations at both new and existing sources. However, for leaking equipment, the text only states "[f]or

leaking equipment, the final rule includes a work practice standard." EPA believes that the lack of distinction between leaking equipment at new and existing sources is indication that the final rule applies to both situations. EPA sees no reason to omit new sources from having to address leaking equipment and does not agree with the commenter's concern about this adjustment "significantly" broadening the impact of the final rule.

#### IV. Impacts of the Final Rule

The changes incorporated as a result of the final rule amendments do not change any of the impacts presented in the preamble to the final rule which was published at 68 FR 19076 (April 17, 2003).

#### V. Statutory and Executive Order (EO) Reviews

##### A. EO 12866: Regulatory Planning and Review

Under EO 12866 (58 FR 51735; October 4, 1993), 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 EO. The EO 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 EO.

It has been determined that today's action is not a "significant regulatory action" under the terms of EO 12866 and is, therefore, not subject to OMB review.

##### B. Paperwork Reduction Act

OMB has approved the information collection requirements in the 2003 NESHAP for HCl production under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0529. At proposal, EPA prepared a revision to the currently approved

information collection request (ICR), and made it available for public comment. Most of the final rule amendments are not expected to have an impact on the ICR burden. However, the ICR was revised because two of the final rule amendments are expected to change the burden slightly. The exemption for individual emission streams that are routed to 40 CFR part 63, subpart EEE, hazardous waste combustors is expected to decrease the reporting and recordkeeping burden for some sources. The routine maintenance allowance is expected to increase the reporting and recordkeeping burden for all sources. Overall, the total annual reporting and recordkeeping burden is expected to be 733 hours (1 percent) lower than for the final rule. No comments were received on the revised ICR or burden estimates.

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

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

##### C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action.

For purposes of assessing the impacts of today's amendments on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.202; (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. The small

business size standard for the affected industries (NAICS 325181, Alkalies and Chlorine Manufacturing; and NAICS 325188, All Other Basic Inorganic Chemical Manufacturing) is a maximum of 1,000 employees for an entity.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that today's action will not have a significant economic impact on a substantial number of small entities. The final rule amendments will not impose any requirements on small entities.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, 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, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 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.

Today's final amendments contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for

State, local, or Tribal governments. EPA has determined that the final amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's final amendments are not subject to the requirements of UMRA sections 202 and 205.

#### *E. EO 13132: Federalism*

Executive Order 13132 (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 EO 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."

The final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. None of the affected facilities are owned or operated by State governments. Thus, EO 13132 does not apply to the final amendments.

#### *F. EO 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249; November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." The final rule amendments do not have Tribal implications, as specified in EO 13175. They will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No Tribal governments own facilities subject to the HCl Production NESHAP. Thus, EO 13175 does not apply to the final amendments.

#### *G. EO 13045: Protection of Children From Environmental Health and Safety Risks*

EO 13045 (62 FR 19885; April 23, 1997) applies to any rule that: (1) Is

determined to be "economically significant" as defined under EO 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, 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. EPA interprets EO 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. The final rule amendments are not subject to EO 13045 because they are based on technology performance and not on health or safety risks.

#### *H. EO 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Today's action is not subject to EO 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under EO 12866.

#### *I. National Technology Transfer and Advancement Act*

As stated in the proposed rule, 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, or business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The final rule amendments do not involve changes to the technical standards in the final rule. Therefore, EPA is not considering the use of any voluntary consensus standards in the final amendments.

#### *J. Congressional Review Act*

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

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the comptroller General of the United States. EPA will submit a report containing the final rule amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments will be effective April 7, 2006.

**List of Subjects in 40 CFR Part 63**

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

Dated: March 31, 2006.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set forth in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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.*

**Subpart NNNNN—[Amended]**

■ 2. Section 63.8985 is amended by revising paragraphs (b)(4) and (c) to read as follows:

**§ 63.8985 Am I subject to this subpart?**

\* \* \* \* \*

(b) \* \* \*

(4) 40 CFR part 63, section 63.994, subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

\* \* \* \* \*

(c) An HCl production facility is not subject to this subpart if it is located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes, and the emissions from the HCl production facility are subject to section 63.113(c), subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process

Vents, Storage Vessels, Transfer Operations, and Wastewater.

\* \* \* \* \*

■ 3. Section 63.8990 is amended by revising paragraph (b)(4) to read as follows:

**§ 63.8990 What parts of my plant does this subpart cover?**

\* \* \* \* \*

(b) \* \* \*

(4) Each emission stream resulting from leaks from equipment in HCl service.

\* \* \* \* \*

■ 4. Section 63.9000 is amended by:

- a. Revising paragraph (a);
- b. Revising the introductory text of paragraph (c);
- c. Adding paragraph (c)(4); and
- d. Adding paragraph (d).

**§ 63.9000 What emission limitations and work practice standards must I meet?**

(a) With the exceptions noted in paragraphs (c) and (d) of this section, you must meet the applicable emission limit and work practice standard in table 1 to this subpart for each emission stream listed under § 63.8990(b)(1) through (4) that is part of your affected source.

\* \* \* \* \*

(c) The emission streams listed in paragraphs (c)(1) through (4) of this section are exempt from the emission limitations, work practice standards, and all other requirements of this subpart.

\* \* \* \* \*

(4) Emission streams from HCl process vents, HCl storage tanks, and HCl transfer operations that are also subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, or 40 CFR 266.107, subpart H, Burning of Hazardous Waste in Boilers and Industrial Furnaces.

(d) The emission limits for HCl storage tanks in table 1 to this subpart do not apply during periods of planned routine maintenance of HCl storage tank control devices. Periods of planned routine maintenance of each HCl storage tank control device, during which the control device does not meet the emission limits specified in table 1 to this subpart, shall not exceed 240 hours per year.

■ 5. Section 63.9015 is amended by revising paragraph (a) to read as follows:

**§ 63.9015 When must I conduct subsequent performance tests?**

(a) You must conduct all applicable performance tests according to the procedures in § 63.9020 on the earlier of

your title V operating permit renewal or within 5 years of issuance of your title V permit. For emission points meeting the outlet concentration limits in table 1 to this subpart without the use of a control device, all applicable performance tests must also be conducted whenever process changes are made that could reasonably be expected to increase the outlet concentration. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: process upsets and unintentional, temporary process changes.

\* \* \* \* \*

■ 6. Section 63.9025 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?**

(a) For each operating parameter that you are required by § 63.9020(e) to monitor, you must install, operate, and maintain each CMS according to the requirements in paragraphs (a)(1) through (6) of this section.

\* \* \* \* \*

- 7. Section 63.9045 is amended by:
  - a. Removing and reserving paragraph (e); and
  - b. Revising paragraph (f).

**§ 63.9045 What notifications must I submit and when?**

\* \* \* \* \*

(e) [Reserved]

(f) You must submit the Notification of Compliance Status, including the performance test results, within 240 calendar days after the applicable compliance dates specified in § 63.8995.

\* \* \* \* \*

- 8. Section 63.9050 is amended by:
  - a. Revising paragraphs (b)(1) and (2);
  - b. Revising the introductory text of paragraph (c); and
  - c. Adding paragraphs (c)(8) through (c)(10).

**§ 63.9050 What reports must I submit and when?**

\* \* \* \* \*

(b) \* \* \*

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8995 and ending on June 30 or December 31, whichever date is the first date



following the end of the first calendar half after the compliance date that is specified for your source in § 63.8995 (i.e., June 30, 2006, for sources existing on April 17, 2006).

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8995 (i.e., July 31, 2006, for sources existing on April 17, 2006).

\* \* \* \* \*

(c) The compliance report must contain the following information in paragraphs (c)(1) through (10) of this section.

\* \* \* \* \*

(8) If you did not make revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a statement that you did not make any revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period. If you made revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a copy of the revised plan.

(9) If you meet the outlet concentration limit in table 1 to this subpart without the use of a control device for any emission point, verification that you have not made any process changes that could reasonably be expected to increase the outlet concentration since your most recent performance test for that emission point.

(10) The information specified in paragraphs (c)(10)(i) and (ii) of this section for those planned routine maintenance operations that caused or may cause an HCl storage tank control device not to meet the emission limits in table 1 to this subpart, as applicable.

(i) A description of the planned routine maintenance that was performed for each HCl storage tank control device during the reporting period. This description shall include the type of maintenance performed and the total number of hours during the reporting period that the HCl storage tank control device did not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance.

(ii) A description of the planned routine maintenance that is anticipated to be performed for each HCl storage tank control device during the next reporting period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

\* \* \* \* \*

■ 9. Section 63.9055 is amended by adding paragraph (b)(6) to read as follows:

**§ 63.9055 What records must I keep?**

\* \* \* \* \*

(b) \* \* \*

(6) Records of the planned routine maintenance performed on each HCl storage tank control device including the duration of each time the control device does not meet the emission

limits in table 1 to this subpart, as applicable, due to planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(6)(i) and (ii) of this section.

(i) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were not met at the beginning of the planned routine maintenance, and

(ii) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were met at the conclusion of the planned routine maintenance.

■ 10. Section 63.9075 is amended by revising the definitions of “Equipment in HCl service” and “HCl production facility” to read as follows:

**§ 63.9075 What definitions apply to this subpart?**

\* \* \* \* \*

*Equipment in HCl service* means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in an HCl production facility that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time.

\* \* \* \* \*

*HCl production facility* is defined in § 63.8985(a)(1).

\* \* \* \* \*

■ 11. Table 1 in subpart NNNNN is revised to read as follows:

**TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS**

[As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source]

For each . . . .	You must meet the following emission limit and work practice standard
1. Emission stream from an HCl process vent at an existing source .....	a. Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 20 ppm by volume or less; and b. Reduce Cl <sub>2</sub> emissions by 99 percent or greater or achieve an outlet concentration of 100 ppm by volume or less.
2. Emission stream from an HCl storage tank at an existing source .....	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
3. Emission stream from an HCl transfer operation at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
4. Emission stream from leaking equipment in HCl service at existing and new sources.	a. Prepare and operate at all times according to an equipment LDAR plan that describes in detail the measures that will be put in place to detect leaks and repair them in a timely fashion; and b. Submit the plan to the Administrator for comment only with your Notification of Compliance Status; and c. You may incorporate by reference in such plan existing manuals that describe the measures in place to control leaking equipment emissions required as part of other federally enforceable requirements, provided that all manuals that are incorporated by reference are submitted to the Administrator.
5. Emission stream from an HCl process vent at a new source .....	a. Reduce HCl emissions by 99.4 percent or greater or achieve an outlet concentration of 12 ppm by volume or less; and b. Reduce Cl <sub>2</sub> emissions by 99.8 percent or greater or achieve an outlet concentration of 20 ppm by volume or less.
6. Emission stream from an HCl storage tank at a new source .....	Reduce HCl emissions by 99.9 percent or greater or achieve an outlet concentration of 12 ppm by volume or less.

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source]

For each . . .	You must meet the following emission limit and work practice standard
7. Emission stream from an HCl transfer operation at a new source .....	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.

■ 12. Table 3 in subpart NNNNN is revised to read as follows:

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES

[As stated in § 63.9020, you must comply with the following requirements for performance tests for HCl production for each affected source]

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
1. Select sampling port location(s) and the number of traverse points.	a. Method 1 or 1A in appendix A to 40 CFR part 60 of this chapter.	i. If complying with a percent reduction emission limitation, sampling sites must be located at the inlet and outlet of the control device prior to any releases to the atmosphere (or, if a series of control devices are used, at the inlet of the first control device and at the outlet of the final control device prior to any releases to the atmosphere); or ii. If complying with an outlet concentration emission limitation, the sampling site must be located at the outlet of the final control device and prior to any releases to the atmosphere or, if no control device is used, prior to any releases to the atmosphere.
2. Determine velocity and volumetric flow rate .....	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 of this chapter.	
3. Determine gas molecular weight .....	a. Not applicable .....	i. Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas .....	Method 4 in appendix A to 40 CFR part 60 of this chapter.	
5. Measure HCl concentration and Cl <sub>2</sub> concentration from HCl process vents.	a. Method 26A in appendix A to 40 CFR part 60 of this chapter.	i. An owner or operator may be exempted from measuring the Cl <sub>2</sub> concentration from an HCl process vent provided that a demonstration that Cl <sub>2</sub> is not likely to be present in the stream is submitted as part of the site-specific test plan required by § 63.9020(a)(2). This demonstration may be based on process knowledge, engineering judgment, or previous test results.
6. Establish operating limits with which you will demonstrate continuous compliance with the emission limits in Table 1 to this subpart, in accordance with § 63.9020(e)(1) or (2).		

■ 13. Table 5 in subpart NNNNN is revised to read as follows:

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

[As stated in § 63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source and each work practice standard]

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Affected source using a caustic scrubber or water scrubber/adsorber.	a. In Tables 1 and 2 to this subpart.	i. Collecting the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, and effluent pH monitoring data according to § 63.9025, consistent with your monitoring plan; and ii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

[As stated in § 63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source and each work practice standard]

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
2. Affected source using any other control device .....	a. In Tables 1 and 2 to this subpart.	iii. Maintaining the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and iv. Maintaining the daily average scrubber effluent pH within the operating limits.
3. Affected source using no control device .....	a. In Tables 1 and 2 to this subpart..	i. Conducting monitoring according to your monitoring plan established under § 63.8(f) in accordance with § 63.9025(c); and ii. Collecting the parameter data according to your monitoring plan established under § 63.8(f); and iii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iv. Maintaining the daily average parameter values within the operating limits established according to your monitoring plan established under § 63.8(f).
4. Leaking equipment affected source .....	a. In Table 1 to this subpart	i. Verifying that you have not made any process changes that could reasonably be expected to change the outlet concentration since your most recent performance test for an emission point. i. Verifying that you continue to use a LDAR plan; and ii. Reporting any instances where you deviated from the plan and the corrective actions taken.

■ 14. Table 7 in subpart NNNNN is revised to read as follows:

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§ 63.1 .....	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2 .....	Definitions .....	Yes .....	Additional definitions are found in § 63.9075.
§ 63.3 .....	Units and abbreviations .....	Yes.	
§ 63.4 .....	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5 .....	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a) .....	Compliance with standards and maintenance requirements-applicability.	Yes.	
§ 63.6(b)(1)–(4) .....	Compliance dates for new or reconstructed sources.	Yes .....	§ 63.8995 specifies compliance dates.
§ 63.6(b)(5) .....	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6) .....	[Reserved] .....	Yes.	
§ 63.6(b)(7) .....	Compliance dates for new or reconstructed area sources that become major.	Yes .....	§ 63.8995 specifies compliance dates.
§ 63.6(c)(1)–(2) .....	Compliance dates for existing sources .....	Yes .....	§ 63.8995 specifies compliance dates.
§ 63.6(c)(3)–(4) .....	[Reserved] .....	Yes.	
§ 63.6(c)(5) .....	Compliance dates for existing area sources that become major.	Yes .....	§ 63.8995 specifies compliance dates.
§ 63.6(d) .....	[Reserved] .....	Yes.	
§ 63.6(e)(1)–(2) .....	Operation and maintenance requirements .....	Yes.	
§ 63.6(e)(3) .....	SSM plans .....	Yes.	
§ 63.6(f)(1) .....	Compliance except during SSM .....	Yes.	
§ 63.6(f)(2)–(3) .....	Methods for determining compliance .....	Yes.	
§ 63.6(g) .....	Use of an alternative non-opacity emission standard.	Yes.	
§ 63.6(h) .....	Compliance with opacity/visible emission standards.	No .....	Subpart NNNNN does not specify opacity or visible emission standards.

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

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation	
§ 63.6(i) .....	Extension of compliance with emission standards	Yes.	Except for existing affected sources as specified in § 63.9010(b).	
§ 63.6(j) .....	Presidential compliance exemption .....	Yes.		
§ 63.7(a)(1)–(2) .....	Performance test dates .....	Yes .....		
§ 63.7(a)(3) .....	Administrator's Clean Air Act section 114 authority to require a performance test.	Yes.	Additional monitoring requirements are found in § 63.9005(d) and 63.9035. Subpart NNNNN does not refer directly or indirectly to § 63.11.	
§ 63.7(b) .....	Notification of performance test and rescheduling	Yes.		
§ 63.7(c) .....	Quality assurance program and site-specific test plans.	Yes.		
§ 63.7(d) .....	Performance testing facilities .....	Yes.		
§ 63.7(e)(1) .....	Conditions for conducting performance tests .....	Yes.		
§ 63.7(f) .....	Use of an alternative test method .....	Yes.		
§ 63.7(g) .....	Performance test data analysis, recordkeeping, and reporting.	Yes.		
§ 63.7(h) .....	Waiver of performance tests .....	Yes.		
§ 63.8(a)(1)–(3) .....	Applicability of monitoring requirements .....	Yes .....		
63.8(a)(4) .....	Monitoring with flares .....	No .....		
§ 63.8(b) .....	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.		
§ 63.8(c)(1)–(3) .....	Continuous monitoring system O&M .....	Yes .....		
§ 63.8(c)(4) .....	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes .....		
§ 63.8(c)(5) .....	Continuous opacity monitoring system (COMS) minimum procedures.	No .....	Subpart NNNNN does not have opacity or visible emission standards.	
§ 63.8(c)(6) .....	Zero and high level calibration checks .....	Yes .....	Applies as modified by § 63.9005(d).	
§ 63.8(c)(7)–(8) .....	Out-of-control periods, including reporting .....	Yes.	Applies as modified by § 63.9005(d).	
§ 63.8(d)–(e) .....	Quality control program and CMS performance evaluation.	No .....		
§ 63.8(f)(1)–(5) .....	Use of an alternative monitoring method .....	Yes.	Only applies to sources that use continuous emissions monitoring systems (CEMS). Applies as modified by § 63.9005(d).	
§ 63.8(f)(6) .....	Alternative to relative accuracy test .....	No .....		
§ 63.8(g) .....	Data reduction .....	Yes .....	Except § 63.9045(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.	
§ 63.9(a) .....	Notification requirements—applicability .....	Yes.		
§ 63.9(b) .....	Initial notifications .....	Yes .....		
§ 63.9(c) .....	Request for compliance extension .....	Yes.	Subpart NNNNN does not have opacity or visible emission standards.	
§ 63.9(d) .....	Notification that a new source is subject to special compliance requirements.	Yes.		
§ 63.9(e) .....	Notification of performance test .....	Yes.		
§ 63.9(f) .....	Notification of visible emissions/opacity test .....	No .....		
§ 63.9(g)(1) .....	Additional CMS notifications—date of CMS performance evaluation.	Yes.		
§ 63.9(g)(2) .....	Use of COMS data .....	No .....		Subpart NNNNN does not require the use of COMS.
§ 63.9(g)(3) .....	Alternative to relative accuracy testing .....	No .....		Applies only to sources with CEMS.
§ 63.9(h) .....	Notification of compliance status .....	Yes .....		Except the submission date specified in § 63.9(h)(2)(ii) is superseded by the date specified in § 63.9045(f).
§ 63.9(i) .....	Adjustment of submittal deadlines .....	Yes.		
§ 63.9(j) .....	Change in previous information .....	Yes.		
§ 63.10(a) .....	Recordkeeping/reporting applicability .....	Yes.	§§ 63.9055 and 63.9060 specify additional recordkeeping requirements.	
§ 63.10(b)(1) .....	General recordkeeping requirements .....	Yes .....		
§ 63.10(b)(2)(i)–(xi) .....	Records related to SSM periods and CMS .....	Yes.		
§ 63.10(b)(2)(xii) .....	Records when under waiver .....	Yes.	Applies only to sources with CEMS.	
§ 63.10(b)(2)(xiii) .....	Records when using alternative to relative accuracy test.	No .....		
§ 63.10(b)(2)(xiv) .....	All documentation supporting initial notification and notification of compliance status.	Yes.		
§ 63.10(b)(3) .....	Recordkeeping requirements for applicability determinations.	Yes.		

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

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.9005 (d).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.9050 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes	§ 63.9045(f) specifies submission date.
§ 63.10(d)(3)	Opacity or visible emissions observations	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§ 63.10(d)(5)	SSM reports	Yes.	
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)	Results of COMS performance evaluations	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports	Yes.	
§ 63.10(e)(4)	Continuous opacity monitoring system data reports	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes.	
§ 63.11	Control device requirements—applicability	No	Facilities subject to subpart NNNNN do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.9070 lists those sections of subparts NNNNN and A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes	Subpart NNNNN does not incorporate any material by reference.
§ 63.15	Availability of information/confidentiality	Yes.	

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[PA209–4302; FRL–8055–8]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO<sub>2</sub> Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan; Correction**

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

**ACTION:** Direct final rule; correction.

**SUMMARY:** On July 21, 2004 (69 FR 43522) EPA published a **Federal Register** notice redesignating the Hazelwood SO<sub>2</sub> Nonattainment Area and the Monongahela River Valley Unclassifiable Area to attainment of the sulfur dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS). In the July 21, 2004 final rulemaking document, two areas were inadvertently omitted from the revised designated

area listing. This document corrects that error.

**DATES:** *Effective Date:* April 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth, (215) 814–2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” or “our” are used we mean EPA. On July 21, 2004 (69 FR 43522), we published a final rulemaking announcing our approval of the redesignation of the Hazelwood SO<sub>2</sub> Nonattainment Area and the Monongahela River Valley Unclassifiable Area, located in the Allegheny Air Basin in Allegheny County to attainment of the NAAQS for SO<sub>2</sub> and approved a combined maintenance plan for both areas as a State Implementation Plan (SIP) revision. This action pertained to the redesignation of the Hazelwood and Monongahela River Valley areas (V.(B)(1) and V.(B)(2), respectively, of part 81, section 81.339, to attainment. This action was not intended to affect the area within a two-mile radius of the Bellevue monitor (V.(B)(3), or the remaining portions of the Allegheny County Air Basin (V.(B)(4). In the July 21, 2004 rulemaking document, these areas were inadvertently removed in the Pennsylvania SO<sub>2</sub> Table in part 81,

section 81.339. Therefore, this correction action restores the entries which were inadvertently removed.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today’s rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

**Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)). Because the agency has made a “good cause” finding that this action